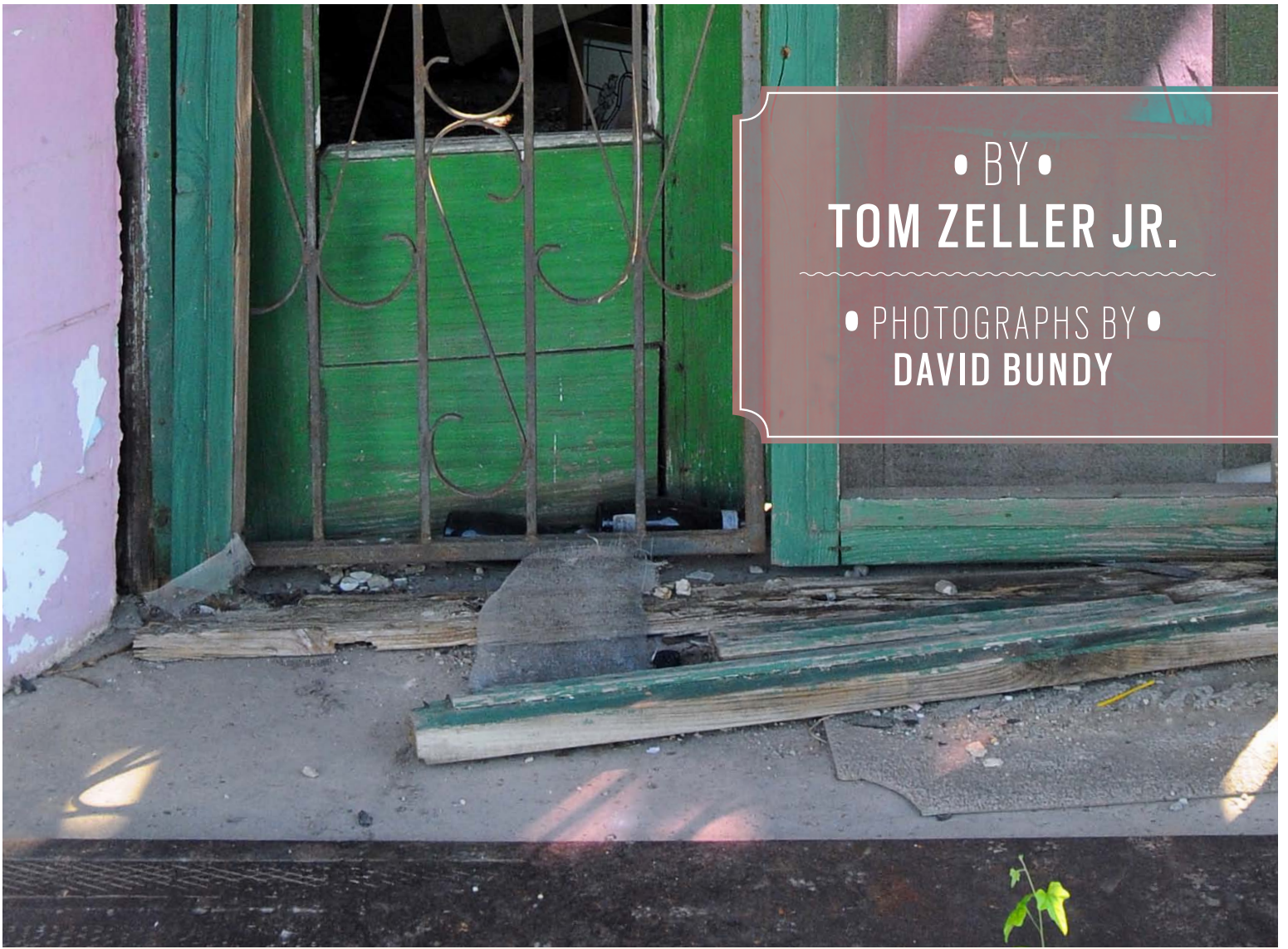




• WELCOME TO UNIONTOWN •

OLD KING COAL

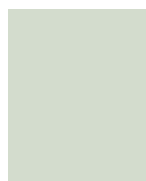
LIVING AMID INDUSTRIAL SLOP



• BY •
TOM ZELLER JR.

• PHOTOGRAPHS BY •
DAVID BUNDY

Booker T. Gipson, 71, owns a small piece of land directly across County Road 7 from the Arrowhead landfill, just outside of Uniontown, Alabama. He's got a modest trailer on the property, perched on thigh-high cinder block columns, and he keeps a few head of cattle in an adjacent field.





Rolling prairie and farmland define the local landscape, but Uniontown and its surroundings are unmistakably poor.

Off the front of the trailer he's built a broad wooden deck, which a few years back offered views of gently rolling scrubland and low forest. Today, the deck looks out on a small mountain — now among the highest geographical features in the area.

It's built of coal ash.

"It will just about choke you," Gipson says of the stench that sometimes rises from the pile.

Patches of newly-planted grass and dozens of white, hook-shaped gas vents now cover the artificial butte, which was formed between 2009 and 2010. In that time, roughly 4 million tons of

coal ash — sometimes known as fly ash or, more officially, as "coal combustion residuals" — were dumped here. Laced with a variety of heavy metals like arsenic, mercury and lead, it's what's left over after coal is burned to produce electricity, something the United States continues to do in prodigious amounts.

