



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR - 9 2019

**CERTIFIED MAIL RETURN RECEIPT**

Mr. John J. Gasparovic  
General Counsel  
Exide Technologies  
13000 Deerfield Parkway, Bldg. 100W  
Milton, Georgia 30004-8532

SUBJ: Exide Technologies, EPA ID No.: GAD 070 330 576  
Consent Agreement and Final Order, Docket No.: RCRA-04-2018-4015(b)

Dear Ms. Fitzpatrick:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-referenced matter. Please note that payment of the civil penalty is due within thirty (30) calendar days of the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk. A copy of the check, wire transfer or online payment should be submitted to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and to:

Daryl Himes, Environmental Engineer  
Hazardous Waste Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Thank you for your assistance in resolving this matter. If you have any questions, please feel free to contact me at (404) 562-8590 or by email at [lamberth.larry@epa.gov](mailto:lamberth.larry@epa.gov).

Sincerely,



*for* Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosures

Thank you for your assistance in resolving this matter. If you have any questions, please feel free to contact me at (404) 562-8590 or by email at [lamberth.larry@epa.gov](mailto:lamberth.larry@epa.gov).

Sincerely,

Handwritten signature of Alan A. Annicella in black ink.

*for* Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	DOCKET NO.: RCRA-04-2018-4015(b)
	)	
Exide Technologies	)	
3639 Joy Road	)	
Columbus, Georgia 31906	)	Proceeding Under Section 3008(a) of the
EPA ID No.: GAD 070 330 576	)	Resource Conservation and Recovery Act,
	)	42 U.S.C. § 6928(a)
Respondent	)	
_____	)	

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2019 APR -9 AM 7:53  
OFFICE OF THE  
GENERAL COUNSEL

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the Georgia Hazardous Waste Management Act (GHWMA), Ga. Code Ann. § 12-8-60 *et seq.* [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939g], and the regulations promulgated pursuant thereto and set forth at Georgia Hazardous Waste Management Rules (GHWMR), Ga. Comp. R. and Regs. 391-3-11-.01 to 391-3-11-.18 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, 273, & 279]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] and the GHWMR, Ga. Comp. R. and Regs. 391-3-11-.01 to 391-3-11-.18 [40 C.F.R. Parts 260 through 270, & 279].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

## II. THE PARTIES

4. Complainant is the Chief, Enforcement and Compliance Branch, Resource Conservation and Restoration Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is Exide Technologies, a corporation, incorporated under the laws of the State of Delaware and registered to do business in the State of Georgia. Respondent is the owner and operator of a battery manufacturing business located at 3639 Joy Road, Columbus, Georgia (the Facility).

## III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Georgia (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at Sections 12-8-60 to 12-8-83 of the GHWMA, Ga. Code Ann. § 12-8-60 *et seq.*, and at Ga. Comp. R. and Regs. 391-3-11.01 to 391-3-11.18.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. Georgia has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 12-8-64(1)(A) of the GHWMA, Ga. Code Ann. § 12-8-64(1)(A) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. Part 262 (2016)].
12. Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Ga. Comp. R. and Regs. 391-3-11-.10(2) (permitted) and Ga. Comp. R.

and Regs. 391-3-11-.10(1) (interim status)] [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.4(b)].
15. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous wastes and are provided with the EPA Hazardous Waste Numbers D001 through D043.
16. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. §§ 261.20 and 261.24], a solid waste that exhibits the characteristic of toxicity for lead is a hazardous waste identified with the EPA Hazardous Waste Number D008.
17. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], a “generator” is defined as any person, by site, whose act or process produces hazardous waste identified or listed in Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.
18. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
19. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], a “person” includes a corporation.
20. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
21. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
22. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10], “used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
23. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.2], must determine if that waste is a hazardous waste following the methods articulated in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.11].

24. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(c)(1) (2016)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where the wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without having interim status, as required by Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a) (2016)], provided that the generator complies with the satellite accumulation conditions listed in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(c)(1)(i)-(ii) (2016)] (hereinafter referred to as the “SAA Permit Exemption”).
25. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(c)(1)(i) (2016)], which incorporates Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.173(a)], and is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
26. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month is a large quantity generator (LQG) and may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, as required by Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)-(4) (2016)] (hereinafter referred to as the “LQG Permit Exemption”).
27. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.173(a)], and is a condition of the LQG Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
28. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(2) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that the date upon which each period of accumulation begins is clearly marked and visible on each container.
29. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(3) (2016)], which is a condition of the LQG Permit Exemption, a generator is required to ensure that, while accumulated on-site, each container is labeled with the words “Hazardous Waste.”
30. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.171], and is a condition of the LQG Permit Exemption, if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements.
31. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(i) (2016)], which incorporates Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.174], and is a condition of the LQG Permit Exemption, a generator is required to, at least weekly, inspect areas where containers are stored looking for leaking containers and for deterioration of containers caused by corrosion or other factors.

32. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(4) (2016)], which incorporates Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.16(a), (b), (c) & (d)], and is a condition of the LQG Permit Exemption, (a) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the regulations; (b) Facility personnel must complete this training within six months of being hired; (c) Facility personnel must take part in an annual RCRA refresher training; and (d) the generator must maintain training records that include, among others: the job title, written description, and name of each employee filling the job for each position related to hazardous waste management; and documentation that the training required has been given to and completed by Facility personnel.
33. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.42(a)(1) (2016)], a generator of 1,000 kilograms or greater of hazardous waste in a calendar month must submit an exception report to the EPA Regional Administrator for the region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the designated facility within 35 days of the date the waste was originally accepted by the transporter.
34. Pursuant to Ga. Comp. R. and Regs. 391-3-11-.17(1) [40 C.F.R. § 279.22(c)(1)], containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

35. Respondent is a "person" as defined in Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10].
36. Respondent is the "owner/operator" of a "facility" located at 3639 Joy Road, Columbus, Georgia, as those terms are defined in Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10].
37. Respondent is a "generator" of "hazardous waste" as those terms are defined in Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10] and Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. § 261.3].
38. Respondent generates "used oil" as that term is defined in Ga. Comp. R. and Regs. 391-3-11-.02(1) [40 C.F.R. § 260.10].
39. Respondent specializes in the manufacturing of lead acid batteries for the transportation, motive and network power industries. Some of these activities include the manufacturing of various components of lead acid batteries.
40. Some of the waste Respondent generates through its manufacturing activities includes scrap metal, which Respondent states it collects and often reuses in place of virgin lead metal, in an attempt to minimize the volume of waste generated and to reuse and recycle wherever possible.



41. On March 21, 2016, Respondent notified the Georgia Environmental Protection Division (GAEPD) that it is a LQG of hazardous waste as that term is defined in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a) (2016)].
42. On March 6 and 7, 2018, the EPA and the GAEPD conducted a compliance evaluation inspection (CEI) at Respondent's Facility. The EPA's findings of the CEI were documented in a report mailed to Respondent, dated April 4, 2018.
43. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent failed to conduct a hazardous waste determination on solid wastes in a 55-gallon container in the Maintenance Area.
44. The EPA therefore alleges that Respondent violated Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid waste generated at its Facility.
45. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was storing containers of D008 hazardous waste in Satellite Accumulation Areas (SAAs). The following containers, which were stored in these SAAs, were open when the waste was not being added or removed: a 55-gallon drum near a casting machine, a 5-gallon container in the Pasting Area, and a 55-gallon drum in the SLI Area.
46. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(c)(1)(i) (2016)], by not complying with the container management requirements of Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.173(a)].
47. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was storing D008 hazardous waste in containers that were open when the waste was not being added or removed including: a metal and a plastic bin in the Battery Assembly Line 1-4 Area, a 30-gallon container in the Water Bath Area and a roll-off in the Wastewater Treatment Plant Area.
48. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in of Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(i) (2016)], by not complying with the container management requirements of Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.173(a)].
49. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was storing hazardous waste in containers that were not marked with accumulation start dates, including: two 55-gallon containers in the Casting Area, one 55-gallon container in the Pasting Area, two bins in the Battery Assembly Line Area, two 55-gallon containers in the Battery Assembly Line Area, five 55-gallon and one 30-gallon containers in the Water Bath Area and three 55-gallon containers in the Wastewater Treatment Plant Area. These containers would not qualify for the SAA Permit Exemption because the volume of hazardous waste stored in the containers exceeded 55-gallons.

50. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the dating requirements of Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(2) (2016)].
51. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was storing hazardous waste in containers that were not labeled with the words “Hazardous Waste,” including: one 55-gallon container in the Casting Area, one 55-gallon container in the Battery Assembly Line Area, one 30-gallon container in the Water Bath Area and three 55-gallon containers in the Wastewater Treatment Plant Area. These containers would not qualify for the SAA Permit Exemption because the volume of hazardous waste stored in the containers exceeded 55-gallons.
52. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption by not complying with the labeling requirements of Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(3) (2016)].
53. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was storing D008 hazardous waste in containers that were in poor condition, including a 55-gallon container in the Water Bath Area and two 55-gallon containers in the Waste Water Treatment Plant Area.
54. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(i) (2016)], by not complying with the container management requirements of Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.171].
55. During a file review conducted during the March 6 and 7, 2018 CEI, the inspectors observed, through a lack of records, that from June 17 to July 14, 2017, August 4 to August 19, 2017, November 16 to November 30, 2017 and from December 7, 2017 to March 7, 2018, that Respondent had not conducted weekly inspections of hazardous waste containers.
56. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(1)(ii) (2016)], by not inspecting its hazardous waste containers as required by Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.174].
57. During a file review conducted during the March 6 and 7, 2018 CEI, the inspectors observed that Respondent failed to document that its employees had received initial or annual refresher hazardous waste training. In addition, Respondent failed to document job titles, job descriptions and hazardous waste training required for its employees responsible for the management of hazardous waste.

