

Regulator gives company deadline to transfer lead waste

Penske has until Oct. 27 to remove waste from landfill

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AMERICAN-STATESMAN STAFF
Sunday, September 26, 2004

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The state's top environmental regulator has ordered Penske Truck Leasing Inc., the company deemed responsible for nearly 1,600 tons of lead-tainted garbage now sitting at an Austin-area landfill, to ship it as hazardous waste to a licensed toxic waste disposal or treatment site by Oct. 27.

The order by Glenn Shankle, executive director of the state's main environmental agency, came via a letter dated Friday to a Penske executive at the company's headquarters in Reading, Pa.

Shankle's order appears in some ways to go beyond the strict recommendations of Texas environmental commissioners, who overturned Shankle's June 30 decision that the waste was no longer hazardous and could go back into a conventional landfill, as Penske's lawyers have contended. The waste is suspected of containing several hundred to several thousand pounds of the toxic metal.

But Bob Gregory, who owns the Texas Disposal Systems landfill where, state regulators have ruled, Penske illegally sent the hazardous lead waste in 1997, says he isn't certain the language in Shankle's order is as strict as it appears.

Gregory said he is concerned that Shankle's order might give Penske officials the option to do tests that, although not considered valid under federal waste law, could enable the trucking company to further argue that the waste mixture has been diluted to the point it is no longer hazardous.

"For this reason, and unless we get clarification from Mr. Shankle on the limits he's placing on Penske in the management of the waste . . . once it leaves (my) property, we will have to seriously consider" (further legal action), Gregory said.

Commissioners Kathleen Harnett White and Larry Soward, who prevailed on a 2-1 vote to overturn Shankle's original decision, did not direct Shankle to take any specific step to require proper disposal.

But Soward emphatically suggested that Shankle require Penske to send the lead-tainted garbage to be detoxified or buried in a hazardous waste landfill, or pay the astronomical costs for the testing of each of the 99 containers holding the waste to determine what portion of it is lead -- using an EPA-approved testing method.

Any container holding lead waste would have to have it removed and sent for proper disposal, Soward said, but any nonhazardous dirt or debris could go back into the Texas Disposal landfill near Creedmoor, where it has sat for most of the past seven years.

Shankle wrote in his new order that if Penske officials still want to retest the lead and garbage mixture, presumably to see whether at least some of the garbage and clay can go into a conventional landfill as Soward suggested was possible, that also must be done at a hazardous waste treatment site or hazardous waste landfill.

Penske Senior Vice President and legal counsel Michael Duff said Saturday that the company has received the letter and is "considering the most appropriate course of action."

A central issue in the dispute is whether, as Penske lawyers continue to argue, debris originally designated as hazardous waste loses that designation if it is diluted enough after being mixed with nonhazardous garbage.

Expert witnesses testified that federal law bars reclassification when a toxic waste such as lead is diluted.

If Shankle's original ruling had been allowed to stand, state legislators and experts including a former U.S. EPA chief warned, industries could "accidentally" send hazardous waste to the state's garbage dumps and be exempt from paying for proper disposal in a licensed hazardous waste dump.