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December 17, 2005

Mr. David Gillespie
Associate Director for RCRA
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: Petition for Withdrawal of Program Approval for Texas RCRA,
Hazardous Waste Program, Texas Disposal Systems Landfill, Inc.
Docket No.: w/Petition - TX/RCRA-06-2006-0001

Dear Mr. Gillespie:

We received a request from Ms. Alima Patterson from EPA, Region VI for documents evidencing TCEQ's erroneous interpretation of the federal hazardous waste regulations as described in the Petition for Withdrawal of Program Approval referenced above. In response, Texas Disposal Systems Landfill, Inc. (TDSL) has compiled the following list of documents, along with a brief description of how they address the request. Some of these documents consist of excerpts from legislative committee hearings and from TCEQ public meetings. We are also providing a second set of documents that includes the full transcripts from these meetings, as well as some relevant briefs and reports that were before the TCEQ Commissioners during their public meetings. These are listed separately.

1. October 9, 1997 accident report, identifying the spilled material as hazardous waste. (Attachment A)
2. October 9, 1997 Buda Fire Department Spill Accident Report, wherein Penske notified emergency responders that the broken CRT tubes were hazardous waste. (Attachment B)
3. December 2, 1997 letter from Penske to TCEQ declaring the accident debris as hazardous waste. (Attachment C)
4. Hazardous Waste Manifest (signed March 23, 1998), identifying the broken cathode ray tubes as D008 hazardous waste and Penske as the generator. (Attachment D)
5. January 15, 2004 letter from TCEQ Staff, authorizing the storage of the commingled hazardous CRT waste with municipal solid waste and clay cover materials ("commingled CRT waste") at TDSL in covered transport containers and advising that dilution of

hazardous waste to make it non-hazardous is prohibited by federal regulations. (Attachment E)

6. May 13, 2004 Notice of Violation from TCEQ to Penske, advising Penske that it has caused the disposal of hazardous waste at an unauthorized facility, in violation of Texas regulations, and that it must remove the "commingled cathode ray tube contaminated solid waste that resulted from Penske's action" from TDSL's facility and dispose of it at an authorized facility. (Attachment F)
7. June 4, 2004 "Technical Evaluation of TCEQ Mixed Waste Characterization Program" prepared by Robert M. Zoch, Jr., P.E., criticizing TCEQ's sampling of the commingled CRT waste and opining that between 6,712 and 10,261 pounds of the hazardous CRT waste material remain in the commingled CRT waste and between 791 and 1209 pounds of lead are in the commingled CRT waste. (Attachment G)
8. June 18, 2004 letter from TCEQ (Executive Director's staff) approving Penske's request to transfer and dispose of commingled CRT waste as special waste (non-hazardous) based on random sampling of the entire commingled CRT waste. (Attachment H)
9. June 30, 2004 letter from TCEQ (Executive Director's staff) to Penske, reiterating that the commingled CRT waste can be disposed of as non-hazardous special waste. (Attachment I)
10. July 28, 2004 letter from TCEQ (Executive Director's staff) acknowledging that the CRT tubes were declared hazardous; that the hazardous waste was mixed with and diluted by other landfill waste; and that dilution of hazardous waste is prohibited. The letter nevertheless authorizes the disposal of the commingled CRT waste as special waste. (Attachment J)
11. Excerpts from Texas House Environmental Regulation Committee hearing transcript, September 8, 2004, during which Depute Director of the TCEQ Office of Compliance and Enforcement John Steib testified that it is acceptable to dispose of the commingled CRT waste as a non-hazardous special waste. (Attachment K)
12. September 16, 2004 TCEQ order, granting TDSL's Motion to Overturn the Executive Director's June 18 and June 30 letter decisions that would have allowed Penske to manage the commingled CRT waste as non-hazardous special waste. (Attachment L)
13. September 24, 2004 letter from TCEQ Executive Director allowing Penske, as an alternative to properly disposing the commingled CRT waste as hazardous waste in a permitted hazardous waste facility, to remove the commingled CRT waste from TDSL's facility and assess it at a separate facility to determine whether to treat all or any part of the commingled CRT waste as hazardous waste. In other words, Penske would have the option of characterizing the commingled CRT waste as non-hazardous and disposing of it

as such. This letter also suggests that extraction of any hazardous waste will occur only if necessary---*i.e.*, only if testing reveals the presence of some hazardous waste, which should then be extracted. But it does not state that the hazardous waste must be extracted before testing. (Attachment M)

