

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2012 DEC 18 PM 2:57  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: )  
 )  
EXIDE TECHNOLOGIES ) DOCKET NOS.  
FRISCO, TEXAS ) RCRA-06-2013-0907 and  
 ) CAA-06-2013-3321  
RESPONDENT )  
 )

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region 6, and Exide Technologies (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. Notice was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding only, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations and facts which are alleged herein.

6. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

7. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

8. The Respondent agrees that the provisions of this CAFO shall be binding on the Respondent, and its officers, directors, employees, successors, and assigns.

9. The headings in this CAFO are for convenience of reference only and shall not affect the interpretation of this CAFO.

## **II. STATUTORY AND REGULATORY BACKGROUND**

### **A. RESOURCE CONSERVATION AND RECOVERY ACT**

10. The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, was enacted on October 21, 1976, and establishes a comprehensive program to be administered by the Administrator of EPA (Administrator), regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

11. Pursuant to its authority under RCRA, EPA promulgated regulations at 40 C.F.R. Parts 260 through 272 that are applicable to generators, transporters, and treatment, storage, and

disposal facilities. These regulations provide detailed requirements governing the activities of persons who generate hazardous waste. These regulations generally prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” These regulations also prohibit land disposal of certain hazardous waste.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the Administrator may authorize a state to administer a RCRA hazardous waste program in lieu of the federal program when he or she deems the state program to be substantially equivalent to the federal program. When a state obtains such authorization, federally-approved state regulations apply in lieu of the federal RCRA regulations in that state. Federally-approved state RCRA regulations are enforceable by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

13. The Administrator granted final authorization to Texas to administer its Hazardous Waste Management Program in lieu of the federal program on December 12, 1984, effective December 26, 1984 (49 Fed. Reg. 48300; *see also* 40 C.F.R. § 272.2201), and there have been subsequent authorized revisions to the federal program.

14. In Texas, the federal hazardous waste program is managed by the Texas Commission on Environmental Quality (TCEQ), pursuant to the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Chapter 361, and the rules and regulations promulgated thereunder at 30 Texas Administrative Code (T.A.C.) Chapter 335. For example, TCEQ administers closure of solid waste landfills and cleanup of releases of hazardous waste at facilities in Texas. Accordingly, under the CAFO, the closure plan for any required remediation at the Facility shall be submitted to the TCEQ for approval and subsequent implementation. For ease of reference,

the Texas regulations are cited below followed by the applicable federal hazardous waste regulation.

**B. CLEAN AIR ACT**

15. On June 13, 1997, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from secondary lead smelters. These regulations are set forth at 40 C.F.R. Part 63, Subpart X (Subpart X). Subpart X applies to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electronic smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources.

16. Section 112(*l*) of the CAA enables EPA to approve a state program for implementation and enforcement of the NESHAP program. 42 U.S.C. § 7412(*l*). As part of its CAA Title V submission, TCEQ stated that it intended to use the mechanism of incorporation by reference to adopt Section 112 of the CAA into its regulations. 60 Fed. Reg. 30037, 30044 (June 7, 1995); 61 Fed. Reg. 32693, 32698 - 99 (June 25, 1996). On December 6, 2001, EPA promulgated final full approval of Texas' operating permits program effective November 30, 2001. 66 Fed. Reg. 63318. EPA has also delegated many Part 63 requirements to the State of Texas, including Subpart X. 40 C.F.R. § 63.99(a)(43)(i). Section 112(*l*)(7) of the CAA, 42 U.S.C. § 7412(*l*)(7), also states that approval of a state program does not prohibit the Administrator from enforcing any applicable emission standard or requirement under Section 112 of the CAA, 42 U.S.C. § 7412.

17. Section 113(d)(1) of the Act, authorizes EPA to bring an administrative action for penalties that exceed \$295,000<sup>1</sup> and/or the first alleged date of violation occurred more than

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<sup>1</sup> The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March

twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

18. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. GENERAL PRELIMINARY ALLEGATIONS**

19. The Respondent is a corporation formed under the laws of the State of Delaware authorized to do business in the State of Texas.