Public health advocates consider the stuff poison, and have been lobbying for tough federal oversight of its disposal and handling — a function currently left to a patchwork of varying state laws. Industry representatives say the hazards of coal ash, which is often

recycled for use in concrete and other construction materials, are overstated, and that state rules, which typically treat coal ash as non-hazardous “special” waste, are adequate.

Either way, civil rights activists say the fact that the stuff was dumped near Gipson and his neighbors — mostly poor, predominantly black — reflects a broader national problem: More than two decades after the rise of the environmental justice movement, which aspired to protect disenfranchised Americans from the ill-effects of pollution, a disproportionate share of the nation’s filth continues to land on low-income and minority communities.

The coal ash at Arrowhead is the result of an accident that occurred four years ago and roughly 300 miles north, in Kingston, Tenn. An impoundment pond at a coal-burning power plant near Kingston broke through a dike and spilled more than one billion gallons of wet coal ash sludge across the surrounding land and into nearby rivers and streams.

It was one of the largest environmental disasters of its kind in U.S. history, and, as all disasters do, it set in motion a complex and troubling chain of events.

At the time of the spill, Uniontown residents had recently lost a

legal battle to block construction of a roughly 1,000-acre municipal landfill across from Gipson’s house. The facility — modern in design and ready to be put to full use — was close to rail lines and authorized to accept municipal, industrial, commercial, construction and, crucially, “special” wastes, from states near and far.

Simply put, it was a ripe target for Kingston’s coal ash, and after weighing a handful of other proposed sites, federal officials approved a plan to bring the waste — all 4 million tons of it — to Uniontown.

Gipson and other local residents were mortified, but local politicians, including several black leaders on the Perry County Commission in Marion, Ala., located 20 miles north of Uniontown, welcomed the business — not least because it earned the county, which negotiated a \$1.05-per-ton fee on the ash, a multi-million dollar windfall.

But as the stuff rolled in over the course of a year, and the mountain of ash rose up off the former prairie, Gipson and other residents living around the landfill suggest they paid a price for the lack of stronger federal oversight. Wind and rain would often disperse the ash, they say, either as a grey-white dust that

coated their yards and fruit trees and cars, or as a pasty mud that rolled across the road and into nearby ditches and streams.

Federal and state lawsuits against the operators of the site, filed amid the coal ash deliveries, are pending. In January, Gipson and other Perry County residents also filed a civil rights complaint with the Environmental Protection Agency.

“Now here’s what my concern is,” says Gipson, who has lived most of his life in and around Uniontown, the dilapidated hamlet that is the dump’s nominal home. “I got five grandkids, and they’ll be playing out there in the yard every day. All five of them play there in the yard daily. But I don’t know what they’re going to catch from this landfill.”

“They would protect an animal before they’d protect humans.”

— *Uniontown resident on environmental regulators*

BUZZARDS AND DOGS

On a recent afternoon, Gipson sits on the porch of his neighbor, Dora Williams, along with Esther Calhoun, another outspoken critic of the landfill.

Staring out at the coal ash mound, all three share recollections of the parade of developers, politicians, journalists, lawyers and state and federal regulators who have drifted in and out of the area since their battle against the placement of a landfill near Uniontown began almost a decade ago. Recalling the coal ash deliveries, they talk of a year or more of relentless noise, foul odors, sore throats, watery eyes and worries about the quality of the groundwater they drink.

Though it’s quieter these days, and the stench comes less often, they bemoan the swarms of buzzards and packs of dogs that have taken a liking to the landfill — the latest insult to a country corridor that they once cherished. And they worry that it is only a matter of time before more coal ash, from some other facility in some far-away state, or even from Alabama’s slew of loosely regulated holding ponds, begins rolling in again.

Calhoun is particularly incensed with the EPA and the state’s environmental regulator, the Alabama Department of

Environmental Management, or ADEM, which she says did little to protect them. As it happens, a coalition of environmental and public health advocates sued the EPA in April for failing to develop rules for coal ash handling.

“They would protect an animal before they’d protect humans and I think that’s terrible,” Calhoun says of environmental regulators. “They came down here, and we rode around. We took them on the whole tour. We took them down and around. And I said ‘We gonna show ‘em!’” she continues. “Didn’t hear nothing else from them. We poured our souls out and everything to them. They just take what we got and then you never hear anything. ADEM? They didn’t do anything. They think we’re a joke or something.

“But the thing of it is,” she adds, “we just can’t give up.”

Lawsuits claiming that authorities discriminate when choosing where to locate industrial facilities — whether landfills, toxic waste repositories, chemical facilities, or other potentially polluting enterprises — typically face a tough road. Courts have traditionally set very high bars for proving that a company or regulator was intentionally biased in the selection of a site.

But Robert Bullard, dean of the

Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University, suggests that the practical realities of wealth and power dictate that discrimination happens all the time, and he grows animated when talking about cases like the Perry County landfill.

