



TEXAS DISPOSAL SYSTEMS

TEXAS DISPOSAL SYSTEMS, INC. • TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

P.O. BOX 17126
AUSTIN, TEXAS 78760-7126
512-421-1300
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October 15, 2004

Mr. Glenn Shankle
Executive Director
(MC-109) Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: September 24, 2004 Executive Director Order to Penske Truck Leasing Co., L.P.
(Penske)

Dear Mr. Shankle:

The purpose of this letter is threefold. First, I would like to thank you for your September 24, 2004 letter ordering Penske to remove the D008 hazardous waste from Texas Disposal Systems Landfill, Inc. (TDSL) by hazardous waste manifest. A copy of the referenced letter was sent to me and I have attached a copy for your convenience. Your order for Penske to take responsibility for its hazardous waste along with the municipal solid waste and clay soil contaminated by the hazardous waste, and to dispose of the hazardous waste, whether the commingled non-hazardous fraction of waste is separated from the D008 hazardous waste glass or not, clearly implements the intent of Chairman White and Commissioner Soward as expressed in the September 16, 2004 hearing on TDSL's Motions to Overturn. Second, I would like to request clarification from you on the specific requirements of Penske under the above referenced letter because it has become clear that it is Penske's intent to repeat the same process the Commissioners have already rejected. Third, I would like to advise you of a number of normal business related issues that need to be resolved between TDSL and Penske before the transportation of the 99 containers to an authorized hazardous waste facility can begin. TDSL will assist you and your staff to assure a quick and legally defensible resolution of this long festering problem. If necessary, I will work with you to provide a location on the TDSL site to separate the hazardous waste from the non-hazardous waste and to sample any fully sorted waste believed to be non-hazardous.

Upon first reading your September 24th Order, I was immediately concerned that Penske could interpret the latter part of the letter as a license to remove the commingled waste in the 99 containers under some sort of temporary hazardous waste manifest issued by an unrelated third party trucking company. Penske could then simply resample the same commingled mixture of waste as it currently exists in the 99 containers, declare the waste to be non-hazardous once again, terminate the hazardous waste manifest and illegally dispose of the waste in a municipal solid waste landfill. All this would occur before TDSL or the TCEQ could respond to halt the illegal disposal, since your September 24th letter only requires Penske to report what they have done no later than 90 days from the letter or upon completion of the disposal activities. My concerns were increased when I reread Pam Giblin's comments in the September 17th Austin American-Statesman article, Penske's letter to the editor published September 24th and a recent exchange of correspondence between TDSL and Penske. Now it has become clear in Penske's

General Counsel, Michael A. Duff, October 7th and 12th, 2004 letters to TDSL that Penske views the September 16, 2004 Commission decision as merely requiring further testing as opposed to physical removal and proper disposal of all D008 CRT waste that is contained within the 99 containers of commingled waste. Copies of these recent letters between TDSL and Penske are attached for your reference.

