

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SEC. 26
DIV.

NO: 434257

STATE OF LOUISIANA

VERSUS

VEOLIA ENVIRONMENTAL SERVICES NORTH AMERICA, L.L.C.,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
AND CHEMICAL WASTE MANAGEMENT, INC.

STATE

FILED: _____

OCT 13 2014

DEPUTY CLERK

BY _____

DEPUTY CLERK OF COURT

**PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND PERMANENT INJUNCTION**

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana, ex rel. James D. "Buddy" Caldwell, Attorney General ("State"), who respectfully petitions this Honorable Court for a judgment to issue injunctive relief in favor of the State and against Veolia Environmental Services to prevent the transport of potentially-Ebola contaminated material collected from the apartment where the Dallas, Texas Ebola victim became ill. Upon information and belief, the State makes the following allegations:

PARTIES

1.

Petitioner, the State of Louisiana, acting through its Attorney General, James D. "Buddy" Caldwell, the Chief Legal Officer of this State, brings this action pursuant to the authority vested in him by Louisiana Constitutional Article IV, Section 8, which authorizes the Attorney General to institute and prosecute any civil action or proceeding, "[a]s necessary for the assertion or protection of any right or interest of the state." The State is a juridical person, having its seat of government in East Baton Rouge Parish, State of Louisiana.

2.

The Defendant, Veolia Environmental Services North America, L.L.C. ("VESNA"), is a foreign limited liability company, headquartered in Chicago, Illinois, with its principal place of business located in Wilmington, Delaware.

EBR2468618

3.

Veolia ES Technical Solutions, L.L.C. (“Veolia ES”) is a foreign limited liability company, domiciled in Wilmington, Delaware, with its principal place of business in Lombard, Illinois. Veolia ES owns the Port Arthur TSDf Incineration Facility in Port Arthur, Texas, and it conducts business in Louisiana and has an office in Baton Rouge, Louisiana.

4.

Chemical Waste Management, Inc. is a foreign corporation, domiciled in Wilmington, Delaware, with its principal place of business in Houston, Texas. Chemical Waste Management owns and/or operates a hazardous waste landfill in Louisiana, conducts other business in Louisiana, and has a registered office in Baton Rouge, Louisiana.

JURISDICTION AND VENUE

5.

Venue is proper in the Parish of East Baton Rouge pursuant to La. C.C.P. art. 42 because the State is domiciled in East Baton Rouge Parish.

FACTS

6.

Upon information and belief, on Friday, October 3, 2014, the United States Department of Transportation (“USDOT”) granted an emergency special permit authorizing Stericycle, Inc. (“Stericycle”), to transport certain Ebola contaminated medical waste for autoclaving or incineration in the State of Texas. That special permit specifically provides, “[t]he safety analyses performed in development of this special permit only considered the hazards and risks associated with transportation in commerce. The safety analyses did not consider the hazards and risks associated with consumer use, use as a component of a transport vehicle or other device, or others uses not associated with transportation in commerce.” The hazardous materials description in the permit classifies the waste as “[i]nfectious substances, affecting humans.” See DOT-SP 16266 (attached hereto as Exhibit 1)

7.

Upon information and belief, Stericycle transported six truckloads of material, which came from the Dallas apartment where the Ebola patient lived, possibly contaminated with Ebola virus, to the Veolia ES incinerator facility in Port Arthur, Texas between Thursday, October 9,

2014, and Friday, October 10, 2014, where 142 55-gallon plastic drums containing potentially-contaminated Ebola virus material were allegedly unloaded and incinerated.

8.

Upon information and belief, the ash residue resulting from the incineration of the material is to be transported by VESNA and/or Veolia ES to a hazardous waste landfill in Calcasieu, Louisiana for disposal. Upon information and belief, the Louisiana landfill slated to receive the materials is Chemical Waste Management, Inc.

9.

Upon information and belief, on Monday, October 13, 2014, Chemical Waste Management announced that it would not accept the Ebola waste that was incinerated at the Texas facility. This announcement is not a legally binding statement by the company; therefore, out of an abundance of caution, the State seeks a temporary restraining order against Chemical Waste Management.

10.

On August 1, 2014, the Centers for Disease Control and Prevention (“CDC”) released guidance titled, “Infection Prevention and Control Recommendations for Hospitalized Patients with Known or Suspected Ebola Hemorrhagic Fever in U.S. Hospitals (“CDC Guidance”) (attached hereto as Exhibit 2). In the frequently asked questions section, the CDC guidance provides:

4. How should disposable materials (e.g., any single-use PPE, cleaning cloths, wipes, single-use microfiber cloths, linens, food service) and linens, privacy curtains, and other textiles be managed after their use in the patient room?