“The fact is that after more than two decades of intense empirical study and evidence, it is very clear that environmental racism and discrimination is real,” says Bullard, who launched his career in the late 1970’s combatting the placement or “siting” of landfills in predominantly minority neighborhoods of Houston. “There’s lots of data — hundreds of studies establishing relationships and correlations between race and class in environmental disparities. When you start looking at these studies, particularly over last 10 years — whether it’s about siting or industrial pollution, chemical use or accidents and explosions, discoveries of old waste sites, air quality, dirty air — the trends are undeniable.”

Even without the data, the mechanics of this sort of de facto discrimination aren’t difficult to understand. Affluent communities, after all, have more resources to either fight off the arrival of an unwanted industry or facility; are less likely to need whatever

OLD KING COAL

economic benefits such projects might offer; and in any case have the means to relocate to fairer, and in all likelihood, more expensive pastures should an environmental insult prove too much.

Slide down the income scale, and you'll eventually start running into folks like Booker Gipson, who lives on a tiny Social Security payment and whatever he can muster at the stockyards for his few head of cattle — less than \$10,000 even in a good year.

“If they treat me well and give me enough of the green stuff, well then I can get up and go,” Gipson says, when asked if he'd sell his property if he could. “As it is, we can't afford to move.”

On the flip side, potential polluters tend to favor — and surely follow — paths of least resistance. Such paths, almost by definition, more often lead to the door of folks like Gipson than to, say, a wealthy suburb of Montgomery.

An analysis by researchers from the University of Colorado, and published in 2008 in the journal *Sociological Perspectives*, made the income connection quite clear. Although the results were not predictive of pollution exposures, the researchers were able to combine broad pollution data gleaned from EPA's Toxics Release Inventory with Census-tract demographic



Light industry buoys the local economy, but the area has seen better times.

data on race and income. The study revealed an unmistakable link between declining incomes and increasing odds of living in an area of higher toxic concentration.

Even more telling: the results varied significantly by race, even when income was the same. The average black household with an income below \$10,000, the researchers noted, “lives in a neighborhood with a toxic concentration value that is significantly different from — and 1.51 times as great as — the average white household in the same category.”

Those findings came as no sur-

prise to Bullard. In 2007, along with researchers from the Universities of Michigan and Montana, and Dillard University in New Orleans, he updated a 1987 analysis of toxic waste facilities in the United States. The new report, “Toxic Wastes and Race at 20,” used Census data and distance-based analyses to reveal the characteristics of residents within the orbit of the nation’s 413 commercial hazardous waste facilities.

“The application of these new methods, which better determine where people live in relation to where hazardous sites are locat-

“After more than two decades of intense empirical study...it is very clear that environmental racism and discrimination is real.”

— Robert Bullard, Dean of the Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University

ed, reveals that racial disparities in the distribution of hazardous wastes are greater than previously reported,” the authors noted. “In fact, these methods show that people of color make up the majority of those living in host neighborhoods within 3 kilometers (1.8 miles) of the nation’s hazardous waste facilities. Racial and ethnic disparities are prevalent throughout the country.”

ONE OF THE BEST PLACES TO DUMP GARBAGE

Bullard points to BP’s Gulf oil spill as a recent example of how the pollution-discrimination dynamic continues to work. By July of 2010, workers were soaking massive quantities of oil sludge from the waters and surrounding shores of the Gulf, and delivering the refuse — some 39,000 tons of oil-soaked turf, clothing and other debris — to several sanctioned landfills in Florida, Mississippi, Alabama and Louisiana.

Bullard examined the data at the time and discovered that more than half of the landfills were located in communities where the resident population was primarily made up of racial and ethnic minorities.

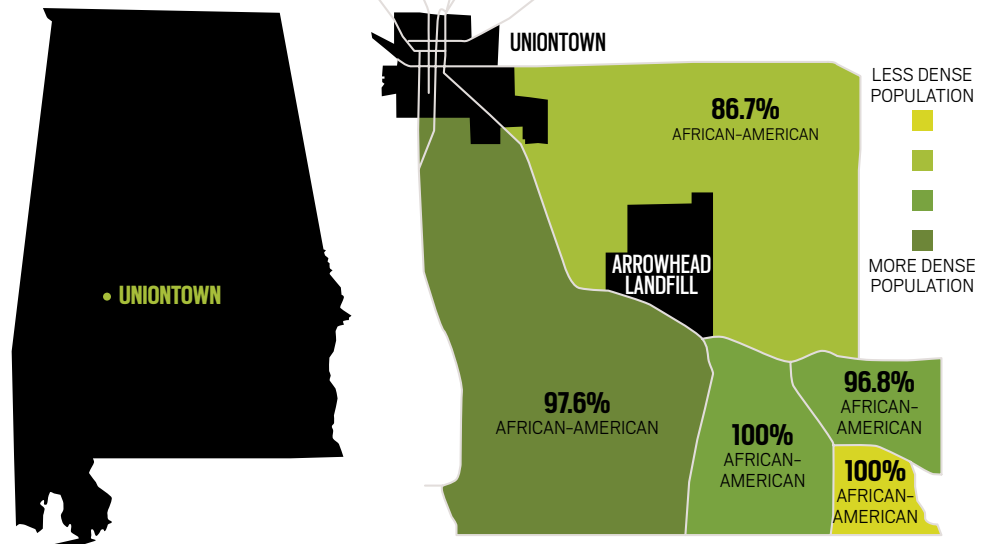
EPA officials say BP was directed to select landfills based on a variety of criteria, including prox-



The Arrowhead landfill is permitted to receive up to 15,000 tons of municipal, industrial, commercial and construction waste — as well as “special waste” like coal ash — from nearly all of the Eastern United States.

