

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 13, 2004

LaDonna Castañuela  
Chief Clerk, MC 105  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

CHIEF CLERK

11-30-04

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Executive Director's Response to Texas Disposal Systems Landfill, Inc.'s Motion to Overturn  
*In the Matter of the Authorization of Disposal of Waste as Special Waste Issued by the Executive Director*  
TCEQ Docket No. 2004-0984-IHW-E

Dear Ms. Castañuela:

Enclosed for filing is the original and eleven copies of the "Executive Director's Response to Texas Disposal Systems Landfill, Inc.'s Motion to Overturn" in the above referenced matter.

If you have any questions or comments, please call me at (512) 239-2548.

Sincerely,

*David Speaker* for

David Speaker  
Attorney  
Litigation Division

Enclosure

cc: Service List  
John Steib, Deputy Director, Office of Compliance and Enforcement, MC 172



IN THE MATTER OF THE  
AUTHORIZATION OF DISPOSAL OF  
OF WASTE AS SPECIAL WASTE  
ISSUED BY THE  
EXECUTIVE DIRECTOR

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO TEXAS DISPOSAL SYSTEMS  
LANDFILL, INC.'S MOTION TO OVERTURN

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
RECEIVED  
MAY 11 2005

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality (TCEQ), by and through a representative of the Litigation Division, and files this his Response to Texas Disposal Systems Landfill, Inc.'s (TDSL) Motion to Overturn. In support thereof, the Executive Director (ED) would show the following:

The ED's Position

The ED correctly approved Penske Truck Leasing Company, L.P.'s (Penske) proposal to dispose of commingled picture tube waste as special waste provided that Penske meet all regulatory requirements in disposing of the waste. Penske's characterization of the waste as nonhazardous is correct. All of the available analytical evidence indicates that the waste is nonhazardous. TDSL's contention that the waste must continue to be treated as hazardous because, at one time, the waste was characteristically hazardous is contrary to the applicable regulations. Where characteristically hazardous waste is mixed with a solid waste, the mixture is not hazardous if it does not exhibit any hazardous waste characteristics. See ED's Response to TDSL's Motion to Overturn, p. 5-7. Given the analytical data, it is appropriate to treat the waste as special waste, and the ED's action in this matter was proper. As such, TDSL's Motion to Overturn should be denied.

## Background

A truck operated by Penske that was transporting television picture tubes owned by Zenith Electronics Corporation (Zenith) was involved in a traffic accident. The broken television picture tubes resulting from the accident were taken to the TDSL facility. ~~Approximately 98 cubic yards of accident-related debris, including approximately 200 picture tubes, entered the landfill.~~ See Zenith Electronics Corporation's Response to Motion to Overturn, p.3; Exhibit ED-4 (6/23/04 letter from Penske to ED); Penske Truck Leasing Co., L.P.'s Response to Texas Disposal Systems Landfill, Inc.'s Motions to Overturn, p.2. TDSL initially removed a portion of the accident debris (which was disposed of at an authorized landfill by Penske), ~~then subsequently removed the remaining portion of the accident debris~~ along with some commingled municipal solid waste. See Texas Disposal Systems Landfill, Inc.'s Brief in Support of Motion to Overturn, pp. 5-6; Penske Truck Leasing Co., L.P.'s Response to Texas Disposal Systems Landfill, Inc.'s Motions to Overturn, p.2.; Exhibit ED-2 (6/1/04 Penske letter); Exhibit ED-4 (6/23/04 letter from Penske to ED with attachment). At present, 99 roll off boxes containing approximately 1600 tons of waste remains at the TDSL facility awaiting disposal. *Id.* See also Exhibit ED-1 (NOV), p.3. This waste contains only a small amount of picture tube waste. The vast majority of the waste is municipal solid waste disposed of at the TDSL site on the day of the accident. This waste was commingled with the picture tube waste.

