

## Trucking firm cited in case of lead waste

Six years after hazardous material was left at Creedmoor landfill, state agency takes action

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After six years of delays, Texas environmental regulators have formally accused Penske Truck Leasing Co. of violating hazardous waste laws by sending lead-laden waste to a Creedmoor municipal waste landfill and then failing to remove it. The Texas Commission on Environmental Quality issued a violation notice to the company, whose truck, loaded with Zenith Electronics Corp. television 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 after the Penske truck driver told emergency workers his cargo was nonhazardous, records and testimony show.

Though Penske officials knew the cargo would be hazardous if broken, the driver was not informed, according to testimony.

Glenn Shankle, acting executive director of the environmental commission, said Tuesday that his staff is still calculating the potential penalty for the allegations: improper disposal of hazardous waste and failure to determine whether the waste was hazardous. Documents that Texas Disposal filed with the commission estimate that the trucking company could face a minimum fine of \$978,125.

In the violation notice mailed Thursday to Penske's president, Shankle also ordered the Reading, Pa., company to have 1,600 tons of commingled hazardous waste and garbage removed from Texas Disposal property and sent for proper disposal by July 13. The estimated cost is \$400,000.

Shankle said his investigation of the incident showed that Texas Disposal violated no laws or regulations and at least twice made good-faith efforts to get Penske to remove the waste and send it to a hazardous waste landfill for proper disposal.

"The TCEQ requires no further action from (the) Texas Disposal Systems Landfill on this matter," Shankle wrote last week in a letter to the company, which won a 2002 governor's award for environmental excellence.

Texas Disposal officials learned the waste was hazardous, and not allowed in its landfill, while trucks hauling it from the wreck scene were still being unloaded. The landfill staff halted the unloading, but Penske, despite acknowledging that it created the hazardous waste, failed to follow a 1997 commission directive to remove all of its waste from the landfill, documents show.

That waste now sits in 99 metal transport containers, which are lined to prevent the lead from leaking into the environment.

Shankle said he is still looking into the reasons the commission failed to follow up for so many years. That failure forced Texas Disposal to sue Penske and Zenith to recover its expenses and force removal of the waste.

"It might have been the case that the agency . . . assumed those parties had resolved the matter," Shankle said.

The civil trial in state district court in Hays County ended in a mistrial last month after an American-Statesman article reported details of the case -- including the commission's past determination that Penske improperly sent hazardous waste to the landfill -- that jurors had not been allowed to hear.

Penske officials issued a statement Tuesday saying they were surprised to receive a violation notice so long after the incident and they believe that Texas Disposal, not Penske, was at fault.

"We are considering an appropriate response to the notice of violation. Penske continues to believe that it acted appropriately and made all the required notifications, and is not responsible for TDSL's decision on October 9, 1997 to allow the material into its landfill," the statement said.

The case became a key part of the recent Texas Senate confirmation hearing on the appointment of Larry Soward as one of three state environmental commissioners. Soward told senators the agency's failure to act was inexcusable and promised to improve its much-maligned enforcement programs.

One of those senators, Gonzalo Barrientos, D-Austin, had already asked the commission for an explanation of the enforcement delays and of the decision last month by Shankle's predecessor to investigate Texas Disposal's actions.

On Tuesday, Barrientos said he's pleased the agency finally acted, consistent with its 1997 findings.

"Why it took them so long to follow up on it, I don't know," Barrientos said. "Frankly, I am disappointed that I had to get involved in this matter."

He said he's confident the agency will be more careful, but he will continue to monitor the case.

"Sure I'll keep an eye on it, but hopefully my further involvement with this specific situation won't be necessary," he said.

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