ENVIRONMENTAL JUSTICE? Critics say the relocations of millions of tons of coal ash from Tennessee to the Arrowhead landfill near Uniontown, Alabama was discriminatory.

RIGHT: The portion of the population nearest the landfill that is African American, by Census block.



imity to the spill, a facility’s history of complaints, and potential impacts on nearby low-income and minority communities, among other factors.

Still, Bullard maintains that a larger share of the total refuse generated by the spill by mid-2010 — 24,000 of 39,000 tons, or 61 percent — was being deposited in minority communities, even though blacks and other people of color make up just a quarter of the coastal population in those four states.

In late July of that year, residents of Harrison County, Miss., successfully blocked BP from using the local Pecan Grove landfill for the oil trash. Harrison is 70 percent white.

The situation in Perry County, Bullard says, is not different.

“It’s a classic case of environmental injustice,” he says. “The coal ash was too dangerous to stay in east Tennessee — in what happened to be a mostly white area — so why is it OK to ship it to Perry County?”

“This is happening in 2010, not 1910,” Bullard says. “The problem with all this is not the lack of evidence. The problem is, once we have all these facts, what do we do?”

Though not a direct answer to that question, Alabama’s governor, Robert Bentley, did issue an executive order in February of last year, effectively establishing a moratorium on new landfill permits until

better procedures for issuing them — and stiffer environmental oversight — could be established.

The state legislature similarly voted to approve a two-year moratorium last May.

To local critics of the waste trade, these moves could not have come too soon, and in 2010, The Mobile Press-Register hinted at why: The state was importing some 19 million tons of trash — or roughly 7.5 percent of the total national volume. This while the state itself represents under 2 percent of the nation's population, and generates just 1.6 percent of the nation's garbage.

“Alabama is gaining a reputation as one of the best places in the nation to dump garbage,” the newspaper declared.

Part of the reason is that local county commissions in the state have enjoyed almost absolute power in approving landfill projects. A developer keen on establishing a landfill has traditionally only needed to convince a majority of local county commissioners — often a part-time job in Alabama — to get behind a landfill proposal. From there, a permit from the Alabama Department of Environmental Management is generally smooth sailing.

In more than one instance, developers have been caught greas-

ing the palms of local commissioners to gain their support, but in many impoverished counties, the mere promise of economic activity — any economic activity — is enough.

The Arrowhead landfill in Perry County sits at the western end of a statewide, crescent-shaped region known as the Black Belt — so-named for its rich, dark soils. Rolling prairie, farmland, and dense stands of loblolly and shortleaf pine define the landscape, but Uniontown and its surroundings are unmistakably poor.

A smattering of light industry buoys the local economy, including a cheese plant, a fish processor, catfish ponds of varying size, and small-scale agriculture and livestock sales. A full 22 percent of the population is unemployed, and 40 percent live below the poverty line, according to federal statistics.

Roughly 90 percent of the population in this part of the county — about 20 miles southwest of the county seat in Marion — is black. In the census block areas that directly border the landfill, the population ranges anywhere from 87 to 100 percent African-American.

Talk of bringing a landfill to the area dates at least as far back as the early 1990s, when longtime county commissioner Johnny Flowers, who is black, was work-

ing as part of a regional coalition of county leaders to establish a waste facility in the area. Flowers says the project waxed and waned until the early 2000s when private real estate developers from Atlanta showed interest in the large tract of land across from Gipson's place and began discussing a landfill project there with Perry County commissioners.

Perhaps not surprisingly, waste handling in the state often involves a whole ecosystem of players, including out-of-town real estate developers who sometimes purchase a lot and go through the steps of obtaining a landfill permit — site surveys, hydrology profiles and so forth — only to quickly sell the site, or the permit, or both (they are often owned and sold

separately) to a certified waste handler, or hire a subcontractor to actually operate the site.

Arrowhead's original Atlanta-based developers, for example, flipped the site for \$12.5 million almost immediately upon obtaining the permit.