20. The Respondent is a “person” as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15), and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. The Respondent owns and operates the Exide Technologies battery recycling facility, located at 7471 South Fifth St., Frisco, Texas 75034 (Facility).

22. On or about December 14-18, 2009, January 28, 2010, February 2, 2010, March 15-16, March 29, 2010, December 9, 2010, EPA conducted multi-media inspections of the Facility pursuant to RCRA, the Clean Water Act (CWA), the CAA, and the Emergency Planning and Community Right-to-Know Act (EPCRA) (collectively, the Inspections).

23. In addition to this CAFO, the following orders associated with the findings and factual allegations arising from the Inspections have previously been entered by EPA (collectively, the Prior Orders): Consent Agreement and Final Order, Docket No. EPCRA-06-2010-0508, dated June 29, 2010, executed by EPA and Exide; Findings of Violation and

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15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to \$295,000 for violations occurring after January 12, 2009.

Compliance Order, Docket No. CWA-06-2011-1812, NPDES Facility Number TXU010915, dated July 11, 2011 issued by EPA to Exide; and Administrative Order on Consent, Docket No. RCRA 06-2011-0966, dated May 2, 2012, executed by EPA and Exide.

**B. RCRA PRELIMINARY ALLEGATIONS**

24. “Owner” is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as “the person who owns a facility or part of a facility.”

25. “Operator” is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as “whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste.”

26. “Owner or operator” is defined in 40 C.F.R. § 270.2 as “the owner or operator of any facility or activity subject to regulation under RCRA.”

27. “Facility” is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) to include “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).”

28. The Exide Technologies Facility identified in Paragraph 21 above is a “facility” as that term is defined by 30 T.A.C. § 335.1(59) [40 C.F.R. § 260.10].

29. The Respondent is the “owner” and “operator” of the Exide Technologies Facility identified in Paragraph 21 above, as those terms are defined at 30 T.A.C. § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

30. The Facility was issued a RCRA Hazardous Waste Permit (#50206) in 1988, which was renewed in 2001. The permit authorizes the Facility to operate two hazardous waste storage

units: 1) Battery Receiving/Storage Building (a RCRA hazardous waste container storage area); and 2) Raw Material Storage Building (a RCRA hazardous waste containment building).

31. On or about December 14-18, 2009, January 28, 2010, February 2, 2010, March 15-16, March 29, 2010, and December 9, 2010, EPA conducted inspections of the facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

### **C. RCRA VIOLATIONS**

#### **RCRA Count One – Unpermitted Storage of a Hazardous Waste**

32. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

33. Per 30 T.A.C. § 335.69(a)(1)(A) [40 C.F.R. § 262.34(a)(1)(i)], a generator of hazardous waste may accumulate hazardous waste in on-site containers for 90 days or less without a permit if the tanks comply with the “applicable requirements of subparts I, AA, BB, and CC of 40 C.F.R. part 265.”

34. 40 C.F.R. § 265.171 (Subpart I) requires that the owner or operator of a containing holding hazardous waste that begins to leak must remove the waste to container in good condition or otherwise manage the waste in a manner than complies with 40 C.F.R. part 265.

35. Exide has a fractionation tank that is a portable device meeting the definition of a container pursuant to 40 C.F.R. § 260.10 located on a concrete slab on the west side of a crystallizer unit. The crystallizer removes sodium sulfate from water treated in the facility’s wastewater treatment plant. Monthly, the facility performs a “boil out” on the crystallizer to remove high concentrations of chlorine. The liquid from the boil out is collected in the

fractionation tank, sampled, and sent off-site for solidification and disposal in a non-hazardous landfill.

36. At the time of the Inspections, the storage area for the fractionation tank did not meet the containment system requirements. During the December 14-18, 2009 inspection, EPA observed and documented liquid leaking from the fractionation tank and visible drainage pathways to the edge of the concrete.

37. Exide provided EPA with analysis of samples taken from the fractionation tank between February 11, 2009 and October 13, 2009. The results show that the liquid exhibited the toxic characteristic for cadmium (1.00 mg/L) in three samples. Results show the toxic characteristic for selenium (1.00 mg/L) in five samples.