In your September 24th Order, you clearly state that Penske must remove the 99 containers of commingled waste from TDSL under hazardous waste manifest. However, you allow an alternative approach that Penske contends does not require hazardous waste extraction, the same as was conducted in 1998 on the accident scene waste that was not placed in the landfill. You then state in the alternative approach, "In any case, the roll-off containers must be removed from the TDSL facility by October 27, 2004, and the waste manifested as hazardous waste until such time as it is conclusively determined that no D008 waste at the level that is characteristically hazardous remains." Penske apparently has interpreted this to mean that "the waste" can be tested in its current diluted state and if the diluted mixture tests to be non-hazardous, then the waste can be disposed of in a municipal solid waste landfill. They forget the regulatory requirement stated by the commissioners that prohibit such an action. The waste of concern is the D008 CRT accident debris that is commingled in the mass of waste contained in the 99 containers. They also recognize that since there is no pending environmental penalties accruing against them for their continued hazardous waste mismanagement they have nothing to lose from once again creating a scenario that would cause TDSL to justifiably resist the illegal disposal of the hazardous waste. We are concerned that you may have allowed Penske and Zenith to think they can simply conduct additional sampling of the entire waste volume, before the physical extraction or separation of the D008 CRT waste, and then reclassify some or all of the D008 CRT waste contained within the commingled waste as non-hazardous. Such a course of conduct was specifically rejected by the Commissioners and would be (1) directly contrary to Chairman White's and Commissioner Soward's stated guidance to you on September 16th; (2) contrary to the sworn deposition testimony of the TCEQ's in-house hazardous waste experts; and (3) contrary to the federal Third Third Land Ban restrictions found at 40 CFR 268.3. We believe it is essential that you immediately clarify for Penske and Zenith that your "alternative" language will not allow another round of testing of the commingled mass of waste in the 99 containers followed by a Penske declaration that since the entire commingled mass of waste is not hazardous then no D008 waste exists in the 99 containers, and therefore disposal of all of the waste in a non-hazardous landfill is deemed appropriate. Any such declaration is not legal hazardous waste management nor a legitimate outcome based on the law, the Commission's September 16th decision, and the undeniable factual presence of a conservatively estimated 6,000 to 10,000 lbs. of D008 hazardous waste in the 99 containers. Please let me remind you that there is no truth to Penske's assertion that 80 of the 98 cubic yards of accident debris, that was sent to TDSL as a result of Penske's improper action on October 9, 1997, was removed from the TDSL working face and that all or substantially all of the D008 CRT waste was therefore removed from TDSL in 1997.

As the majority of the Commission clearly recognized at the September 16th hearing, the waste to be focused on is the D008 CRT waste which is contained within the commingled mass of waste in the 99 containers. Chairman White specifically stated that additional testing is not a valid issue at this point, since D008 CRT waste was generated at the accident scene and proper treatment is required under RCRA prior to final disposal. ("I don't think the law takes me to testing . . ." and "It needs to be, I am concluding, it needs treatment and therefore it needs

assessing that I don't think, for that purpose has yet occurred.") Commissioner Soward went even further to clarify what should be required at this time is that the original D008 CRT physical waste separation protocol implemented by Penske's hazardous waste remediation contractor, Code 3, in January 1998 be used today on each of the 99 containers. ("And in reviewing the voluminous records that we have, I believe the agency and the parties would have done what they did. They would have gone out there and collected this waste, identified that which was the CRT waste, removed the CRT waste, and properly disposed of it under the regulations. And in fact, what appears to be a significant portion of that CRT waste was indeed handled that way. Unfortunately, it stopped there.") Please see the attached section of the September 16, 2004 hearing transcript at which time Commissioner Soward seconds the motion of Chairman White to grant TDSL's Motions to Overturn. Even Zenith's counsel, Phillip Comella, agreed with this approach. ("Commissioner, I think the method of separating out the hazardous debris is a very reasonable approach to handling this kind of problem. And the earlier that you do it, the better off you are.") As its counsel, Kerry Russell, stated on the record, TDSL wholeheartedly agrees with the recommended physical separation and SW 846 compliant sampling protocol on the non-hazardous portion after the physical separation is complete. Knowing that D008 waste exists in the 99 containers, treatment must occur to meet the Land Disposal Restrictions before the waste can be disposed. Disposal of the commingled waste in a non-hazardous waste landfill before extracting the D008 waste and/or adequate treatment at an authorized hazardous waste treatment/disposal facility is not legal. Sampling is not treatment, nor is the dilution of the D008 waste with municipal solid waste and clay soils.

Once again, the waste that must be focused upon is not the commingled mass of waste in the 99 containers stored for Penske and Zenith to remove from the TDSL landfill. Rather, the waste to be focused upon, not ignored by Penske and Zenith, is the D008 CRT waste that is well documented to be contained within the commingled mass of waste within the 99 containers. (See attached flow chart depicting the point of waste generation.) Eric Cooper, an employee of the Code 3 remediation firm, confirmed under oath in a 2004 deposition that pieces of the CRT waste that Penske and Zenith classify as D008 waste were present in the commingled waste which was pushed into the isolated storage area in February 1998 and covered with a clay and plastic cover. That, without question, is the same commingled waste that is now in the 99 containers. TDSL has photographs of this waste isolation that clearly shows Penske accident debris mixed in with the municipal solid waste and clay soils. Another third party environmental consultant, Ian Howes of HBC/Terracon, stated under oath in a recent deposition that he observed numerous pieces of glass in the 99 containers that appeared to come from CRT monitors. Mr. Howes made these observations in January-February 2004 during the process of moving the commingled waste and clay cover soils into the 99 containers. I have also personally observed the CRT waste and the associated packing materials in the waste now in the containers, as has my brother, Jim Gregory, Gary Newton and other landfill workers. In fact, Jim Gregory collected samples of the D008 CRT waste to share with Zenith and Penske consultants during the containerization process in February 2004. The Penske and Zenith consultants did not want these samples and threw them into a container that is now included with the 99 containers. Even Mr. Comella said to the Commissioners, "I would agree with that there is probably some glass left."