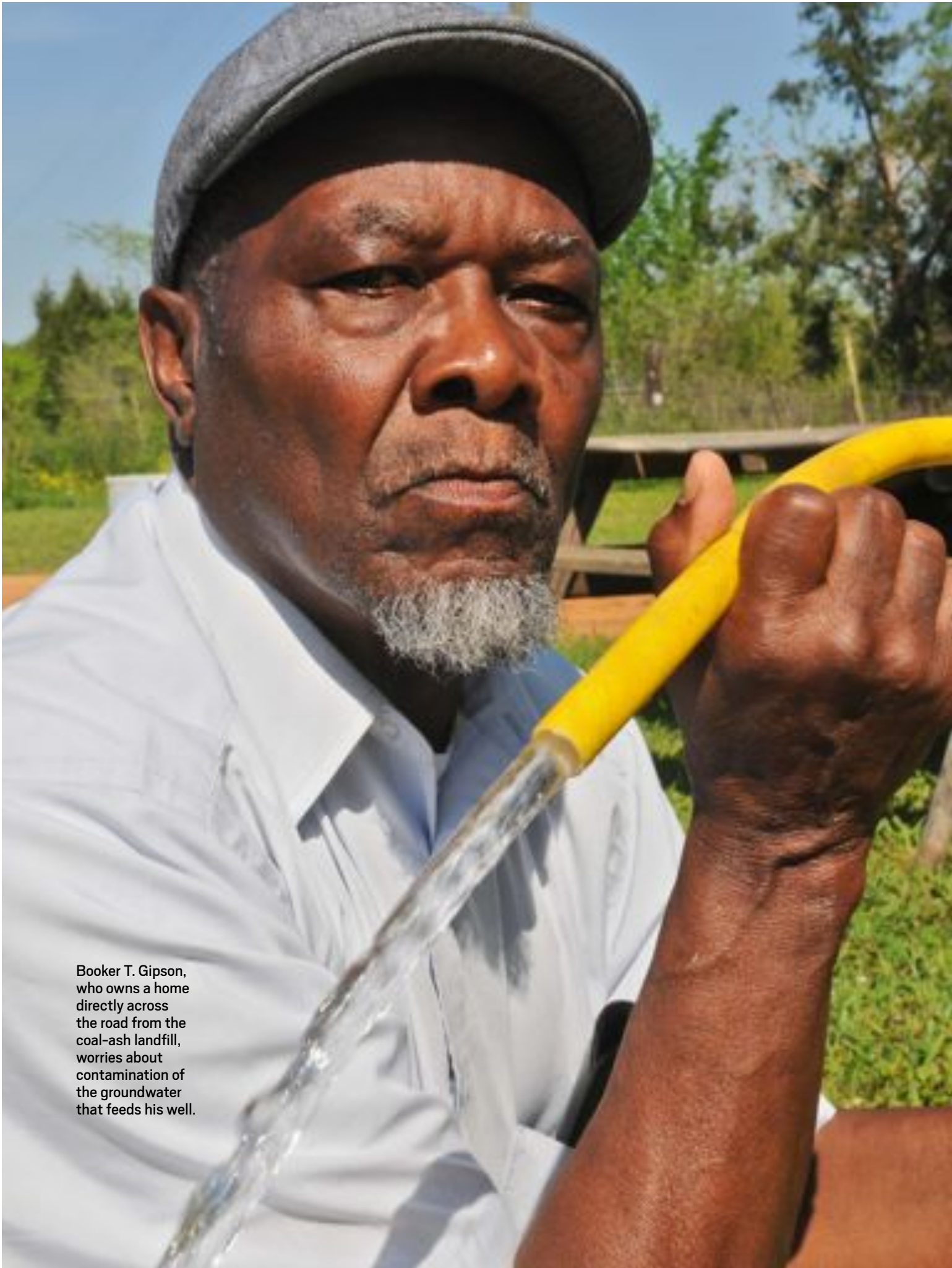
Even before that permit was granted, residents around the property say they made their opposition to the project well known at public hearings in Uniontown, though they say the commissioners in Marion never took their concerns seriously.

In one notorious episode, Albert Turner Jr., a well-heeled Perry County commissioner and the scion of Albert Turner Sr., a prominent figure in the civil rights movement, dismissed the complaints of some Uniontown-area residents as coming from “hanky-headed niggers, or should I say Negroes.”

In an interview in his Marion office — nearly every inch of wall space covered with images of Turner posing with prominent figures, including Bill Clinton and Barack Obama — Turner is unrepentant when asked about this and his reputation in Uniontown for being a bully on the landfill issue. The project was, and is, unequivocally good for Perry County and for Uniontown, he says, and if

“Can’t nobody tell you if coal ash is toxic or not. You never get a direct answer.”

— Uniontown resident and landfill critic, Esther Calhoun



Booker T. Gipson, who owns a home directly across the road from the coal-ash landfill, worries about contamination of the groundwater that feeds his well.

people in that part of the county feel silenced, it's not his fault.

"I've never not allowed them to talk, but I'm not going to let you talk about stuff you don't know about," Turner says. "You don't know what you're talking about, so why should you get up and dominate a meeting spreading false information?"

Flowers' take is less confrontational, but his attitude toward local landfill opponents is clear.

"When you live in a community and they don't have anything, they don't know how to go about getting something," he explains. "If you're in a little match box, and you stay in that match box, you can't strike unless you get out of that match box. Every match in the match box can burn the world up, but it won't happen unless you get out of the box. So these people are in the box."

The commission gave its imprimatur to the landfill proposal in 2005, prompting citizens of the Uniontown area to oust Flowers the following year and end his 18-year run on the commission. A group of some of the area's better-off residents, many of them white, also helped finance a lawsuit citing a variety of procedural violations in the permit process.

In June 2008, just six months before the coal ash dam in Ten-

nessee would fail, a Montgomery circuit court rejected the residents' claims and found in favor of the commission and the site's owners — at that point a pair of limited-liability companies known as Perry Uniontown Ventures I, which owned the land, and Perry County Associates, which owned the permit. Susan Copeland, a Montgomery attorney who represented the residents, says the owners must have had a high level of confidence in the outcome: They had spent the preceding years bulldozing the site and preparing it for trash delivery.

