

# Free Press

SERVING HAYS COUNTY SINCE 1903

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Landfill anxious to take out trash

Wednesday, August 15, 2007 12:44 PM CDT

Penske, TDS continue 10-year struggle over contaminated waste

by Jen Biundo

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CREEDMOOR-Ten years ago, an 18-wheeler en route from Chicago to a Mexican maquiladora crashed on IH-35 in Buda, backing traffic up to Town Lake and littering the interstate with Zenith television components.

It's a mess that's taken almost a decade of legal battles to clean up.

Last month, the Texas Commission on Environmental Quality (TCEQ) ordered the trucking company, Penske, to haul away 99 containers of lead-tainted garbage from the Texas Disposal Systems (TDS) landfill in Creedmoor and dispose of it as hazardous waste.

But on Thursday, a Travis County district court issued a temporary restraining order against enforcement of TCEQ's order, effective until Penske's Sept. 11 hearing on a motion for permanent injunction against the order.

TDS founder Bob Gregory said Penske needs to properly dispose of the 99 containers, and TDS could be considered liable if the waste is simply brought to another municipal landfill.

"Our whole reputation is at stake," Gregory said. "When we started, 30 years ago this year, we were committed to doing a responsible company, both from an environmental and ethical standard. The bottom line is in 30 years of doing business we have never had an environmental group against us."

But Mike Duff, Penske senior vice president and general counsel, says the waste has been so diluted that it is no longer hazardous and TDS is more concerned with litigation.

"This has not ever been a matter that has much to do with the environment or public health and safety," Duff said. "This is not hazardous waste...Their biggest concern is they want to be able to use that in the lawsuit to try to get money from us."

The saga started on Oct. 9, 1997, as emergency workers began clearing the interstate after the accident and sending the debris to the nearest landfill, TDS. The wreckage included 1,248 television cathode ray tubes (CRTs), which are categorized as hazardous waste due to their high lead content.

By the time TDS was notified several hours later that the CRTs were hazardous, said owner Bob Gregory, they already had accepted seven trucks full of accident debris, which had been commingled in the landfill with tons of regular municipal waste and pushed underground.

Code 3 Remediation, a hazardous waste clean-up team, was called out to the accident scene and later helped TDS isolate the CRTs to one area of the landfill, excavate the CRTs and fill the 99 container boxes with 1,600 tons of accident refuse and commingled municipal waste.

At issue now is the final fate of the 99 containers, which TDS refuses to release without assurance that they will be disposed of as hazardous waste.

In an odd twist, TCEQ commissioners have been at odds with Executive Director Glenn Shankle, the commissioners



At the Texas Disposal Systems (TDS) landfill in Creedmoor, 99 containers of hazardous waste still await disposal nearly 10 years after the truck crash that generated the waste. TDS founder Bob Gregory says Penske trucking company should take responsibility. (photo by Jen Biundo)

supporting TDS and the executive director overturning their rulings on multiple occasions.

Penske maintains that testing has shown the waste is no longer hazardous and says TCEQ and the EPA agrees with that assessment.

"We've offered more than 20 times to move this stuff from the landfill, but we're not going to do it in a way that gives TDS another argument in their suit," Duff said. "...TCEQ tested it, and it was shown not to be hazardous. It's well below any level of toxicity for lead."

But the Gregory's say allowing the 99 containers to be disposed of as municipal waste would create an inadvertent loophole in federal standards for the disposal of hazardous waste.

Federal Resource Conservation and Recovery Act (RCRA) "dilution rule" prohibitions disposing of commingled hazardous waste as non-hazardous waste-or in the lingo of the industry, "the solution to pollution is not dilution."

Both sides say they've spent millions of dollars in legal fees in the decade since the accident, and there's still no resolution in sight.

In addition to the district court dates, a civil case TDS filed against Zenith and Penske in 1998, which resulted in a 2004 mistrial, is coming back for retrial in October.

"The irony of this is the trial will be beginning in Hays County about a week after the 10 year anniversary of the truck accident," Duff said.

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