38. The liquid identified in Paragraph 37 is a hazardous waste pursuant to 30 T.A.C. § 335.1(69) [40 C.F.R. 261.20(a) and 40 C.F.R. 261.24(a)].

39. Therefore, Exide violated 30 T.A.C. § 335.69(a)(1)(A) [40 C.F.R. § 262.34(a)(1)(i)] because the fractionation tank contained hazardous waste and leaked, in violation of 40 C.F.R. § 265.171.

#### **RCRA Count Two - Failure to Meet Design and Operating Standards for a Containment Building**

40. Pursuant to Exide's hazardous waste permit (No. HW-50206), the containment building must be designed and operated in accordance with 40 C.F.R. 264.1101.

41. 40 C.F.R. § 264.1101(a)(1) requires that a containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

42. During the inspection of December 14-18, 2009, EPA inspected the Raw Materials Storage Building, which is permitted as a containment building.



43. EPA inspectors observed the building doors open to the outside that were capable of being closed.

44. In addition to the functional doors being open, two doors had been damaged by a forklift and removed. As a result, the building was operated with uncontrolled doorways.

45. Therefore, Exide violated its hazardous waste permit (No. HW-50206) by failing to completely enclose the building to “prevent exposure to the elements” and “assure containment of managed wastes” as required by 40 C.F.R. 264.1101(a).

### **RCRA Count Three – Failure to Make a Hazardous Waste Determination**

46. 30 T.A.C. § 335.1(138) [40 C.F.R. § 261.2(a)(1)] defines solid waste as “discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.”

47. Per 30 T.A.C. § 335.1(138)(B)(i) [40 C.F.R. § 261.2(a)(2)(i)], a discarded material is any material which is abandoned.

48. Per 30 T.A.C. § 335.1(138)(C)(i) [40 C.F.R. § 261.2(b)(i)], materials are solid wastes if they are abandoned by being disposed of.

49. “Disposal” is defined in 30 T.A.C. § 335.1(44) (40 C.F.R. § 260.10) as “the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.”

50. Pursuant to 30 T.A.C. § 335.62 [40 C.F.R. § 262.11], a person who generates a solid waste must determine if that waste is hazardous pursuant to 30 T.A.C. § 335.504

[40 C.F.R. § 262.11].

51. During the December 14-18, 2009 inspection, EPA observed liquid seeping from beneath the outside edge of the facility flood wall, resulting in standing water and white crystalline residue between the wall and Stewart Creek.

52. On March 29, 2010, EPA collected samples of soil saturated with the white crystalline substance between the facility flood wall and Stewart Creek. In three of the samples, analytical results exceeded EPA's media-specific soil screening level concentration of lead in industrial soil (800 ppm).

53. On January 18, 2012, EPA collected a composite sample of soil with white crystalline precipitates on the ground surface in the area between the flood wall and Stewart Creek.

54. Analytical results of the sample of the soil with white crystalline precipitates exceeded the regulatory level of 5.00 mg/L for lead under the Toxicity Characteristic Leaching Procedure (TCLP) and therefore exhibited the toxicity characteristic for hazardous waste.

55. The Respondent failed to make a hazardous waste determination with respect to the liquid seepage and white crystalline precipitates that impacted the soil between the flood wall and Stewart Creek, identified in Paragraphs 51, 52 and 53 .

56. Therefore, the Respondent violated 30 T.A.C. § 335.62 [40 C.F.R. § 262.11] by failing to make a hazardous waste determination.

#### **D. CAA PRELIMINARY ALLEGATIONS**

57. 40 C.F.R. Part 63, Subpart X applies to emissions of hazardous air pollutants (HAPs) emitted from new or existing affected sources at secondary lead smelters.

58. The facility identified in Paragraph 21 is a secondary lead smelter.

59. Per 40 C.F.R. § 63.541(a), the requirements of Subpart X apply to reverberatory furnaces, process fugitive sources, and fugitive dust sources at secondary lead smelters.

60. December 14-18, 2009, January 28, 2010, February 2, 2010, March 15-16, March 29, 2010, and December 9, 2010, EPA conducted a multi-media (RCRA, CAA, CWA, and EPCRA) compliance inspection at the facility.