Arrowhead opened for business in 2007, before the court had even issued a decision in the case.

CAN'T NOBODY TELL YOU

At the time of the Kingston coal ash disaster, Uniontown itself was in particularly dire straits. Creditors, including electric utilities, were harassing the village, according to Mayor Jamaal Hunter and county commissioner Turner, and both the state of Alabama and the federal Internal Revenue Service had placed liens on the city's tax revenues. Uniontown was also facing action from ADEM officials over its sewer system, which was failing due to lack of maintenance.

According to the EPA, which was overseeing TVA's emergency



“That city was swamped in debt,” Perry County commissioner Albert Turner Jr., says of Uniontown. “It was on the verge of the lights and telephone being cut off.”

response to the Kingston spill, several sites in Alabama, Georgia, Pennsylvania and Tennessee were considered as destinations for the coal ash being dredged out the Emory River there. Arrowhead, which was then operated by a subsidiary of Knoxville-based land development and construction firm Phillips & Jordan, was deemed the best option by both TVA and the EPA — not least because of its large capacity, its modern containment and monitoring systems, and its proximity to a Norfolk Southern rail line, which would obviate the need for a massive convoy of coal-ash laden trucks on area roads.

TVA entered into a \$95 million

contract with P&J to bring the ash to Uniontown.

Turner, meanwhile, says the decision was a no-brainer for the county. It delivered roughly \$4 million to the commission’s coffers through a \$1.05 per-ton fee, effectively doubling the Perry County budget in the space of a year.

At least \$300,000 went directly to Uniontown to help balance its books.

“That city was swamped in debt,” Turner says. “It was on the verge of the lights and telephone being cut off. The city employees didn’t have insurance. That city was held together by hay string.”

The facility also employed dozens of local residents, earning

between \$12 and \$20 per hour — good wages for the area — while the coal ash was being delivered. Most of those jobs are now gone, and the landfill employs fewer than 10 people, although that number may go up if more coal ash can be found, something that Turner and other supporters are unabashedly hoping will happen.

Gipson and other residents argue that there were other ways of generating income for the area — including investing in tourism or outdoor recreation. Uniontown, they point out, is just 30 miles down the road from Selma, the birthplace of the civil rights movement, and it also has rich potential as a hunting and fishing corridor. Even if these wouldn't amount to much, they argue, no one bothered to ask them whether they would mind if the landfill they never wanted in the first place suddenly became, in addition to a household waste facility, the final destination for millions of tons of coal ash.

“They can see that landfill right here in the people's face,” Calhoun says, gesturing to the mountain across the road. “You can see how close it is. Can't nobody tell you — they can't tell you if coal ash is toxic or not. You never get a direct answer.”

In a conversation with The

Huffington Post, Scott Hughes, a spokesman for the Alabama Department of Environmental Management, and Phil Davis, head of the agency's Solid Waste Division, explained that the coal ash was carefully segregated from other waste streams, as per EPA requirements, and that odds were slim that any coal ash wafted off-site or otherwise migrated onto surrounding properties.

They were less clear about whether the stuff poses a health risk:

HUFFINGTON POST: Is coal ash a concern for human health? That's what I'm asking you.

PHIL DAVIS: It's not a hazardous waste.

SCOTT HUGHES: I cannot answer that question. The only thing I can say is that our responsibility is to issue permits that are protective of human health and the environment. And then ensure that we have a field presence to ensure that facilities are operating in compliance with those permits.

HP: I don't mean to belabor the point, but as the Department of Environmental Management, which also takes into consideration the protection of human health, ADEM must have some opinion or thought on whether coal ash is safe?

SH: I cannot answer that question

HP: Phil, is that something you can answer?

PD: It's not a hazardous waste.

HP: Ok, so to the extent that it's not classified as a hazardous waste, there should be no public health concern?

PD: You said that, Tom, I didn't.

HP: Well, what would you say?

PD: I would say what Scott said.

To be sure, the safety of coal ash is a hotly debated topic and to date, it remains unregulated at the federal level. Until last year, Alabama had no rules for coal ash at all.

A combination of increased elec-

“This is all we have. Nobody seems to care, but let me tell you that this is only the beginning. You can listen or wait ‘til later to see what happens.”

— Esther Calhoun, a Uniontown resident, addresses regulators

tricity demand and better pollution controls, which now capture many of the noxious constituents that, in previous years, would have been spewed into the air over the nation's coal burning power plants, have led to a precipitous rise in the amount of coal ash produced.

The United States produces more than 130 million tons of coal ash annually, according to the American Coal Ash Association, an industry group. Roughly 43 percent of that is used as an additive in concrete products, bricks, shingles and other materials.

The rest has been traditionally deposited in loosely regulated landfills, or unlined holding pond systems like one that failed in Kingston, and environmental groups have busied themselves documenting the slow leaching of coal ash constituents, including arsenic and other heavy metals, into the groundwater surrounding such storage sites.

In the aftermath of the Kingston spill, the EPA revisited the coal ash issue in earnest, and in 2010, it proposed two options for bringing the waste material under the purview of the Resource Conservation and Recovery Act, the 1976 legislation that sets rules for the disposal of both non-hazardous and hazardous wastes in the United States.