These materials should be placed in leak-proof containment and discarded appropriately. To minimize contamination of the exterior of the waste bag, place this bag in a rigid waste receptacle designed for this use. Incineration or autoclaving as a waste treatment process is effective in eliminating viral infectivity and provides waste minimization. If disposal requires transport offsite then this should be done in accordance with the U.S. Department of Transportation’s (DOT) Hazardous Materials Regulations (HMR, 49 C.F.R., Parts 171-180).^{6, 7} Guidance from DOT has been released for Ebola.⁷

Aside from this statement, the guidance document contains no information regarding disposal of incinerator ash or the classification of that ash.

11.

As recently as October 2, 2014, a CDC spokesman was quoted in a Reuters article titled *U.S. nears solution for safe disposal of Ebola waste*, “the waste management problem has not been resolved yet.” <http://www.reuters.com/article/2014/10/02/us-health-ebola-waste->

idUSKCN0HR07T20141002 (site last visited on 10/13/2014) (attached hereto as Exhibit 3). According to the article, a USDOT official said the “CDC and DOT will likely issue joint guidance by next week.” *Id.*

12.

According to the Environmental Protection Agency (“EPA”), “[m]edical waste disposal is primarily regulated at the state level.”

See <http://www.epa.gov/waste/nonhaz/industrial/medical/programs.htm> (site last visited on 10/13/2014).

13.

In Louisiana, regulation of medical waste is handled by the Louisiana Department of Environmental Quality (“LDEQ”) (Solid Waste Regulations, LAC 33:VII.701, *et seq.*) and the Louisiana Department of Health and Hospitals (“LDHH”) (Louisiana Sanitary Code, LAC 51, Part XXVII).

14.

Upon information and belief, Louisiana officials learned of the transport of incinerated and treated Ebola virus material from Veolia ES’s Port Arthur facility to a Louisiana landfill through media reports on Sunday, October 12, 2014. Prior to these reports, the Louisiana regulatory departments were not contacted regarding the disposal of treated Ebola contaminated waste originating in the State of Texas and incinerated in the State of Texas. No test reports or results had been provided to Louisiana officials for evaluation and verification of the effectiveness of the incineration process. No permits were applied for or issued for the transport of this potentially infectious material to and within the State of Louisiana.

15.

After learning that this medical waste was to be disposed of in a Louisiana landfill, LDHH contacted the CDC and, based on news reports that the incinerator ash was to be analyzed for two days for any remaining contamination before being sent to Louisiana, asked (according to communications between the undersigned and LDHH officials): (1) Did the CDC recommend post-incineration testing, and if so, what testing?; (2) Was post-incineration testing of any kind done on the ash?; and, (3) If so, can LDHH have the test results? The CDC responded as follows:

Dear Dr. Welch,

There is no indication that CDC did any post-testing of incinerated Ebola waste. The company contracted to manage the waste speaks about two days of testing, but we do not know what testing might have been done. Please see CDC's position on incinerated Ebola waste. There is additional guidance and information related to safe handling before it is inactivated and transport of waste. However, I believe the site listed here is most appropriate as a reference. Please let me know if you need any think else before tomorrow. Take Care, BR

Ebola-associated waste disposal is subject to state and local regulations. Ebola-associated waste that has been appropriately inactivated or incinerated is no longer infectious.

See <http://www.epa.gov/waste/nonhaz/industrial/medical/programs.htm>.

16.

Upon information and belief, the landfill to which the treated material is expected to be transported for final disposal in Louisiana is operating under an existing contract with Veolia ES, and the landfill also learned of the origin of the materials to be received on Sunday morning. Upon information and belief, the landfill reported receiving a "characteristic of ash" report, but, at the time of receipt of that report, the landfill had no direct knowledge of the possible connection to the Ebola virus. The shipment is expected to be received over the next two days (*i.e.* possibly as early as Monday, October 13, 2014).

RELIEF REQUESTED

17.

La. C.C.P. Art. 3601 provides that "an injunction shall issue in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law."

18.

LDHH regulates the packaging, labeling, storage, transportation, and treatment of medical waste in Louisiana. According to the Louisiana Sanitary Code, a generator transporting treated but still recognizable potentially infectious biomedical waste must secure a permit from LDHH. LAC 51:XXVII.701(B).

19.