Robert Zoch, P.E., a recognized RCRA expert, has scientifically calculated that the commingled waste in the 99 containers is comprised of approximately 4.6 tons of D008 CRT waste, 801.9 tons of municipal solid waste (MSW), and 775.5 tons of soil cover and liner material. The

precise location of the D008 CRT waste, representing approximately 0.3% of the total materials' weight in the 99 containers, is not presently known. It is possible that some of the containers contain a small amount of the D008 CRT waste, while others most likely contain significant "hot spots" of the hazardous material. The commingled waste in all of the containers is highly heterogeneous in composition. The best time to have gone through the waste to hand sort out the D008 glass would have been immediately after the accident in 1997 or in January 1998 when Penske paid Code 3 to hand sort the hazardous waste from the non-hazardous waste in the seven rolloff boxes of CRT contaminated waste that was not stored in the TDSL landfill. However, Penske's refusal to take responsibility for their waste generated on October 9, 1997 required TDSL to take actions that resulted in a further commingling of the municipal solid waste, clay cover soils and D008 CRT waste. Penske and Zenith have no one to blame but themselves for having to now sort through such a large volume of commingled waste.

It is still possible for the waste generators (Penske and Zenith) to do the same thing with the commingled waste in the 99 containers (that includes the D008 waste components of at least 226 CRTs) as they did in January 1998. The waste materials (D008 CRT debris, MSW and clay cover soil) should be physically separated by applying a "negative sort" similar to that performed by Code 3 in January 1998. Clearly identifiable CRT glass should be extracted for management as D008 hazardous waste. Any MSW that obviously does not contain glass or other CRT debris should be extracted and separated as non-hazardous waste. Any questionable components and waste mixtures that are too soiled or commingled with CRT glass to allow hand separation must be treated and disposed as D008 hazardous waste. Unlike the contaminated soils collected from the bar ditch at the 1997 accident site, most of the soil present in the 99 containers is clay landfill cover soil and may or may not be contaminated by D008 CRT waste. During the physical sorting process, soils that are clearly not mixed with waste materials should be stockpiled and homogenized in accordance with SW 846 heterogeneous mixture sampling protocols. Written documentation of these protocols should be included in the overall documentation for TDSL's Site Operating Record. SW 846 representative samples of the stockpiled soil should then be analyzed for TCLP lead and total lead. The total lead analyses should then be statistically compared to the background total lead level in virgin cover soils used by TDSL. Any sorted stockpiled soils which are thereby demonstrated to contain only background concentrations of lead, along with the extracted MSW demonstrated to be free of CRT debris, can then be managed as non-hazardous special waste.

Finally, I would like to note several logistical issues to be addressed by Penske and for TDSL to accomplish prior to the removal of the 99 containers of commingled waste from TDSL. (These logistical issues were previously outlined in my June 30, 2004 letter to John Steib, Deputy Director of Compliance and Enforcement and faxes to Penske on July 1st, July 2nd and July 6th. TDSL's General Counsel, Gary Newton, also discussed these logistical issues with Michael A. Duff, Penske's General Counsel, in an October 7th telephone call.) TDSL has the responsibility to assure that federal and state law and its permit terms are not violated and to further insure that its customers' waste is not subjected to potential superfund liability. This will be accomplished by the approximately 1600 tons of waste and clay soil that has been contaminated by Penske and Zenith's D008 waste or the separated D008 waste being removed and disposed of offsite, pursuant to the RCRA Third Third Land Ban provisions. It is not reasonable for anyone to ask TDSL to turn over the 99 containers of commingled waste, in rolloff boxes owned by our sister company Texas Disposal Systems, Inc. (TDS), without any information on who is taking them, where they are being taken, and what is going to be done with the waste and containers if the

D008 hazardous waste is not going to be extracted, when TDSL and its customers have so much liability at stake.

