

# ENVIRONMENTAL REGULATION COMMITTEE

## House Hearing Transcript

September 8, 2004

10:14 am to 1:38 pm

### Instructions for viewing

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The following is set at 59:59/3:23:38 with exchanges between

- Representative Edmund Kuempel (Kuempel), Vice Chairman of the House Environmental Regulation Committee
- Representative Dennis Bonnen (Bonnen) Chairman of the House Environmental Regulation Committee
- John Steib (Steib) TCEQ, Deputy Director of Enforcement

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**Kuempel:** I know we have a deal going on just South of Austin and, I don't know, I will ask you the questions and I don't know if you can answer for the Executive Director or if we are going to have to set up another meeting. Whatever you are comfortable with, I'm going to be fine with.

**Bonnen:** Let me begin by, not begin, but let me jump in there and tell you the issue that Chairman Kuempel is about to address, and I am glad that he is going to address it here and you may not have the answers but I will tell you that this committee is committed to finding the answers and if we aren't able to find them today, we will, in the near future, when our committee schedules meet up right, and we will have another hearing to address this issue.

**Kuempel:** You are lucky, I got a new pair of glasses.

**Bonnen:** And now we're really in trouble cause he can see. But, I would like you to answer the questions the best you can today and if not, we will be back here and we'll discuss it again.

**Steib:** I will certainly make every attempt to give you the answers that I have.

**Kuempel:** These are my gold-rimmed glasses. These are my \$1.95 glasses. Those are a dollar.

**Lady:** Unrecognizable

**Kuempel:** Can we get a photographer down here to take my picture? I can't see out of them John, but other than that I am just doing great.

**Kuempel:** How can the Executive Director issue a violation to a company for failure to properly manage hazardous waste and not fine the company?

**Steib:** How can the Executive Director issue a Notice of Violation for not properly handling the waste?

**Kuempel:** How can the Executive Director issue a violation to a company for failure to properly manage hazardous waste and not fine the company?

**Steib:** That sometimes takes the form of a Notice of Violation. We have different processes in the agency for violations of regulations, either as an NOV, Notice of Violation, that includes necessary corrective action and timelines or it may be referred directly to a Notice of Enforcement which could include fines but one doesn't necessarily preclude the other. An NOV could be issued with corrective action required and once that is done then that's the end of it. Or an NOV could require corrective action and then move on to become an enforcement process.

**Kuempel:** Ok, where we are talking about TDS that came up in court and it is in San Marcos and I think that's on hold...

**Steib:** The agency has issued a Notice of Violation and that issue to Penske. We have given them corrective action to take and we have not made a final determination on whether or not a fine is appropriate.

**Kuempel:** So, if a company buried hazardous waste, that is certainly in violation of state law.

**Steib:** Yes sir.

**Kuempel:** But, sometimes it might not be an offense that needs a fine?

**Steib:** There are a number of factors to consider. Each case has its own merits and its own circumstances. There may be circumstances where the waste that was dumped, small as it might be, was extremely hazardous, leaching into a ground water supply, with direct environmental harm, that would certainly warrant penalties or deterrents. And otherwise, there may be other circumstances where the hazardous waste, classified arguable or not, was deposited, commingled, diluted to the point that it was not presenting not only no environmental harm, but could not be tested and classified as hazardous waste. And it might not be in that circumstance appropriate to assess penalty.

**Kuempel:** When it went into the landfill, was it hazardous waste or was it not?

**Steib:** That's arguable, sir. The manufacturer of the tubes in question, certainly classified and treated them as hazardous waste in their manufacturing environment.

**Kuempel:** Ok.

**Steib:** Now the accident that occurred....

**Kuempel:** Was that...oh excuse me, go ahead.

**Steib:** I was only then going to point out that the accident that occurred was not in that clean environment that consisted of just that hazardous waste. Now we've got that waste from those picture tubes commingled with a bunch of other debris, packing materials and a bunch of waste along the highway, and it is not the same waste stream and I don't know, I am not the expert on it whether or not ipso facto continue its classification that it retained in its manufacturing environment. That's why I only point out that it is arguable and it is being argued in other venues.

**Kuempel:** Was it on the manifest or is it by law suppose to be on the manifest that the driver was carrying hazardous waste?

**Steib:** The driver was carrying end products. He was carrying product that were going to be assembled into a larger product obviously picture tubes, so they were not manifested as hazardous waste.

**Bonnen:** When was the NOV issued?

**Steib:** We issued the NOV just a number of months ago. I want to say May. I'm sorry.

**Bonnen:** No, that's ok.

**Kuempel:** Was there a violation...Did you issue a violation to a company for failure to properly manage hazardous waste and then allow that company to dispose of hazardous waste at a non-hazardous waste facility?

