

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
BEFORE THE ADMINISTRATOR

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In the Matter of:

Exide Technologies—Canon Hollow

Docket No. CAA 07-2019-0271

Respondent.

CONSENT AGREEMENT

1. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 7 (the “EPA”). On the EPA’s behalf, the Director of the Enforcement and Compliance Division is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is Exide Technologies—Canon Hollow, a corporation doing business in the state of Missouri. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e). The terms of this Consent Agreement apply solely to the Exide Canon Hollow facility in Forest City, Missouri.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to section 113(a)(3)(A).

6. The Regional Judicial Officer is authorized to ratify this Consent Agreement

which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).

7. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

3. GOVERNING LAW

8. Section 112 of the Act, 42 U.S.C. § 7412, authorizes the Administrator of EPA to regulate hazardous air pollutants. The Administrator established emissions standards, codified at 40 C.F.R. Part 63, Subpart X, National Emissions Standards for Hazardous Air Pollutants: Secondary Lead Smelting. The requirements of NESHAP X apply to owners and operators of the following affected sources at a secondary lead smelter: blast, reverberatory, rotary and electric furnaces; refining kettles, agglomerating furnaces; dryers; process fugitive emissions sources; buildings containing lead-bearing materials; and fugitive dust sources. 40 CFR § 63.541(a). Owners or operators are also subject to Title V permitting requirements under 40 CFR Parts 70 or 71, as applicable. 40 CFR § 63.541(c). The emissions standards in NESHAP X apply at all times pursuant to 40 CFR § 63.541(d).

9. Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1), defines “major source” as any stationary source or group of stationary sources located in a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, ten (10) tons per year or more of any single HAP or twenty-five (25) tons per year or more of any combination of HAPs. Stationary source is defined as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112 (c) source category or subcategory.

10. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), defines “person” as an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

11. 40 CFR § 63.541 defines “shutdown” as the period when no lead bearing materials are being fed to the furnace and smelting operations have ceased during which the furnace is cooled from steady-state operating temperature to ambient temperature.

12. 40 CFR § 63.8(c)(2)(i) states that all continuous emission monitoring systems must be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS must be located in the applicable performance specification(s).

13. 40 CFR § 63.544(c)(1) requires a facility to construct and operate total enclosures under negative pressure at specified values. The facility must ventilate the total enclosure continuously to ensure negative pressure values of at least 0.013mm of mercury (0.007 inches of water).

14. 40 CFR § 63.548(k)(1)(iii) requires a facility to install and maintain a minimum of one building digital differential pressure monitoring system on an exterior wall that connects the leeward and windward wall at a location defined by the regulation.

15. 40 CFR § 63.548(k)(4) states that each digital differential pressure monitoring system must have a digital recorder. To demonstrate compliance with the standard for differential pressure, the facility must maintain the pressure in total enclosures such that the average pressure in any 15-minute period does not fall below the level specified in 40 CFR § 63.544(c)(1). The 15-minute averages must include at least one reading per minute.

16. 40 CFR § 63.548(j) requires the facility to demonstrate continuous compliance with the total hydrocarbons and dioxins and furans emissions standards. During periods of startup and shutdown, the requirements of (j)(4) do not apply. Instead, the facility must demonstrate compliance with the standard for total hydrocarbon by meeting the requirements of 40 CFR § 63.543(1).

17. 40 CFR § 63.548(j)(1) requires continuous temperature monitoring. The regulation requires the facility to install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in 40 CFR § 63.8.

18. 40 CFR § 63.548(j)(4) states that to demonstrate continuous compliance with the standards for total hydrocarbons and dioxins and furans, the facility must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28° C (50° Fahrenheit) below the average established in paragraph (j)(3) of this section.

19. Section 113(d) of the Clean Air Act, 42 U.S.C. §7413(d), authorizes the Administrator to issue an administrative order against any person whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Act referenced therein, including Section 112.

20. Section 113 (d)(2)(B) of the Clean Air Act, 42 U.S.C. §7413(d)(2)(B), states that the Administrator may compromise, modify, or remit , with or without conditions, any administrative penalty which may be imposed under this subsection.

4. STIPULATED FACTS

21. Respondent, Exide Technologies—Canon Hollow, is a “person” as defined by Section 302 of the Clean Air Act, 42 U.S.C. §7602(e).

22. Exide has a Title V permit issued by the Missouri Department of Natural Resources, OP2010-038A, issued May 2, 2015. The permit states that the facility is a major

source of volatile organic compounds (VOCs) and sulfur oxide (SO_x) emissions. The Title V permit also incorporates requirements of NESHAP X.

23. Respondent is the owner and or operator of a secondary lead smelter located at 25102 Exide Drive, Forest City, Missouri.

24. The secondary lead smelter is a “major source” as defined by Section 112(a)(1) of the Clean Air Act, 42 U.S.C. § 7412(a)(1).

25. On May 17, 2018, inspectors from the EPA and the Missouri Department of Natural Resources (MDNR) inspected the facility.

26. On June 8, 2018, EPA finalized its Clean Air Act Inspection Report for the facility. EPA sent the facility a copy of the Report in April 2019.

27. On October 3, 2018, the EPA sent a Clean Air Act Section 114 Information Request to Exide Technologies to request information to assess Exide’s compliance with NESHAP X. Exide submitted responses to the Information Request on October 22, November 23, and December 6, 2018.

