

NOV 20 2007

At 2:11 p. M.  
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GN-04-02245

TEXAS DISPOSAL SYSTEMS LANDFILL, §  
INC. AND TEXAS CAMPAIGN FOR THE §  
ENVIRONMENT §

IN THE DISTRICT COURT

V. §

TRAVIS COUNTY, TEXAS

TEXAS COMMISSION ON §  
ENVIRONMENTAL QUALITY §

200<sup>TH</sup> JUDICIAL DISTRICT

and

NO. D-1-GN-07-002750

PENSKE TRUCK LEASING CO., L.P. §

IN THE DISTRICT COURT

V. §

TRAVIS COUNTY, TEXAS

TEXAS COMMISSION ON §  
ENVIRONMENTAL QUALITY §

98<sup>TH</sup> JUDICIAL DISTRICT

and

NO. D-1-GN-07-003508

PENSKE TRUCK LEASING CO., L.P. §

IN THE DISTRICT COURT

V. §

TRAVIS COUNTY, TEXAS

TEXAS COMMISSION ON §  
ENVIRONMENTAL QUALITY §

98<sup>TH</sup> JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this day came on to be considered the above-entitled and numbered causes.

The Court finds that the administrative proceedings before the Texas Commission on Environmental Quality ("TCEQ") on which these causes are based arose from an October 9, 1997,

accident (the "Accident") involving a truck owned by Penske Truck Leasing Co., L.P. and operated by Penske Logistics LLC (collectively, "Penske"). The truck was carrying a cargo of cathode ray tubes ("CRTs") owned by Zenith Electronics Corp. Some of the CRTs that were broken and/or discarded at the time of and after the Accident and other debris from the Accident (together, the "Accident Debris") were transported to and deposited in the Type I, municipal solid waste landfill operated by Texas Disposal Systems Landfill, Inc. ("TDSL"). In 2004, the portion of the Accident Debris that had remained in the TDSL landfill, in a mixture with landfill clay cover soils and municipal solid waste, was excavated by TDSL and placed in 99 roll off containers on TDSL's premises (the "Commingled Waste").

Having reviewed the pleadings, the Joint Motion for Entry of Agreed Judgment, and other documents filed with the Court, the Court has determined that it has jurisdiction over the parties and the subject matter of these suits and has been informed that the matters in controversy herein have been fully and finally compromised and settled under the terms reflected herein. TDSL and Penske have informed the court and the TCEQ that a related case (between TDSL and Penske) in Hays County has been settled. Plaintiffs and Defendant therefore have agreed to the entry of this Judgment as set forth herein.

IT IS THEREFORE UNDERSTOOD AND AGREED between and among TDSL, Texas Campaign for the Environment, and Penske that within 30 days of this Judgment, Penske will manifest, ship, treat and cause to be disposed of at an authorized hazardous waste treatment and disposal facility (that also has been authorized to take the waste that is commingled) all the Commingled Waste on TDSL's premises as D008 hazardous waste contained within municipal solid waste and clay soils, consistent with the Order of the TCEQ dated July 30, 2007 (a copy of which

is attached hereto as Exhibit A), which is no longer subject to challenge or appeal.

It is FURTHER UNDERSTOOD AND AGREED by the TCEQ Executive Director, Glenn Shankle, that, once the Commingled Waste is disposed of as described above and agreed between TDSL and Penske, the Executive Director will withdraw the Notice of Violation he issued to Penske on May 13, 2004 (a copy of which is attached hereto as Exhibit B). The Executive Director agrees that he will impose no fine, penalty or other sanction on either TDSL or Penske as a result of any act or omission (including but not limited to the handling or storage of any waste generated in the Accident, its aftermath, or the Commingled Waste) related to the Accident or its aftermath or described in the May 13, 2004, Notice of Violation.

It is FURTHER UNDERSTOOD AND AGREED between and among TDSL, Texas Campaign for the Environment, and Penske that they will submit, within 30 days of the date hereof, a written request to the U.S. Environmental Protection Agency ("EPA") that EPA Region 6 withdraw, revise, or supplement its May 16, 2006, "Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program" (the "EPA Determination") in Docket No. W/Petition-TX/RCRA-06-2006-0001, since TDSL, Texas Campaign for the Environment, and Penske do not want the EPA Determination to be relied upon as having a binding effect on the rights of parties and the EPA's ability to exercise discretion related thereto in the future. (A copy of the written request is attached hereto as Exhibit C.) In the event that EPA withdraws the EPA Determination, TDSL agrees to dismiss all federal court petitions and appeals related thereto with prejudice to re-filing same.

