

TDSL/TCEQ/ZENITH/PENSKE HAZARDOUS WASTE ISSUE: BACKGROUND CHRONOLOGY

January 1997: Zenith enters into a transportation agreement with Penske to transport Zenith cathode ray tubes (“CRTs”) from Zenith’s Chicago CRT manufacturing facility to Zenith’s Mexico maquiladora facility. The agreement specifies that Penske will handle broken/discarded CRTs as hazardous material in accordance with the Resource Recovery and Conservation Act (“RCRA”). Under RCRA, broken CRTs are classified as D008 hazardous waste because they exhibit a toxicity characteristic due to high lead count.

October 9, 1997: A Penske truck overturns during an accident on IH-35, south of Austin, Texas in Hays County. The load of 1,248 Zenith CRTs is broken/discarded, and toxic characteristic hazardous D008 CRT Waste is generated at the accident scene. Even though both companies are made aware of the major accident within minutes of its occurrence, Zenith and Penske fail to promptly notify emergency responders that the spill contained D008 hazardous waste if the CRTs are discarded.

- Believing the spill was not hazardous, emergency response personnel direct nine dump truck loads of the D008 CRT Waste to the TDSL municipal solid waste (“MSW”) landfill for disposal. The loads are represented as non-hazardous waste to TDSL and landfill personnel have no knowledge that CRTs are hazardous waste. Before TDSL is notified of the correct D008 CRT Waste characterization, seven of these loads are discharged on the landfill working face and compacted with other loads of waste entering the landfill, over a period of approximately 2 hours. Once notified of the proper hazardous waste characterization of the debris approximately 3.5 hours after the accident, TDSL immediately stops the discharge of D008 CRT Waste and other waste at the landfill working face.
- In accordance with the law, TDSL subsequently rejects the two remaining loads of D008 CRT Waste that were in route to the working face when Penske makes the proper characterization. TDSL also immediately isolates the landfill working face where the D008 CRT Waste has been buried up to five feet in depth along with an unknown volume of MSW from various entities. TDSL demands that Zenith/Penske remove the D008 CRT waste for proper transportation, treatment and disposal as required by RCRA (40 CFR 268.3).

November 5, 1997: The Texas Commission on Environmental Quality (“TCEQ”) initiates enforcement proceedings with correspondence to Penske.

- Although acknowledging to TCEQ in writing that the broken CRTs constitute D008 hazardous waste, Zenith/Penske refuse to remove the D008 CRT Waste that was commingled and embedded in the landfill working face or to attempt to sort the D008 CRT Waste from the Commingled D008 Waste. Zenith, who at this time is partially owned by LG Electronics, decides to transfer its responsibility for the waste to Penske and to rely upon the indemnification language it had negotiated in its transportation agreement.

February 1998: TDSL files suit in Hays County State District Court against Penske and Zenith to recover damages and to gain the proper management of the abandoned waste.

March 1998: Penske properly manifests and transports, for ultimate treatment and disposal at an authorized hazardous waste treatment, storage, and disposal (TSD) facility, the D008 CRT Waste generated at the accident scene that had not been buried below the surface of the TDSL landfill (i.e., 70 to 80% of the volume of the D008 CRT Waste generated at the accident). Penske and Zenith both abandon their waste that remained at the TDSL landfill.

January 29-February 2, 2004: The abandoned D008 CRT Waste, commingled with MSW and clay landfill cover soil (Commingled D008 Waste) that was initially secured within the landfill, is containerized for proper transport, treatment and disposal at a hazardous waste treatment facility per TCEQ authorization dated January 15, 2004. The amount of D008 CRT Waste commingled with MSW and clay cover soil is 7,000 to 14,000 pounds.

April 2004: Mistrial declared and a new trial is now scheduled to begin on October 15, 2007.

May 2004: The TCEQ Executive Director (“ED”) issues a formal Notice of Violation (“NOV”) against Penske for failure to properly characterize and manage the D008 CRT Waste stored at TDSL, which was generated at the 1997 accident scene. The ED found no fault with TDSL’s management of the hazardous waste.

June 2004: The ED issues letters to Penske authorizing disposal of the Commingled D008 Waste as “non-hazardous” special waste in violation of RCRA (40 CFR 268.3), which prohibits waste dilution to avoid land disposal restrictions (“LDR”) relative to D008 hazardous waste prior to land disposal. TDSL appeals the ED’s authorization to the full Commission.

September 2004: The TCEQ Commissioners vote to approve TDSL’s Motions to Overturn the ED’s authorization. The TCEQ Commissioners appear to support TDSL’s RCRA interpretation that D008 hazardous CRT waste cannot be legally treated by dilution and then disposed as non-hazardous waste.

October – November 2004: Following the September 2004 ruling, the ED issues a letter that circumvents RCRA requirements and TDSL files another appeal.

December 1, 2004: TCEQ Chairman Kathleen Hartnett White does not receive a second to her motion to grant TDSL’s Motion to Overturn the ED’s September 24, 2004 authorization. Subsequently, the ED’s attempted authorization for disposal of the commingled D008 CRT Waste, municipal waste and clay cover mixture as “non-hazardous” results in multiple appeals to the Travis County State District Court for review. These cases remain pending today.

January 2005: Appeals of TCEQ ED decisions filed in Travis County District Courts.

February-May 2005: The Texas State Senate Natural Resources Committee reviews the issue legislatively and conducts a hearing on the lack of action and enforcement related to this case and gives direction to the TCEQ Commissioners to resolve the dispute. A series of meetings between parties are conducted, in an effort to facilitate a settlement.

October 2005: TCEQ ED refuses to prosecute Penske or Zenith for hazardous waste violations forcing TDSL to appeal to EPA.

November 2005: Due to the ED’s statement that he will take no further action to bring enforcement against Zenith and Penske until after the Hays County trial, and TCEQ’s eight-year refusal to properly enforce RCRA, TDSL notifies EPA of its intent to seek removal of TCEQ’s delegated authority to administer and enforce the RCRA hazardous waste program in Texas.

January 2006: New judge is appointed in the Hays County State District Court case to hear damage issues.

May 2006: EPA Region 6 denies TDSL Petition to Withdraw the Texas RCRA Program, based on inaccurate assumptions and inappropriate interpretation of state and federal hazardous waste management regulations. EPA effectively grants an inadvertent dilution exemption for toxic characteristic hazardous waste that is diluted after the point of waste generation. Further, EPA inappropriately finds that no enforcement is warranted.

August 2006: Appeals of EPA’s May 16, 2006 “Determination as to Whether Cause Exists to Withdraw the Texas RCRA Program” are filed in three Federal District Courts in the name of TDSL and several environmental organizations.

June 21, 2007: TDSL Petitions TCEQ to review the TCEQ Executive Director’s Action and Order Proper Disposal of Hazardous Waste.

July 30, 2007: TCEQ issued An Order that within 30 days... Penske to remove all waste... under an unconditional... hazardous waste manifest...

NOTE: To see TDSL Petition to EPA and related documents go to:

http://www.texasdisposal.com/epa_petition.htm

http://www.texasdisposal.com/tceq_filings.htm