

TCEQ DOCKET NO. 2007-1019-IHW

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERK'S OFFICE

IN THE MATTER OF VIOLATIONS §
OF THE TEXAS SOLID WASTE §
DISPOSAL ACT AND TCEQ §
REGULATIONS BY PENSKE §
TRUCK LEASING CO., L.P. AND §
PENSKE LOGISTICS, INC. §
BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**TEXAS DISPOSAL SYSTEMS LANDFILL, INC.'S
REPLY TO PENSKE TRUCK LEASING CO., L.P., PENSKE LOGISTICS, INC.,
AND THE EXECUTIVE DIRECTOR'S RESPONSES TO TEXAS DISPOSAL
SYSTEMS LANDFILL, INC.'S PETITION TO REVIEW
THE EXECUTIVE DIRECTOR'S ACTION
AND ORDER PROPER DISPOSAL OF HAZARDOUS WASTE**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Texas Disposal Systems Landfill, Inc. ("TDSL") and files this, its Reply to Penske Truck Leasing Co., L.P., Penske Logistics, Inc. (collectively "Penske"), and the Executive Director's ("ED") Responses to Texas Disposal Systems Landfill, Inc.'s Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste (collectively "Responses").

I. Introduction

Since Penske's and the Executive Director's Responses to TDSL's June 21, 2007 Petition make essentially the same arguments, this reply will address both Responses. The Responses raise a number of issues that are not relevant to the relief requested by the Petition. TDSL's Petition does not request a Commission decision on any issue of law that is currently being litigated in any other forum. TDSL's Petition simply requests that the Commission issue an explicit Order to Penske requiring them to remove the commingled D008 CRT waste from TDSL's landfill under a standard hazardous waste

manifest and deliver it to a properly licensed hazardous treatment, storage, and disposal (“TSD”) waste facility for proper management. This is exactly what Chairman White and Commissioner Soward suggested to the Executive Director on September 16, 2004. The Executive Director has chosen to ignore this suggestion for almost three years. The Executive Director stated to the United States Environmental Protection Agency (“USEPA”) in his December 16, 2005 letter that he would take no further action to require Penske to properly manage its D008 hazardous waste.¹ It is time for the Commission to take explicit action under its plenary powers.

II. Jurisdiction

The Responses argue that the Commission is without legal authority to either hear this matter or take action. As noted by the OPIC, the Responses are wrong. First, this is not a contested case matter. Therefore, the body of law related to contested case matters is not applicable to this situation. Second, there has never been an Order issued by the Commission in regard to this matter. On September 16, 2006, the Commission granted TDSL’s Motion to Overturn the Executive Director’s letter which authorized Penske to dispose of the commingled D008 CRT waste as non-hazardous special waste. There was no Order to Penske. On December 1, 2004, the Commission failed to take action on TDSL’s Motion to Overturn the Executive Director’s September 24, 2004 letter which includes an option that authorized Penske to remove the commingled D008 CRT waste from TDSL’s landfill and then improperly manage it as non-hazardous waste.

¹ See letter from Mr. Glenn Shankle to Mr. Carl Edlund, Director, P.E., of the Environmental Protection Agency, Region 6, December 16, 2005, attached hereto as Exhibit A [hereinafter ED Letter to USEPA].

The Commission has clear legal authority to consider this matter on July 25, 2007 and provide the relief requested by TDSL.²

III. Facts

TDSL believes there are certain facts that are now undisputed, regardless of claims to the contrary in the Responses. The Commission should be able to rely on the following facts during the Agenda discussion on July 25, 2007.

1. Penske had a Transportation Agreement with Zenith Electronics Corporation that specifically warned that cathode ray tubes ("CRTs") becomes hazardous once damaged.³
2. The Point of Generation of the D008 CRT waste was the scene of the truck accident.
3. Penske self characterized the accident debris as D008 hazardous waste on October 9, 1997, and so advised the emergency responders late that afternoon.
4. The Generator of the D008 CRT waste was Penske.⁴
5. Penske manifested some of the D008 CRT waste to TECO under a standard hazardous waste manifest for proper management and disposal.⁵

² The Commission's plenary authority to implement and enforce the environmental laws of the State is expressed in Texas Water Code §§ 5.012, 5.102, 7.002, and 7.0025(a). Its corresponding specific authority over the management of hazardous and nonhazardous solid waste is stated in Texas Health and Safety Code § 361.017. The Executive Director's subordination to the Commissioners in all such implementation and enforcement matters is expressed in Texas Water Code §§ 5.108(a), 5.221, and 5.230. The "plenary power" of the TCEQ over all such environmental matters within its jurisdiction was recently recognized by the 261st Judicial District Court of Travis County in *Asarco Incorporated v. TCEQ*, Cause No. GN401709 (Order issued March 9, 2005).

³ See Transportation Agreement between Zenith Electronics Corporation and Penske Logistics, March 10, 1997, at 14, attached hereto as Exhibit B.

⁴ See Uniform Hazardous Waste Manifest, which identified Penske Logistics as generator of hazardous waste, completed March 1998, attached hereto as Exhibit C.

⁵ See *id.*

6. Some of the D008 CRT waste was commingled with MSW and cover soil at the TDSL landfill.
7. Penske's hazardous waste remediation contractor, Code 3, specifically identified CRT waste in the commingled waste during the isolation process.⁶
8. The commingled D008 CRT waste is presently stored at the TDSL landfill in 99 roll off containers.
9. Under 40 CFR 268.3, dilution cannot be used as a substitute for treatment of D008 toxic characteristic hazardous waste to meet the Land Disposal Restriction standard for lead disposal.

IV. Irrelevant Arguments

The Responses state that the issue raised in TDSL's petition should be resolved in some other forum where various issues related to this matter are presently being litigated. In no particular order, listed below are the other forums and why each is not relevant to the Petition.

1. There is an ongoing lawsuit in Hays County District Court. This is a tort lawsuit founded, primarily, in negligence. The relief requested in that lawsuit will not result in the immediate removal of the commingled D008 CRT waste from TDSL's landfill. The Hays County District Court has made it abundantly clear that it is not the proper forum to resolve environmental regulatory issues. The Hays County lawsuit is irrelevant to the relief requested in the Petition.