It is FURTHER UNDERSTOOD AND AGREED that TCEQ Chairman H.S. Buddy Garcia (in his official capacity as an individual commissioner) will submit, as soon as practicable but no

later than 30 days after confirmation that the waste has been disposed of, as evidenced by the submittal of final hazardous waste manifests, a written request (a copy of the text of which is attached hereto as Exhibit D) that EPA Region 6 withdraw, revise, or supplement the EPA Determination.

It is FURTHER UNDERSTOOD AND AGREED by all parties that Cause No. D-1-GN-04-02245, Cause No. D-1-GN-07-002750, and Cause No. D-1-GN-07-003508 are dismissed with prejudice to re-filing same and that all parties waive any rights of appeal from this Agreed Final Judgment in said causes.

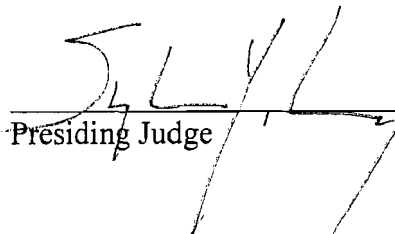
It is FURTHER ORDERED, ADJUDGED, AND DECREED that all attorneys' fees and costs incurred in connection with these causes, or in the administrative proceedings on which they are based, shall be taxed against the party incurring the same.

It is FURTHER ORDERED that the clerk place a true and correct copy of this Agreed Final Judgment in the file of Cause No. D-1-GN-04-02245, Cause No. D-1-GN-07-002750, and Cause No. D-1-GN-07-003508.

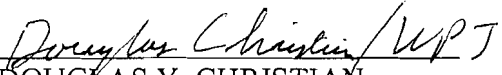
All relief not expressly granted herein is denied.

This is a final judgment.

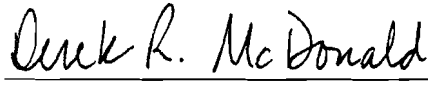
SIGNED this 20 day of November, 2007.

  
\_\_\_\_\_  
Presiding Judge


APPROVED AS TO FORM AND SUBSTANCE:

  
DOUGLAS Y. CHRISTIAN  
Ballard Spahr Andrews & Ingersoll, LLP  
1735 Market Street, 47<sup>th</sup> Floor  
Philadelphia, PA 19103-7599

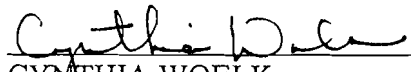
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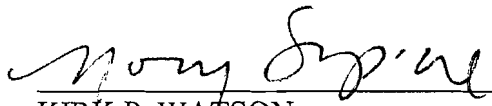
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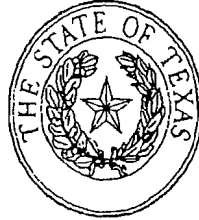
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Austin, Texas 78701

Counsel for Texas Disposal  
Systems Landfill, Inc.

# **EXHIBIT A**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **AN ORDER**

Concerning the Petition of Texas Disposal Systems  
Landfill, Inc.; TCEQ Docket No. 2007-1019-IHW.

On July 25, 2007, the Texas Commission on Environmental Quality (Commission) considered during its open meeting the petition filed by Texas Disposal Systems Landfill, Inc. (TDSL) concerning the waste from a traffic accident which occurred on October 9, 1997 on Interstate Highway 35, south of Austin, in Hays County, involving a Penske Truck Leasing Co., L.P. (Penske) truck transporting cathode ray tubes (CRT) owned by Zenith Electronics Corporation and also concerning 99 roll-off boxes of waste currently located at a Type I Municipal Solid Waste landfill owned by TDSL near Creedmoor, Travis County. The Commission also considered the responses to the petition filed by Penske Truck Leasing Co., L.P., the Executive Director, and the Office of Public Interest Counsel.

After evaluation of all relevant filings, the Commission determined that pursuant to the Commission's authority under Texas Water Code §§ 5.012, 5.102, 5.221, 7.002 and Texas Health & Safety Code § 361.017, the Commission exercises jurisdiction over this matter. As necessary clarification of the Commission's Order of September 16, 2004 granting TDSL's Motion to Overturn, the Commission reiterates that the CRT waste in the 99 roll-off boxes at TDSL is D008 characteristically hazardous waste for reasons of toxicity. The Commission also

reiterates that because the D008 CRT characteristically hazardous waste has been commingled with other MSW and landfill cover soil wastes, the entire volume of the waste in the 99 roll-off boxes must be legally treated as hazardous waste and thus, subject to the EPA's RCRA Land Disposal Restrictions for purposes of management, treatment, and disposal. The Commission further reiterates that because the D008 CRT waste was hazardous at the point of generation at the October 1997 accident scene, federal law and rule preclude further testing of the D008 commingled waste for the purposes of reclassification of the waste and determination of disposal alternatives.

