

Lead-tainted land causes concern, lawsuit

By RYAN ANDERSON
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Thoughts of the state coming in and taking everything that he owns, and has worked for, keeps Wesley Eisenman up most nights.

The sleepless nights are courtesy of a lawsuit that Eisenman, and his wife, Carolina, along with Randy and Susan McCullough, are faced with because they won't let the Texas Natural Resource Conservation Commission onto their property, adjacent to Harkey Road just outside of the Pearland city limits, to search for lead.

The source of the lead is a lot, adjacent to the Eisenman's home, and across the street from the McCullough's, where parts of car batteries were used as fill dirt around 20 years ago according to Randy McCullough.

The lead was discovered around four years ago when a three-year-old girl living on the property was diagnosed with lead poisoning, Susan McCullough said.

Following the discovery, the family that lived on the property was forced to move and leave everything they owned behind, since it was contaminated.

Presently, the lead-laced property, deemed "Little Brio" by some residents, has been surrounded by a chain link fence with razor wire and several signs warning of the health risks.

"That fence isn't doing anything," said Susan McCullough. "The gate isn't properly shut and there are kids playing in there all the time."

For further evidence of the failed containment of the lead laced battery chips, one need only go to the shoulder of Harkey Road where the drainage ditch runs. The land along the shoulder is sprinkled with black plastic battery parts in a variety of sizes. The chips came to the surface following some culvert work.

"The county came in here and dug up the culverts, and stirred up all the chips that were here," said Randy McCullough.

Furthermore, both families say a water main broken by TNRCC officials, when they were digging for soil samples, also helped spread the lead.

"They (the TNRCC) didn't even notify our water company when they broke the main, I had to call and let them know," Eisenman said. "We were getting our water out of garden hoses until it was fixed."

The two families' opposition to having their land searched centers around a liability issue.

"We don't want to be held responsible for something that we didn't know anything about," Susan McCullough said.

While the battle heads towards an Austin court, Eisenman admits that although his house is almost paid off, he can't "give it away," let alone sell it.

"We all want this cleaned up for our children, but we want to be assured by the TNRCC, that we won't be held liable," Eisenman said. "Also, I want the value of my property back."

Attorney General John Cornyn has filed the lawsuit, on behalf of the TNRCC, seeking an injunction to allow state officials access to the property for the purpose of testing the land for the presence of lead.

The basis of the State's case on the lawsuit is the Texas Water Code. Under the Water Code the TNRCC and its agents are allowed, "to enter any private or public property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order."

Furthermore, the Texas Health and Safety Code authorizes agents of the TNRCC or local governments to "enter at any reasonable time public or private property in the governmental entity's jurisdiction to inspect and investigate conditions concerning solid waste management and control."

According to the lawsuit, failure to allow state officials to test the land can result in a fine of \$50-\$25,000 for each day that officials are kept off of the land.

"What do we have to do, hire lawyers like O.J. had?" Eisenman said. "We don't have that kind of money, but we want to protect our homes. They may not look like much but we are honest people working hard to pay for what we own. My wife grew up on this land, we aren't going to just give up."

Despite stating that they do not want the TNRCC on their property, the McCulloughs say they have photos of state officials trespassing on their land and taking samples.

Although the TNRCC is currently not welcome on the two families' land, there was a time when samples were allowed to be taken. According to Susan McCullough, all the tests taken at that time were negative.

"Now, they (the TNRCC) want to dig even deeper," Susan McCullough said. "If they didn't find lead on the surface, I don't think it will be found any deeper."

The case will be heard in the District Court of Travis County, in Austin.

Until then, both the Eisenmans and the McCulloughs can only dream of a day when their neighborhood can return to normal.

"I used to go catch crawdads in that ditch when I was a kid," Eisenman said. "My kids still play on this street, but I tell them to stay away from the ditch and that lot. It's like a part of their childhood is being taken away from them."