

Federal suit plaintiffs still want injunction to stop debris burns

Despite overriding Mapp's veto of burn ban law, lawmakers, others fear rules still won't be followed

By SUZANNE CARLSON
Daily News Staff

Plaintiffs in a federal lawsuit seeking to block burning of plant debris brought down by the hurricanes say they'll continue pursuing an injunction to stop incineration of vegetative material, despite a new law banning such burning in the territory.

"We have to pursue it because we don't know what the governor will do," said Senate Vice President Nereida Rivera-O'Reilly, who is a plaintiff along with former V.I. senator Clarence Payne, the V.I. Conservation Society, and the Sierra Club. Plaintiffs filed the lawsuit in U.S. District Court on St. Croix on Dec. 15 against the Federal Emergency Management Agency and the U.S. Army Corps of Engineers.

Gov. Kenneth Mapp has said he plans to instruct the Army Corps of Engineers, through the Federal Emergency Management Agency, to burn about 35 percent of the estimated 700,000 cubic yards of plant debris collected across the territory after hurricanes Irma and Maria.

Senators in the 32nd Legislature passed Bill No. 32-0157 to block any such burning in the interest of ecological and public health, and voted Thursday to override a veto attempt by Mapp, making the burn ban territorial law.

Rivera-O'Reilly said she wants to ensure the new law isn't violated, and will continue to fight for an injunction to stop any potential burning.

"The governor, he intimated at some point that it didn't matter what we did, he would still proceed with his plans. I'm not sure what action he will be taking," Rivera-O'Reilly said.

'Essentially a Dumpster fire'

Ken Rumelt, professor of law and senior attorney at Vermont Law School's environmental and natural resources law clinic, will serve as lead attorney for the plaintiffs on the case.

Rumelt said plans to use "air cur-

tain incineration" to dispose of plant debris is not sophisticated technology and does not include protections against release of dangerous smoke and particulate matter.

"It's essentially a Dumpster fire," Rumelt said.

The Army Corps has said it filed applications with the Department of Planning and Natural Resources for permits to conduct burning, and Rumelt said his request for copies of those permit applications from DPNR Commissioner Dawn Henry have gone ignored.

Henry and DPNR spokesman Jamal Nielsen have not responded to a similar request from The Daily News.

"A lot of the details about the plan to burn have been done behind closed doors," Rumelt said.

Rumelt said it's necessary for the public to know what burning plans might entail, and there's been a lack of transparency from the local government.

While the plaintiffs could file a request for information under Virgin Islands law, "we know it's going to drag out and we'll never see those records," Rumelt said.

Abiding by the override?

As chairwoman of the Legislature's Committee on Health, Hospitals and Human Services, Rivera-O'Reilly said she's focused on ensuring that constituents do not suffer negative health impacts as a result of burning plant debris — and she wants Mapp to do the same.

"There's so many laws on the books that are not enforced, that are not carried out," Rivera-O'Reilly said. "I hope that the governor will do the right thing, which is follow the will of the Legislature, which is ultimately the will of the people. But on other occasions, he has practically said that he will just do what he needs to do and not follow the law. And so, in light of this, I think that it is important for us to continue to pursue the lawsuit until we know that the governor has alternative plans."

St. Croix attorney Andrew Simpson, who filed the lawsuit, said in



With the assistance of the Texas Department of Transportation, the Texas A&M Forest Service uses an Air Curtain Incinerator (ACI) to burn vegetative debris in Rockport, Texas, in October that resulted from environmental damage created by Hurricane Harvey.



Kenneth Mapp



Nereida Rivera-O'Reilly

a statement Tuesday that plaintiffs are hopeful the case will be rendered moot by the recent change in local law, but aren't ready to drop the suit without assurances that burning is indeed banned.

"We believe that the override of the veto should end the matter and are hopeful that everyone will now focus their efforts on obtaining an extension of the federal government's commitment to pay 100 percent of debris removal costs beyond the initial six months," Simpson said.

Mapp has repeatedly said that if the debris is not dealt with before March 20, the territory will be responsible for disposal costs, which it cannot bear.

But Simpson said federal law allows for "extenuating circumstances" necessitating an extension of that six-month window in which the federal authorities would pay for debris disposal.

"Burning the debris presents a major threat to the health of the

residents of the Virgin Islands and is therefore an extenuating circumstance that justifies composting rather than burning. However, until we have satisfactory assurances that FEMA, the Army Corps of Engineers and the Virgin Islands government have altered their plans to incinerate, we do not consider the case to be moot," Simpson said.

'Artificial deadline'

"This March 20th deadline that seems to be a big concern is very much an artificial deadline," said Rumelt. "There's nothing that I'm aware of that prevents an extension to ensure that federal funding for recovery on this issue and other issues can't be extended."

The only way the lawsuit would be rendered moot "would be written assurances and an agreement by FEMA and the Army Corps of Engineers that they are not going to burn any of the wood debris waste," Rumelt said. "The goal is to continue on with the lawsuit to ensure that the health and safety of the people in the Virgin Islands is protected from the planned burning, and we're going to do whatever it takes to accomplish that goal."

In response to those who have argued burning would be cheaper, easier, and reduce the potential fire hazard from stacks of debris sitting exposed, Rumelt said those concerns pale in comparison to the

potential consequences to public health.

"Whatever short-term savings there might be are going to be lost long-term with the health impacts on the people who live nearby," Rumelt said.

He called debris removal costs "a drop in the bucket" compared to the total cost of recovery and relief efforts, "and to put kids at risk, including a child in our case who has leukemia and attends school within 1,500 feet of the St. Croix burn site, is just not acceptable," Rumelt said. "If we can't manage a big pile of wood, then what country is it that we live in here?"

Proper management of debris piles would eliminate the risk of spontaneous combustion, and "the number one concern is people's health, particularly children and other vulnerable populations, and again, the reality is that there will have to be management of these piles one way or another," Rumelt said. "If you're capable of starting to burn it now, you're certainly capable of starting to chip and compost now, so those risks would be dealt with either way. And if you choose chipping and composting, you're going in the direction that is safe for the people who live around the facility, versus going with burning. It's just not worth it."

— Contact Suzanne Carlson at 340-714-9122 or email scarlson@dailynews.vi

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