Moreover, because the Commission finds that the Executive Director, in part, erred in his September 24, 2004 letter to implement the 9/16/2004 Commission Order by allowing that testing could be utilized to "conclusively determine that no D008 waste at the level that is characteristically hazardous" remains in the commingled CRT waste, the Commission concludes to adopt the TDSL petition before the Commission, including the arguments therein. The Commission now issues a clarifying, supplemental Order specifying the following corrective actions understood as required by the September 16<sup>th</sup> Commission Order.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

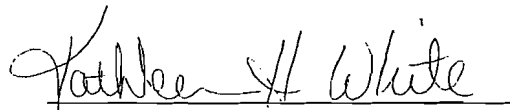
1. Within 30 days from the date of issuance, the Commission orders Penske to remove all waste contained in the 99 roll-off boxes at the TDSL landfill under an unconditional, standard, unaltered hazardous waste manifest that designates Penske as the generator of the commingled D008 hazardous CRT waste and identifies the 1997 accident scene on IH-35 in Hays County as the point of generation;
2. The hazardous waste manifest shall designate the destination of the waste as a facility that is authorized to treat and dispose of D008 hazardous waste;



3. Penske shall arrange for, and actually dispose of all D008 hazardous waste contained in the 99 roll-off boxes in one of the two following ways:
  - a) By transport of the entire contents of the 99 roll-off boxes to a landfill that is authorized to receive and dispose of such hazardous waste. At such facility, Penske is responsible for the management, treatment, and actual disposal of this waste according to the RCRA Land Disposal Restrictions for hazardous waste; or
  - b) By "negative sort" separation of all nonhazardous municipal solid waste from the D008 CRT component debris and D008 contaminated soil in the roll-off boxes, followed by disposal of the remaining D008 CRT debris, D008 contaminated soil, and any MSW unsegregated from the mix, in a landfill that is authorized to receive and dispose of hazardous waste;
4. Any MSW separated from the hazardous CRT debris and contaminated soil by negative sort may be tested for the presence of any hazardous characteristic and, if there is none, disposed of in a municipal solid waste landfill;
5. All commingled waste and solids that have not been removed as part of a negative sorting process shall be disposed of as "D008 hazardous waste contained within MSW and clay soils" with Penske designated as the generator; and
6. The Commission directs the Executive Director to take all necessary and appropriate action, including oversight and inspections, as necessary, to expeditiously implement this Order.

Issue date: JUL 30 2007

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

MAILING LIST

Petition of Texas Disposal Systems Landfill, Inc.  
TCEQ Docket No. 2007-1019-IHW

*Via First Class Mail and Via Fax*

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FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
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FOR PUBLIC INTEREST COUNSEL:

Mr. Garrett Arthur, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
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Austin, Texas 78711-3087

# **EXHIBIT B**

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



Exhibit B

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 13, 2004

**CERTIFIED MAIL # 7002 0860 0000 9040 7278**  
**RETURN RECEIPT REQUESTED**

Mr. Brian Hard, President  
Penske Truck Leasing  
P.O. Box 563  
Route 10-Green Hills  
Reading, PA 19603-0563

Re: Notice of Violation for the Spill Investigation at IH-35 South, near Exit 221, Buda, Hays County, Texas

Dear Mr. Hard:

On October 9, 1997, the Texas Commission on Environmental Quality (TCEQ) responded to a tractor-trailer accident at the above-referenced location. The TCEQ has continued the investigation of the incident to assure environmental compliance with applicable requirements of the Texas Water Code, the Texas Administrative Code and the Code of Federal Regulations. The information obtained in the investigation indicates that violations have occurred regarding the management of the waste material generated during the incident. Enclosed is a summary which lists the investigation findings. Please submit to this office by July 13, 2004, a written description of corrective actions taken and the required documentation demonstrating that the cathode ray tube contaminated solid waste at the Texas Disposal Systems Landfill has been removed and properly disposed of at an authorized facility.