Following an investigation, the TCEQ issued a Notice of Violation letter (NOV) to Penske. Exhibit ED-1 (NOV). The NOV cites Penske for two violations related to the unauthorized disposal of hazardous waste, and requires Penske to remove the unauthorized waste from the TDSL facility

and dispose of it at an authorized facility. *Id.* In response to the NOV, Penske proposed removing the commingled picture tube waste from the TDSL facility and disposing of it as a "special waste" at an authorized landfill. Exhibit ED-2 (6/1/04 Penske letter): As discussed in letters dated June 18, 2004 (Exhibit ED-3) and June 30, 2004 (Exhibit ED-5), the ED approved Penske's proposal to dispose of the commingled picture tube waste as a special waste if Penske could satisfy the applicable regulatory requirements governing special waste.

#### The Motion to Overturn

On July 9, 2004, TDSL filed a "Motion to Overturn" with the TCEQ, requesting that the Commission overturn the ED's decision to allow Penske to classify the commingled picture tube waste as a special waste. As the discussion below demonstrates, TDSL has not shown that the ED committed any error committed and has not shown other justification for overturning the decision to allow Penske to dispose of the commingled picture tube waste as a special waste. The ED's decision was proper based on the facts and law applicable to this case.

#### The Executive Director's Decision

Before addressing the substantive points of the Motion to Overturn, it is useful to review the specific decisions the ED has made in this case. The NOV letter required Penske to remove the commingled picture tube waste from the TDSL landfill, and dispose of it at an authorized facility. Exhibit ED-1 (NOV), p. 2: To satisfy this requirement, Penske proposed to dispose of the waste as a special waste. On June 18, 2004, the ED, through the Office of Compliance and Enforcement, approved Penske's approach of classifying the commingled picture tube waste as a special waste:

We have reviewed your plan and approve your approach of transferring the waste from the TDSL facility and disposing of it as special waste. Before the waste can be

disposed of as a special waste, you must receive approval from the TCEQ. To receive authorization for disposal, please complete TCEQ Form 0152 (Request for Authorization for Disposal of a Special Waste) and submit it to the MSW Permits Section...

Exhibit ED-3 (6/18/04 letter to Penske). On June 23, 2004, Penske submitted its Request for Authorization for Disposal of a Special Waste. Exhibit ED-4 (6/23/04 letter from Penske to ED). On June 30, 2004, the TCEQ Waste Permits Division reiterated the ED's approval of Penske's intention to dispose of the commingled picture tube waste as a special waste, and identified seven landfills that have Class I non-hazardous waste cells authorized to accept special waste. Exhibit ED-5 (6/30/04 letter to Penske). Under the terms of the NOV, Penske will be required to provide written confirmation that the commingled waste has been properly removed and disposed of at an authorized facility. Exhibit ED-1 (NOV); p.3.

#### Special Waste

TDSL is asking the Commission to overturn the ED's decision to allow Penske to classify the commingled picture tube waste as a special waste. *See* Texas Disposal Systems Landfill, Inc.'s Brief in Support of Motion to Overturn, pp. 24-25. Despite being the key component of the ED's decision, there has been little discussion of special waste in the filings thus far. "Special waste" is defined as:

[a]ny solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported or stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment.

30 TEX. ADMIN. CODE § 330.2(137). Upon receiving written authorization from the ED, a special waste may be disposed of at a municipal solid waste landfill if the landfill has an established, dedicated Class 1 industrial waste trench that can accept the special waste; and if the permit for the landfill has an approved waste acceptance plan that identifies the special waste offered for disposal. See 30 TEX. ADMIN. CODE §§ 330.136 and 330.137.

The facts of this case demonstrate that the ED's decision to approve Penske's proposal to remove the commingled picture tube waste is appropriate. None of the available analytical evidence indicates that the commingled picture tube waste is characteristically hazardous for lead. In fact, in recent sampling performed by the ED, all of the samples taken of the commingled picture tube waste were well below the 5 mg/L lead leachate threshold for characteristically hazardous waste. See Exhibit ED-6 (6/12/04 sample results); Exhibit ED-7 (7/28/04 letter from John Steib to TDSL); Exhibit ED-8 (Description of 6/12/04 sampling). The ED has committed no error that would justify overturning this decision.