⁶ See Deposition of Mr. Eric Cooper, *Texas Disposal Sys. v. Penske Truck Leasing Co., L.P.*, Cause No. 98-0159, 207th Judicial Dist. Ct., Hays County, Texas, at 94 (March 1, 2004), attached hereto as Exhibit D [hereinafter Cooper Deposition]. The isolated waste is now stored in the 99 roll off containers. TDSL notes that Code 3 was hired by TDSL to oversee the waste isolation process.

2. There are multiple appeals currently pending in Travis County District Court. There are appeals by both TDSL and Penske. All of these appeals relate to the Executive Director's attempt to create an inadvertent dilution exception to RCRA in Texas for toxic characteristic hazardous waste. None of the relief requested in Travis County District Court will result in the immediate removal of the commingled D008 CRT waste from TDSL's landfill. The Travis County appeals are irrelevant to the relief requested in the Petition.
3. There are appeals currently pending in the D.C. Circuit and the 5th Circuit related to the United States Environmental Protection Agency's ("USEPA") failure in preventing the Executive Director from creating a RCRA inadvertent dilution exception in Texas for toxic characteristic hazardous waste. None of the relief requested in the federal appeals courts will result in the immediate removal of the commingled D008 CRT waste from TDSL's landfill. The federal court actions are irrelevant to the relief requested in the Petition.
4. The legislation introduced in the last legislative session related to Texas courts ability to assess justified abatement costs and attorney fees for specific nuisance environmental activities. The Responses completely misrepresent the effectiveness of the proposed legislative amendment, the action of the House of Representatives, and the history of other legislative actions. Activities during the last legislative session are irrelevant to the relief requested in the Petition.

5. The USEPA determination letter touted in the Responses was based on flawed, self-serving information provided to USEPA by the Executive Director. The USEPA states that, based upon information provided by the Executive Director, it is unknown if the CRT waste was D008 waste and what the Point of Generation was of the D008 waste, if such existed. The USEPA then goes on to consider, as suggested by the Executive Director, that the commingled D008 CRT waste (i.e., the “exhumed waste”) is a new wastestream subject to new waste characterization through testing.

This is a fundamentally flawed perspective of the actual situation. It is an intentionally flawed perspective that was presented to the USEPA by the Executive Director in his December 16, 2005 letter.⁷ It is in direct contradiction of Chairman White’s December 1, 2005, stated position.⁸ A

⁷ See ED Letter to USEPA, *supra* note 1, at 2, specifically quoting “[T]he fundamental issue of this dispute which is whether or not the waste currently stored in the 99 roll-off containers at TDSL’s facility is hazardous.” This is wrong. The fundamental issue is proper management of D008 CRT waste generated by Penske on October 9, 1997.

⁸ At the December 1, 2005 Commission Agenda, Chairman White stated:

Thank you Duncan. Well, then I will just offer, as I initially said, a restatement because I think that it’s the same issue in the second MTO as it was in the first. I move to uphold the first Motion to Overturn that TDS submitted challenging the Executive Director’s characterization of the CRT waste at issue in the 99 roll-off containers at the TDS facility as mixed special waste. Because, and I upheld that Motion to Overturn because I was persuaded by that MTO that on the basis of the facts and the controlling RCRA law that the waste at issue is D008 waste. It is characteristically hazardous waste as determined at the point of generation. It retains that characteristic throughout its life in a commingled or not in a commingled fashion. Without going into details, the dilution or the mixture rule is not applicable to alteration of the characteristic hazardous waste label of the D008 CRT waste and that waste characterization, that waste classification subjects it to the Land Disposal Restrictions in RCRA which is the 40 CFR 268.40 which dictates, as far as the facts of this matter in my opinion, one of two disposal alternatives. One is the entire commingled D008 CRT waste must all be disposed of as hazardous; or, the CRT portion of the commingled loads in the 99 roll-off containers must be physically separated in entirety. The legal decision that I thought I was making then and again that I think is identical to that at issue today is that that waste classification as characteristically hazardous waste, commingled or not commingled precludes any kind of

review of the so-called facts presented to the USEPA by the Executive Director should make it clear to the Commission that the fundamental basis of the USEPA Determination letter was flawed due to the Executive Director's intentional misinformation.⁹

The most important part of the USEPA determination letter is found on page 10 where it is stated "On January 15, 2004, TCEQ sent a letter to TDSL stating that: "40 Code of Federal Regulations Section 268.3 prohibits dilution as a means to render a characteristic hazardous waste as non-hazardous." The USEPA letter indicates that, based on the Executive Director's "facts", TCEQ

sampling or testing for hazardous waste levels which I think was the issue in the second MTO in the portion of the Executive Director's letter which says that the loads must be manifested as hazardous until such time as it is conclusively determined that no D008 waste at the level that is characteristically hazardous remains. It is my assessment that because this is, however commingled, D008 CRT waste, characteristically hazardous, that there is, it is not an option to test, to transport it as hazardous and then to test at what level of lead, a lead constituent that is hazardous, the entire commingled load retains the characteristically hazardous classification and that puts it under the relevant RCRA Land Disposal Restrictions. And that to me was the decision that I made, but did not clarify although that was the body, that was the substance of the MTO I was upholding in the first MTO and that is to me the same issue in this second MTO. But because I didn't clarify the first time, perhaps I have no partners in my position. But that was my position and is my position.

Transcript of December 1, 2005, Commission Agenda, Testimony of Kathleen White, at 3 (December 1, 2005).

