

February 11, 2005

Note: This revised Action Plan contains alternative steps for any separation of uncontaminated MSW and soils from the Commingled D008 Waste at either the TDSL site, in an authorized facility, at an off-site authorized facility or simply disposing of the entire volume of Commingled D008 Waste as D008 hazardous waste contained within MSW and clay soils.

Action Plan Proposed by TDSL For TCEQ To Properly Implement State And Federal Regulations And Resolve The Problems Associated With The Penske And Zenith Mismanagement Of D008 CRT Waste Generated October 9, 1997

Texas Disposal Systems Landfill, Inc. (TDSL) has requested that the Texas Commission on Environmental Quality (TCEQ) bring enforcement action against the generators of toxic characteristic hazardous waste that has been mismanaged and abandoned by the generators since October 9, 1997. This D008 hazardous waste is commingled with other waste from households and businesses and landfill clay cover soils and is held in storage in 99 roll off containers at the TDSL landfill for the generators to remove for proper treatment and disposal. To accomplish this, and considering the history of the generators' lack of cooperation and insistence upon mismanaging the waste, TDSL presents the following specific steps it believes the generators and the TCEQ should take within the next 30 days. Given the significant legislative and regulatory status of this situation, TCEQ should encourage rather than restrict public involvement during this process. The TCEQ should avoid becoming entangled in a protracted debate of irrelevant fact issues and work from the following conclusions:

1. The cathode ray tube (CRT) accident debris was properly characterized by Penske as D008 hazardous waste on October 9, 1997.
2. The CRT waste was hazardous at the point of waste generation at the truck accident scene.
3. Penske Logistics, Inc. and Penske Truck Leasing Co., L.P. were the generators of the D008 CRT waste, which resulted from hauling Zenith CRTs.
4. The entire volume of CRT waste that was buried below the surface of the landfill working face on October 9, 1997, before Penske notified the TCEQ and TDSL that the accident debris was hazardous, has been removed from the landfill and containerized, along with the commingled municipal solid waste (MSW) and clay landfill cover soils.
5. The D008 CRT toxic characteristic waste is mixed throughout the commingled MSW and clay cover soils stored in 99 containers at the TDSL landfill.
6. The D008 waste must be profiled, manifested, treated and disposed at an authorized hazardous waste treatment and disposal facility.
7. Penske and/or Zenith may hand sort the nonhazardous waste from the mixture of CRT waste, MSW and soils in the 99 containers, to minimize the volume of waste to be disposed as hazardous.
8. All the commingled waste and soils that has not been removed as a part of a visual inspection identifying nonhazardous waste in a negative sorting process must be disposed as "D008 hazardous waste contained within MSW and clay soils."

Penske Logistics, Inc., Penske Truck Leasing Co., L.P. and Zenith Electronics Corporation (collectively referred to as the Generators) must comply with all applicable state and federal hazardous waste management regulations:

- A.** The Generators must remove the D008 CRT waste generated at the accident scene on October 9, 1997 (the D008 CRT Waste), as well as the MSW and the clay landfill cover soils contaminated by the D008 CRT waste, presently contained in the 99 roll-off containers stored at the TDSL landfill in southeast Travis County. The D008 waste must be managed pursuant to a properly executed and unconditioned/unqualified hazardous waste manifest. The Generators must profile their waste at the authorized hazardous waste treatment and disposal facility accordingly. The mixture of materials stored in the 99 containers is referred to herein as Commingled D008 Waste.
- The accident scene must be identified as the point of waste generation for the D008 CRT Waste, so it is clear that TDSL is not the generator of the CRT hazardous waste.
 - The Commingled D008 Waste must clearly be profiled and manifested as “D008 waste contained within MSW and clay soils.”. Any negative sort of nonhazardous waste can be sampled and disposed as nonhazardous; but only if no D008 CRT waste is contained therein.
 - The Generators must clearly be identified as the generators of the D008 CRT Waste. Since the D008 CRT Waste is commingled with the MSW and clay cover soils, the manifesting of any MSW and soils contaminated by the D008 Waste and the responsibility for its management and disposal must be borne by the Generators. TCEQ documents and the Generator waste profile and manifests must be consistent with this position.
 - The licensed hazardous waste transporter and the permitted hazardous waste treatment/disposal facility must be identified on the manifest.
 - The waste profile and manifest must not contain any disclaimers, caveats or conditional statements that bring into question whether the D008 CRT waste is a hazardous waste, that the Generators are the responsible party or that the waste may be disposed as a nonhazardous waste.
- B.** The Generators must provide a copy of the waste profile documentation submitted to the treatment/disposal facility and a sample copy of a completed manifest for TCEQ and TDSL review and approval prior to the removal process. Volumes of commingled waste can be listed on each particular manifest in cubic yards or weights.
- C.** The D008 CRT Waste and any MSW and soils contaminated by D008 waste must be transported by the Generators to a permitted hazardous waste treatment/disposal facility for final disposition of the D008 CRT Waste in accordance with the RCRA Land Disposal Restrictions (LDR), 40 C.F.R. part 268.