OLD KING COAL

Under the first option, coal ash — which can include a wide range of waste materials like fly ash, bottom ash and others — would be treated as a “special waste” under Subtitle C of RCRA, which governs hazardous wastes. A second option would deal with the material under Subtitle D of the statute, which governs non-hazardous wastes.

The coal ash industry opposes both of these regulatory designations and has lobbied hard to block them, claiming, among other things, that the combination of increased costs and attending higher electricity rates would result in as many as 316,000 lost jobs across the economy, and as much as \$110 billion in lost economic activity over a 20-year period.

The industry has spent millions making their case on Capitol Hill, and Republicans in both houses introduced bills last year that would effectively strip the EPA of its ability to oversee coal ash disposal.

On April 5, a group of 11 environmental and public health groups sued the EPA in an attempt to force the issue, arguing that federal oversight of coal ash is “long overdue.”

By nearly all accounts, the Arrowhead landfill boasts the very latest containment technologies, including thick layers of com-



Residents say coal ash dust went airborne as it was being unloaded into the landfill, coating their homes and local vegetation with a fine, ashen dust. Landfill supporters say that's unlikely.

pacted soil, high-tech plastic liners and a modern system for collecting leachate, the foul liquid that percolates through decomposing piles of trash. Federal rules for handling coal ash, should they ever be promulgated, would almost certainly direct the nation's coal waste, which has to go somewhere, to facilities like Arrowhead.

Supporters of the landfill also argue that Arrowhead sits above a particularly advantageous geologic formation, known as the Selma Chalk, which is a thick and nearly impermeable stratum of limestone sitting hundreds of feet above the

water table. That, in addition to Arrowhead's own safety features, make dangers to the groundwater supply minimal, backers say.

ADEM officials also point out that the site has 13 groundwater monitoring wells currently in place, and that quarterly tests are conducted to ensure the water table is not impacted. Officials say they also measure air quality and explosive gas levels around the site.

But landfill operators themselves submit all of this information to ADEM for review. While the agency has the ability to conduct its own sampling, according to spokesman Scott Hughes, it does not generally do so -- nor has it made an independent review of the constituents of coal ash.

When asked if ADEM considers the demographics of an area — race, ethnicity, income — as part of its technical review of permit application, Hughes says no.

"That information," he says, "is not part of the application process."

At a recent public hearing with state environmental regulators in the basement of Uniontown city hall, a few dozen residents from around the area gather to hear ADEM describe a request from the landfill's operators to modify its current permit so a new part of Arrowhead can be opened to receive trash.

A few residents hold homemade signs. One reads "Stop Black Land Loss."

Booker Gipson, stands in the back of the room saying little. He's holding a placard that reads "Stop Dumping on Uniontown."

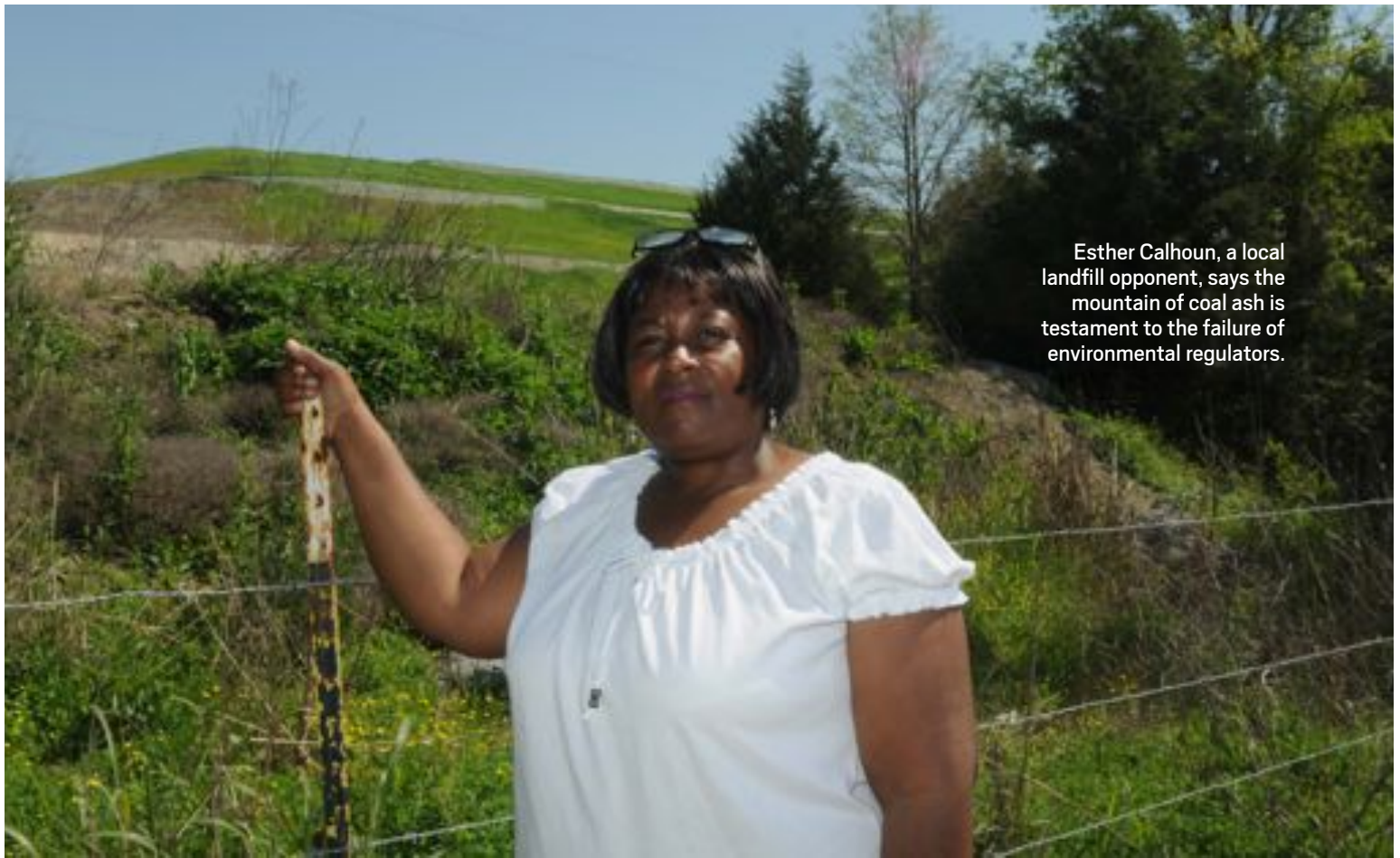
Other residents take to a microphone at the front of the room to offer their thoughts on the permit modification. Few stick to the script, instead issuing a litany of bitter condemnations, desperate pleas, and occasional warnings.