⁹ See ED Letter to USEPA, *supra* note 1, at 2, specifically: "To briefly recap, on October 9, 1997, an accident involving a truck operated by Penske that was transporting television picture tubes owned by Zenith Electronics Corporation (Zenith) resulted in approximately 98 cubic yards, including approximately 200 picture tubes, of accident-related debris being deposited on the working face of TDSL's facility." The actual fact is that accident debris was compacted into the working face and did not remain on the surface. The ED continues with misstated facts: "The following day, approximately 80 cubic yards of accident debris was removed from the landfill with the focus being the visible picture tube waste, and taken to an authorized facility by Penske." The actual fact is the next day a small amount of CRT waste was picked off the surface of the working face and placed in containers with the rest of the accident debris that had been temporarily stored at the landfill by Penske. The 80 cubic yards represented primarily the accident debris. The ED then makes his most glaring, and critical, misstatement: "The vast majority of the waste in the 99 roll-off boxes is municipal solid waste disposed of at the landfill on the day of the accident, along with at most a very small portion, if any, of the remaining accident debris." The actual fact, according to Code 3, is residual D008 CRT waste in the working face was isolated and is now in the 99 roll-off containers. See Cooper Deposition, *supra* note 6, at 94.

interprets the law consistently with USEPA's interpretation. If such were true, TDSL would not be back before the Commission on July 25, 2007 requesting relief. If such were the Executive Director's true position, Penske would have been required in 2004 to manifest the commingled D008 CRT waste from TDSL's landfill to an authorized hazardous waste TSD facility for proper management and disposal. TDSL has never refused to allow Penske to remove the 99 roll off containers of commingled D008 CRT waste for proper management at an authorized hazardous waste TSD facility.

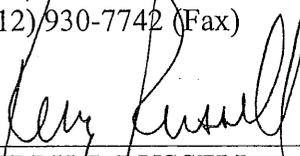
V. Conclusion

Some of Penske's self characterized D008 CRT waste was compacted into the working face of the TDSL landfill on October 9, 1997, and to date has not been sorted from the isolated and containerized commingled D008 CRT waste. The Executive Director has disregarded the Commission's previous suggestions on the proper course of action. The commingled D008 CRT waste must be manifested out of TDSL's landfill as D008 hazardous waste for TDSL to maintain a clear operating record. It now appears the only way such will happen in the foreseeable future is direct action by the Commission. For this reason, TDSL respectfully requests that the Commission (1) reject the arguments propounded by Penske and the Executive Director; (2) accept the arguments put forth by the Office of Public Interest Council and others, and (3) grant the relief requested in

TDSL's Petition and execute the attached Order of the Commission.¹⁰

Respectfully submitted,

RUSSELL & RODRIGUEZ, L.L.P.
102 West Morrow Street, Suite 103
Georgetown, Texas 78626
(512) 930-1317
(512) 930-7742 (Fax)



KERRY E. RUSSELL
State Bar No. 17417820

¹⁰ TDSL has attached, as Exhibit E, a proposed Order for the convenience of the Commission.

CERTIFICATE OF SERVICE

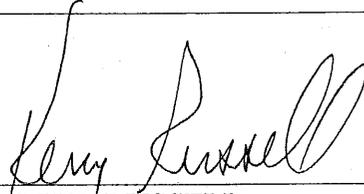
I hereby certify that on this the 20th day of July, 2007, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, Federal Express overnight delivery, or hand delivery to the following:

Mr. Derek Seal General Counsel (MC-101) Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (mail) Telephone: (512) 239-5525 Fax: (512) 239-5533	General Counsel of the Texas Commission on Environmental Quality
Mr. Guy Henry Texas Commission on Environmental Quality MC-173 P.O. Box 13087 Austin, Texas 78711-3087 Telephone: (512) 239-6259 Fax: (512) 239-3434	Representing the Executive Director, Texas Commission on Environmental Quality
Mr. Blas Coy Office of the Public Interest Counsel Texas Commission on Environmental Quality MC-103 P.O. Box 13087 Austin, Texas 78711-3087 Telephone: (512) 239-6363 Fax: (512) 239-6377	Representing the Office of Public Interest Counsel, Texas Commission on Environmental Quality
Ms. Jody Henneke Office of the Public Assistance Texas Commission on Environmental Quality MC-108 P.O. Box 13087 Austin, Texas 78711-3087 Telephone: (512) 239-4000 Fax: (512) 239-4007	Representing the Office of Public Assistance, Texas Commission on Environmental Quality
Mr. Kyle Lucas Alternative Dispute Resolution Texas Commission on Environmental Quality MC-222 P.O. Box 13087 Austin, Texas 78711-3087 Telephone: (512) 239-4010 Fax: (512) 239-4015	Representing Alternative Dispute Resolution, Texas Commission on Environmental Quality

Docket Clerk TCEQ Office of Chief Clerk (MC-105) P.O. Box 13087 Austin, Texas 78711-3087 (mail) 12100 Park 35 Circle, Building F Austin, Texas 78753 (delivery) Fax: (512) 239-3311	For the Office of the Chief Clerk
Mr. Douglas Y. Christian Ballard Spahr Andrews & Ingersoll, LLP 1735 Market Street, 51 st Floor Philadelphia, PA 19103-7599 Fax: (215) 864-8999	Representing Penske Truck Leasing
Mr. William P. Johnson Clark, Thomas & Winters P.O. Box 1148 Austin, Texas 78767-1148 Fax: (512) 474-1129	Representing Penske Defendants
Mr. Philip Comella Seyfarth Shaw 55 East Monroe Street, Suite 4200 Chicago, IL 60603-5803 Fax: (312) 269-8869	Representing Zenith Electronics Corporation
Mr. David Waddell Seyfarth & Shaw, LLP 700 Louisiana, Suite 3850 Houston, Texas 77002-2731 Fax: (713) 225-2340	Representing Zenith Electronics Corporation
Ms. Pam Giblin Baker Botts, L.L.P. 1500 San Jacinto Center 98 Jacinto Blvd. Austin, Texas 78701-4039 Fax: (512) 322-8308	Representing Penske Truck Leasing
Mr. Gary Newton Texas Disposal Systems Landfill, Inc. P.O. Box 17126 Austin, Texas 78760-7126 Fax: (512) 243-4123	Representing Texas Disposal Systems Landfill , Inc.

