

Office of Inspector General

U.S. Department of Homeland
Security
Central Regional Office
Office of Disaster Assistance Oversight
3900 Karina Street, Room 224



Homeland
Security

December 15, 2006

MEMORANDUM FOR: James W. Stark
Director
FEMA's Louisiana Transitional Recovery Office

FROM: *Tonda L. Hadley*
Tonda L. Hadley
Director
Central Regional Office

SUBJECT: *Congressional Inquiry, Landfill Cost Issues Relating
To Disposal of Debris in the City of New Orleans
Report Number DD-07-03*

At the request of Congressman Jeb Hensarling, we reviewed issues related to landfill costs for debris disposal in the City of New Orleans, Louisiana (City). The Congressman's letter says that nearly all of the waste deposited at the Chef Menteur Landfill was from U.S. Army Corps of Engineers (Corps) contracts funded by the Federal Emergency Management Directorate (FEMA); describes a separate agreement for the landfill operator to "donate" a percentage of revenues to the City; and suggests that Chef Menteur was not the most cost effective landfill in the region. The letter also suggests that a link may have existed between the creation of Chef Menteur, the "donations" from the landfill operator to the City, and the high tipping fees (disposal charges by the landfill operator).

We performed this review under the authority of the Inspector General Act of 1978, as amended. Our objectives were to determine whether the donation agreement was appropriate and whether using the Chef Menteur landfill was cost effective. We reviewed circumstances surrounding the creation of the Chef Menteur landfill and the donation agreement between the landfill operator and the City. We also evaluated the potential cost of using other landfills as alternatives to Chef Menteur because the City closed Chef Menteur on August 15, 2006. We interviewed officials from FEMA, the

Corps, the Louisiana Department of Environmental Quality (LDEQ), and the landfill operator, and reviewed relevant documentation. City officials declined to meet with us. We conducted our fieldwork from July 14, to September 11, 2006.

Background

As a result of Hurricanes Katrina and Rita in August and September 2005, FEMA tasked the Corps to perform debris removal on behalf of various cities and parishes in Louisiana, including the City of New Orleans and some of the parishes surrounding the City. Under its agreement with FEMA, the Corps awarded contracts for debris removal and FEMA reimbursed the Corps. FEMA officials said they relied on local officials to identify properly permitted landfill sites. The Corps used three primary landfills: Chef Menteur, Gentilly, and Highway 90.

RESULTS OF REVIEW

The donation agreement was not appropriate because the "donations" agreed to by the Chef Menteur landfill operator and the Mayor of the City of New Orleans increased debris removal costs without justification or added benefits. In substance, the donations should be treated as a credit and deducted from the City's final claim to reduce FEMA's cost of debris removal. Even with the added cost of the donations, the Corps' use of Chef Menteur was more cost effective and productive than the use of Highway 90, but using the Gentilly landfill was more cost effective and productive than using either Chef Menteur or Highway 90. However, FEMA severely restricted the use of the Gentilly landfill by limiting it to 5,000 cubic yards of debris per day. In addition, the August 15, 2006, closing of Chef Menteur resulted in higher costs and slower debris removal.

Creation of Chef Menteur Landfill

Before Hurricane Katrina, Chef Menteur was used as a household waste transfer site. The owner of the waste transfer operation contacted the City and LDEQ and proposed using the site as a landfill. On February 14, 2006, the City's Mayor signed an agreement with the waste transfer operation owner allowing him to operate Chef Menteur as a landfill. Another document signed by the Mayor said that approval was effective until debris removal was complete. Due to the urgent nature of the debris removal, the Mayor suspended the requirement for a local conditional use permit and, in April 2006, LDEQ granted emergency authorization for the landfill to accept construction and demolition debris. On April 14, 2006, the Corps provided emergency authorization for the site to begin operation. The landfill operator, LDEQ, and the U.S. Environmental Protection Agency implemented a monitoring process to minimize the amount of unauthorized material going into the landfill. LDEQ took air and water samples from the landfill during May and June 2006 that showed particulates found were not posing a health risk.

Landfill Operator's Donation Agreement With the City

On the same day the Mayor signed the agreement permitting operation of the Chef Menteur landfill, he also signed a notarized agreement with the landfill operator stipulating that the landfill operator donate 22 percent of landfill revenues to the City. Landfill revenues consisted of tipping fees that debris removal contractors paid to the landfill operator. Under this donation agreement, the City is to receive an estimated \$860,000 based on the amount of debris delivered from New Orleans sites to Chef Menteur before it closed.

As of August 15, 2006, the landfill operator said he had made no payments to the City, but intended to fulfill the terms of the agreement. He also said that financial agreements such as the donation agreement are commonly used in the landfill business to compensate the host government for potential additional expenses, such as wear and tear on the roadways. However, he said these arrangements are usually referred to as "royalties" or "host fees," instead of "donations." He would not confirm whether this agreement was a prerequisite to the City's approval for the landfill operation. The City Attorney also declined to comment, citing ongoing litigation between the City and the landfill operator.

The landfill operator's tipping fee for Chef Menteur was \$5.00 per cubic yard, which is significantly higher than the \$3.50 tipping fee at the nearby Gentilly and the \$2.75 tipping fee at Highway 90. Under the donation agreement, the landfill operator is to pay the City \$1.10 of the \$5.00 tipping fee, which reduces his net revenue from the tipping fee to \$3.90, an amount closer to the Gentilly tipping fee.

