

State rules landfill waste is hazardous

Environmental board recommends garbage be tested or removed

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Texas environmental commissioners Thursday reversed the decision of their own executive staff in a potentially precedent-setting hazardous waste dumping case that had drawn the attention of state lawmakers, federal regulators and the nation's waste disposal industry.

In a 2-1 vote after a more than two-hour hearing, the commissioners overturned a ruling by Texas Commission on Environmental Quality Executive Director Glenn Shankle, who had said that lead-tainted garbage now sitting in 99 large containers at the Texas Disposal Systems landfill near Austin was no longer hazardous waste and could be reburied in a conventional Texas landfill.

At issue was whether debris originally designated as hazardous waste loses that designation if it is diluted after being mixed with nonhazardous garbage. The commission decision means the estimated several hundred to several thousand pounds of lead-laden material now mixed in with clay and household garbage still is considered hazardous waste. The solution Commissioner Larry Soward suggested is for Penske Truck Leasing Inc. to identify, remove and properly dispose of the lead portion, or ship the tons of mixed waste to a hazardous waste landfill.

If Shankle's ruling had been allowed to stand, warned several experts including a former U.S. Environmental Protection Agency chief, companies would have found it easy to send hazardous waste to many of the state's garbage dumps, and even if caught would face no requirement to pay for the proper disposal in a licensed hazardous waste dump.

"I'm thrilled," said Bob Gregory, owner of the Texas Disposal landfill. He had fought for nearly seven years to get Penske or Zenith Corp. to remove hundreds to thousands of pounds of lead from his landfill.

Penske officials acknowledged years ago in letters or government documents that the lead waste was hazardous after one of the company's 18-wheelers, carrying lead-laden Zenith television tubes, wrecked on Interstate 35 in 1997. Now, Penske argued, the waste is no longer hazardous -- and might not have been to begin with -- so the company bore no responsibility to send the lead-tainted garbage for treatment or disposal at a landfill licensed to accept hazardous waste.

Shankle and his executive staff agreed with Penske in rulings formalized in a June 30 letter.

But Gregory lawyer Kerry Russell appealed the decision to the three-member commission and, in recent weeks, Gregory found himself supported by the commission lawyers assigned to represent the public's interest, activist groups such as the Sierra Club, a national waste industry trade group and a bipartisan assemblage of Texas lawmakers including the chairmen of the House and Senate environmental affairs committees. Commission Chairman Kathleen Hartnett White joined Soward in overturning Shankle's ruling, both citing their interest in reaching a common-sense solution without setting a precedent that could harm the public or the environment.

They opted in the ruling not to direct Shankle to take any specific step to require proper disposal. But Soward "strongly suggested" that the right step seven years ago would be the right step now: Have Penske send the lead-tainted garbage to be detoxified or buried in a hazardous waste landfill, or pay for testing of the 99 containers in a valid way. Any container having any lead waste would have to have the lead portion removed and sent for proper disposal, while any certified nonhazardous debris could go back in Gregory's landfill.

Penske's lawyers argued that they had test results showing the lead-garbage mix was actually not hazardous -- about the time of the accident and during more recent tests overseen by commission staff.

However Soward and White challenged Penske or Zenith lawyers to provide certified evidence to support their claims that those test results were valid and followed mandatory EPA protocol. "I saw nothing in your thick notebook that showed" that you followed the protocol, Soward said.

Penske officials, represented by a Philadelphia law firm and Baker Botts of Austin, issued a written statement after the vote: "We believe the original decision was correct, and we are confident that further testing will confirm the results of all the previous tests showing it is nonhazardous."

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