- D.** TCEQ should determine whether the Commingled D008 Waste should be separated to minimize the volume of hazardous waste disposed and whether the separation of the nonhazardous waste and uncontaminated soils should occur at the TDSL facility in an authorized treatment facility, or at an off-site authorized treatment facility. TCEQ should give the permitted hazardous waste treatment/disposal facility and/or the authorized hazardous waste management contractor written notice of the only two regulatory options for treating and disposing of the Commingled D008 Waste:

Option One: All of the Commingled D008 Waste must be treated and disposed of in an authorized hazardous waste treatment and disposal facility as D008 hazardous waste contained within MSW and clay soils, in accordance with 40 CFR § 268.40, LDR of 0.75 mg/kg TCLP Lead and the universal treatment standards for all underlying hazardous constituents in accordance with 40 CFR §268.48; or

Option Two: If all of the Commingled D008 Waste is not disposed of as D008 hazardous waste, the following protocol must be followed for D008 CRT Waste separation prior to final disposal:

(a) the uncontaminated MSW and soils must be physically separated (by a negative sort process) out of the Commingled D008 Waste by an authorized hazardous waste management contractor either at a TDSL on-site authorized treatment facility (authorization given to Generators and to TDSL) or at an off-site authorized treatment facility;

(b) the D008 CRT Waste and D008 contaminated MSW and soils that remains after the nonhazardous waste is separated from the commingled waste mixture must be treated and disposed in accordance with 40 CFR § 268.40, LDR of 0.75 mg/kg TCLP Lead and the universal treatment standards for all underlying hazardous constituents in accordance with 40 CFR § 268.48;

(c) the sorted waste that has been visually examined and determined to not contain any hazardous D008 CRT Waste must be sampled under TCEQ approved SW-846 protocols for a heterogeneous waste and 40 CFR § 268.48 to determine the appropriate disposal method for the remaining waste. This negative sort separated nonhazardous waste may be disposed in the TDSL landfill or in another facility authorized to accept such waste, once verified by the TCEQ to no longer contain D008 waste and any underlying hazardous constituents.

Note: If the waste sorting/separation procedure cannot identify the estimated 6,000 to 10,000 lbs. of D008 CRT Waste glass, due to the clay coating on virtually all pieces of waste, then all of the Commingled D008 Waste, including the contaminated MSW and clay landfill cover soils, must be treated and disposed of in a manner specified in Option One above.

Note: The Generators' removal, transportation, separation, treatment, and disposal plan for the D008 CRT Waste must be submitted to TCEQ for TCEQ and

TDSL review and TCEQ approval, prior to the waste removal. TCEQ should verify, for the benefit of the TDSL Site Operating Record, that all D008 CRT Waste that entered the TDSL landfill on October 9, 1997 has been removed for proper disposal by the Generators as D008 waste.

- E.** TCEQ representatives should observe and document the transportation, separation, treatment, and disposal process of all the D008 waste and D008 contaminated MSW and soils. If the waste separation process is to occur off the TDSL site, the Generators should cooperate in seeking permission from the treatment/disposal facility operator for TDSL representatives to be on-site to observe such sorting activity.
- F.** The Generators must provide TDSL with written release, indemnification, and certificates of liability insurance with TDSL and Texas Disposal Systems, Inc. (TDS) listed as additional insureds for the Generators' representatives/agents when they are on the TDSL site and while they are in possession of the 99 TDS owned roll-off containers. The Generators must also coordinate with TDSL on details of their work plan prior to initiating the removal, separation, treatment, and disposal project. Any authorized TDSL on-site hazardous waste treatment facility/area and the 99 roll-off containers must be decontaminated by Generators. The decontamination procedure should be verified by TCEQ for the TDSL Landfill Site Operating Record.
- G.** TCEQ should provide TDSL a waiver of liability under RCRA and CERCLA, for its involvement in having to deal with the Generator's D008 waste and any separated nonhazardous waste residue.
- H.** The TCEQ should take appropriate enforcement action against all three Generators consistent with the TCEQ Penalty Policy for violations of applicable statutory and regulatory requirements and their lack of cooperation and good faith effort to comply with the regulatory requirements related to the mismanagement of the D008 CRT Waste generated at the accident scene and abandoned at the TDSL landfill since October 9, 1997.
- I.** The final agency administrative action should expressly clarify that the Executive Director's letters dated September 24, 2004 and October 19, 2004 are superseded by action taken to accomplish the above recommendations by, or on behalf of, the Executive Director or the Commission.