Thomas Edwards
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Representing the Office of the Attorney General



KERRY E. RUSSELL

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glen Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 16, 2005

Mr. Carl Edlund, Director, P.E.
Multimedia Planning and Permitting Division
Environmental Protection Agency Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: Petition for Withdrawal of Texas' Resource Conservation and Recovery Act Program, dated November 14, 2005, Docket No: W/Petition-TX/RCRA-06-2006-0001

Dear Mr. Edlund:

I'm in receipt of your recent letter advising the Texas Commission on Environmental Quality (TCEQ) of the Environmental Protection Agency's (EPA) informal investigation of Texas Disposal Systems Landfill's (TDSL) Petition (Petition) for Withdrawal of Program Approval for Texas Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program. As set forth in your letter, the agency is afforded the opportunity to examine the petition and provide any information or comments that it believes are relevant to the matter. Accordingly, attached are the following items:

- 1) Lawsuits filed by TDSL and Penske Truck Leasing Co., L.P. (Penske) against the TCEQ¹;
- 2) The Executive Director's Original and Supplemental Responses to TDSL's July 9, 2004 Motion to Overturn (MTO);
- 3) BPA's September 2, 2004 letter to the TCEQ concerning disposal of wastes under RCRA;
- 4) The Executive Director's September 24, 2004 letter to Penske concerning the Commission's September 16, 2004 Order;
- 5) The Executive Director's October 19, 2004 letter of clarification to TDSL concerning the September 24, 2004 letter to Penske;
- 6) Transcript of Commission's Consideration of TDSL's October 18, 2004 MTO on December 1, 2004;
- 7) The Executive Director's October 12, 2005 letter to Penske;
- 8) Federal rulemaking preambles relating to the Mixture Rule and Land Disposal Restriction (LDR) Dilution Prohibition (55 FR 22520, June 1, 1990; 62 FR 64636 at 64644, December 8, 1997; 63 FR 25886, May 26, 1998; and 66 FR 27266, May 16, 2001); and

¹ An Agreed Order of Consolidation signed by the parties on 12/5/05; the Court ordered the following seven causes of action - Cause Nos. GN402245, GN403433, GN403519, GN403551, GN403900, GN404119, and GN404231 - be consolidated into one action under Cause No. GN402245.

Exhibit A

Mr. Carl Edlund, Director, P.E.

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December 16, 2005

10) EPA Guidance Documents, FAXBACKs 11173, 12030, 13164 and 11140 relating to the Mixture Rule and LDR Dilution Prohibition.

I will not belabor the extensive and differing legal interpretations that have been advanced by the parties and the unique circumstances which have given rise to this petition; the various legal arguments are fully articulated in the attached seven causes of action. Rather, I will focus on the fundamental issue of this dispute which is whether or not the waste currently stored in the 99 roll-off containers at TDSL's facility is hazardous. Based on the facts and applicable RCRA regulations, it is appropriate to classify the co-mingled waste as non-hazardous as the available analytical data indicates that the waste does not exhibit a hazardous characteristic. This does not reflect a change in the agency's interpretation of applicable RCRA rules, including the Mixture Rule (40 CFR §261.3) and the LDR Dilution Prohibition (40 CFR §268.3). Importantly, it is consistent with EPA's applicable rules, preambles and FAXBACKs. The TCEQ has and continues to comply with the RCRA Delegation Memorandum of Agreement.

To briefly recap, on October 9, 1997, an accident involving a truck operated by Penske that was transporting television picture tubes owned by Zenith Electronics Corporation (Zenith) resulted in approximately 98 cubic yards, including approximately 200 picture tubes, of accident-related debris being deposited on the working face of TDSL's facility. The following day, approximately 80 cubic yards of accident debris was removed from the landfill, with the focus being the visible picture tube waste, and taken to an authorized facility by Penske. The vast majority of the waste in the 99 roll-off boxes is municipal solid waste disposed of at the landfill on the day of the accident, along with at most a very small portion, if any, of the remaining accident debris. Notwithstanding my exercise of authority to require Penske to remove the commingled waste, the waste remains in roll-off containers at TDSL's facility due to TDSL's refusal to allow Penske access to the material and the parties' ongoing legal dispute as to how the waste should be handled. Accordingly, because this matter is best resolved in court, I do not plan to take further action on Penske's Notice of Violation pending the resolution of this matter in court proceedings.

In closing, I assure you that TCEQ takes very seriously the agency's responsibility for the administration of Texas' RCRA Program as has been demonstrated in this matter and all RCRA issues handled by this agency since program approval. Please do not hesitate to contact me on any additional questions you may have.

Sincerely,



Glenn Shunkle, Executive Director
Texas Commission on Environmental Quality

cc: David Gillespie, EPA, Region 6
Gautman Srinivasan, OGC, EPA
Tom Reinhart, OSW, EPA
Cynthia Woelk, Associate Attorney General, Office of the Attorney General
Derek Seal, General Counsel, TCEQ
Dan Eden, Deputy Director, OPRR, TCEQ
John Steib, Deputy Director, OCF, TCEQ
Stephanie Bergeron Perdue, Acting Deputy Director, OLS, TCEQ

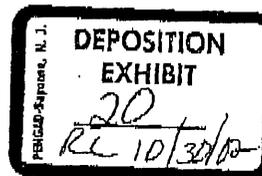
TRANSPORTATION AGREEMENT

THIS AGREEMENT is made as of January 1, 1997, between Zenith Electronics Corporation, a Delaware corporation, (after this called Shipper) with an address at 1000 Milwaukee Avenue, Glenview, IL 60025, Facsimile (847) 391-7102, and Penske Logistics, Inc. (f/k/a Leaseway Dedicated Logistics, Inc.), a California corporation, (after this called Carrier). Shipper and Carrier agree as follows:

1. Services:

1.1 Scope of Services:

Subject to the provisions of this Agreement and the availability and limitations of any necessary operating authorities, Carrier will provide Shipper with a motor carrier transportation service and related services and described in Schedule A to this Agreement, for distribution of goods described in Schedule A ("Goods"), to and from the locations or within the service areas listed in each Schedule A ("Services"). Shipper will comply with any minimum tender requirements described in each Schedule A.