#### **E. CAA VIOLATIONS**

##### **CAA Count One - Failure to Install an Enclosure Hood on the Reverberatory Furnace Slag Tap**

61. 40 C.F.R. § 63.544(a)(3) requires that owners and operators of secondary lead smelters shall control fugitive source emissions from smelting furnace slag taps.

62. 40 C.F.R. § 63.544(b) requires that lead smelter process fugitive sources must be equipped with an enclosure hood meeting the definition established in 40 C.F.R. § 63.542.

63. 40 C.F.R. § 63.542 defines an enclosure hood as “a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.”

64. EPA collected evidence during the 2009 and 2010 facility inspections showing that the hood installed at the reverberatory furnace slag tap was a partial hood enclosure that has openings which allow fugitive emissions to escape. During the December 14-17, 2009 inspection, EPA observed and documented that the doors enclosing the slag molds were left open during the tapping process.

65. Therefore, the Respondent violated 40 C.F.R. § 63.544(b) by failing to equip the reverberatory furnace slag tap with an enclosure hood meeting the definition at 40 C.F.R. § 63.542.

**CAA Count Two - Failure to Install an Enclosure Hood on the Reverberatory Furnace Charging Chute**

66. 40 C.F.R. § 63.544(a)(1) requires that owners and operators of secondary lead smelters shall control fugitive source emissions from smelting furnace charging chutes.

67. 40 C.F.R. § 63.544(b) requires that lead smelter process fugitive sources must be equipped with an enclosure hood meeting the definition established in 40 C.F.R. § 63.542.

68. 40 C.F.R. § 63.542 defines an enclosure hood as “a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.”

69. EPA collected evidence during the 2009 and 2010 facility inspections showing that the hood installed at the reverberatory furnace charging chute has openings that allow fugitive emissions to escape. During the December 14-17, 2009 and December 9, 2010 inspections, EPA observed reverberatory furnace feed accumulating outside of the ram enclosure.

70. Therefore, the Respondent violated 40 C.F.R. § 63.544(b) by failing to equip the reverberatory furnace charging chute with an enclosure hood meeting the definition at 40 C.F.R. § 63.542.

**CAA Count Three - Failure to Control Fugitive Dust Emissions**

71. 40 C.F.R. § 63.545(a) requires owners and operators of secondary lead smelters to prepare and at all times operate according to a standard operating procedures manual that describes control measures to guard against fugitive dust emissions.

72. Per 40 C.F.R. § 63.545(a), fugitive dust sources include, among others, plant roadways and materials storage and handling areas.

73. 40 C.F.R. § 63.545(c)(5) requires owners and operators of secondary lead smelters to apply wet suppression to materials storage and handling areas sufficient to prevent the formation of dust and to perform vehicle wash at each exit from the area.

74. During the December 2009 inspection, EPA inspectors observed and documented visible fugitive dust emissions originating from raw material storage piles in the Exide blast furnace raw materials storage area.

75. During the December 2009 inspection, EPA inspectors observed and documented vehicle traffic leaving the Raw Materials Storage building without visiting the vehicle wash as required. Forklifts bearing reverberatory furnace slag were observed making regular trips between the raw material storage building and the reverberatory furnace. The paved ramp between the reverberatory furnace and the raw material storage building was not wetted. A forklift bearing reverberatory furnace slag was observed passing at regular intervals through the raw material storage building using the north and east doors which were not equipped with a vehicle wash.

76. Therefore, Respondent violated 40 C.F.R. § 63.545(c) by failing to apply wet suppression and perform vehicle washes as required by 40 C.F.R. § 63.545(c)(5).

**CAA Count 4 – Failure to prepare and operate according to a Fugitive Dust Source Standard Operating Procedures Manual that Describes in Detail the Measures Put in Place to Control Fugitive Dust Emissions Sources**

77. 40 C.F.R. § 63.545(a) requires owners and operators of secondary lead smelters to prepare and at all times operate according to a standard operating procedures manual (SOP).

78. 40 C.F.R. § 63.545(c)(3) requires that the SOP section addressing furnace areas shall include, at a minimum, “partial enclosure and pavement cleaning twice per day; or total enclosure and ventilation of the enclosure to a control device.”

