

Court Strikes Down New York City Garbage Rates

By STEVEN LEE MYERS

In a ruling that could cost New York City businesses thousands of dollars, a state appeals court last week struck down the city's decision to lower the maximum rate private garbage haulers may charge commercial customers.

The city's Department of Consumer Affairs, which regulates the hauling industry, reduced the rate by 7.5 percent on Aug. 1, announcing with fanfare that the reduction would ease steep garbage collection bills.

But in a sharply worded ruling handed down on Tuesday, the Appellate

Division of the State Supreme Court overturned a lower court's decision to uphold the city's rate reduction, finding that the Department of Consumer Affairs had used "inconsistent methodologies" in determining the rate.

City to Appeal

The department immediately announced it would appeal, but on Friday Judge Theodore R. Kupferman of the Appellate Division cleared the way for the haulers to resume charging the old rate and to recoup the money they have lost since the new rate took effect six months ago.

The city's 250,000 businesses, which

pay private haulers more than \$1 billion a year for garbage collection, should begin receiving bills this week for back charges that could amount to thousands of dollars for larger businesses, said Gerald Walpin, a lawyer for the Council of Trade Waste Association, which represents many of the 400 haulers in the city.

"The 7.5 percent reduction in the rate was in many cases equal to the profit margin and in some cases exceeded the profit margins for the carriers," Mr. Walpin said.

Last spring, Commissioner Mark Green announced that for the first time the city would lower the maximum

rate to \$13.60 a cubic yard, from \$14.70, beginning on May 6. "At a time when so many other business costs are rising," Commissioner Green said then, "the city is pleased to help lower one major cost."

A legal challenge, led by the Council of Trade Waste, delayed the start of the new rate until Aug. 1.

Under the new rate, a grocery or delicatessen that paid \$15,000 a year for garbage collection would have saved more than \$1,000, while a larger business like Macy's, which pays \$500,000, would have saved \$35,000.

But the four-member appeals court found that in setting the rate the Department of Consumer Affairs had "relied upon assumptions about certain facts that are both contradictory and unrealistic."

The court particularly rebuked the

department for not factoring the substantial amounts of pre-compacted waste, which is more costly for the haulers to carry, and for assuming a market rate of \$33.07 a cubic yard for dumping fees at landfills when the city's own rate at the Fresh Kills landfill on Staten Island is \$40.

Reviewing the Options

The court ordered the department to set a new rate. Linda Sachs, the assistant commissioner for communications, said the department was still reviewing its options.

"We believe in the integrity of the original procedure," Ms. Sachs said.

"I can't predict what the effect of this will be on businesses, but clearly it's not the most favorable outcome."