

# The Times-Picayune

## **New Orleans residents of Superfund site, a former landfill, still waiting for their checks**

**Sunday, May 29, 2011**

**By John Simerman, The Times-Picayune**

Robin Barnes was 5 when the bad news came down about her neighborhood. By the time her parents allowed her to have a sleepover at age 11, word had spread: The homes on the site of the former Agriculture Street Landfill, along with a nearby school and community center, sat atop a stew of toxic chemicals so dangerous the government declared it a federal Superfund site.

Some of her friends were forbidden from playing outside her house.

"It was depressing," said Barnes, standing in the driveway of the Garden Plaza Drive home where she still lives, near the fenced-off and abandoned Press Park townhouse and apartment complex.

"I'm torn, because this is my home. This is all I've ever known. At the same time, I'm kind of ashamed. I don't bring my friends over."

Now 23, Barnes is among thousands of current and former residents of the area who can barely contain their frustration -- at the city, the Housing Authority of New Orleans, and for many, even their own attorneys -- over a class-action lawsuit that appeared all but over three years ago when a state appeals court upheld a judgment in the residents' favor.

Despite 18 years of litigation and the judgment by Civil District Judge Nadine Ramsey holding the agencies liable for emotional distress and loss of property value, only the nine

original plaintiffs have seen any money: \$675,000 plus interest.

Attorneys for the rest think Ramsey's formula for damages should apply, potentially adding up to hundreds of millions of dollars with interest for the 7,666 claimants. The defendants disagree, and so 76 new plaintiffs -- a 1 percent sampling -- will head to court this summer for a trial to prove their individual damages, while the rest sit on the sideline.

### **'Shocking' developments**

The new phase comes nearly two decades after the U.S. Environmental Protection Agency first warned residents of the tainted soil, and of the landfill and garbage dump that operated there from 1909 until about 1958 and reopened for about a year in 1965 to handle debris from Hurricane Betsy.

The city soon began approving both private and public housing on the site, including the HANO-run Press Park complex giving low-income residents a leg up with a rent-to-own program. The school district opened Moton School, with 900 students, in 1986, around the time the EPA first tested the soil. In 1993 the EPA did new tests, telling residents the ground contained higher-than-allowed levels of lead, arsenic and polychlorinated aromatic hydrocarbons, among other chemicals.

Residents also reported random garbage surfacing in their yards. In her ruling, Ramsey found it "shocking" that the city and HANO developed federally subsidized homes there. Some of the 76 new plaintiffs said they've been forced to relive that shock in lengthy, probing depositions before a cadre of lawyers for the city, HANO and four insurance firms that represented the housing agency over time. "I felt like we were being interrogated. It was, 'Why do you feel stressed?'" said Jacquelyn Garrett Bates of her deposition. "My kids played out there. There'd be bottles, rocks, little instrument things in the ground. The kids would say there must have been a pirate ship back there."

Defense attorneys asked the claimants about their full work history, lifestyle, education and use of household chemicals, aiming to test both their residency and emotional distress claims.

"They definitely treat it like we're doing something wrong," said Barnes.

A 2003 state Department of Health and Hospitals study showed a "statistically significant 50 percent excess of breast cancer" for all women and black women in the census tract that includes the landfill area, for the 10-year period ending in 1997. No other statistical anomalies for cancer were found in the study.

### **Payment formula uncertain**

Under Ramsey's formula, claimants would be due as much as \$25,000 each plus interest for mental torment and up to the full value of homes they owned for at least a year prior to February 1994. Former students and employees of Moton School also would be due \$2,000 for each year they attended or worked there.

But a new judge overseeing the case, Paulette Irons, is not bound by that formula. The sampling of claimants requested by Irons, representing various categories, including owners and renters from the different neighborhoods over and around the former landfill, may help avoid a new trial for every claimant, said Alexandria attorney Richard Arsenault, an authority on class actions.

"Normally you'd want to try to get some statistically significant sampling done, so when they see patterns, it'll push them for settlement," he said.

It's the questioning that bothers Suzette Bagneris, the lead attorney for the plaintiffs.

"They're trying to get a complete do-over," Bagneris said. "There should be three questions: Did you live there? How long did you live there? Do you claim emotional distress?"

Bagneris said she picked the 76 plaintiffs -- which include her mother-in-law -- in a three-day rush to find easily accessible, local plaintiffs who could make court dates. Still, exclusion has bred resentment among others. After so many years, many of the claimants also harbor suspicion over delays in the case.

Some suspect Bagneris and the four other defense attorneys of milking the case for profit,

although there is no evidence that they have been paid beyond a 25 percent cut from the original nine plaintiffs.

Dozens of claimants still live at Gordon Plaza, or their children do.

"Everybody is tense around here. Everybody wants their money. Some of the neighbors are divided," said Janice Stemley. "First it was March, now April, now August. What happens after that? Where is the money going? Who has the money?"

### **Financial questions**

The question of who pays and how much may fall to another court.

A panel of the Fourth Circuit Court of Appeals heard arguments in March over claims by HANO's various insurers that their policies included caps ranging from \$100,000 to \$1 million. The plaintiffs' attorneys argue that the policies have no limits.

Even if they win, the plaintiffs can't force a public agency to pay. But they can attempt to seize the assets of the insurers under a pre-1980 law that makes each liable party in a judgment responsible for the whole. Ramsey ruled that the landfill case applies, because the city and HANO decided to develop the landfill property before the law changed.

That case will likely reach the state Supreme Court for a ruling that could prove decisive in whether most claimants eventually see anything more than pocket change. The public agencies, for their part, say they are broke.

Jonathon McCall, a lawyer for the Orleans Parish School Board, or OPSB, said the board will likely enter into unopposed judgments with eligible former Moton students and employees based on the formula from the original case, rather than fight each plaintiff in court. But the money -- which may exceed \$9 million -- is unlikely to come anytime soon, he said.

"The OPSB has set aside no specific funds for payment of this judgement," McCall said in a statement. Rather, "the claims will be placed on the OPSB's list of unpaid, state court judgments and settlements according to the date the judgment became final."

That list of "unpaid resolved claims" runs 118 names long, totaling \$15.7 million, according to the district.

The city claims to have no money set aside. It has a history of waiting years before borrowing money and clearing out a backlog of settlements and judgments. It last stepped up in 2005, with an offer of 75 cents on the dollar for those awaiting payment. The city's list of unpaid judgments runs nearly 450 names long, totaling more than \$20 million with judgments dating as far back as 1998.

Spokesman Ryan Berni said Mayor Mitch Landrieu's office would not comment on pending litigation.

### **'Too much stress'**

Early on, homeowners had urged the EPA to buy them out. The agency instead chose to remove less than two feet of contaminated soil and replace it with clean clay atop fabric liner, at a \$42.8 million total cost -- higher than initial estimates in part because people lived there. In 2003 and 2008, the EPA found the cleanup actions were effective, and in September, agency officials told U.S. Government Accountability Office investigators they planned to start removing the landfill from the Superfund list.

That was little consolation for many of the latest plaintiffs as they sat through depositions, they said. After more than an hour of questioning, Alton Bates Sr. wept as he recounted his wife's breast cancer and his own health problems, after a lawyer asked him how the situation affected him.

"That is too much stress to see family members suffering, to see my kids suffering," said Bates, a 58-year-old engineer who bought a new house on the landfill in 1981. "I don't know if it's related to the dirt or not, but I'll be darned if I let someone tell me it's not. That's stress. Coming here is stress, to tell you what you already know, what's already documented."

###