In the enclosed listing we have cited applicable requirements, including TCEQ rules. If you would like to obtain a copy of the applicable TCEQ rules, you may contact any of the sources listed in the enclosed brochure entitled "Obtaining TCEQ Rules." Copies of applicable federal regulations may be obtained from either of the following offices:

U.S. Government Printing Office  
Texas Crude Building  
801 Travis Street  
Houston, Texas 77002  
713/228-1187 (phone)

U.S. Government Printing Office  
Room 1C-50  
Federal Building  
1100 Commerce Street  
Dallas, Texas 75242  
214/767-0076 (phone)

Mr. Brian Hard  
Page 2  
May 13, 2004

The TCEQ appreciates your assistance in this matter. We anticipate that you will resolve this matter as required in order to protect the State's environment.

If you or members of your staff have any questions, please feel free to contact me at (512) 239-3900.

Sincerely,



Glenn W. Shankle, Acting Executive Director  
Texas Commission on Environmental Quality

GS/bem

cc: Mr. Michael A. Duff, Penske Truck Leasing, Reading, PA  
Mr. Douglas Y. Christian, Reed Smith, 2500 One Liberty Place, 1650 Market Street,  
Philadelphia, PA 19103-7301  
TCEQ Austin Regional Office

Enclosure: Summary of Investigation Findings

**SUMMARY OF INVESTIGATION FINDINGS**  
**Penske Truck Leasing Co., L.P., Penske Logistics, Inc.**  
**Spill Investigation Located at IH-35 South, Near Exit 221, Buda, Hays County, Texas**  
**Incident Date: October 9, 1997**

**NOTICE OF VIOLATIONS**

1. 30 Tex. Admin. Code §330.4(b) / 30 Tex. Admin. Code §335.2(a) / 30 Tex. Admin. Code §335.2(b) and Tex. Admin. Code §335.43(a)

30 Tex. Admin. Code §330.4(b)

In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit.

30 Tex. Admin. Code §335.2(a)

No person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization...

30 Tex. Admin. Code §335.2(b)

In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit.

30. Tex. Admin. Code §335.43(a)

No person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Commission on Environmental Quality.

**Alleged Violation**

Failure to prevent the disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization.

Penske caused, suffered, allowed, or permitted waste to be disposed of at an unauthorized facility.

**Recommended Corrective Action**

To resolve this alleged violation, the approximately 1,600 tons (99 plastic-lined and covered rolloff transport containers) of commingled cathode ray tube contaminated solid waste that resulted from Penske's actions must be removed from the Texas Disposal Systems Landfill (TDS) and disposed of at an authorized facility. Penske has until July 13, 2004 to remove and properly dispose of this waste and provide a written description of corrective action taken and the required documentation demonstrating that compliance has been achieved for the outstanding alleged violation.

**SUMMARY OF INVESTIGATION FINDINGS**

**Penske Truck Leasing Co., L.P.**

**Spill Investigation Located at IH-35 South, Near Exit 221, Buda, Hays County, Texas**

**Incident Date: October 9, 1997**

**Page 2**

2. 30 Tex. Admin. Code §335.62

30 Tex. Admin. Code §335.62

Hazardous Waste Determination and Waste Classification. A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

**Alleged Violation**

Failure to determine if a generated waste was a hazardous waste.

**Recommendation Corrective Action**

There is no corrective actions for this alleged violation.

# EXHIBIT C



(Joint Letter to EPA)

<<DATE>>

Richard E. Greene  
Regional Administrator, EPA Region 6  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Ste. 1200  
Mail Code: 6RA  
Dallas, TX 75202-2733

Re: Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program, May 16, 2006; Docket No.: W/Petition-TX/RCRA-06-2006-0001.

Dear Mr. Greene:

Texas Disposal Systems Landfill, Inc. ("TDSL"), Penske Truck Leasing Co., LP, Penske Logistics, LLC (together, "Penske"), Zenith Electronics Corp. ("Zenith") and Texas Campaign for the Environment ("TCE") jointly request that the U.S. Environmental Protection Agency ("EPA") withdraw, revise, or supplement its "Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program," issued on May 16, 2006 (the "EPA Determination").

TDSL, Penske, Zenith and TCE ask the EPA to withdraw, revise, or supplement the EPA Determination because the issue on which the EPA Determination was based has been resolved. Specifically, the exhumed cathode-ray tube waste (the "CRT Waste") on which TDSL based its November 15, 2005 petition for withdrawal of approval of the Hazardous Waste Program of the State of Texas (the "TDSL Petition") will soon be removed from TDSL's premises. When removed, the CRT Waste will be manifested, transported, treated and disposed of as hazardous waste at an authorized hazardous waste facility. Such removal will be consistent with the terms of a July 30, 2007 order issued by the Texas Commission on Environmental Quality (the "TCEQ Order"), a copy of which is attached to this letter as Exhibit A. The TCEQ Order is no longer subject to challenge or appeal, and is therefore a final order. With any question about the proper means of handling the CRT Waste now resolved, TDSL, Penske, Zenith and TCE agree that the EPA should withdraw, revise, or supplement the EPA Determination.

