

Penske sues over state waste ruling

Move is latest in legal tussling over lead-tainted garbage at Austin-area landfill

BYLINE: Kevin Carmody, AMERICAN-STATESMAN STAFF

DATE: October 19, 2004

PUBLICATION: Austin American-Statesman (TX)

SECTION: Metro/State

A national trucking company is suing the state's environmental commissioners, alleging that those officials were "arbitrary and capricious" in a Sept. 16 decision that kept 1,600 tons of lead-tainted garbage from being classified as nonhazardous and buried in a municipal landfill.

The lawsuit, filed by **Penske** Truck Leasing Co. in state District Court in Austin on Friday, is among the latest in a flurry of legal maneuvers by the Reading, Pa.-based trucking company and the owners of the Austin-area landfill where, state regulators have ruled, **Penske** illegally sent several tons of hazardous lead waste in 1997 after a trucking accident near Buda.

The lead, from TV tubes the truck was hauling, was mixed into the regular garbage at the landfill near Creedmoor, south of Austin.

One of **Penske's** Austin-based lawyers, William Johnson of Baker Botts LLP, said Monday night that the appeal was mainly a procedural move intended to protect his client and to meet a filing deadline should the Texas Commission on Environmental Quality decline to reconsider its decision. **Penske** also has requested that reconsideration in motions filed with the commission.

"In order to keep all options open, **Penske** filed an appeal of the commission's ruling," Johnson said, noting that the landfill operator, Texas Disposal Systems Inc., did the same in state court in July when it requested that the commission act in the case.

The recent legal filings by **Penske** and Texas Disposal come on the heels of the commission's 2-1 vote to overturn its own executive director's decision that the mixed waste was no longer hazardous.

On Sept. 24, Executive Director Glenn Shankle issued a new order that the material must be hauled from Texas Disposal as hazardous waste by Oct. 27. But Texas Disposal officials say they're concerned that Shankle also opened the door for **Penske** to again have the mixture improperly retested, declared nonhazardous and sent to any municipal waste dump.

Penske filed a motion Friday with the commission asking it to vacate the Sept. 24 ruling that the mixed waste must be handled as hazardous, arguing that any lead in the garbage is too diluted to be harmful. And Texas Disposal filed a motion

with the commission Monday seeking to overturn the part of Shankle's ruling that would allow retesting.

Despite the unresolved legal issues, the looming deadline for removing the waste, now sitting in 99 above-ground metal containers, stands unless a judge orders otherwise, said commission spokesman Andy Saenz.

He said Shankle and the commissioners cannot comment on pending lawsuits or motions.

Texas Disposal co-owner Bob Gregory said he would allow **Penske's** contractor to remove the waste as his company proposed Monday -- something Gregory has sought for seven years -- but only if **Penske** has it shipped as hazardous waste, with the appropriate federal manifest, to a licensed hazardous waste facility.

"We will not allow them to haul it to a nonhazardous facility without the proper separation and treatment of hazardous lead waste," he said.

kcarmony@statesman.com; 912-2569

Copyright (c) 2004 Austin American-Statesman