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From: Marisa Perales

Date: July 11, 2007

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Texas Campaign for the Environment's Amicus Brief in Response to TDSL's Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste.	9

COMMENTS:

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July 11, 2007

Ms. LaDonna Castañuela
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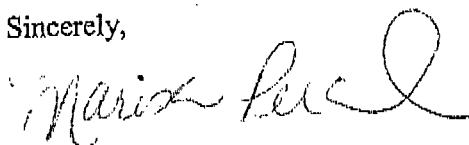
**Re: Texas Disposal System Landfill, Inc.'s (TDSL) Petition to Review the
Executive Director's Action and Order Proper Disposal of Hazardous
Waste; TCEQ Docket No. 2007-1019-IHW**

Dear Ms. Castañuela:

Please find enclosed eleven (11) copies of Texas Campaign for the Environment's Amicus Brief in Response to TDSL's Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Marisa Perales

CC: Service List

TCEQ DOCKET NO. 2007-1019-IHW

IN THE MATTER OF
VIOLATIONS OF THE TEXAS
SOLID WASTE DISPOSAL ACT
AND TCEQ REGULATIONS BY
PENSKE TRUCK LEASING CO.,
LP AND PENSKE LOGISTICS,
INC.

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS CAMPAIGN FOR THE ENVIRONMENT'S
AMICUS BRIEF IN RESPONSE TO TDSL'S PETITION TO REVIEW THE
EXECUTIVE DIRECTOR'S ACTION AND ORDER PROPER DISPOSAL OF
HAZARDOUS WASTE

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW Texas Campaign for the Environment (TCE) and offers this
Amicus Brief in support of TDSL's Petition to Review the Executive Director's Action
and Order Proper Disposal of Hazardous Waste.

I. Introduction

Texas Campaign for the Environment is a non-profit citizens' organization that
effectively informs and mobilizes residents, lobbies government officials, and urges
corporate officials to protect the quality of life, health, and the environment locally and
statewide.

TCE's non-partisan membership base includes over 30,000 residents who support
the organization's campaigns to improve electronic, municipal, and hazardous waste
disposal in Texas. The organization has approximately 10,000 members in Travis

County, Texas, the location of the landfill at which the broken CRTs at issue in this case were disposed. This case affects waste management and public health concerns for TCE members living and working in Travis County and has implications for members residing throughout Texas.

TCE has campaigned extensively to restore and strengthen regulatory standards for municipal solid waste and hazardous waste disposal since its inception in 1991, and as a result of its award-winning efforts, is one of the foremost local citizens' groups protecting Texans' health and environment on waste issues. For instance, after five years of organizing on the issue of electronic waste, TCE helped build a broad coalition of business, local government, recyclers and environmental groups to pass a computer takeback law at the State Capitol. Consequently, Texas has become the most populous state with a producer takeback law for electronic waste.

II. Purpose of Brief

In accordance with its goals of ensuring safety of the public by promoting safe management and disposal of solid and hazardous wastes, TCE offers this Amicus Brief to express its concerns about the manner in which the broken CRTs currently stored at the TDSL landfill are transported, managed, and ultimately disposed of. By this Brief, TCE urges the Commission to take this opportunity to reiterate what, until recently, has been the clear, historical policy of both this Commission and EPA: (1) Land disposal restrictions for toxic characteristic hazardous waste are determined at the point of generation and remain with the waste from the cradle to the grave; and (2) in contrast to

other characteristic hazardous wastes, dilution is never an effective treatment for toxic characteristic hazardous waste.

III. Relevant Regulatory Scheme

In order to ensure the proper management and disposal of hazardous wastes (both listed and characteristic), EPA adopted Land Disposal Restrictions. Land Disposal Restrictions for Third Scheduled Wastes, 55 Fed. Reg. 22,520, 22,652 (June 1, 1990) (codified at 40 C.F.R. pts. 148, 261, 262, 264, 265, 268, 270, 271, & 302). These LDR requirements are determined at the point of generation of the hazardous waste, not at the point of disposal. 55 Fed. Reg. at 22528, 22651-52. Indeed, EPA explained in the Preamble to its LDR rules that it sought to avoid “the enormous difficulties of determining new points of generation every time a hazardous waste is altered in some respect.” 55 Fed. Reg. at 22,661.

The CRT fragments at issue in this case were determined to be toxic characteristic hazardous waste, by the generator of the waste, at the point of generation (the scene of the accident). Thus, the applicable LDRs attached at that time. Subsequent alteration of the waste (by mixing or dilution of the waste, for instance) cannot change the point of generation or the LDR requirements, even if the waste were to somehow lose its characteristic prior to land disposal. 40 C.F.R. § 261.3(d)(1).

