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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

Concerning the Petition of Texas Disposal Systems Landfill, Inc.; TCEQ Docket No. 2007-1019-IHW.

On July 25, 2007, the Texas Commission on Environmental Quality (Commission) considered during its open meeting the petition filed by Texas Disposal Systems Landfill, Inc. (TDSL) concerning the waste from a traffic accident which occurred on October 9, 1997 on Interstate Highway 35, south of Austin, in Hays County, involving a Penske Truck Leasing Co., L.P. (Penske) truck transporting cathode ray tubes (CRT) owned by Zenith Electronics Corporation and also concerning 99 roll-off boxes of waste currently located at a Type I Municipal Solid Waste landfill owned by TDSL near Creedmoor, Travis County. The Commission also considered the responses to the petition filed by Penske Truck Leasing Co., L.P., the Executive Director, and the Office of Public Interest Counsel.

After evaluation of all relevant filings, the Commission determined that pursuant to the Commission's authority under Texas Water Code §§ 5.012, 5.102, 5.221, 7.002 and Texas Health & Safety Code § 361.017, the Commission exercises jurisdiction over this matter. As necessary clarification of the Commission's Order of September 16, 2004 granting TDSL's Motion to Overturn, the Commission reiterates that the CRT waste in the 99 roll-off boxes at TDSL is D008 characteristically hazardous waste for reasons of toxicity. The Commission also

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reiterates that because the D008 CRT characteristically hazardous waste has been commingled with other MSW and landfill cover soil wastes, the entire volume of the waste in the 99 roll-off boxes must be legally treated as hazardous waste and thus, subject to the EPA's RCRA Land Disposal Restrictions for purposes of management, treatment, and disposal. The Commission further reiterates that because the D008 CRT waste was hazardous at the point of generation at the October 1997 accident scene, federal law and rule preclude further testing of the D008 commingled waste for the purposes of reclassification of the waste and determination of disposal alternatives.

Moreover, because the Commission finds that the Executive Director, in part, erred in his September 24, 2004 letter to implement the 9/16/2004 Commission Order by allowing that testing could be utilized to "conclusively determine that no D008 waste at the level that is characteristically hazardous" remains in the commingled CRT waste, the Commission concludes to adopt the TDSL petition before the Commission, including the arguments therein. The Commission now issues a clarifying, supplemental Order specifying the following corrective actions understood as required by the September 16th Commission Order.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Within 30 days from the date of issuance, the Commission orders Penske to remove all waste contained in the 99 roll-off boxes at the TDSL landfill under an unconditional, standard, unaltered hazardous waste manifest that designates Penske as the generator of the commingled D008 hazardous CRT waste and identifies the 1997 accident scene on IH-35 in Hays County as the point of generation;
2. The hazardous waste manifest shall designate the destination of the waste as a facility that is authorized to treat and dispose of D008 hazardous waste;

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3. Penske shall arrange for, and actually dispose of all D008 hazardous waste contained in the 99 roll-off boxes in one of the two following ways:
 - a) By transport of the entire contents of the 99 roll-off boxes to a landfill that is authorized to receive and dispose of such hazardous waste. At such facility, Penske is responsible for the management, treatment, and actual disposal of this waste according to the RCRA Land Disposal Restrictions for hazardous waste; or
 - b) By "negative sort" separation of all nonhazardous municipal solid waste from the D008 CRT component debris and D008 contaminated soil in the roll-off boxes, followed by disposal of the remaining D008 CRT debris, D008 contaminated soil, and any MSW unsegregated from the mix, in a landfill that is authorized to receive and dispose of hazardous waste;
4. Any MSW separated from the hazardous CRT debris and contaminated soil by negative sort may be tested for the presence of any hazardous characteristic and, if there is none, disposed of in a municipal solid waste landfill;
5. All commingled waste and solids that have not been removed as part of a negative sorting process shall be disposed of as "D008 hazardous waste contained within MSW and clay soils" with Penske designated as the generator; and
6. The Commission directs the Executive Director to take all necessary and appropriate action, including oversight and inspections, as necessary, to expeditiously implement this Order.

Issue date: JUL 30 2007

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
Kathleen Hartnett White, Chairman

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Protecting Texas
by Reducing and
Preventing Pollution

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Organization

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Office of the Chief Clerk

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NOTES:

I am faxing a copy of the order for Texas Disposal Systems Landfill, Inc. (TCEQ Docket No. 2007-1019-IHW) issued by the TCEQ Commission on July 30, 2007.

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MAILING LIST

Petition of Texas Disposal Systems Landfill, Inc.
TCEQ Docket No. 2007-1019-IHW

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