28. On July 11, 2019, EPA sent Exide a pre-filing negotiation letter alleging specific violations of the NESHAP X, followed by more detailed information from EPA on August 6, 2019, outlining the scope of allegations.

29. Information gathered by EPA during the inspection process showed instances between 2015 and 2018 when the facility did not always achieve negative pressure values of at least 0.013mm of mercury (0.007 inches of water) at the following areas of its facility: Slag Stabilization, South Containment, and Casting Area.

30. Information gathered by EPA during the inspection process indicated that during flue cleaning activities, Exide idles the afterburners used to control dioxins/furans and total hydrocarbons from the blast furnace. The blast furnace is not cooled to ambient temperature during these idling times.

31. During these idling times, Exide does not continuously monitor the temperature of the afterburner and does not include these time periods in the temperature averaging.

32. Exide’s Fugitive Dust Plan (part of its Title V permit) does not contain a standard operating procedure to address the emissions of dioxins/furans during the idling times.

5. ALLEGED VIOLATIONS OF LAW

33. Paragraphs 1-32 are incorporated by reference herein.

34. Exide has violated 40 CFR §63.544(c)(1) by failing to achieve negative pressure values of at least 0.013mm of mercury (0.007 inches of water) at the following areas of its facility: Slag Stabilization, South Containment, and Casting Area during instances between 2015 to 2019.

35. Exide violated 40 CFR §63.548(a)(1) and (4) by not demonstrating continuous compliance by failing to include all temperatures as required by 40 CFR § 63.548(j)(1) during periods of operation from May 2015 through February 2019.

6. TERMS OF CONSENT AGREEMENT

36. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) admits to the facts stated above;
- (c) neither admits nor denies the alleged violations of law stated above;
- (d) consents to the assessment of a civil penalty as stated below;
- (e) consents to the issuance of any specified compliance or corrective action order as provided herein;
- (f) consents to the conditions specified in this Agreement;
- (g) consents to any stated Permit Action;
- (h) waives any right to contest in this proceeding the alleged violations of law set forth in Section 5. of this Consent Agreement; and
- (i) waives its rights to appeal the Order accompanying this Agreement.

37. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Western District of Missouri; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the United States District Court for

the Western District of Missouri to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

38. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 CFR part 19, authorize the assessment of a civil penalty up to \$37,500 per day of violation occurring between January 13, 2009 and November 2, 2015, and up to \$47,357 per day for each violation occurring after November 2, 2015. To determine the amount of civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of the Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's compliance history and good faith efforts to comply, the duration of violation established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

39. Penalty Payment. Respondent agrees that, in settlement of the claims alleged in this Agreement, Respondent shall:

(a) pay the compromised civil penalty of \$59,063.00 ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement.

(b) Payment of the penalty may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of each payment receipt and mail a copy of each receipt to EPA's representative identified in this paragraph:

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219, and to

Lisa Hanlon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

Payments may also be made by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties - CFC
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA's representatives identified in this paragraph.

40. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

41. Conditions. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to the following:

- (a) No later than November 1, 2019, provide the Missouri Department of Natural Resources written notice of the change in location of the temperature monitoring device for Exide's blast furnace process emissions;
- (b) No later than November 30, 2019, install a new temperature monitoring device in the AB chamber;
- (c) No later than December 31, 2019, operate the new temperature monitoring device alongside the existing temperature monitoring device to ensure the new temperature monitoring device is collecting temperature data and holding up within the AB chamber environment;
- (d) No later than January 31, 2020, provide a 30-day notice of performance testing for total hydrocarbons (THC) and dioxins/furans (D/F) compliance to MDNR to establish a new temperature limit for THC and D/F compliance;

(e) No later than April 30, 2020, establish a new limit and complete performance testing for THC and D/F for the relocated temperature monitoring device; and

(f) Provide MDNR and EPA the performance test results and new temperature limit for the source within 60 days after the date completing each performance test and provide notice to EPA and MDNR of the change from the old to new temperature device monitoring location and limit.

During the time frames specified above, EPA may exercise its enforcement discretion for circumstances cited in paragraphs 30 and 31, if Exide is in compliance with the conditions of Paragraph 41.

42. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraph 41 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section E of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims; provided, however, the Tolling Period and Tolled Claims shall not include any claims arising or occurring on or before April 30, 2015.

43. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 41, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Exide Canon Hollow facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

44. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

45. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

46. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

47. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

7. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

48. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

49. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

50. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

51. The terms, conditions and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

52. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$99,681 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) and adjusted for inflation pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

53. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

54. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

8. EFFECTIVE DATE

55. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Exide Technologies—Canon Hollow, Docket No. CAA 07-2019-0271 is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

9/30/2019

DATE



DeAndre Singletary, Director
Enforcement and Compliance Assurance Division
U.S. EPA Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
BEFORE THE ADMINISTRATOR

In the Matter of:

Exide Technologies—Canon Hollow,
Respondent.

Docket No. CAA 07-2019-0271

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Oct. 1, 2019
DATE

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE


I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Exide Technologies--Canon Hollow, Docket No. CAA 07-2019-0271, were filed and copies of the same were mailed to the parties as indicated below.

By Certified Mail

Environmental Manager
Exide Technologies
25102 Exide Drive
Forest City, Missouri 64451

1 Oct 2019

DATE


for Sara Hertz Wu
Senior Counsel