**Steib:** Yes sir.

**Kuempel:** Was that an illegal treatment?

**Steib:** We believe we had a legal basis for both of those decisions. We believe that the decision made to issue an NOV addressed an issue that at the time we thought there was some responsibility for that company to determine and know about its contents and what to do in the event of an accident. And they were the carrier. Now, at this point in time, with the commingling of that small residual amount, unintentionally, with the testing that has been done, with the ratio amount of leachable lead in the significant volume of that waste now, not revealing any hazardous characteristics that are normally associated within the parameters of it, we don't feel that it is appropriate now to assess a penalty or perhaps not a fine associated with that. It can be proper...I am sorry, I did not fully answer your question, and now it can be properly disposed of in our mind as a special waste in an appropriate landfill not requiring a hazardous waste classification.

**Kuempel:** Am I correct in hearing and understanding you are stating that it was not hazardous waste to begin with when it went into the landfill?

**Steib:** I am not making that statement unequivocally, I am saying that that statement is still being argued by attorneys on whether or not its waste stream remained consistent classification and remained consistent from the time it was in the manufacturing environment to the time...

**Kuempel:** But attorneys can argue for a long, long time.

**Steib:** Yes sir.

**Kuempel:** What is TCEQ's position?

**Steib:** TCEQ issued a Notice of Violation to the carrier for improper handling of the waste. Since it has been commingled, post the accident, post the event, diluted to where now we only have in the neighborhood of 18 cubic yards that was left there, commingled now with 1600 cubic yards, tested a number of times, not reaching the level of hazardous waste, we have made a common sense decision, and a human health decision and consistent with federal guidelines and rules that it can now be properly disposed of not as a hazardous waste.

**Kuempel:** Ok, going back, did TCEQ's technical staff acknowledge that representative samples were not possible with the TCEQ sampling and protocol?

**Steib:** I can't address that chairman, I am not familiar with that.

**Kuempel:** Can you find the answer out and give it to me in writing?

**Steib:** Yes sir.

**Kuempel:** Were the samples that were collected in accordance with EPA requirements for hazardous waste testing?

**Steib:** We conducted appropriate protocol for collecting sample waste, we published our protocol to all that were interested, we sampled twice, we had outside sampling activities, we split the samples with the owner of the site. I don't know the results of everyone else's testing, but every sample we took, we believe it was following appropriate protocol which we published resulted in a non-detect, or rather low-detect.

**Kuempel:** Proper protocol, I guess the question is, were the samples collected in accordance with the EPA requirements for hazardous waste testing?

**Steib:** I can't personally answer that. I will get you an answer in writing.

**Kuempel:** When we go back, in your opinion, do you think the Executive Director established a policy that would encourage hazardous waste generators to sneak hazardous waste into non-hazardous municipal landfills, because there is not going to be any consequences if they commingle and they test them 5 or 6 years down the line?

**Steib:** In my opinion, we do not feel that we have opened that door or set that precedent. In my opinion, we reviewed this individual case on its merits, looking at all factors associated with this specific case, and made as I said before, a common sense decision using science and federal law.

**Kuempel:** And you think that you have met the testing, has met TCEQ's and the EPA requirements?

**Steib:** Yes sir, I do.

**Kuempel:** You don't think that there is any question that ya'll have followed the letter of the law?

**Steib:** There is no question in my mind sir.

**Kuempel:** Why is this taking like 6 ½ or 7 years?

**Steib:** That's a question that I wish I had a real good answer for, and I don't. I can only share the information that everyone else has gleaned over the last seven year about the events surrounding the accident in '97 and the fact that 80 of the 98 yards that were deposited there were removed and approximately 18 cubic yards were left. They were mixed in with some existing landfill. This was not unprecedented in the State of Texas. This happens across the state in various landfills. We make judgments decisions everyday in various parts of the state on how to handle certain circumstances. At that time, it was my understanding that the determination was made that the amount of leachable lead, and it is an insignificant amount of leachable lead vis-a-vis the total cubic yardage that we are talking about, was determined by the on-site regional office representatives that it was not necessary to be removed at that time.

**Kuempel:** It, ...would it have been better to be safe than sorry, if that is a good expression, God, I don't know, that it could have been isolated at that time and not turned into, I don't know, how many cubic yards did you say?

**Steib:** Sir, there's over 1600 cubic yards.

**Kuempel:** 1600 versus...I mean

**Steib:** With 99 roll-offs to date.

**Kuempel:** Versus, I mean...

**Steib:** Certainly.

**Kuempel:** Why could that not have been...

**Steib:** I can't disagree, I think that it would have been an appropriate course of action for all parties to agree and have it removed. I am reminded that the Commission is, the three member Commission, is holding a hearing on September 16 to address the Executive Director's decision to classify this waste as a special waste. There is a Motion to Overturn that decision and the Commission will be hearing the argument in a little over a week.

**Kuempel**: What date was that?

**Steib**: I believe it is September 16.

**Kuempel**: I don't have any other questions. Thank you.