There is nothing inappropriate about a private citizen or firm making donations to a cause. The word "donation" implies that the donor is making a voluntary gift without expecting anything in return. In fact, the donation agreement says that the "City of New Orleans has provided neither goods nor services in consideration, in whole or in part, for the Donation." However, the donation agreement also says that the landfill operator will submit its calculation of the 22 percent of landfill revenues "to the City along with payment and will give the City the opportunity to validate the calculation. The Donation shall become effective upon, and continue so long as, [the landfill operator's] disposal operations continue at the landfill."

Common sense tells us that the beneficiary of a voluntary donation would not normally require the donor to (1) sign a notarized agreement, (2) submit calculation of donated amounts to the beneficiary for validation, or (3) continue donations so long as the donor operated a business that required the beneficiary's authorization. These requirements provide convincing evidence that the landfill operator's "donation" of 22 percent of gross revenues was contingent on the City's approval to operate the landfill.

Further, these requirements, together with the fact that the tipping fees for the Chef Menteur landfill were significantly higher than other local landfills, indicate that the landfill operator passed the cost of the "donations" to the Corps' contractors.

Inadvertently, the Corps subsequently passed these unnecessary costs to FEMA through its mission assignment for debris removal.

Office of Management and Budget (OMB) Circular A-87, codified at 2 CFR Part 225, Appendix A, section C.1.i, states that, to be allowable under federal awards, costs must be net of all applicable credits. Also, FEMA's *Public Assistance Guide* (FEMA 322, October 1999, p.33) states that eligible costs must be "reduced by all applicable credits, such as insurance **proceeds** and salvage values."

FEMA did not require the City to pay for debris removal necessitated by Hurricanes Katrina and Rita, but the City should not profit from those debris removal operations, especially when the profit (donations) appears to be at the federal government's expense. Therefore, in substance, the donations should be treated as a credit and deducted from the City's final claim for other disaster costs, effectively to reduce FEMA's costs for the City's debris removal.

Closing; of the Chef Menteur Landfill

In a February 14, 2006 letter, the Mayor asked LDEQ to approve the landfill for "the duration of hurricane Katrina disaster cleanup efforts, at this time estimated to be 12 months." However, the Mayor suspended the requirement for a conditional use permit, normally required to operate a landfill, for only six months. The City Attorney closed Chef Menteur on August 15, 2006, because the six months had passed and the landfill operator had not applied for a permit. The landfill operator said that he submitted an application for a permit on August 14, 2006, and subsequently filed a lawsuit in federal court to reopen the landfill.

Potential Cost of Chef Menteur Closure

Closing the Chef Menteur landfill has resulted in slower debris removal and higher costs. The Highway 90 landfill is about 15 miles further from the debris removal sites than Chef Menteur, so the contractors have to drive further. Gentilly is closer than Highway 90, but FEMA has restricted the amount of debris that the Corps can dump at Gentilly. As a result, most debris is being hauled to the Highway 90 landfill. Although the tipping fees at Chef Menteur were significantly higher than Highway 90, the debris removal costs for delivery to Highway 90 are greater because of the increased traveling distance. We estimate a decrease of about 15 percent in the daily volume delivered to Highway 90 and an increase in daily costs of about \$19,000.

We asked FEMA and Corps officials for the rationale of limiting Corps contractors to 5,000 cubic yards of debris per day at Gentilly because debris disposal at Gentilly costs less than either Chef Menteur or Highway 90. FEMA officials said they imposed the limit because of environmental concerns. LDEQ authorized a daily limit of 19,000 cubic yards at Gentilly, and, on August 28, 2006, raised that limit to 50,000 cubic yards after the landfill operator added environmental safety procedures. Debris disposal at Chef Menteur before it closed averaged about 9,500 cubic yards per day. As of September

2006, the end of our fieldwork, debris disposal at Gentilly, from all sources, averaged about 13,000 cubic yards per day.

On December 5, 2006, we spoke with FEMA officials again on the issue of limiting debris disposal at the Gentilly landfill. They said they were currently limiting debris disposal at Gentilly, from all sources, to 19,000 cubic yards per day and would consider raising that limit when specified improvements were completed to address environmental concerns.

CONCLUSION AND RECOMMENDATION

We concluded that a link does exist between the City's decision to open Chef Menteur, the donation agreement, and the high tipping fees. The donation agreement was inappropriate and resulted in higher tipping fees that were eventually passed on to FEMA. Finally, the Corps' use of Chef Menteur was more cost effective and productive than the use of Highway 90, but less cost effective and productive than using Gentilly.

We recommend that the Director of FEMA's Louisiana Transitional Recovery Office require the City to treat its receipts under the donation agreement, currently estimated at \$860,000, as a credit to be deducted from the City's claim for other disaster costs.

DISCUSSION WITH MANAGEMENT AND AUDIT FOLLOW-UP

We discussed the results of our review with FEMA officials on August 21, 2006, and with State program officials on September 7, 2006. These officials agreed that the City should reimburse FEMA for its receipts under the donation agreement. City officials declined to comment due to the pending lawsuit by the Chef Menteur landfill operator. FEMA officials also agreed that using Gentilly would result in lower costs.

Please advise this office within 30 days of the actions taken or planned to implement our recommendation, including target completion dates for any planned actions. Should you have any questions concerning this report, please call me at (940) 891-8900 or Jack Lankford, Audit Manager, at (510) 377-7383.

cc: Audit Liaison, FEMA
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