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Section B

Trucker again told to get lead out of landfill

State: Onus is on Penske in 10-year-old case

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AMERICAN-STATESMAN STAFF

In the latest turn in a decade-long landfill saga, the Texas Commission on Environmental Quality on Wednesday ordered a trucking company to haul away lead-tainted garbage from a Travis County landfill and dispose of it as hazardous waste.

The fate of 1,600 tons of lead-tainted garbage has been the subject of 11 lawsuits between landfill operator Texas Disposal Systems Inc. and Penske Truck Leasing Co. over which is responsible for the waste and its proper disposal.

Bob Gregory, the landfill's co-owner, called the ruling

decisive and said he hopes the waste will be taken away in the next 30 days, as called for in the order.

But for Penske, based in Reading, Pa., Wednesday's order simply sets the stage for a 12th lawsuit on the matter, said its lawyer, Pamela Giblin.

Meanwhile, a case in which the landfill is asking for at least \$5 million in damages and legal fees is expected to go to trial again in state District Court in Hays County in October after a mistrial in 2004.

The legal dispute began after a Penske truck hauling 1,248 cathode ray tubes to Mexico for television assembly crashed on

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Interstate 35 near Buda on Oct. 9, 1997. Penske sent the smashed tubes to the Texas Disposal Systems landfill, where lead from the tubes was mixed in with regular garbage.

The landfill, in Creedmoor, south of Austin, said the lead was hazardous and moved the waste into 99 above-ground containers that it says are now deteriorating from age.

In 2004, the environmental commission ordered Penske to remove the waste from the landfill and treat it as hazardous material.

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Glenn Shankle

Texas Commission on Environmental Quality executive director

But the agency's executive director wrote a separate letter to the company giving it the option to haul away the waste

and then test it to see if it could be classified as nonhazardous.

If the waste is classified as nonhazardous, then Texas Disposal Systems would have little leverage to sue for damages, according to Gregory and Mike Duff, a lawyer for Penske. (Penske says the waste is nonhazardous.)

Texas Disposal Systems, fearing liability problems, refused to allow the testing and insisted that the waste be shipped to a hazardous disposal site.

Both sides agree that the cost of removing the material from the landfill would cost far less than what they've spent on 10

years' worth of litigation.

Despite the commission's vote Wednesday — Commissioner Larry Soward voted no, saying he thought the matter should be settled in a court — agency Executive Director Glenn Shankle told the commissioners that he thought the order would do little to resolve the situation.

"It's a litigation matter about money, not about the environment," Shankle said. "This agency has made every attempt to get that waste and dispose of it."

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