79. 40 C.F.R. § 63.545(c)(5) requires that the SOP section addressing material storage and handling areas shall include, at a minimum, “partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, vehicle wash at each exit from the area, and paving of the area; or total enclosure of the area and ventilation of the enclosure to a control device, and a vehicle wash at each exit.”

80. During the 2009 inspection, EPA inspectors observed, and recorded as photographic evidence, dry piles of raw materials stored in the blast furnace area.

81. As recorded in the 2009 CAA inspection report, Exide personnel informed the EPA inspector the sprinkler heads used for the wet suppression system at the blast furnace raw material storage area were clogged and not working, however, operations personnel were charged with hand-wetting the piles.

82. EPA staffed observed the piles dry and visibly generating dust during material handling activities on December 15 and 17, 2009.

83. Upon request during the 2009 inspection, Exide could not produce records of wet suppression for the raw materials stored in the blast furnace area.

84. EPA collected Exide’s fugitive dust SOP during the December 2009 inspection and again during the December 2010 inspection.

85. The blast furnace area is not listed in Exide’s fugitive SOP. Exide’s fugitive dust SOP fails to address the raw materials stored in the blast furnace area or to require that daily records be maintained of all wet suppression activities performed to control fugitive dust emissions from these piles of raw materials.

86. Therefore, Exide in is violation of 40 C.F.R. § 63.545(c) because the fugitive dust SOP did not include (1) requirements for fugitive dust controls for the raw materials stored in the blast furnace area or (2) the requirement for daily records of wet suppression activities to control fugitive dust emissions from the raw materials stored in the blast furnace area.

87. During the 2009 inspection, the EPA inspector noted that a vehicle wash is located adjacent to the to the west door of the raw material storage area, however, no vehicle wash was present at either the north or east doors of the building.

88. Therefore, Exide’s fugitive dust SOP also fails to meet the requirements set forth in 40 C.F.R. § 63.545(c)(5) to include, as controls to be specified in the fugitive dust SOP for materials storage and handling area, a “vehicle wash at each exit from the area.”

#### **CAA Count 5 – Failure to Maintain Required Records**

89. 40 C.F.R. § 63.545(a) requires owners and operators of secondary lead smelters to prepare and at all times operate according to a standard operating procedures manual.

90. SOPs must include, among other things, the requirement that “daily records be maintained of all wet suppression, pavement cleaning, and vehicle washing activities performed to control fugitive dust emissions.”

91. During the December 2009 inspection EPA inspectors requested records of activities performed to control fugitive dust emissions. Exide was unable to provide all these records.

92. During the December 2009 inspection and the December 2010 inspection, EPA inspectors requested fugitive dust records, including complete maintenance records for the automated wet suppression system in the blast furnace feed storage area. Exide was unable to provide complete records.

93. Therefore, Exide violated 40 C.F.R. § 64.545(c) by failing to maintain daily records of wet suppression activities as required by 40 C.F.R. § 64.545(d).

#### **IV. COMPLIANCE / INJUNCTIVE RELIEF**

94. Regarding the hazardous waste determination addressed in “RCRA Count Three”

- a. In accordance with the Agreed Order on Consent, Docket No. RCRA 06-2011-0966 (RCRA Agreed Order), the Respondent shall continue with the implementation of the sampling plan approved by EPA pursuant to such agreed order, including use of the procedures set forth in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846 and the corresponding method detection limits, for the delineation of any lead contamination to applicable TRRP standards in the affected media in the area bounded by the south side of the flood wall near the Battery Storage Area and Stewart Creek (“Flood Wall Area”).
- b. Within thirty days of the effective date of this CAFO, Exide will submit a work completion plan reflecting Exide’s plan (i) to complete implementation of the sampling plan approved by EPA and delineation of any lead contamination in the Flood Wall Area to applicable TRRP standards in the affected media; and (ii) to develop and implement a Response Action Plan to be approved by the TCEQ for the defined area of contamination requiring remediation, in accordance with 30 T.A.C. 335.174 (40 C.F.R. 264 Subpart G and 264.310) and 30 T.A.C. 350 (TRRP) .