The logistical issues include basic items such as a description of the Penske work plan while on TDSL property, timing of their work, identification of the on-site coordinator for Penske, and Penske's use of TDSL's services at our site. TDSL will also need Penske certificates of insurance coverage for TDSL employees and equipment used during Penske's work since Penske will be taking custody of the waste removed by their trucking firm and will be utilizing the 99 containers owned by TDS. TDSL will need written documentation that Penske's transporter is licensed and insured to transport hazardous waste. Penske and/or Zenith must be responsible for the D008 waste should a spill occur in transit to the final disposal facility, and for the liability related to the final disposal. A system for providing copies of hazardous waste manifests with Penske listed as the generator, not Penske's transporter, for TDSL files for each load leaving TDSL will also be necessary as TDSL must know the identification and location of the specific hazardous waste disposal facility where TDS' containers are to be taken. Likewise, TDSL will need a copy of the completed hazardous waste manifest with Penske listed as the generator for each of the 99 containers taken to the hazardous waste disposal facility to be entered into TDSL's permanent Site Operating Record. Penske's hazardous waste transporter must be able to clean the mud off their tires before leaving the TDSL site. As you may know, the 99 containers are stored on an uncompacted clay pad and the area can turn quite muddy with a small amount of rainfall. The TDS containers will need to be returned to TDSL in a specific time period and be in similar condition as when they were loaded, i.e., cleaned and free of any hazardous waste residue. Penske must agree not to use the 99 containers to transport any other waste or materials while in their possession. No doubt, other similar issues will arise as the parties work together to complete the project. TDSL will address these issues as they arise.

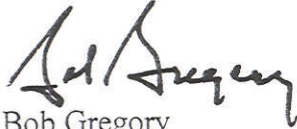
We believe the process will be facilitated if Penske provides the TCEQ and TDSL with a sample standard hazardous waste manifest identifying Penske as the generator, listing the D008 waste, identifying the authorized hazardous waste facility, etc. This sample will allow TDSL to evaluate whether the manifest will meet the needs for TDSL's permanent Site Operating Record required to be maintained by federal and state regulations.

In view of Penske's October 7th and 12th assertions, I specifically request that you authorize TDSL experts to observe any off-site process employed by Penske relative to the extraction of D008 waste, separation of non-hazardous waste and disposal of the commingled waste, to insure the process protects TDSL and its customers from future liability under state and federal statutes and regulations. To this end, we believe that Penske should be required to present the TCEQ with a workplan prior to the removal of the commingled waste from TDSL, for TCEQ hazardous waste staff review and approval, describing how the D008 CRT waste will be handled, extracted, sorted, sampled and disposed. This workplan should also be subject to comment by interested parties prior to initiating this project.

In closing, please clarify the issues addressed above, concerning your September 24th letter to Penske, as soon as possible. Your September 24, 2004 letter allows Penske to wait until after all waste is removed from TDSL and is disposed before Penske has to notify the TCEQ of what happened. TDSL cannot risk finding out, after the fact, that Penske disposed of the commingled waste in a municipal solid waste landfill after re-sampling the waste as it currently exists in the 99 containers and terminating the hazardous waste manifests as never having been necessary.

Please let us know your response in writing as soon as possible, so the parties may properly plan the completion of this project. Also, please let me know if you would like for me to work with you to provide a location on the TDSL site to sort the hazardous waste from the non-hazardous waste and to sample any fully sorted waste believed to be non-hazardous. If you have any questions, feel free to contact me at (512) 421-1300.

