

Tubes dumped in '97 sparking 3-way fight

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The Texas Commission on Environmental Quality is caught in a custody battle over 1,600 tons of waste contaminated with lead and phosphorous from cathode ray tubes.

The agency recently approved a plan by Penske Trucking Co., which it deemed responsible for the waste, to classify it as "special" instead of hazardous.

That would make it cheaper and easier to move from a Buda-area landfill, where it has sat for more than six years, to another landfill.

But the landfills are balking. The plan called for it to be moved to the Tessman Road Landfill in San Antonio, but that company has refused to accept it, even with the new classification.

"No, we're not taking it," said Tessman Road Landfill general manager Brad Dugas, adding it would have to be reclassified as regular Class 2 waste, not special waste, for his company to even consider accepting it.

The Texas Disposal Systems Landfill near Buda cited liability fears when it told the agency this week it will not release the waste unless it is reclassified as hazardous.

The agency's decision reversed its "notice of violation" sent May 13 to Penske for the storing, processing or disposing of hazardous waste. And agency documents have referred to the waste as hazardous for years, TDSL owner Bob Gregory said.

Penske delivered the Zenith-made tubes to the Buda landfill in October 1997 after a trailer in which they were being shipped overturned. Only after some of the debris had been buried with municipal waste did Penske inform Texas Disposal Systems of the tubes' hazardous nature.

The Buda landfill isolated the contaminated waste, storing it in clay and plastic. In January, the some 1,660 cubic yards of waste was put into 99 plastic-covered transport containers.

Gregory said federal law requires the commingled waste to be treated as hazardous.

The state agency's decision to reclassify the waste "will set a dangerous precedent unsupported by law and will create a huge financial incentive for hazardous waste generators looking for loopholes to dispose of hazardous waste at less expensive nonhazardous waste facilities," a TDSL letter to the agency stated.

The decision also may improve Penske's and Zenith's position in ongoing litigation with TDSL over storage and disposal costs, Gregory said. The landfill sued to recover the costs in 1998.

John Steib, deputy director of compliance and enforcement for TCEQ, said the agency stands by its decision. The commingled waste need not be treated as hazardous, he said, because tests show that it does not have any of the characteristics of hazardous waste.

"We find no evidence that that waste is harmful to people or the environment," Steib said.

He declined comment on the arguments raised by the Buda landfill because, he said, the agency does "not want to debate the issue in the newspapers."

The agency has given Penske until July 13 to dispose of the containers. Steib said the agency has not decided what action it will take against Penske if the company does not comply.

Mike Duff, general counsel for Penske, said the firm is finalizing compliance plans, but would not say if any facility has agreed to accept the containers.

In a letter sent to Gregory this week, Penske said it plans to begin removal Tuesday to one of seven TCEQ-approved facilities, but Gregory said he'll allow it only if the waste is classified as hazardous and the facility is authorized to receive it.

One of the approved sites, Covell Gardens Landfill in San Antonio, told Penske last week that it will not accept the containers.