95. Regarding “RCRA Count Two”, Respondent shall, within thirty days of the effective date of this CAFO, provide copies of all work orders for door replacement and door repairs for the Raw Materials Storage Building since EPA’s inspection commencing on December 14, 2009.

96. In all instances in which this Complaint requires written submissions to EPA, each submission must be accompanied by the following certification signed by a “responsible official:”

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

For the purpose of this certification, a "responsible official" of a Respondent means a person with the authority to bind Respondent as to the truth, accuracy, and completeness of all certified information.

## V. TERMS OF SETTLEMENT

### A. CIVIL PENALTY

97. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **Two Hundred Twenty Five Thousand Dollars (\$225,000)**.

98. The Respondent shall pay the assessed civil penalty by certified check, cashier’s check, or wire transfer, made payable to “Treasurer, United States of America, EPA - Region 6”. Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the checks should be remitted to:

In the Matter of Exide Technologies --  
Docket Nos. RCRA-06-2013-0907 and  
CAA-06-2013-3321

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the checks should be remitted to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
Protection Agency"

**PLEASE NOTE:** Docket numbers RCRA-06-2013-0907 and CAA-06-2013-3321 shall be clearly typed on the checks, or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of this CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the checks, transmittal letters, or wire transfer instructions to the following:

Guy Tidmore, Chief  
Compliance Enforcement Section (6EN-HE)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Steven Thompson, Chief  
Air Enforcement Section (6EN-AA)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

99. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

100. If the Respondent fails to submit payment within thirty (30) days of the effective date of this Order, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

101. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

102. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid.

In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R.

§ 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

## **B. NOTIFICATION**

103. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA:

Guy Tidmore, Chief  
Compliance Enforcement Section (6EN-HE)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent:

Mr. David McKercher  
Plant Manager  
Exide Technologies  
P.O. Box 250  
Frisco, TX 75034

### **C. RETENTION OF ENFORCEMENT RIGHTS**

104. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

105. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of RCRA and CAA.

106. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous waste, pollutants, contaminants, or hazardous substances on, at or from the Respondent's facility, including but not limited to, issuing orders under CERCLA, Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), and Section 7003 of RCRA, 42 U.S.C. § 6973. EPA and the United States also reserve the right to bring an action against the Respondent under CERCLA and any other applicable law for the performance of response actions and/or the recovery of response costs incurred by EPA in connection with any activities conducted at the Facility in response to the release of hazardous

substances, including but not limited to, costs of performing corrective action, indirect costs, oversight costs, and past costs, that have not been reimbursed by the Respondent or any other potentially responsible party. Furthermore, except as expressly provided herein, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**D. COSTS**

107. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**E. MODIFICATION**

108. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

**F. TERMINATION**

109. At such time as the Respondent completes its final payment as set forth in Paragraph 99 of this CAFO, it may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has

been satisfied and terminated. However, the Respondent's responsibility for closure and remediation set forth in Paragraph 94 remains until all closure and remediation activities have been completed to the satisfaction of the relevant regulatory agency.

**G. EFFECTIVE DATE**

110. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**


**FOR THE RESPONDENT:**

Date: 12/11/12

  
\_\_\_\_\_  
Exide Technologies

**FOR THE COMPLAINANT:**

Date: 12.17.12

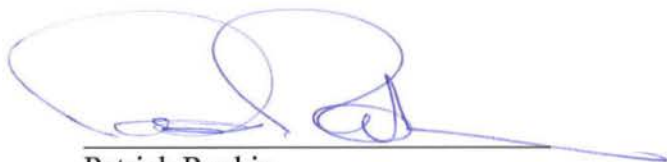
  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6

## VI. FINAL ORDER

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those violations and facts alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, directors, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

12/18/12



Patrick Rankin  
Regional Judicial Officer




**CERTIFICATE OF SERVICE**

I hereby certify that on the 18 day of December, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) were hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7007 3020 0002 5102 1615**

David McKercher  
Plant Manager  
Exide Technologies  
P.O. Box 250  
Frisco, TX 75034

  
\_\_\_\_\_  
Lori Jackson, Paralegal