Sincerely,



Bob Gregory
President and CEO

BG/jb

Attachments

- September 24, 2004 letter from Glenn Shankle to Michael Duff
- October 7, 2004 letter from Michael Duff to Gary Newton
- October 8, 2004 letter from Gary Newton to Michael Duff
- October 12, 2004 letter from Michael Duff to Gary Newton
- A portion of the Transcript of September 16, 2004 TCEQ Commission Hearing
- A flow chart depicting the point of waste generation

cc: Chairman Kathleen Hartnett White
Commissioner Larry Soward
Commissioner Ralph Marquez
Mr. Duncan Norton, TCEQ General Counsel
Mr. Blas Coy, TCEQ Public Interest Counsel
John F. Steib, Jr., Deputy Director, TCEQ Office of Compliance and Enforcement
Mr. Michael A. Duff, General Counsel, Penske Truck Leasing Co., L.P.
Ms. Pam Giblin, Baker Botts, L.L.P.
Mr. Phillip Comella, Seyfarth Shaw, L.L.P.
Mr. Kerry Russell, Russell, Moorman & Rodriguez, L.L.P.
Mr. Kinnan Golemon, Brown/McCarroll

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 24, 2004

Mr. Marc E. Althen
Senior Vice President
Penske Truck Leasing,
P.O. Box 563
Reading, Pennsylvania 19603-0563

Dear Mr. Althen:

On May 13, 2004, the Texas Commission on Environmental Quality (TCEQ) issued Penske Truck Leasing (Penske) a Notice of Violation (NOV) in connection with the spill investigation at IH-35 South near Exit 221 in Buda, Hays County. This NOV required Penske to take certain corrective actions. On June 18, 2004, on my behalf, John Steib, Deputy Director for the Office of Compliance and Enforcement, approved your proposed plan for removal and disposal of the waste located at the Texas Disposal Systems Landfill (TDSL) as special waste. TDSL filed a Motion to Overturn my decision in this matter. On September 16, 2004, the Commission issued an order overturning my decision and remanding this matter.

I now exercise my authority to act in this matter, and by this letter, I am requiring the following actions of Penske. No later than October 27, 2004, Penske must remove all of the waste currently stored in the 99 roll-off containers at the TDSL facility. This waste must be manifested as hazardous waste and disposed of at a permitted hazardous waste facility. Alternatively, Penske may pursue the actions discussed at the September 16th hearing relating to the assessment and any necessary extraction of the waste in the roll-off containers. If Penske pursues this approach, all activities associated with the assessment, characterization and extraction of the contents of the roll-off containers must be conducted at a separate authorized facility in a manner that ensures protection of human health and the environment. Specifically, Penske must ensure compliance with all RCRA requirements, including land disposal restrictions for any D008 waste triggering those requirements. In any case, the roll-off containers must be removed from the TDSL facility by October 27, 2004, and the waste manifested as hazardous waste until such time as it is conclusively determined that no D008 waste at the level that is characteristically hazardous remains.

Mr. Marc E. Althen
Penske Truck Leasing
Page 2
September 24, 2004

Upon completion of this activity, but no later than 90 days from the date of this letter, please submit all documentation necessary to demonstrate that the waste was properly disposed of in accordance with all applicable rules and regulations. Please submit this information to:

Ms. Anna Rodriguez, Special Assistant
Office of Compliance and Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087, MC 163
Austin, Texas 78711-3087

If you have any questions, please feel free to contact Mr. John F. Steib, Jr., Deputy Director, Office of Compliance and Enforcement at (512) 239-5718.

Sincerely,



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: Ms. Pam Giblin, Baker Botts, LLP
Mr. John F. Steib, Jr., Deputy Director, TCEQ Office of Compliance and Enforcement
Mr. Robert Gregory, Texas Disposal Systems



MICHAEL A. DUFF
SENIOR VICE PRESIDENT AND GENERAL COUNSEL

October 7, 2004

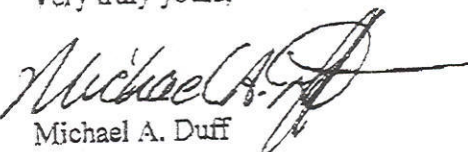
VIA FACSIMILE--(512) 243-4123

Gary T. Newton, Esquire
General Counsel
Texas Disposal Systems, Inc.
P.O. Box 17126
Austin, Texas 78760-7126

Dear Gary:

By now you have received a copy of Glenn Shankle's letter. We will be contacting you shortly to arrange a date for our contractors to begin the process of removing the 99 rolloffs for off-site testing as provided in the letter.