1.2 Vehicles:

Carrier will provide, operate and maintain, or cause to be maintained, in good working condition for the exclusive use of Shipper all motor vehicles and allied equipment ("Vehicles") used to perform the Services and listed in Schedule B to this Agreement. Permanent additional or replacement Vehicles will be provided by Carrier as agreed to by the parties, and will be included in a revised Schedule B. Carrier will secure temporary substitute vehicles which may be needed to replace a Vehicle which is temporarily out of service. Carrier will also secure temporary additional vehicles, at rates agreed to by the parties, which may be needed from time to time to perform the Services, and Carrier's obligation to provide the Services is subject to the availability of temporary additional vehicles when needed. Temporary substitute or additional vehicles will be considered "Vehicles" while used to provide the Services, except that Section 9.2 does not apply to temporary substitute or additional vehicles.

1.3 Personnel:

Carrier will provide all drivers and other personnel necessary to provide the Services ("Personnel"). Each driver will possess all necessary licenses and meet all applicable qualifications of federal Motor Carrier Safety Regulations.

1.4 Supplies:

Carrier will furnish all other supplies and equipment necessary to perform the Services, except as provided in Section 6 or as may otherwise be agreed to by the parties.

1.5 Compliance with Laws:

Promptly after execution of this Agreement, Carrier will apply for any necessary permit or registration not already held by Carrier, and Shipper will provide any assistance reasonably requested by Carrier. Carrier will comply with all laws and regulations applicable to the Services.

1.6 Receipts:

Each movement of Goods pursuant to this Agreement will be evidenced by a written receipt in a form agreed to by the parties, signed by Carrier and the consignor or consignee, as the case may be, showing the kind and quantity of Goods received and delivered by Carrier. Carrier's responsibility for Goods will commence only after Carrier has signed a receipt for those Goods. Each signed receipt will evidence Carrier's acceptance and delivery of the Goods covered by that receipt in apparent good order and condition unless otherwise noted on the face of the receipt. This Agreement will prevail over any inconsistent provision in a receipt.

2. Payments:

Shipper shall pay Carrier, by wire transfer to Carrier's account made no later than the first (1st) day of each month, one million and one hundred thousand dollars (\$1,100,000.00). No later than the fifteenth (15th) day of each month, Carrier will reconcile the actual rates and charges which accrued during the previous month with the estimated payment for that month and notify Shipper of the results of that reconciliation. No later than the fifteenth (15th) day of the month, Carrier will refund to Shipper, by check, any overpayment. In the event of an underage, Shipper shall pay the entire amount of the underage to Carrier within fifteen (15) days of the reconciliation, without deduction or offset. Carrier may impose a service charge of one percent (1%) per month (or if less, the highest lawful rate) on any amount not paid when due. Carrier is not required to collect freight charges from any consignee of Shipper.

3. Control of Services:

Carrier will have exclusive control over the manner in which it or its Personnel perform the Services and Carrier may engage and employ such individuals as it deems appropriate in connection with its performance of the Services. Carrier will at all times be an independent contractor of Shipper.

4. Insurance:

Carrier will maintain during the term of this Agreement (1) workers' compensation insurance covering all Personnel, as required by applicable state law, (2) automobile liability insurance for the Vehicles with a five million dollars (\$5,000,000) combined single limit per occurrence, covering bodily injury and property damage suffered by third persons resulting from Carrier's use or operation of the Vehicles, (3) cargo liability insurance covering Goods transported by Carrier with a limit of two hundred and fifty thousand dollars (\$250,000) per occurrence, and (4) environmental liability and restoration insurance meeting the requirements of MCS-90. The insurance policies providing the foregoing coverages will be written by insurance companies authorized to transact business in all jurisdictions in which the Services will be provided, and will provide that the insurance companies issuing the policies will endeavor to notify Shipper at least ten (10) days prior to any policy cancellation. Upon request, Carrier will furnish Shipper with a certificate of insurance evidencing the foregoing coverages. Where permitted by law, Carrier may self-insure for all or a portion of the foregoing risks.

5. Cargo Loss.

5.1 Liability for Loss:

Carrier will be liable for actual loss or damage to the Goods only if it is shown that the loss or damage occurred while in Carrier's exclusive care, custody and control and resulted from the negligence or intentional acts of Carrier, its employees, subhauliers or agents, so long as Shipper complies with Sections 5.2 and 5.3. In no event will Carrier be liable for concealed damage or where the loss or damage is caused by an act of God, the public enemy, an act or omission of Shipper or its employees, agents or consignees, a public authority or the inherent vice or nature of the Goods. If Carrier receives a sealed trailer, Carrier will be liable to Shipper for loss or damage to Goods in that trailer only if the trailer is involved in a collision or upset or if the seal is not intact upon delivery. Carrier's liability to Shipper for any loss or damage to the Goods will not exceed the lesser of (1) the direct cost to Shipper of the Goods involved (including transportation to the point of loss or damage), less any salvage value, or (2) two hundred and fifty thousand dollars (\$250,000) per occurrence.

5.2 Notice of Claim:

Shipper must give Carrier oral or written notice of any potential claim for loss or damage to any Goods within thirty (30) days after the date the Goods are delivered or tendered for delivery or (in the case of lost Goods) scheduled for delivery ("Delivery Date"). Each notice of claim must contain information sufficient to put Carrier on notice as to the existence and nature of the potential claim. Shipper must confirm any oral notice of claim by written notice given by the next business day.

5.3 Claims:

All claims for recovery by Shipper for loss or damage to Goods must be filed in writing with Carrier within one hundred and eighty (180) days after the Delivery Date. Each claim must contain information reasonably necessary to identify the Goods affected, the basis for liability and the amount of the alleged loss or damage, as well as all appropriate supporting documentation. Shipper will cooperate with Carrier and its insurers in their investigation of any claim or potential claim by Shipper. Carrier will pay, decline or make a compromise offer to Shipper within ninety (90) days after Carrier's receipt of Shipper's claim with all reasonably required supporting documentation. Any civil action brought by Shipper for cargo loss or damage must be filed by Shipper within one (1) year after the foregoing pay, decline or offer date.

6. Use of Shipper's Facilities:

Shipper will at its expense provide Carrier access to Shipper's distribution facilities identified in Schedule A ("Facilities") as needed to perform the Services, use of the Facilities without charge as and to the extent provided in Schedule A, and a safe working environment for Carrier's employees who may be present at the Facilities in connection with the Services.

