

Penske, state may cut deal on toxic waste

Proposal to reclassify lead-filled trash stored at Creedmoor landfill may set Texas precedent

BYLINE: Kevin Carmody, AMERICAN-STATESMAN STAFF

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The trucking company deemed responsible for illegally sending tons of hazardous lead waste to a Creedmoor landfill in 1997 appears close to getting state permission to ship it, and the garbage with which it was accidentally mixed, to a municipal waste landfill in San Antonio, state documents show. In letter dated Friday, a high-ranking official at the Texas Commission on Environmental Quality tentatively approved Penske Truck Leasing Co.'s proposal to treat the commingled trash as "special waste," instead of as hazardous waste.

That approval, if formally adopted, could set a legal precedent in Texas, save Penske as much as \$325,000 in disposal costs and possibly complicate efforts by the owner of the Texas Disposal Systems landfill, Bob Gregory, to recover millions of dollars in expenses he says Penske and a second company owe him. Gregory contends that he incurred the costs for handling the waste as hazardous for nearly seven years.

The special handling was to prevent the lead from contaminating groundwater. If disposed of as "special waste" in San Antonio, it would not be sealed with a special double liner required for hazardous waste.

The plan could set a precedent because federal law does not allow hazardous waste to be reclassified as municipal waste by diluting it with other material. Up to now, the state commission appears to have followed that rule.

John Steib Jr., a deputy executive director at the environmental commission, wrote in the letter to Penske that the commission staff "approve(s) your approach of transferring the waste from the TDSL facility and disposing of it as special wastes." But agency spokesman Andy Saenz said Tuesday that approval of the required permit is not automatic.

The question of whether the waste was hazardous appeared to have been resolved nearly seven years ago, when state inspectors said so in agency reports in the weeks after a Penske truck, loaded with 223 Zenith Electronics Corp. TV tubes, wrecked on Interstate 35 near Buda in October 1997.

The smashed tubes, each with 3.5 pounds of lead, created 41,000 pounds of hazardous waste. It was mistakenly sent to the Texas Disposal Systems landfill, and much of it mixed with household trash, after the Penske truck driver told emergency workers that his cargo was not hazardous, according to records and testimony.

Though Penske officials knew the cargo would be hazardous if broken, the driver was not informed, according to testimony. The state inspectors directed Penske to ship the hazardous waste for proper disposal, but the agency never proposed a fine or followed up to guarantee that it happened, forcing Texas Disposal to take legal action in 1998.

"It sounds to me as if the TCEQ has already made a determination before even reviewing the permit application," Gregory complained Tuesday after being sent a copy of the letter. "We will strongly oppose this because it is contrary to the law, particularly the federal law that prohibits diluting hazardous waste as a way of reclassifying it as nonhazardous.

"We spent a lot of time, effort and money handling this waste as hazardous, doing the right thing, because that's what we were told by the state. For TCEQ to now change its decision and declare it to be nonhazardous, special municipal waste, would play right into the hands of Penske and Zenith, whose legal argument was that I could have left it all in the landfill."

The case drew widespread attention this spring after the American-Statesman reported that Texas Disposal was in court in San Marcos trying to recover its costs and get Penske and Zenith to take responsibility for the disposal of 99 large containers of commingled waste now stored at the Creedmoor site.

After the article triggered a mistrial, Texas state senators grilled environmental commissioner appointee Larry Soward during his confirmation hearing in early May. Soward chastised his own agency for mishandling the case, and on May 13 Acting Executive Director Glenn Shankle issued Penske a violation notice, formally accusing the company of breaking state and federal hazardous waste laws, which could lead to a minimum fine of nearly \$1 million.

In a June 1 letter, Penske Senior Vice President Marc Althen proposed transferring the waste to 30-cubic-yard trucks over two days later this month. It would be trucked to the BFI Inc. Tessman Road municipal waste landfill near San Antonio and buried as special waste in time to meet the July 13 deadline set by Shankle, Althen wrote.

Copies of the letters between Steib and Althen were provided by the environmental commission under the Texas Public Information

Act on Tuesday, just hours after the spokeswoman at Penske's corporate headquarters in Reading, Pa., said in a written statement that the company was still planning how to comply with the removal order. She said she could provide no details such as the likely destination for the waste or expected disposal costs.

That statement, issued in response to a second written request Monday afternoon for such details, read in total: "Penske Truck Leasing is currently in the planning process and we are exploring all available options to comply with the TCEQ's wishes. Additional information is not available at this time."

kcarmody@statesman.com; 912-2569