Very truly yours,


Michael A. Duff

jmm

cc: Glenn Shankle
John F. Steib, Jr.



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October 8, 2004

Michael A. Duff
Senior Vice President and General Counsel
Penske Truck Leasing Co., L.P.
Rt. 10 Green Hills
P.O. Box 563
Reading, PA 19603-0563

RE: Response to your letter dated October 7, 2004

Dear Mike:

I appreciate you taking the time to visit with me by telephone about the logistics for transporting the 99 rolloff boxes under a Penske hazardous waste manifest to a permitted facility and for removing the D008 waste that is commingled with the waste and clay soils in the boxes. As we discussed, there are a number of issues that we need to address prior to initiating this project.

Please let me know when you have a firm grasp on your plans so we can finalize the plan for proper treatment and disposal of the D008 waste in the boxes and make arrangements regarding Penske's use and return of the 99 TDS boxes after Penske is through with them. You may reach me at (512) 421-1305.

Sincerely,

Gary Newton
General Counsel

GT/jb

Cc: Glenn Shankle, TCEQ Executive Director
John F. Steib, Jr., TCEQ Deputy Director of Compliance and Enforcement



MICHAEL A. DUFF
SENIOR VICE PRESIDENT AND GENERAL COUNSEL

October 12, 2004

VIA FACSIMILE--(512) 243-4123

Gary T. Newton, Esquire
General Counsel
Texas Disposal Systems, Inc.
P.O. Box 17126
Austin, Texas 78760-7126

Dear Gary:

I received your letter and want to correct both your view of what is required under the Glenn Shankle letter as well as your characterization of our conversation. On September 16, the TCEQ Commissioners rejected TDSI's view that the 1660 cubic yards you accumulated are a hazardous waste as a matter of law and sent the matter back to the Executive Director without any instructions. Pursuant to that total remand, Mr. Shankle has authorized the testing of the material off-site so that we can conclusively determine "that no D008 waste at the level that is characteristically hazardous remains." As I stated on the phone, we intend to remove the rolloffs to a permitted facility and then test the material; we believe this testing will again confirm our longstanding view that the material is not hazardous.

We hope you will cooperate with Mr. Shankle's directive.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Duff", is written over a printed name. The signature is stylized and includes a large, circular flourish at the end.

Michael A. Duff

jmm

cc: Glenn Shankle
John F. Steib, Jr.

TCEQ Hearing on TDSL's Motions to Overturn 9/16/2004
Commissioner Larry Soward's Comments upon his second to Chairman White's
Motion to Grant TDSL's Motions to Overturn:

...I believe that it could have been addressed in the past and it can be addressed today.

...“What would we have done in January and February of 1998?” Not today, but what would we have done in January and February of 1998. Because that's where the whole issue that's facing us today starts. That's where, when I was talking to the Senate, I believe there were things that could have been done by all parties involved, in early 1998 that would have addressed this issue. And this matter would not be languishing 7 years later in about, come next month. So I said, “What would this agency and what would the parties have done in January and February of 1998?” And in reviewing the voluminous records that we have, I believe the agency and the parties would have done what they did. They would have gone out there and collected this waste, identified that which was the CRT waste, removed that CRT waste, and properly dispose of it under the regulations. And in fact, what appears to be a significant portion of that CRT waste was indeed handled that way. Unfortunately it stopped there.