Shipper will at its expense maintain the portions of the Facilities accessed or used by Carrier in good and safe condition and in compliance with applicable laws, codes and regulations. Shipper will also maintain at its expense whatever property perils insurance coverage it deems appropriate to protect its interest in the Facilities and its property located at the Facilities, and Shipper hereby waives and will indemnify Carrier against liability for any loss or damage to the Facilities or to Shipper's property located at the Facilities which results from any event or risk insured against under a standard form all risk property perils insurance policy, regardless of whether Shipper elects to maintain such a policy or the policy limits.

7. Indemnification:

7.1 By Carrier:

Except as provided in Section 11, Carrier will defend, indemnify and hold harmless Shipper, its employees, agents and affiliates, from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, expenses and reasonable legal fees, including without limitation liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as amended ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., as amended ("RCRA"), or any comparable state law, resulting from (1) bodily injury or property damage (other than property damage covered by the waiver and indemnity in Section 6) caused by the negligence or intentional acts of Carrier, its employees or agents, in the performance of the Services, and/or (2) any environmental remediation required by applicable laws, regulations or directives of governmental authorities as a result of Carrier spilling any hazardous or toxic substance or waste.

7.2 By Shipper:

Shipper will defend, indemnify and hold harmless Carrier, its employees, agents and affiliates, from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs, expenses and reasonable legal fees, including without limitation liabilities under CERCLA, RCRA or any comparable state law, resulting from (1) bodily injury or property damage (including damage to the Vehicles) caused by the negligence or intentional acts of Shipper, its employees or agents, or the inherent vice or nature of the Goods, and/or (2) any environmental remediation required by applicable laws, regulations or directives of governmental authorities as a result of the release at any time of any toxic or hazardous substance or waste at a facility by anyone other than Carrier, and/or (3) the operation of Shipper's transportation and other operations prior to the commencement of Services.

8. Force Majeure:

Neither party will be liable to the other for failing to perform or discharge any obligation under this Agreement (other than the obligation to pay fixed and other charges as they accrue) where caused by acts of God, labor disorders, fire or other casualty, closing of the public highways, governmental interference and other causes beyond the affected party's control.

9. Term and Termination.

9.1 Term:

The term of this Agreement will commence with respect to the Services described in each Schedule A on the Commencement Date set forth in that Schedule A, and will continue (except as otherwise provided in this Agreement) for the Initial Term set forth in that Schedule A and thereafter until terminated by either party upon at least sixty (60) days prior written notice to the other party. Either party may also terminate this Agreement with respect to all or (if both parties agree) some of the Services covered by a Schedule A at each anniversary of the Commencement Date for that Schedule A, upon at least sixty (60) days prior written notice to the other party. Carrier may also terminate this Agreement (1) if Shipper fails to complete a refinancing of its current credit facility by April 1, 1997, or (2) if such refinancing does not ameliorate Shipper's financial condition in a manner satisfactory to Carrier. Upon any complete or partial termination of this Agreement, each party will remain liable for all obligations arising or incurred by it prior to the effective date of termination, including without limitation obligations under Sections 2, 5, 6, 7, 9.2, 10 and 11.

9.2 Termination Payment:

Shipper will make a "Termination Payment" to Carrier upon any complete or partial termination. The Termination Payment will consist of (1) the unamortized portion of any Startup Expenses shown on each affected Schedule A over the balance of the amortization period shown on that Schedule A, plus (2) for each Vehicle listed in a Schedule B which will no longer be used to serve Shipper as a result of the termination and which has not reached the end of its Term shown on the Schedule B, (i) the amount, if any, by which the Termination Value of that Vehicle exceeds its Market Value, each as defined below; and (ii) the unexpired portion of any non-refundable license fees, permit fees, and any other similar fees applicable to the Vehicle as of the effective date of the termination, to the extent not already paid for by Shipper pursuant to this Agreement. "Market Value" is the highest bona fide written offer obtained by either party within thirty (30) days after Shipper's receipt of Carrier's request, net of sales tax and other associated costs. "Termination Value" is the Agreed Price of each Vehicle, less an amount equal to its Monthly Depreciation Credit shown on Schedule B, multiplied by the number of whole and fractional months it has been in service and for which fixed charges (if any) have been paid pursuant to Schedule C. Carrier will use its best efforts to reallocate the Vehicles subsequent to any termination in an effort to minimize the Termination Payment. To the extent that any Vehicles are reallocated at rates and for terms reasonably necessary to satisfy Carrier's leasing obligations for those Vehicles, Carrier shall reduce the Termination Payment accordingly.

10. Default:

10.1 By Carrier:

Carrier will be in "Default" under this Agreement if Carrier fails to perform any obligation required to be performed by Carrier under this Agreement within thirty (30) days after notice from Shipper specifying the failure of performance. Upon a Default by Carrier and while that Default is continuing, Shipper may at its option terminate this Agreement and in any event may recover all damages, costs and expenses incurred as a result of Carrier's Default, including without limitation reasonable legal fees, in addition to all other rights and remedies available under this Agreement or by law or in equity. In no event, however, will Carrier be liable to Shipper for any indirect or consequential damages.

10.2 By Shipper:

Shipper will be in "Default" under this Agreement if Shipper fails to pay any amount then due under this Agreement by the third (3rd) business day after notice from Carrier that the nonpayment has occurred, fails to timely pay the estimated payment described in Section 2, or fails to perform any other obligation required to be performed by Shipper under this Agreement within thirty (30) days after notice from Carrier specifying the failure of performance. Upon a Default by Shipper and while that Default is continuing, Carrier may at its option terminate this Agreement and in any event may recover all damages, costs and expenses incurred as a result of Shipper's Default, including without limitation reasonable legal fees, in addition to all other rights and remedies available under this Agreement or by law or in equity. Carrier at its option may also suspend its Services if any amount due pursuant to this Agreement is not paid in full by Shipper after notice of nonpayment is received by Shipper.