Although withdrawal of the EPA Determination would be most appropriate, TDSL, Penske, Zenith and TCE agree that, at a minimum, the EPA Determination should be revised or supplemented to ensure that it is not mischaracterized as having some kind of binding legal effect beyond merely denying the TDSL Petition, or as somehow limiting EPA's ability to exercise discretion in similar matters. The unnecessarily detailed nature of the EPA Determination has caused confusion as to whether it is a regulatory decision or determination that goes beyond simply communicating the EPA's decision to deny the TDSL Petition.

To resolve such confusion by revising the EPA Determination, the EPA could substitute the EPA Determination with an alternative limited strictly to the relevant procedural history and the EPA's decision to deny the TDSL Petition.

Alternatively, the EPA also could resolve any confusion resulting from the EPA Determination in its present form by supplementing it with a separate letter in response to this request. Such a letter would make clear that the EPA believes no court is bound by the EPA Determination, and other authorities should not rely on it for any purpose. For example, in briefs the EPA has filed in federal litigation with TDSL challenging the EPA Determination, the EPA has stated the EPA Determination was issued for no purpose other than "explain[ing] EPA's basis for refusing to commence proceedings to withdraw Texas' RCRA authorization . . ." and "merely determines whether cause exists to commence withdrawal proceedings for Texas' hazardous waste authorization program." Cautioning against misusing the EPA Determination in other proceedings, the EPA further stated in its briefs that the EPA Determination "has no effect on any regulation or requirement"; "has no binding regulatory effects on interested parties"; "does not make formal findings about future regulatory actions to be undertaken"; "lack[s] any cognizable binding legal effect"; "is not binding on its face, nor is it applied by the Agency in a way that indicates it is binding"; and "does not regulate anyone's behavior." Confirming the substance of these statements in a short letter supplementing the EPA Determination would dispel any misconceptions about its purpose or effect.

Additionally, withdrawing, revising, or supplementing the EPA Determination will resolve the two remaining proceedings initiated by TDSL in federal court to appeal it. Of course, if the EPA withdraws, revises or appropriately supplements the EPA Determination, TDSL and TCE also will take whatever steps are possible to withdraw the TDSL Petition in response to which the EPA Determination was issued.

Accordingly, for all of the foregoing reasons, TDSL, Penske, Zenith and TCE respectfully urge the EPA to withdraw the EPA Determination, to replace it with a substitute that simply denies the TDSL Petition, or to appropriately supplement it.

Thank you for your attention to this request.

Sincerely,

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Texas Disposal Systems Landfill, Inc.**

**Zenith Electronics Corp.**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Penske Truck Leasing Co., LP  
Penske Logistics, LLC**

**Texas Campaign for the Environment**

# **EXHIBIT D**

<<TCEQ LETTERHEAD>>

<<DATE>>

The Honorable Richard Greene  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
144 Ross Avenue, Suite 1200  
Dallas, Texas 75202

Dear Mayor Greene:

Enclosed please find a copy of an Agreed Judgment entered into on [DATE] by Texas Disposal Systems Landfill, Inc. ("TDSL"), Penske Truck Leasing Co., LP, Penske Logistics, LLC (together "Penske"), Texas Campaign for the Environment ("TCE"), and the Texas Commission on Environmental Quality ("TCEQ").

This Agreed Judgment is based on causes which arose from an accident on October 9, 1997. A truck owned by Penske was carrying a cargo of cathode ray tubes owned by Zenith Electronics Corporation ("Zenith"). Some of the Zenith tubes were broken and/or discarded at the time of and after the accident. A portion of the broken tubes and other debris from the accident were transported to and deposited in the Type I, municipal solid waste landfill operated by TDSL. In 2004, the portion of the broken tubes and accident debris that had remained in the TDSL landfill, in a mixture with landfill clay cover soils and municipal solid waste, was excavated by TDSL and placed in 99 roll off containers on TDSL's premises.

The decade-long dispute among Penske, Zenith and TDSL, and the related administrative proceedings involving TCE and the TCEQ, have been fully and finally negotiated and settled. Pursuant to the Agreed Judgment, TDSL, Penske, Zenith and TCE are sending EPA Region 6 a letter asking it to withdraw, revise, or supplement its May 16, 2006 "Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program." A copy of that letter is enclosed with this one, and I join in their request.

Please let us know if you have any questions.

Sincerely,

Buddy Garcia  
Chairman