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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 19, 2004

Mr. Bob Gregory
President and CEO
Texas Disposal Systems, Inc.
Texas Disposal Systems Landfill, Inc.
P.O. Box 17126
Austin, Texas 78760-7126

Dear Bob:

I am in receipt of and continuing to review your letter of October 15, 2004, requesting clarification of my September 24, 2004 letter to Penske Truck Leasing (Penske). However, I'll take this opportunity to address some of the your immediate concerns.

You ask for clarification regarding the alternative approach for handling the waste currently stored in the 99 roll-off containers at your facility. Please note that my September 24, 2004 letter sets forth two alternatives. Under one approach, Penske must manifest the waste as hazardous waste and dispose of the material at a permitted hazardous waste facility. Under an alternative approach, Penske is required to manifest and remove the 99 roll-off bins from your facility as hazardous waste to a separate authorized facility for the purpose of assessment and characterization of the contents of all of the roll-off containers and removal of any hazardous waste that may be found. Under such circumstances, Penske must demonstrate compliance with all RCRA requirements as well as SW-846 sampling protocols and manage and dispose of the waste accordingly (i.e., either a municipal solid waste landfill or hazardous waste landfill as appropriate). Penske's representatives have assured me that they will ensure proper manifesting and transportation of this waste as well as any necessary insurance coverage.

With reference to your concern for liability of the waste once it leaves your facility, I am advised by agency legal staff that TDSL would have no ongoing liability as TDSL is not arranging for the disposal of the waste, is not the owner or operator of any facility that will receive the waste, and is not the transporter of the waste. With regard to your request for me to allow TDSL experts to observe any off-site process, this is beyond my authority. I suggest that any such request be directed to Penske and any appropriate third party who may be handling and processing the waste.

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I thank you for your offer to provide space at the TDSL facility to sort the material. However, the assessment and characterization of this waste is best conducted at a site which is permitted to manage hazardous waste. As always, please contact me for additional information.

Sincerely,



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: Pam Giblin, Baker Botts, L.L.P.
Duncan C. Norton, General Counsel, TCEQ
Lydia González Gromatzky, Deputy Director, Office of Legal Services, TCEQ
John Steib, Deputy Director, Office of Compliance and Enforcement, TCEQ
Blas J. Coy, Jr., Public Interest Counsel