

Austin American-Statesman

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Letters

Leasing company responds

The decision by the Texas Commission on Environmental Quality concerning debris from a 1997 truck wreck south of Austin proves once again that the simplest things can turn into the most complex (Sept. 18 editorial, "Environmental commission makes right move on waste").

- 1 Everyone agrees the trash resulted from an accident and no one was trying to skirt environmental regulations when those working the wreck sent it to the landfill.
- 2
- 3
- 4 Shortly after the accident, our company removed as much of the debris as possible from the landfill.
- 5 The state decided in 1998 any material that might be mixed with other garbage posed no threat to the environment and could stay at the
- 6 landfill. TCEQ's tests confirmed
- 3 that the remaining garbage does not come close to meeting any state or federal standard of hazardous waste.
- 1 All along the way, we have
- 7 sought direction from the state to fully comply with environmental regulations but that effort seems to
- 3 have gotten caught up in a series of contradictory instructions.

Penske Truck Leasing is proud of our record of complying with all laws and regulations in the 49 states and many countries where we do business. We will do everything possible to continue to comply with all regulations because we respect the environment in Texas as much as native Texans.

MICHAEL A. DUFF
 Senior vice president
 and general counsel
 Penske Truck Leasing

October 19, 2004

Bob Gregory's initial response to the Friday, September 24, 2004, letter to the Editor of the Austin American-Statesman from Michael A. Duff, Senior Vice President and General Counsel, Penske Truck Leasing:

1. Penske's failure to responsibly manage their regulated quantity of hazardous waste generated on October 9, 1997, and to clean up their mess over the last seven years represents a negligent act followed by an arrogant disregard for the laws and regulations, which set the standards for managing regulated quantities of hazardous waste. Clearly, people within Penske knew the discarded CRTs had to be disposed as hazardous waste before the accident occurred and Penske knew that the accident had occurred at least several hours before the loads of CRT waste were sent to the TDSL landfill. Zenith internal emails show that Zenith personnel even reminded Penske personnel that the CRTs in the October 9, 1997 accident had to be disposed of as hazardous waste approximately 40 minutes after the accident occurred and several hours before Penske officials changed the Penske driver's classification of the waste from being non hazardous to being hazardous.
2. Penske disregarded the environmental regulations that required them to properly classify their hazardous waste at the point of waste generation, to manifest their hazardous waste to an authorized facility, and to properly manage their hazardous waste, including proper treatment to meet the federal Land Disposal Restrictions, from cradle to grave.
3. It is irresponsible for Penske to blame their own negligence and disregard for regulatory compliance on emergency service personnel, on TCEQ personnel, and the agency's Executive Director.
4. Penske did not remove as much of the debris as possible from the landfill shortly after the accident, despite our repeated requests. They have refused to remove any of their CRT hazardous waste that was buried with other waste on October 9, 1997.
5. Penske knows that the state never decided to allow regulated hazardous waste to stay in TDSL's municipal waste landfill. They know that the appropriate steps to gain such an authorization were never taken and that the TCEQ has issued notices of violation to Penske (not to TDSL) for the improper management of Penske's hazardous waste.
6. Penske continues to assert that they should be allowed to mismanage their hazardous waste and then be allowed to benefit from sampling of the waste they allowed to be diluted with MSW and clay as a commingled waste mass, as a basis for being absolved from not having handled their hazardous wastes properly in 1997 and 1998. Both Penske and the TCEQ tested the wrong waste. You can't rely on testing done on waste after it has been diluted. The waste, as generated, must be tested.
7. Penske was negligent in not training its personnel how to handle the CRTs once discarded, for not keeping the waste out of the TDSL landfill and for not acting quickly to remove their improperly managed waste from the TDSL landfill, among other things. Penske has not acted in good faith. Penske depended upon TDSL to look the other way and to play along with their mismanagement of the hazardous waste. TDSL never wavered in its commitment to follow the regulations. Penske gambled and lost. Now Penske must rely on the ability of its lawyers and lobbyists to arrange favorable decisions through the TCEQ Executive Director to help them reduce their liability in the lawsuit. The regulations require them to properly manage the waste generated at the accident scene on October 9, 1997. That management requires proper treatment of the waste under the RCRA Land Disposal Restrictions. Any decision by the ED to sample the waste in its diluted form, diluted with approximately 800 tons of non hazardous solid waste and approximately 750 tons of clay cover soils would be inconsistent with the regulations and would be an effort to help Penske and Zenith in the litigation. From TDSL's perspective, Penske has worked diligently to avoid complying with federal and state environmental regulations and to harm TDSL financially and by reputation. The TCEQ should severely penalize Penske for its failure to properly manage its hazardous waste and for its refusal to respond to remove the waste for proper treatment and disposal since the TCEQ initial enforcement action against them on November 5, 1997 and since the TCEQ Notices of Violation filed on May 13, 2004.