14. October 12, 2004 letter from Penske to TDSL, interpreting the Executive Director's response as authorizing Penske to test the commingled CRT waste so that it can "conclusively determine 'that no D008 waste at the level that is characteristically hazardous remains.'" Penske states its belief that the testing will confirm that the "material is not hazardous." (Attachment N)
15. October 17, 2004 letter from Penske to TDSL again interpreting the Executive Director's 9/24/04 letter as allowing it to test the commingled CRT waste and then reclassify the commingled waste as non-hazardous: "Penske intends to remove the material . . . and then test and dispose of the material at another facility in accordance with the test results as requested by the Executive Director." (Attachment O)
16. October 18, 2004 Motion to Overturn Portions of the Executive Director's September 24, 2004 Decision, filed by TDSL. (Motion not acted on by the Commission.) (Attachment P)
17. October 19, 2004 letter from TCEQ Executive Director to TDSL explaining that he has authorized Penske to remove the commingled CRT waste from TDSL's facility to assess and characterize it.. (Attachment Q)
18. October 20, 2004 letter from Penske to TDSL stating its intent to transport the commingled CRT waste to another facility, "where it will be tested and disposed of in accordance with the results of that testing and as described in Mr. Shankle's [TCEQ Executive Director] letter." (Attachment R)
19. October 20, 2004 Sampling and Analyses Plan prepared by Phil Bullock, P.G., in which he states that the objective of the plan is to provide representative waste samples and analytical testing to properly characterize the commingled CRT waste for disposal. The plan provides for random sampling of the commingled CRT waste rather than testing of the specific hazardous CRT waste that is within the commingled waste. Only if the analysis of a sample from a given bin of commingled CRT waste exceeds 5.0 mg/l TCLP lead will the entire amount of waste in that bin be classified for disposal as D008 hazardous waste. Otherwise, a bin of waste will be classified for disposal as Class 1 or Class 2 non-hazardous waste under the plan. (Attachment S)
20. October 29, 2004 letter from Penske to TDSL stating its intent to transport the commingled CRT waste for "further testing, assessment, characterization, and disposal as requested by the Executive Director." Attached to the letter is Penske's proposed

manifest, where Penske states that it "does not admit, . . . that the material is a hazardous waste or that it generated the material described in this manifest." (Attachment T)

21. Excerpts from transcript of TCEQ's Agenda Meeting, December 1, 2004, during which the Commissioners considered TDSL's Motion to Overturn, but took no action. During the meeting, Chairman White offers a motion that would have resolved the matter. The motion failed for lack of a second. Commissioner Soward conceded that the "agency cannot resolve" the issue of the proper disposal of the commingled CRT waste, and "the only solution is going to be in the courts of this state." (Attachment U)
22. Excerpts from transcript of Texas Senate Committee on Natural Resources hearing, February 1, 2005, during which Commissioner Soward conceded that the TCEQ has given up on the issue of the proper disposal of the commingled CRT waste. (Attachment V)
23. October 10, 2005 letter from Penske's counsel to TCEQ Executive Director stating that Penske "did not generate, transport or dispose of the material in question" and that Penske has "done everything possible to address the Notice of Violation (NOV) you issued," by attempting to remove the waste at TDSL "in accordance with your [the Executive Director's] letters dated May 13, September 24, and October 29, 2004." (Attachment W)
24. October 12, 2005 letter from TCEQ Executive Director to Penske's counsel, agreeing that "Penske has made appropriate attempts to address the NOV." (Attachment X)

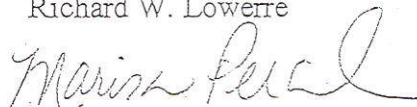
There is never a clear requirement made by TCEQ or a clear commitment made by Penske to separate the hazardous CRT wastes from the other wastes so that a representative sample of the CRT waste can be tested. Instead, TCEQ proposes to allow Penske to test the commingled CRT waste, which has been diluted with municipal solid waste and clay cover materials from TDSL's landfill, to determine whether the entire amount of commingled CRT waste must be managed as hazardous wastes.

If you have any questions or need further information, you can reach us at the numbers listed above.

Sincerely,



w/permission for
Richard W. Lowerre



w/permission for
James B. Blackburn, Jr.