

Times-Picayune, The (New Orleans, LA)

August 16, 2006

Denied a reprieve, landfill closes

Frank Donze

Staff writer

The gates to a controversial eastern New Orleans landfill were locked Tuesday after a federal judge rejected a request by Waste Management of Louisiana to continue using the dump that Mayor Ray Nagin's administration had ordered closed the day before.

The ruling by U.S. District Judge Carl Barbier represents the most significant victory to date for opponents of the Chef Menteur landfill, who have waged a months-long battle to shut down a facility they contend is an environmental hazard.

And while the latest development appears to guarantee that the landfill will remain shuttered for the foreseeable future, the fight may not be over.

In light of Nagin's decision to issue Waste Management a cease-and-desist order on Monday, Barbier ruled that the Houston trash hauler had only one option: to go through normal channels and obtain a permit from the city.

Nagin allowed the landfill to open in April under an emergency order to speed the removal of hurricane debris. Now that the provision has expired, Waste Management cannot operate the landfill without a conditional use permit, which the company applied for Monday in the event it would lose in federal court.

But obtaining that permit may prove to be a long and difficult task.

Saddled by staff reductions that have crippled many parts of city government since Hurricane Katrina whacked the local economy, the City Planning Commission, the first stop in the permit application process, won't be able to consider the landfill issue until next year.

Yolanda Rodriguez, the agency's director, declined to hazard a guess when a hearing might be scheduled other than it likely would take place before June.

And now that Nagin has backed off his emergency authorization, final approval to reopen the landfill rests with the City Council, which is unanimously opposed to the idea.

Long delays forecast

Nonetheless, Waste Management officials are continuing their fight to keep the landfill open, arguing in a written statement after the court verdict that any lengthy closure will retard the city's post-Katrina recovery and carry a price tag of millions of dollars.

Demolition and rebuilding of flood-ravaged homes in the 9th Ward, Lakeview, Broadmoor and Gentilly "could now be delayed for years" as the city searches for an alternative location to dispose of storm debris, said Waste Management Vice President Gerard Sonnier.

Sonnier also said homeowners who rebuild or renovate will be faced with piles of construction and demolition debris stacked in front of them for months, while the city is forced to assume a 10 percent share of the removal costs once the federal government stops footing the entire bill next year.

"This is not the end of the story," Sonnier said. "As rebuilding is delayed and this trash stacks up, the people of New Orleans will need to deal with this again."

'A giant leap forward'

Meanwhile, critics of the landfill greeted the court decision with glee.

"Today, New Orleans took a giant leap forward in re-establishing local democracy," said the Rev. Vien Nguyen, pastor of Mary Queen of Vietnam Catholic Church and a leader of anti-landfill efforts.

With the padlocked entrance to the landfill serving as a backdrop, Nguyen and more than 200 landfill opponents, most of them residents of the mostly Vietnamese-American Village de l'Est community, gathered along Chef Menteur Highway under a blazing sun early Monday, hours before the judge's ruling.

Waving signs and chanting slogans, the peaceful crowd erupted in cheers shortly after 9 a.m. when a large truck filled with debris slowed near the locked front gates before turning around.

The demonstrators were joined by City Council Vice President Arnie Fielkow and Councilwoman Cynthia Willard-Lewis, who represents much of eastern New Orleans.

Disposal options

While they were unable to provide specific alternatives, the council members said they are ready to explore all options to dispose of the mountains of storm debris that still litter much of the city.

"Any delay in the recovery would be of great concern," Fielkow said. "We need to expedite the recovery as much as we can. But I also think that we need to make sure that we don't put people's health at risk. And we need to err on the side of protecting people and protecting people's lives."

Willard Lewis said she hopes the court ruling will prompt all parties involved in the landfill controversy -- including the state Department of Environmental Quality which issued a state permit allowing the landfill to operate -- to come to the table to discuss "appropriate environmentally friendly strategies."

She said "we should have been looking at other alternatives for months now. This (legal) action has taken everybody off focus."

'The only way to rebuild'

DEQ spokesman Darin Mann said Tuesday that the agency stands by its previously stated position that the landfill is "environmentally sound and technically sound."

"There is absolutely no reason for it to shut down," said Mann, who lent support to Waste Management's position that closing the landfill will slow the recovery.

"We have a city to rebuild and the only way to rebuild it is to clean it up," Mann said.

When it comes to alternatives to the Chef Menteur landfill, Mann said there are no easy solutions. He said the Old Gentilly landfill, which is nearing capacity, can handle only a limited amount of debris, while a landfill on Jefferson Parish's West Bank requires trucks to travel considerably farther, limiting the number of daily trips.

As for whether the agency will revoke the landfill's state permit, DEQ attorney Lou Buatt said that matter is complicated.

In a ruling Friday on a lawsuit that Waste Management filed in state court in Baton Rouge, state Judge Janice Clark called for maintenance of the "status quo" at the site. That means that even if DEQ wanted to revoke the landfill's state permit, the agency would have to seek permission from Clark, Buatt said.

Buatt said he hopes to schedule a conference soon with Clark, Waste Management and lawyers for area residents who intervened in the suit.

Attorneys for neighbors in a separate lawsuit seeking to close the landfill have laid blame for the confusing situation on Nagin, who has changed his position on the landfill from support to neutrality to opposition

over a course of weeks.

Local accountability

Now that Nagin has taken a definitive position, Marylee Orr, director of the Louisiana Environmental Action Network, called on DEQ to keep its promise and support the decision of local government officials, "who are directly accountable to the folks who are trying to rebuild their communities."

Joel Waltzer, an attorney for two groups that had been trying to close the landfill, said DEQ has refused to address other options to the debris dilemma, including "night hauling or simply using bigger trucks," which he maintains would dramatically speed up the cleanup.

"DEQ acts like we can't take care of our own problems," **Waltzer** said.

Mann, the DEQ spokesman, said a decision on larger trucks would be up to the Corps of Engineers, which is overseeing debris removal, while the logistics associated with night hauling likely would require setting up staging areas that would need approval by local government officials.

.

Frank Donze can be reached at fdonze@timespicayune.com or (504) 826-3328.

Copyright, 2005. All Rights Reserved.