LDEQ also regulates medical waste. The Solid Waste Regulations, LAC 33:VII.711(D)(1)(e) states that infectious waste from hospitals or clinics may be deposited in Type I or II landfills *if it has been properly packaged and identified and is treated by a method approved by the Department of Health and Hospitals* (emphasis added). Infectious waste is

defined as, “waste that contains pathogens of sufficient virulence and quantity that exposure to it could result in an infectious disease in a susceptible host.” *Id.*

20.

The CDC has issued guidance stating that incineration is effective in eliminating viral infectivity. The CDC offers no reference in support of this statement, even though the guidance document does contain seven references supporting other statements made in the document. *See* CDC Guidance. The CDC has informed Louisiana officials that it has not done any post-incineration testing of the Ebola waste. Without any additional information from Veolia ES, the CDC, or any other entity responsible for the handling, treatment, transport, and regulation of Ebola contaminated waste and the disposal of same, Louisiana has no opportunity to independently verify and confirm the safety of the medical waste. Simply put, there are many unknowns surrounding the Ebola virus, and all parties involved must proceed cautiously. The health and safety of Louisiana citizens must be a top priority, and the State has received no information regarding the transport of potentially hazardous Ebola waste across state lines.

21.

La. C.C.P. art. 3603 authorizes the issuance of a temporary restraining order without notice when:

- (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and
- (2) The applicant’s attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

20.

Given the significant public health interest involved in this matter and the clear authority of the State to regulate the transport and disposal of medical waste within its sovereign borders, the State meets the qualifications to petition this Honorable Court for injunctive relief without notice (*see also* Affidavit of Megan Terrell, attached hereto as Exhibit 4 and the October 13, 2014, letter from the Southwest Delegation Members of the Louisiana Legislature, attached hereto as Exhibit 5), to wit:

- a. The Defendants and other yet unknown entities are attempting to transport or arrange for the transport of potentially infectious and hazardous materials that originated in Texas to a landfill in Louisiana, and this transport may occur as soon as today, Monday, October 13, 2014;
- b. The materials in question are said to have been incinerated and treated at the Port Arthur, Texas facility, yet none of the entities involved in (including but not limited to VESNA, Veolia ES, Chemical Waste Management, the Texas Department of Health, the USDOT, and the CDC) transporting, incinerating, or arranging for the transport of materials have contacted Louisiana officials to disclose the origin of the materials or share information regarding the incineration, treatment, protocol for treatment, or post-treatment testing of the potentially hazardous Ebola contaminated medical waste, or the manifest for transport of, including the travel routes or final destination of the transporter, or final protocol for disposal of the materials;
- c. The transport and disposal of this material in a Louisiana landfill prior to proper reports being provided to Louisiana officials, permits, where applicable, being obtained, post-testing performed on the materials, or other confirmation, certification, or verification that the materials in question are, in fact, safe and do not meet the legal definition of infectious waste, will result in immediate and irreparable injury to the State.

WHEREFORE, the State of Louisiana prays that this petition be deemed good and sufficient and that a temporary restraining order immediately issue to restrain the Defendants, VESNA, Veolia ES, and Chemical Waste Management as follows:

- a. VESNA and Veolia ES be and are commanded to cease and desist any transport of the incinerator ash from the treated Ebola contaminated waste in Texas to the State of Louisiana;
- b. VESNA and Veolia ES be and are commanded to apply for any applicable permits from the State of Louisiana and provide the State of Louisiana with copies of all information it has regarding the material and the transport and treatment of same, including but not limited to, transport manifest, treatment protocol, any testing performed on the materials including the results thereof, any paperwork sufficient to prove that the materials do not constitute or contain infectious waste, and any and all communications or correspondence

from other federal and state regulatory agencies regarding the materials, including but not limited to USDOT, CDC, Texas Department of Health;

- c. VESNA and Veolia ES be and are commanded to provide a list of Texas licensed and permitted hazardous waste landfills authorized to dispose of the materials with whom VESNA and Veolia ES may also be under contract and to which the materials can be transported and contained in the State of Texas where the Ebola contaminated materials originated;
- d. Chemical Waste Management be and is commanded not to accept for disposal or dispose of any incinerated ash or other medical waste originating from Ebola contaminated materials.

The State further prays for all general and equitable relief that may be available to it under the law, including, but not limited to attorneys' fees and costs and any other relief the Court deems appropriate.

Last, the State prays that the Defendants, VESNA, Veolia ES, and Chemical Waste Management be duly ordered to show cause on a day and hour fixed by this Honorable Court as to why a preliminary and/or permanent injunction should not be entered against them.

