

Landfill violation may be dropped

State: Dump owner is blocking Penske on tainted trash

By Kevin Carmody

ADVERTISEMENT

AMERICAN-STATESMAN STAFF

Tuesday, November 9, 2004

State environmental regulators appear poised to dismiss the violation case against Penske Truck Leasing Inc. in which they allege that the company illegally sent tons of hazardous lead waste to an Austin-area landfill in 1997.

Glenn Shankle, executive director of the Texas Commission on Environmental Quality said Monday that he has determined that Texas Disposal Systems Inc., the landfill operator, is preventing Penske from complying with his directive to pick up the remaining 1,600 tons of lead-tainted garbage for proper disposal. After years of inaction by state regulators, Shankle issued the violation notice in May and ordered Penske to remove the waste.

"At this point I think the company (Penske) has attempted to fulfill my directive," Shankle said. "I can't continue to ask them to do it; I'm going to stop asking them to do it.

"There has been some consideration on my part of vacating the notice of violation."

Under the violations Shankle alleged in May, including the failure by Penske to take responsibility for some of the hazardous waste it left at the landfill, Penske could be subject to about \$3 million in fines. The waste was created when a Penske truck carrying lead-filled TV tubes wrecked on Interstate 35 near Buda.

Shankle's comments came after meetings last week with representatives of both companies. The companies have been deadlocked for several weeks over the validity of the federally required hazardous waste shipping document Penske has prepared.

Texas Disposal co-owner Bob Gregory saying he desperately wants the waste removed but won't release it until Penske shows him a copy of a shipping manifest that he deems to be valid.

In the version of the manifest Penske provided to Shankle's staff, the company initially lists itself as the generator of the hazardous waste. But elsewhere on the document Penske states: "Penske does not admit, for purposes of any litigation or regulatory proceeding, that the material is a hazardous waste or that it generated the material described in this manifest."

Gregory said Monday he continues to challenge the manifest because Penske could otherwise take the 99 large waste-filled containers out of the landfill, declare the contents to be nonhazardous and send them to a municipal waste landfill. Penske had asked to do just that and received Shankle's approval, before the state's environmental commissioners overturned that decision by a 2-to-1 vote on Sept. 16.

Gregory said he won't compromise because if Penske improperly disposes of the waste and it contaminates the environment, Gregory and his company could be liable under federal law for millions of dollars in cleanup costs.

"How can Penske get exonerated, after seven years of mismanaging hazardous waste, because I will not honor a bogus hazardous waste manifest?" Gregory asked. "This is ridiculous, and the stakes are bigger than just me and my company. If this approach is allowed to stand, it means anyone can dilute hazardous waste 'accidentally' by mixing it with garbage, and every municipal landfill can be turned into a hazardous waste dump."

Shankle said Monday that Gregory's concerns about the manifest were insufficient to justify his refusal to release the waste.

"It's a weak argument," Shankle said. "Penske's manifest just leaves an opening for someone to argue in a court who is responsible for the waste.

"I want it to be clear that I have classified this as hazardous waste and have instructed Penske to take it to a properly permitted hazardous waste facility," Shankle said. If Penske does anything other than what it has stated, "not only will I pursue it, the environmental crimes task force will pursue it," he said.

Michael Duff, a senior executive with Reading, Pa.-based Penske, did not directly respond to Shankle's comments Monday. But he reiterated that Penske has "made every effort to comply with TCEQ's requests."

Shankle said Penske told him that it plans to ship the waste to TECO Inc., a hazardous waste treatment and disposal facility in the Corpus Christi area. TECO officials could not be reached to confirm that Monday evening.

kcarmody@statesman.com; 912-2569