58. The EPA therefore alleges Respondent violated Section 12-8-66 of the GHWMA, Ga. Code Ann. § 12-8-66 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or interim status, because Respondent failed to meet a condition of the LQG Permit Exemption set forth in Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.34(a)(4) (2016)], by not complying with the personnel training requirements of Ga. Comp. R. and Regs. 391-3-11-.10(1) [40 C.F.R. § 265.16(a), (b), (c) & (d)].
59. During a file review conducted during the March 6 and 7, 2018 CEI, the inspectors observed that Respondent failed to have a return copy of one of its hazardous waste manifests (01765341JJK).
60. The EPA therefore alleges that Respondent violated Ga. Comp. R. and Regs. 391-3-11-.08(1) [40 C.F.R. § 262.42(a)(1) (2016)] by failing to submit an exception report to the EPA Regional Administrator for the region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the designated facility within 35 days of the date the waste was originally accepted by the transporter.
61. During the March 6 and 7, 2018 CEI, the inspectors observed that Respondent was accumulating used oil in a secondary containment system in its Pulsar Building, which was not labeled with the words "Used Oil."
62. The EPA therefore alleges that Respondent violated Ga. Comp. R. and Regs. 391-3-11-.17(1) [40 C.F.R. § 279.22(c)(1)], by storing used oil in containers that were not labeled or marked clearly with the words "Used Oil."

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

63. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
64. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
65. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
66. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
67. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.

68. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
69. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
70. Respondent consents to the conditions specified in this CA/FO, and Respondent consents to the issuance of this compliance order.
71. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
72. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
73. Each party will pay its own costs and attorneys' fees.

#### **VI. PAYMENT OF CIVIL PENALTY**

74. Respondent consents to the payment of a civil penalty in the amount of TWENTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$28,500.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
75. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

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

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen, (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

76. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And to:

Daryl R. Himes, Environmental Engineer  
Hazardous Waste Compliance and Enforcement Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
US EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

77. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 90 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or

stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

- b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
- c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. 31 U.S.C. § 3717(e)(2). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

78. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

## **VII. PARTIES BOUND**

- 79. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
- 80. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
- 81. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

## **VIII. RESERVATION OF RIGHTS**

- 82. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
- 83. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
- 84. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

## **IX. OTHER APPLICABLE LAWS**

85. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

## **X. SERVICE OF DOCUMENTS**

86. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Joan Redleaf Durbin  
Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8530

87. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

John J. Gasparovic  
General Counsel  
Exide Technologies  
13000 Deerfield Parkway, Bldg. 100W  
Milton, Georgia 30004-8532

## **XI. SEVERABILITY**

88. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.


## **XII. EFFECTIVE DATE**

89. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

*In the matter of Exide Technologies, Inc., Docket No. RCRA-04-2018-4015(b):*

**AGREED AND CONSENTED TO:**

**Exide Technologies, Inc.**

By:  Dated: 3/27/19  
John J. Gasparovic  
Executive Vice President & Chief Legal Officer  
Exide Technologies, Inc.

**United States Environmental Protection Agency**

By:  Dated: 4/5/19  
*for* Larry L. Lamberth, Chief  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2018-4015(b)  
)  
Exide Technologies, Inc. )  
3639 Joy Road ) Proceeding Under Section 3008(a) of the  
Columbus, Georgia 31906 ) Resource Conservation and Recovery Act,  
EPA ID No.: GAD 070 330 576 ) 42 U.S.C. § 6928(a)  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 8<sup>th</sup> day of April, 2019.

BY: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer  
EPA Region 4

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Exide Technologies, Inc., Docket Number: RCRA-04-2018-4015(b), and have served the parties listed below in the manner indicated:

Joan Redleaf Durbin  
Associate Regional Counsel  
Office of RCRA/CERCLA Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

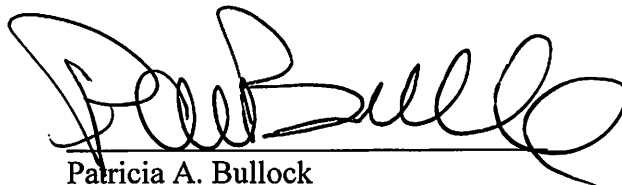
(Via EPA's electronic mail)

John J. Gasparovic  
General Counsel  
Exide Technologies, Inc.  
13000 Deerfield Parkway, Bldg. 100W  
Milton, Georgia 30004-8532

(Via Certified Mail – Return Receipt  
Requested)

Date: \_\_\_\_\_

4-9-19



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511