Respectfully submitted,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL
1885 North 3rd Street
Baton Rouge, Louisiana 70802
James D. "Buddy" Caldwell (#02211)
Megan K. Terrell (#29443)
Ryan M. Seidemann (#28991)
Steven "Beaux" Jones (33915)

By: _____

Megan K. Terrell
Assistant Attorney General
Louisiana Department of Justice
Phone: (225) 326-6020
Fax: (225) 326-6099
Email: terrellm@ag.state.la.us

CERTIFIED TRUE AND
CORRECT COPY

OCT 13 2014
Mudette
East Baton Rouge Parish
Deputy Clerk of Court

FILED
EAST BATON ROUGE PARISH, LA
2014 OCT 13 PM 1:28
DEPUTY CLERK OF COURT

PLEASE SERVE:

VEOLIA ENVIRONMENTAL SERVICES NORTH AMERICA L.L.C.
through its registered agent for service of process:
The Corporate Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

✓ VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.
through its registered agent for service of process:
CT Corporation System
5615 Corporate Blvd., Ste. 400B
Baton Rouge, Louisiana 70808

✓ CHEMICAL WASTE MANAGEMENT, INC.
through its registered agent for service of process:
CT Corporation System
5615 Corporate Blvd., Ste. 400B
Baton Rouge, Louisiana 708085

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO:

DIV.

STATE OF LOUISIANA

VERSUS

**VEOLIA ENVIRONMENTAL SERVICES NORTH AMERICA L.L.C. AND
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.**

ORDER

Considering the foregoing,

IT IS ORDERED that a temporary restraining order shall immediately issue, directed to Defendants VESNA and Veolia ES, to wit:

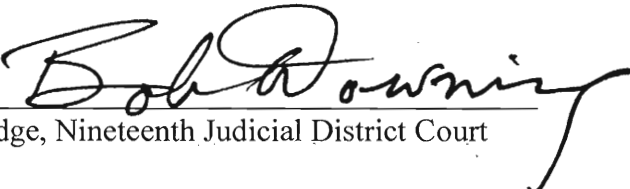
- a. VESNA and Veolia ES be and are commanded to cease and desist any transport of the incinerator ash from the treated Ebola contaminated waste in Texas to the State of Louisiana;
- b. VESNA and Veolia ES be and are commanded to apply for any applicable permits from the State of Louisiana and provide the State of Louisiana with copies of all information it has regarding the material and the transport and treatment of same, including but not limited to, transport manifest, treatment protocol, any testing performed on the materials including the results thereof, any paperwork sufficient to prove that the materials do not constitute infectious waste, and any and all communications or correspondence from other federal and state regulatory agencies regarding the materials, including but not limited to US DOT, CDC, Texas Department of Health;
- c. VESNA and Veolia ES be and are commanded to provide a list of Texas licensed and permitted hazardous waste landfills authorized to dispose of the materials with whom VESNA and Veolia ES may also be under contract and to which the materials can be transported and contained in the State of Texas where the Ebola contaminated materials originated.



d. Chemical Waste Management be and is commanded not to accept for disposal or dispose of any incinerated ash or other medical waste originating from Ebola contaminated materials.

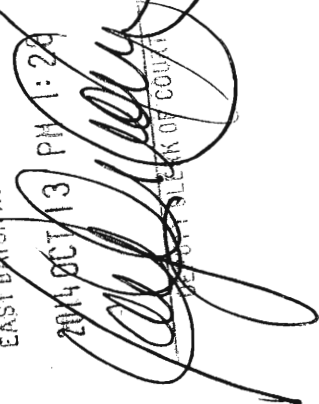
IT IS FURTHER ORDERED that the Defendants appear on the 22nd day of Oct., 2014, at 1:30pm show cause, if any they can, why a preliminary injunction and in due course permanent injunction herein as prayed and for any other equitable relief, including attorneys' fees and costs as allowed under Louisiana law should not issue.

Signed in Baton Rouge, Louisiana on this 13th day of Oct., 2014.



Judge, Nineteenth Judicial District Court

BOB DOWNING
JUDGE, PRO TEMPORE


FILED
EAST BATON ROUGE PARISH, LA
2014 OCT 13 PM 1:29
DEPUTY CLERK OF COURT

CERTIFIED TRUE AND
CORRECT COPY

Meredith Pennington
OCT 13 2014
East Baton Rouge Parish
Deputy Clerk of Court