"What if this was your home?" Esther Calhoun demands of the ADEM presenters, all of whom are white. In keeping with rules for such events, the officials could only sit and listen, without response. "This is all that we have, Calhoun says. "I mean, nobody seems to care, but let me tell you that this is only the beginning. You can listen or you can wait 'til later to see what happens. Someone has to open their eyes.

"It's time to step up and listen to what the people say," she adds. "We are the people."

RIGHTS AND WRONGS

David Ludder, a Florida-based environmental attorney, currently represents area residents in two lawsuits originally filed in Alabama state and federal courts. They charge Phillips & Jordan and its



Esther Calhoun, a local landfill opponent, says the mountain of coal ash is testament to the failure of environmental regulators.

subsidiary with a variety of violations, including failure to prevent gag-inducing odors and flying ash from migrating outside the facility and into the surrounding community. The progress of those suits was slowed when the original owners of the Perry County landfill filed for bankruptcy in early 2010 — even as the coal ash was still pouring in.

Both of Ludder's cases are now being heard in federal bankruptcy court, and the facility has since been purchased by Georgia-based Green Group Holdings, which has ties to Phillips & Jordan. Green Group Holdings now runs the Arrowhead facility through a subsidiary, formed in December, called Howling Coyote, LLC.

Mike Smith, an attorney rep-

resenting Howling Coyote, says it was highly unlikely that the coal ash, which was delivered to the site wet and wrapped in plastic liners — and quickly covered — could have found its way off-site.

“When it was brought to the facility, it was required to have a certain level of moisture,” Smith says. “As a result, the coal ash itself didn't really pose any risk of becoming airborne, because of the high moisture content. It couldn't have been flying around.”

Whatever the outcome of his lawsuits, Ludder's latest move — arguing to the EPA that Alabama regulators violated the civil rights of residents around Arrowhead — might take even longer to adjudicate.

Title VI of the Civil Rights Act of 1964 holds that a recipient of federal funding, including the Alabama Department of Environmental Management, which receives funding from the EPA, cannot administer its programs in such a way that subjects individuals to discrimination based on race, color, sex or national origin.

Conceivably, if the EPA could not broker a resolution between the conflicting parties — its preferred tack in such cases — it could cut off funding for ADEM, and the agency's own criteria for considering such charges would seem to provide for the sort of relief that Bulard and others have learned is so difficult to obtain from the courts.

“Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating,” reads the EPA's 1998 interim guidance for investigating Title VI complaints. “Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.”

Whether or not Ludder's civil-rights appeal will fly, however, is an open question. By early June, more than four months after the complaint was filed, EPA's office

of civil rights, which has come under fire for a long backlog of cases and a lack of organization, still had not indicated whether it would reject the case or accept it for investigation.

Ludder remains optimistic. “I don't expect them to reject the complaint,” he says.

Booker Gipson is not sure it will matter.

As the sun sets behind his property, he walks over to the well pump in the front yard, which likely draws water from the same aquifer that sits beneath the giant mound of coal ash 200 feet away. He opens the spigot and a stream of water spits out the end of a hose.

“I thought to my belief, not knowing, that they wouldn't be allowed to put a landfill this close,” Gipson says. “And if it was just household garbage, well, we didn't want it, but I guess it might not be so bad. But when they put this thing in here, they said they was putting in a molehill. But if anyone drives through here — you can see, it ain't what they were saying.”

Asked what he thinks the future might hold, Gipson smiles and shakes his head.

“I don't believe they're ever gonna change it.”

John Allen Clark contributed reporting from Uniontown, Ala.