EPA found this point-of-generation approach necessary to assure that the treatment level was met by appropriate treatment and not by dilution. 55 Fed. Reg. at 22,661-62. In adopting its LDR requirements, EPA explained that its related dilution rules “are intended to prohibit dilution in lieu of treatment” and to ensure that prohibited

wastes are treated by methods that are appropriate to the respective waste. 55 Fed. Reg. at 22,656, 22,665. Thus, wastes that are inappropriately “diluted,” or mixed with other solid wastes, are treated impermissibly and do not comply with LDRs. *Id.* at 22,665.

This dilution prohibition applies equally to the mixing of hazardous waste and soil: “[A]ny deliberate mixing of prohibited hazardous waste with soil in order to change its treatment classification (i.e., from waste to contaminated soil) is illegal.” 63 Fed. Reg. at 28,621. If such an impermissible dilution of hazardous waste were to occur, EPA explained, the resulting mixture (the hazardous waste diluted by soil) would continue to be subject to the LDRs for the original hazardous waste. Thus, no benefit in terms of reduced treatment requirements would occur through mixture of the CRTs with soils at the scene of the accident. *Id.*

The dilution prohibition is particularly important when addressing toxic characteristic hazardous waste, such as the CRTs at issue here, because simple dilution is not effective treatment for toxic constituents. 55 Fed. Reg. at 22,656. The LDRs require that toxic characteristic hazardous waste containing lead must be treated to stabilize the underlying hazardous constituent so that the lead will not leach; this simply cannot be done by dilution. *Id.* (“Dilution itself does not remove or treat any toxic constituent from the waste.”) In its Preamble to the LDR rules, EPA even included an example of the application of the dilution prohibition to toxic characteristic hazardous waste, an example that mirrors the facts presented in this case.

EPA’s example proposed that a facility generated a toxic characteristic hazardous waste that it stabilized to meet the treatment standard, but in doing so, the waste volume

increased by 400 percent. *Id.* at 22,667. EPA determined that “normally this large an increase in waste volume would indicate that the treatment standard is being achieved as a result of dilution rather than treatment, and therefore would be impermissible.” *Id.* Yet, it appears that Penske proposes to simply rely on the increase in waste volume as a substitute for proper treatment, a practice that EPA specifically prohibited.

IV. Application of Regulatory Scheme to Facts

That the CRT fragments generated at the accident scene are toxic characteristic hazardous waste is undisputed. And according to longstanding EPA regulations, the LDRs attached at that point and remain until the waste is properly treated. Thus, no further testing of the CRT waste (whether in its current form or otherwise) is necessary; it was classified as toxic characteristic hazardous waste by the generators, Zenith and Penske, and no one claims that it has been properly treated. *See* 40 C.F.R. § 262.11(c)(2). No testing after the CRT waste was mixed with solid waste in the landfill could change the treatment classification made by the generator.

TCEQ should take this opportunity to reaffirm the aforementioned longstanding and well-settled principles and apply them to the circumstances of this case. Currently, waste that was designated by its generator as toxic characteristic hazardous waste at the point of generation is sitting in a municipal solid waste landfill. The waste has not been treated to remove its underlying toxic constituents. There is no substitute for proper treatment. Certainly, the generator cannot rely on alleged dilution of the waste to avoid the LDR requirements. There is only one proper manner of managing and disposing of

this waste: it must be properly treated and managed as toxic characteristic hazardous waste.

V. Conclusion

In sum, if Texas allows toxic characteristic hazardous waste to be re-classified as special waste simply by increasing the volume of such waste, then every toxic hazardous waste generator will have an incentive to dispose of their waste in Texas. Incentives for recycling and reuse of toxic materials will be reduced. And the risk of improper disposal of toxic characteristic hazardous waste that has not been properly treated to eliminate the risks inherent in the waste will increase. Moreover, the risk of exposing humans and wildlife to toxic materials will also increase. The Commission's decision in this case will have far from a limited impact.

The Commission should take action, as requested by TDSL's Petition, to ensure that the above-described scenario does not ensue. TCEQ should clarify that the hazardous CRT waste stored on TDSL's landfill must be separated from the other solid waste with which it is mixed and treated and disposed of in accordance with the LDR requirements for toxic characteristic hazardous waste. In the alternative, all of the waste (both the broken CRTs and the solid waste with which it is commingled) must be managed and treated as toxic characteristic hazardous waste.

Respectfully submitted,

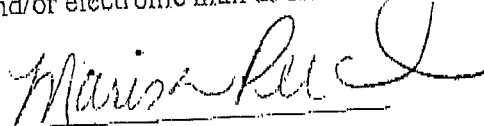
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By: Marisa Perales
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CERTIFICATE OF SERVICE

By my signature below, I certify that on the 11th day of July, 2007 a true and correct copy of the foregoing **TEXAS CAMPAIGN FOR THE ENVIRONMENT'S AMICUS BRIEF IN RESPONSE TO TDSL'S PETITION TO REVIEW THE EXECUTIVE DIRECTOR'S ACTION AND ORDER PROPER DISPOSAL OF HAZARDOUS WASTE** was served upon the parties identified below by hand delivery, first class mail, facsimile and/or electronic mail as shown below.


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