TDSL argues that the ED erred in allowing Penske to classify commingled picture tube waste as a special waste, yet does not present analytical data indicating that the commingled waste is characteristically hazardous for lead. Rather, TDSL bases its argument on its interpretation of the dilution prohibition, and the dilution prohibition's interplay with the mixture rule. As discussed below, TDSL's reasoning is flawed because TDSL has misapplied the two rules.

#### The Mixture Rule

The "mixture rule" applies to mixtures of a hazardous waste with a solid waste. The result of mixing a hazardous waste and a solid waste under the mixture rule is dependent on what type of

hazardous waste is involved in the mixture. There are two types of hazardous waste: listed and characteristic. A "listed hazardous waste" is a waste that is listed in one of the lists found in 40 C.F.R. Part 261, Subpart D. *See* 40 C.F.R. § 261.3(a)(2)(ii); 40 C.F.R. §§ 261.30-261.33. If a listed hazardous waste is mixed with a solid waste, the resulting mixture is a listed hazardous waste. 40 C.F.R. §§ 261.3(a)(2)(iv) and 261.3(b)(2). A "characteristic hazardous waste" is a waste that exhibits one of four characteristics: ignitability, corrosivity, reactivity, and toxicity. *See* 40 C.F.R. § 261.3(a)(2)(i); 40 C.F.R. §§ 261.20-261.24. If a characteristic hazardous waste is mixed with a solid waste, then the resulting mixture is hazardous unless it does not exhibit a characteristic. 40 C.F.R. § 261.3(b)(3). Thus, the mixture of a solid waste with a listed waste will always result in a hazardous waste, but the mixture of a solid waste with a characteristic hazardous waste will result in a hazardous waste only if the resulting mixture exhibits a hazardous characteristic.

The EPA has consistently adhered to this principle. For example, the EPA has noted in several "FAXBACK" guidance documents<sup>1</sup> that a mixture of a solid waste with a characteristic hazardous waste will result in a hazardous waste only if the resulting mixture exhibits a characteristic. *See* EPA Guidance Document, FAXBACK 11140 (March 21, 1986) ("In particular, a mixture of a characteristic hazardous waste, including wastes that are listed solely because they exhibit one or more of the hazardous waste characteristics and a solid waste is not hazardous if the mixture does not exhibit any of the hazardous waste characteristics."); EPA Guidance Document, FAXBACK 12030 (June 1981) ("If a waste becomes hazardous waste only because it exhibits one or more characteristics (i.e., it is not a listed waste), then if such a waste is mixed with another waste

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<sup>1</sup> "FAXBACK" guidance documents are issued by the EPA Office of Solid Waste in response to questions regarding waste regulation.



and the mixture does not exhibit any of the characteristics of a hazardous waste, the mixture automatically ceases to be a hazardous waste.”); EPA Guidance Document, FAXBACK 11173 (August 19, 1986) (Mixtures containing only characteristic and nonhazardous wastes are hazardous only if the mixture exhibits the characteristic according to § 261.3(b)(3).”) Copies of these FAXBACK guidance documents are included in this Response as Exhibit ED-9.

Case law further supports the principle that the mixture of a solid waste with a characteristic hazardous waste will result in a hazardous waste only if the resulting mixture exhibits a characteristic. For example, in a 1997 case involving a manufacturer of galvanized and copper coated wire, an Indiana District Court noted that mixtures involving a characteristic waste will be regulated as a characteristic waste only if the mixture continues to exhibit the characteristic. *U.S. v. GK Technologies, Inc.*, 44 Env't Rep. Cas. (BNA) 1651, 1673 (S.D. Ind. 1997). As noted in the decision:

Unlike listed wastes, characteristic wastes are not subject to the mixture rule. Characteristic wastes are regulated by RCRA based only on whether they exhibit any of the four characteristics: ignitability, corrosivity, reactivity, and toxicity. Mixtures of such wastes continue to be regulated as characteristic wastes only as long as they exhibit any of those characteristics.

*Id.* (internal citations omitted).