11. Hazardous Materials:

Shipper will provide Carrier with advance notice of the proposed shipment of any hazardous material, as that term is used in the Hazardous Materials Transportation Act, 49 U.S.C. §5101, et seq., as amended ("Hazardous Material"), together with a copy of the Material Safety Data Sheet for that Hazardous Material. Unless otherwise indicated in Schedule A, Carrier may reject the proposed shipment of any Hazardous Material without liability to Shipper. Shipper will indemnify, defend and hold harmless Carrier, its officers, employees, agents and insurers, against all claims, liabilities, losses, fines, legal fees and other expenses arising out of contact with, exposure to or release of any Hazardous Material, including without limitation fines or expenses relating to the removal or treatment of that Hazardous Material or any other remedial action pertaining to that Hazardous Material under CERCLA, RCRA or any comparable state law, if (1) Shipper fails to provide the notice required by this Section 11 prior to tendering the Hazardous Material to Carrier, (2) the contact, exposure or release results from improper packaging or loading or other acts or omissions of Shipper, its employees or agents, or (3) the contact, exposure or release occurs subsequent to the transport of the Hazardous Material by Carrier.

Notwithstanding the foregoing, the parties acknowledge that Shipper will regularly tender cathode ray tubes [CRT] to Carrier for transport, and that CRTs are not Hazardous Materials unless damaged. Shipper's obligation to notify Carrier of the proposed shipment of any CRTs pursuant to this section 11 shall be deemed fulfilled at any time subsequent to tender of one Material Safety Data Sheet for damaged CRTs to Carrier's Safety Manager at 3350 East Birch Street, Suite 208, Brea, CA 92821.

12. Miscellaneous:

12.1 Contract Carriage:

All Services are being provided as "contract carriage" within the meaning of 49 U.S.C. §13102(4)(B), and Shipper and Carrier each expressly waive all rights and remedies they may have as to each other under 49 U.S.C., Subtitle IV, Part B (excluding §§ 13703, 13706, 14101 and 14103) to the full extent permitted by 49 U.S.C. §14101(b)(1), each as amended from time to time. Neither party waives any rights or remedies it may have as to any third party.

12.2 Information Systems:

Any management information system or computer hardware or software used or supplied by Carrier in connection with the Services is and will remain Carrier's exclusive property excluding any intellectual property supplied by or otherwise owned by Shipper that may be used by Carrier in the performance of this agreement. All management information systems and related computer software and documentation (including without limitation screen and report formats) used or supplied by Carrier are proprietary to Carrier, and Shipper will treat all such systems as confidential and not copy, use or disclose them to third parties without Carrier's prior written consent, except as required by law.

12.3 Financial Statements:

Shipper will provide to Carrier copies of Shipper's current financial statements as reasonably requested by Carrier. Upon request by Shipper, Carrier will treat these financial statements as confidential and not disclose them to third parties without Shipper's prior written consent, except as required by law.

12.4 Successors and Assigns:

When properly executed, this Agreement is binding on and for the benefit of both parties and their respective successors and permitted assigns. Neither party may assign this Agreement without the written consent of the other party, except that Carrier may without consent grant security interests in its assets and assign its rights (but not its obligations) under this Agreement in connection with its financing.

12.5 Entire Agreement:

This Agreement represents the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda or understandings with respect to this Agreement or its subject matter. Any future representation, agreement, understanding or waiver will be binding only if in writing signed by the party sought to be bound.

12.6 Schedules:

Each Schedule to this Agreement will become part of and subject to this Agreement upon execution by both parties. Carrier is authorized to acquire the Vehicles on a Schedule B once Shipper executes that Schedule B.

12.7 Waivers:

Either party's failure strictly to enforce any provision of this Agreement will not be construed as a waiver of that provision or as excusing the other party from future performance.

12.8 **Notices:**

All notices required or permitted under this Agreement must be in writing (unless otherwise indicated in this Agreement) and either sent by facsimile, sent by overnight courier, hand-delivered or sent by certified mail, return receipt requested, postage prepaid, (1) to Shipper at the address shown at the beginning of this Agreement, (2) to Carrier at Route 10, Green Hills, Reading, PA 19603, Attn.: Executive Vice President of Logistics (Facsimile: (610) 775-6330), with a copy to the Legal Department at the same address, or (3) to either party at such other address as it may notify the other. Notices sent via facsimile, overnight courier or hand-delivered will be effective upon actual receipt. Certified mail notices will be effective on the third (3rd) business day after the mailing date.

12.9 **Applicable Law:**

This Agreement shall be construed and enforced according to Pennsylvania and applicable federal law. If any provision in this Agreement violates any applicable law, that provision will be ineffective to the extent of the violation without invalidating any other provision of this Agreement, unless the invalid provision relates to the charges for Services.

12.10 **Letter of Credit**

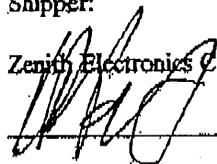
As to any obligation that Shipper may have to obtain protection for Carrier under a Letter of Credit [L/C] or comparable instrument or financial device, Carrier shall credit against Shipper's monthly payment, as applicable, following receipt of reasonable documentation thereof, Shipper's cost for obtaining said L/C or comparable instrument or device.

12.11 Signatures:

The parties have executed this Agreement as of the date set forth above by their authorized representatives.

Shipper:

Zenith Electronics Corporation



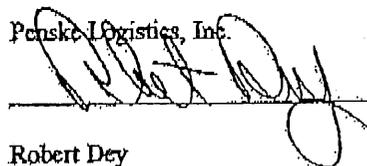
MAR 10 1997

K. R. Patrick

Title: Director - Transportation & Logistics

Carrier:

Penske Logistics, Inc.



Robert Dey

Senior Vice President - Western Region



TR# 832
WC# 00488

Form approved: OMB No. 2050-0039.

Print or type. (Form designed for use on elite (12-pin) typewriter.)