We didn't, and when I say we, I mean all parties involved, take it the next step and say, “We obviously didn't get it all, let's keep looking and get the rest of it and handle it appropriately.” We can't...I don't get hung up on dilution and mixture and all of that because I believe that the CRT waste that was taken to the landfill by those 7 dump trucks on the afternoon of October 7, 1997, was classified as hazardous waste. Nothing changed that. It's still classified as hazardous waste. The CRT waste. Not the 99 bins of stuff which is what we have focused on throughout these proceedings. Again, I may be too simplistic, but I, I don't think we should focus on the 99 rolloff bins. We should find out if there is CRT waste in any of those bins and if we find it, deal with it according to the regulations and if we don't find it, TDS can put the rolloff bin back in the landfill. Now, you say we've got to do a cost benefit. Commissioner Marquez, I would agree with you all day long that we have regulations that in applying them, just doesn't make sense at times. But, two things. One, we're suppose to apply them when they are legally and appropriately adopted and promulgated. But secondly, we have got to make sense of them. And I think we can make sense of these regulations. We can make sense of these regulations by saying that which is CRT waste, that was placed in that landfill as a result of an accident, which was classified as D008 hazardous waste, take that waste and handle it according to regulations. All the other stuff, put it back in the landfill. It's unfortunate that in January of this year, all of this got clouded by all of this waste being removed and put into the 99 rolloff bins because it immediately cause, that set the stage for these discussions and it shouldn't have set the stage for these discussions. The 99 rolloff bins are irrelevant. It's the waste, the CRT waste that's somewhere in those 99 rolloff bins that's what relevant. I agree, I agree, Commissioner Marquez, you, this room could hold those 99 rolloff bins with just a little bit to spare because I did the calculation.

This room is 1,700 cubic yards. See, I told you that I had a math degree. So, look at the volume of this room. This is how much waste we are talking about. Let's assume that there is only 18 cubic yards of CRT waste. Take four of those desks that Blas and his staff are sitting at and stack them on top of each other. That's 18 cubic yards. And look at how much that is in the scheme of

all of this and you say it is insignificant, it's de minimus, but I don't think the regulations go there. If you can identify the waste, the regulations say that that particular waste, which is classified, has to be dealt with in a certain way. If you don't find it, you don't have to do anything with it. So, where I keep coming down is what would we have done in '97 and '98? I believe that we would have, if we all had done that which we should have done, we would have said that we found 80 cubic yards of it. Obviously there is 200 something TVs that we can't account for because we can't find the bands. They are in there somewhere, let's keep looking until we are all satisfied that we just can't find them anymore.

We didn't do that. But we can still do that. Yes it's going to cost money and yes it's going to take time. Um, but I think that is making sense of the regulations. That's, that's making common sense of the regulations and not creating a precedent that says um, that we are going to allow hazardous waste be placed improperly in municipal landfills uh, and not properly dealt with. Um, so that's where I come down. I believe, I believe the Executive Director made the right decision based on the facts that the Executive Director and the issues that the Executive Director was looking at, at that time. I think we may have a different view looking at all the facts and all the issues that we have to look at, at this time. And I think that if we grant the Motion to Overturn it is not saying that the Executive Director made the wrong decision, it's saying that we are making a different one, given all the information, all the facts, all the arguments, all the considerations that the three of us have to make. Which I believe, in some respects are different than what the Executive Director has to make. So I don't think it is a right or wrong, uh whichever way we go. I read SW-846. And I think there are ways to test this waste in each one of the bins that scientifically, Commissioner Marquez, on our triangle, will determine whether or not there is any CRT waste in that particular bin. And if there are, let's handle it. If there's not, put it back in the landfill. Uh, that upholds the base of your triangle. It upholds the law. It upholds the other side of the triangle as best we can of common sense and I may want to agree with you that the RCRA doesn't make sense.

But we've got to make sense of it. And I think you can structure that triangle, even today, so that the science is appropriately applied, the law is appropriately applied and the common sense is appropriately applied as best you can do it. Um, and so that's where I come down. I, I believe that, um, again, without any, um, any communication that granting the motion to overturn is something that the Executive Director made the wrong decision, but rather saying, by granting the motion to overturn, that we are looking at all the issues and even other issues that the ED was not permitted to look at or was not appropriate for him to look at, and saying that we reach a different conclusion. So, I would go along with the motion to grant the Motion to Overturn. I believe as I have outlined that there are ways that this issue can once and for all be resolved. I believe that even though it will cost money, in the end it will be cheaper than protracted litigation. Um, and it will protect the integrity of this agency, the hazardous and solid waste program, the federal regulations, the science and the common sense. So, I would second your motion.

TDSL Landfill

TDSL Non-Landfill Storage