#### The Dilution Prohibition

The “dilution prohibition” is found in the land disposal restrictions program, which is codified in 40 C.F.R. Part 268. Under the dilution prohibition, no person “shall in any way dilute a restricted waste...as a substitute for adequate treatment.” 40 C.F.R. § 268.3(a). Stated another way,

dilution as a substitution for adequate treatment is prohibited. It is important to remember that the dilution prohibition does not change the way wastes are characterized. As the EPA noted:

Consequently, under the rules proposed today, if an impermissible form of dilution occurs that renders a toxic hazardous waste non-hazardous, the act of dilution would be illegal but the waste would be non-hazardous for subsequent management purposes. That is, EPA is not today redefining hazardous waste, but is instead imposing a condition on how hazardous wastes can be managed.

54 Fed. Reg. 48372, at 48495 (November 22, 1989). TDSL has asserted that the EPA did not adopt this approach in the final rule. *See Texas Disposal Systems Landfill, Inc.'s Brief in Support of Motion to Overturn*, pp. 18-19. However, the preamble to the final rule indicates that the EPA did adopt this approach, with certain specific modifications, such as clarifying what types of dilution may be permissible. *See 55 Fed. Reg. at 22666* (June 1, 1990). Thus, while the act of diluting a waste to avoid adequate treatment is prohibited, the resulting waste itself may be classified as non-hazardous if it does not exhibit a hazardous characteristic.

The ED acknowledges that the act of diluting a waste to avoid adequate treatment is prohibited. In the present cases, any dilution inadvertently occurred in addressing an emergency response incident. This is distinguishable from an act of purposeful dilution designed to avoid adequate treatment.

#### The Proper Application of the Mixture Rule and the Dilution Prohibition to the ED's Decision

In this case, the broken picture tubes were originally identified by Zenith as being hazardous based on the toxicity characteristic for lead based on process knowledge. A solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure (TCLP) the extract from a representative sample of the waste contains a contaminant (from the list in 40 C.F.R. §

261.24) in a concentration equal to or greater than the representative value listed in the rule. 40 C.F.R. § 261.24. The representative concentration for lead is 5.0 mg/L. *Id.*

No analytical evidence indicates that the approximately 1600 tons of commingled waste, which is composed of a small amount of accident-related debris commingled with a large amount of other municipal waste, exhibits the hazardous characteristic for lead. In fact, the sampling that has occurred thus far has indicated that the waste is well below the threshold level to be considered characteristic for lead. *See* Exhibit ED-6 (6/12/04 sample results); Exhibit ED-7 (7/28/04 letter from John Steib to TDSL); Exhibit ED-8 (Description of 6/12/04 sampling). Given these facts, it is appropriate for the ED to approve Penske's proposal to classify the waste as a special waste.

The commingled picture tube waste has not been removed from the TDSL facility at this time because Penske has not been able to work out access issues with TDSL. *See* Exhibit ED-7 (7/28/04 letter from John Steib to TDSL). With respect to the ultimate disposal and management of the commingled picture tube waste, the ED is ensuring that all applicable requirements are met by Penske. In reading TDSL's Motion to Overturn and Brief in Support, it is possible to get the impression that the ED's decision allows Penske to dispose of the commingled picture tube waste as any other municipal solid waste. This is not the case. As noted in the definition of special waste, special waste is waste that "...because of its quantity, concentration, physical or chemical characteristics, or biological properties *requires special handling and disposal* to protect the human health or the environment." 30 TEX. ADMIN. CODE § 330.2(137) (emphasis added). The TCEQ's rules outline specific disposal requirements for special waste and industrial wastes that are entering a municipal solid waste landfill. *See* 30 TEX. ADMIN. CODE §§ 330.136 and 330.137. In addition,

the NOV requires that Penske submit a written description of the removal of the commingled picture tube waste, demonstrating compliance with all applicable regulations. Exhibit ED-1 (NOV letter).

### Conclusion

In the Motion to Overturn before the Commission, TDSL has asked that the Commission overturn the ED's decision to allow Penske to classify and dispose of the commingled picture tube waste as special waste, and has requested that the Commission facilitate the removal of the commingled picture tube waste from the TDSL facility "under appropriate hazardous waste manifests." *See* TDSL's Motion to Overturn, pp. 5-6. As set forth above, TDSL has not shown any basis upon which the Commission should overturn the ED's decision to allow Penske to dispose of the commingled picture tube waste as a special waste. The ED's decision is justified by the facts present in this case, and is consistent with the applicable law, rules, and guidance.

