

TCEQ COMMISSIONER'S AGENDA MEETING
December 1, 2004
TDSL'S MOTION TO OVERTURN

WHITE	Kathleen Hartnett White, TCEQ Chairman
BARRIENTOS	Senator Gonzalo Barrientos, Travis County
NORTON	Duncan Norton, TCEQ General Counsel
MARQUEZ	Ralph Marquez, TCEQ Commissioner
SOWARD	Larry Soward, TCEQ Commissioner
RUSSELL	Kerry Russell, TDSL Counsel
GIBLIN	Pam Giblin, Penske Counsel
WILLIAMS	Marcia Williams, EPA Expert for Penske
GROMATZKY	Lydia Gonzalez-Gromatzky, TCEQ ED Legal Counsel
GOLEMON	Kinnan Golemon, TDSL Counsel

WHITE: Thank you very much. And I don't want to rebut anyone's questions, but I am going to reiterate what I said to begin with. I think that this issue begs for clean, clear Agency action, and I just have no faith that the Agency will resolve these issues, all this difference of credible difference of legal analysis and opinion between the parties is not something that I think this agency can ultimately solve and that will be in a court. I consider this, we are in the middle of an enforcement action; a Notice of Violation issued against Penske. And it came to the Commission first in terms of facts and legal analysis in the first MTO. I am persuaded on that basis that legally and factually that the point of generation is the accident scene and that factually we know that D008 CRT waste is in there. That is the basis upon which I assessed all the rest. And for that reason, I don't think that we can consider the point of generation the TDS Landfill. That I think would factually follow, I think, from what you were saying and therefore determine whether this mixed waste has lead levels sufficient to consider it hazardous. I can follow that line, but that is not what I am persuaded with at this time. To me, if you consider it characteristically hazardous waste, if you know it's in those mixed loads; there is only one of two ways to handle it. One is, just as I said, it all has to be disposed of as hazardous, or you do a physical sort, have your pile of the CRT waste, and your question pile. The CRT waste comes under the Land Ban and the remainder could be subject to the protocol for sampling. That's just, obviously credible difference of opinions. But that's my position.

SOWARD: Well, I whole-heartedly agree with you that we are not going to resolve this at this agency. We are wasting oxygen, because the only way that this is going to get resolved is in the courts of this state. Both sides of this issue have significant positions that they will not depart from in order to allow this matter to be handled appropriately under waste management. So, we are wasting our time trying to craft a solution when the only solution is going to be in the courts of this state. There's four lawsuits pending right now on this very issue. I say let's get on with the litigation and find out who's right. This agency cannot resolve it because the parties do not want this agency to resolve it.

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WHITE: So I guess that we have no second. What is the result if we do nothing? If we take no action?

NORTON: Commissioners, there is a prior order that has been entered dated September 16th, and I, that order has been voted on and passed by the Commission and it is still effective.

WHITE: It leaves all consideration of this matter to the Executive Director.

NORTON: I believe that is correct.

WHITE: In an open-ended manner because it doesn't specify any...

NORTON: Correct.

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WHITE: Well, I regret very much for both parties that, and for the public, that the Agency cannot more clearly act on this. So I guess, that's it. We are unable to act.

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