

State aims to end tussle over lead-laced garbage

Regulators to test waste to decide whether Penske or Creedmoor landfill is right

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State environmental regulators intervened Thursday in a standoff between a Creedmoor landfill operator and Penske Truck Leasing Co. over the fate of tons of lead-tainted garbage sitting in 99 metal containers at the landfill. John Steib Jr., the top enforcement official at the Texas Commission on Environmental Quality, stated in a letter to Texas Disposal Systems on Thursday that the agency would send state contractors to begin testing the waste as soon as today to determine whether it must be trucked to a hazardous waste landfill or treatment facility, as landfill officials contend.

"We now have been notified by Penske that (Texas Disposal) has refused to release the waste to Penske, citing disagreement with the waste classification," Steib said, adding that the testing should resolve the issue.

However, Texas Disposal President Bob Gregory said Thursday that he still thinks that under federal law, the waste -- created after a Penske truck carrying lead-filled television tubes crashed on Interstate 35 in 1997-- remains hazardous waste no matter what new tests of the mixed waste show. Some of the wreck debris, determined by state officials to be hazardous, was mistakenly sent to the landfill and mixed with garbage.

In May, nearly seven years after the wreck, the agency staff issued a violation notice to Penske, saying it violated hazardous waste laws by allowing the debris to be sent to the municipal landfill and then failing to remove it all. The agency also gave Penske until next Tuesday to remove the waste for proper disposal.

A month later, however, Steib accepted a Penske plan to allow the mixed waste to be shipped for disposal as "special waste," which requires disposal in a landfill with safeguards greater than most municipal landfills but less than hazardous waste dumps.

"Federal and state law does not allow hazardous lead waste to be diluted into nonhazardous waste in this manner, and we believe we would be violating the law if we allowed the waste to leave our landfill without a legal hazardous waste shipping manifest," Gregory said.

Meanwhile, in San Marcos, state District Judge Gary Steel on Thursday ordered the parties in a pending lawsuit on the matter -- including Texas Disposal, Penske and Zenith Electronics Corp. -- into mediation next week to try to resolve pending legal issues. The TV tubes belonged to Zenith.

Steel indicated that a trial will not occur until at least January.

On July 2, lawyers for Penske had filed a motion seeking sanctions against Texas Disposal and/or its lawyers over an April 24 article in the Austin American-Statesman about the dispute. Alleging the story contained "unbalanced and prejudicial contents" that landfill representatives provided the newspaper, and caused a mistrial in the case months ago, the defendants' court filing sought unspecified lawyers fees, damages and dismissal of part of Texas Disposal's case.

Steel made no specific ruling on the request. Lead landfill lawyer David Donaldson, however, said that the judge did comment that "he didn't think we did anything wrong. If he thought we had, he'd have sanctioned us" before now.

William Johnson, a Penske lawyer with Baker Botts LLP in Austin who requested the sanctions, would not comment on anything Steel might have said in court.

"We remain confident that we do not have any liability in this matter . . . and look forward to the mediation," Johnson said.

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