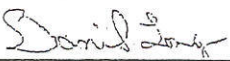
WHEREFORE, PREMISES CONSIDERED, the Executive Director submits his Response to Texas Disposal Systems Landfill, Inc.'s Motion to Overturn, as more fully set forth above, and respectfully requests that the Commission deny TDSL's motion.

Respectfully submitted,

Glenn Shankle  
Executive Director

Lydia González Gromatzky, Deputy Director  
Office of Legal Services

Paul C. Sarahan, Director  
Litigation Division

by 

David A. Speaker  
State Bar of Texas No. 00797478  
Daniel Long  
State Bar of Texas No. 24032679  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3400  
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of August, 2004, the original and 11 copies of the foregoing "Executive Director's Response to Texas Disposal Systems Landfill, Inc.'s Motion to Overturn" was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing "Executive Director's Response to Texas Disposal Systems Landfill, Inc.'s Motion to Overturn" was served on the parties in the following manner:

Via Certified Mail, Return Receipt Requested (70012510000686334059)

Via Facsimile No. (512) 864-7744

Mr. Kerry Russell  
Russell, Moorman & Rodriguez, L.L.P.  
102 West Morrow, Suite 103  
Georgetown, Texas 78626

Via Certified Mail, Return Receipt Requested (70012510000686334042)

Via Facsimile No. (512) 482-9346

Mr. Richard Lowerre  
Lowerre & Kelly  
44 East Avenue, Suite 101  
Austin, Texas 78701

Via Certified Mail, Return Receipt Requested (70012510000686334035)

Via Facsimile No. (512) 322-8308

Ms. Pam Giblin  
Mr. Derek McDonald  
Baker Botts, L.L.P.  
1500 San Jacinto Center  
98 San Jacinto Blvd.  
Austin, Texas 78701-4039

Via Certified Mail, Return Receipt Requested (70012510000686334028)

Via Facsimile No. (512) 480-5760

Mr. David Donaldson  
Graves, Dougherty, Hearon & Moody  
515 Congress, Suite 2300  
Austin, Texas 78701

CHIEF CLERK'S OFFICE

AUG 13 11 30 AM

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Via Certified Mail, Return Receipt Requested (70012510000686334011)

Via Facsimile No. (312) 269-8869

Mr. Philip L. Comella  
Seyfarth Shaw L.L.P.  
55 E. Monroe Street, Suite 4200  
Chicago, Illinois 60603

Via Certified Mail, Return Receipt Requested (70012510000686334004)

Via Facsimile No. (713) 225-2340

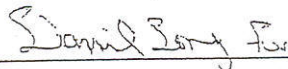
Mr. David Waddell  
Seyfarth Shaw L.L.P.  
700 Louisiana, Suite 3850  
Houston, Texas 77002-2731

Via Certified Mail, Return Receipt Requested (70012510000686334066)

Via Facsimile No. (512) 463-2063

Thomas Edwards  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

I further certify that on this day a true and correct copy of the foregoing EDPRP was hand-delivered to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



David A. Speaker  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

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



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

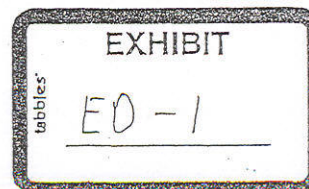
Dear Mr. Hard:

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.

Mr. Brian Hard, President  
Penske Truck Leasing  
May 13, 2004

bcc: John Steib, Deputy Director, OCE  
Lydia González Gromatzky, Deputy Director, OLS  
Wade Wheatley, Director, Waste Permits Division, OPRR  
Patty Reeh, Regional Director, Region 11, Austin  
Paul Sarahan, Director, Litigation Division, OLS  
Stephanie Bergeron, Director, Environmental Law Division, OLS  
David Speaker, Staff Attorney, Litigation Division, OLS  
Daniel Long, Staff Attorney, Environmental Law Division, OLS