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No. TX P 4 9 0 2 8 0 0 2 4	Manifest Document No. 2 5 7 2 0	2. Page 1 of 1	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address Penske Logistics P.O. Box 7635 Reading, PA 19603				A. State Manifest Document Number 01525726		
4. Generator's Phone (610) 665-6268				B. State Generator's ID XXX11		
5. Transporter 1 Company Name American Ecology Transportation		6. US EPA ID Number TX 0 0 0 0 6 9 4 4 8 9		C. State Transporter's ID 83050		
7. Transporter 2 Company Name		8. US EPA ID Number		D. Transporter's Phone 512-387-6096		
9. Designated Facility Name and Site Address Texas Ecologists, Inc. 3 1/2 miles south Petronila Rd Robstown, TX 78380		10. US EPA ID Number TX D 0 6 9 4 5 2 3 4 0		E. State Transporter's ID		
				F. Transporter's Phone		
				G. State Facility's ID 50052		
				H. Facility's Phone 512-387-3518		
11. US DOT Description (including Proper Shipping Name, Hazard Class, ID Number and Packing Group)	12. Containers No. Type	13. Total Quantity	14. Unit Wt/Vol	15. Waste No.		
a. Hazardous Waste Solid, NOS, NA3077, 9, III (D008)	0 0 1 CM	3	Y P	ACMN319H		
b.						
c.						
d.						
J. Additional Descriptions for Materials Listed Above TECO w/s# 09-004-2253 09-004-2535				K. Handling Codes for Wastes Listed Above M111, M132		
15. Special Handling Instructions and Additional Information						
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name, and are classified, packaged, marked, and labelled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me, which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.						
Printed/Typed Name EASON SPIVEY		Signature <i>Eason Spivey</i>		Month Day Year 10 31 23 73		
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name JIMARIE GONZALEZ		Signature <i>Jimarie Gonzalez</i>		Date 13 12 73		
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name		Signature RECEIVED		Date 1 1 1		
19. Discrepancy Indication Space Teco wt. = 30340p						
				MAY 19 1998		Exhibit C
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.						Date
Printed/Typed Name M		Signature <i>Marc E. Althen</i>		Month Day Year 12 1 73		

CAUSE NO. 98-0159

TEXAS DISPOSAL SYSTEMS) IN THE DISTRICT COURT OF
 LANDFILL, INC.,)
 Plaintiff,)
)
 VS.)
) HAYS COUNTY, TEXAS

PENSKE TRUCK LEASING CO.,)
 L.P., PENSKE LOGISTICS,)
 INC., ZENITH ELECTRONICS)
 CORP., ZENITH ELECTRONICS)
 OF TEXAS, INC., and)
 HARRY ERNEST MCCAIN,)
 Defendants.) 207TH JUDICIAL DISTRICT

THE ORAL & VIDEO DEPOSITION OF
 ERIC COOPER
 MARCH 1, 2004

THE ORAL & VIDEO DEPOSITION of
 ERIC COOPER, produced as a witness at the instance
 of the Defendant, and duly sworn, was taken in the
 above-styled and numbered cause, on the 1st day of
 March, 2004, from 10:03 o'clock a.m. to 1:29 o'clock
 p.m., before JULIE VERASTEGUI, Certified Court
 Reporter in and for the State of Texas, reported by
 stenographic and computer-aided transcription, at
 the offices of Plunkett & Gibson, 70 Northeast Loop
 410, Suite 1100, San Antonio, Texas 78216, pursuant
 to Subpoena, the Texas Rules of Civil Procedure and
 the provisions stated on the record or attached
 hereto.

Reported by: Julie Verastegui
 Job No. 44906

1 motor vehicle accident."

2 A. Yes, sir.

3 Q. Do you see that? It says, "Due to the
4 motor vehicle accident that these ha" -- "that these
5 televisions were involved in, the televisions were
6 broken into many pieces." Then it continues, "I
7 personally visualized these broken pieces as the
8 trash was moved. These pieces included a stainless
9 steel band with four brackets, a thin sheet of
10 metal, pallets that televisions were stacked on and,
11 of course, the glass from the bulb and screen." Do
12 you see that?

13 A. Yes, sir.

14 Q. And those are pieces of television tubes
15 that you personally observed in the TDSL landfill
16 on February 24th, 1998?

17 A. Yes, sir.

18 Q. Okay. Did they look like the pieces of
19 television tubes that you saw in the roll-offs a few
20 weeks earlier?

21 A. Exactly. That's the only way I could
22 understand that that's where those came from.

23 Q. Then on the next page, your report starts,
24 "Once the pieces were moved, I walked the original
25 excavation site, ensuring all televisions were

AN ORDER

concerning Petition to Review the Executive Director's
Action and Order Proper Disposal of Hazardous Waste;
TCEQ Docket No. 2007-1019-IHW.

On July 25, 2007, the Texas Commission on Environmental Quality (Commission) evaluated during its public meeting the Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste filed by Texas Disposal Systems Landfill, Inc. ("TDSL") concerning the Executive Director's failure to enforce State and federal laws and regulations governing management and disposal of hazardous waste, and requesting the Commission to order that the hazardous waste left on TDSL's site be removed, managed, and disposed of by the generator, Penske Truck Leasing Co., L.P. and Penske Logistics, Inc. ("Penske"), as D008 hazardous waste in compliance with all applicable law. The Commission also considered briefs by all parties regarding the Petition.

After considering the written filings, oral argument, and responses to questions during the public meeting, the Commission determined that the Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste should be granted.

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

1. TDSL's Petition to Review the Executive Director's Action and Order Proper Disposal of Hazardous Waste is GRANTED; and
2. No later than 30 days from date of the Commission's Order, Penske shall remove all commingled D008 CRT waste contained in the 99 roll-off containers at the TDSL landfill under an unconditional hazardous waste manifest that designates Penske as the

generator of the D008 CRT waste and identifies the 1997 accident scene on I-35 in Hays County as the point of generation of that waste.

3. The hazardous waste manifest shall designate the destination of the waste as a licensed treatment, storage, and disposal ("TSD") facility for proper treatment and disposal as D008 hazardous waste in accordance with current RCRA Land Ban Restrictions.
4. The Commission further orders the Executive Director to take all necessary action, including oversight, inspections, and issuance of such further orders to Penske, as necessary, to immediately implement this Order of the Commission.

Issue date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman