

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2012 FEB 13 PM 3:39  
REGIONAL HEARING CLERK  
FOR REGION VI

BEFORE THE ADMINISTRATOR

In the Matter of:	§	Docket No. CWA-06-2012-1730
	§	
EXIDE TECHNOLOGIES,	§	
a Texas Company,	§	
Respondent.	§	Proceeding to Assess a
	§	Civil Penalty under Section 309(g)
TPDES Facility No. TXU010915	§	of the Clean Water Act

ANSWER AND REQUEST FOR HEARING

Exide Technologies, Inc. (“Exide”) files this answer and request for hearing.

RESPONSE TO STATUTORY AUTHORITY

1. Exide notes that the Administrative Complaint misidentifies its corporate name and description in the style of the Administrative Complaint.
2. Exide denies the allegation under “I. Statutory Authority” that Exide violated the Clean Water Act, the regulations promulgated under the Act, and should be ordered to pay a civil penalty.

RESPONSE TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. In response to paragraph 1, Exide denies the description of its corporate name; Exide admits the remaining allegations of paragraph 1.
4. In response to paragraph 2, Exide admits only that owns and operates a secondary lead smelter located at 7174 South Fifth Street, in Frisco, Texas. Exide denies all remaining allegations in paragraph 2.
5. Exide denies all allegations in paragraph 3.
6. Exide denies all allegations in paragraph 4.
7. Exide admits the allegations in paragraph 5.
8. Exide admits the allegations in paragraph 6.
9. Exide denies all the allegations in paragraph 7.
10. Exide admits that it submitted a Notice of Intent to the EPA in 2000. Exide neither admits nor denies whether it obtained permit coverage under a NPDES general permit so

the allegations are deemed denied. Exide denies the allegations in the second sentence of paragraph 8.

11. Exide denies the allegations in paragraph 9.
12. Exide denies all the allegations in paragraph 10.
13. Exide admits to the allegation that it submitted a Notice of Intent to TCEQ to reapply for permit coverage under the facility's TPDES general permit, but denies all other allegations in paragraph 11.
14. Exide denies all allegations in paragraph 12.
15. Exide denies all allegations in paragraph 13.
16. Exide denies all allegations in paragraph 14.
17. Exide admits that it received a copy of a certified letter to Ms. Susan Johnson of the Texas Commission on Environmental Quality; Exide has no knowledge of whether that action satisfies the requirements of Section 309(g)(1) of the Act as alleged in paragraph 15, so the allegation is deemed denied.
18. Exide admits the allegations in paragraph 16.

#### **RESPONSE TO PROPOSED PENALTY**

19. To the extent paragraph 17 makes any allegations, Exide denies the allegations.
20. To the extent paragraph 18 makes any allegations, Exide denies the.
21. In response to paragraph 19, Exide has filed an answer and request for hearing in response to the Administrative Complaint contesting both the proposed findings of fact / conclusions of law and the proposed penalty amount.
22. In response to paragraph 20 - 29, Exide has followed the requirements set forth in 40 C.F.R. § 22.15. To the extent that paragraphs 20 - 29 make an allegation concerning a proposed finding of fact or conclusion of law, Exide denies the allegation.

#### **AFFIRMATIVE DEFENSES**

23. U.S. EPA's claims and penalty estimate are barred in whole or in part because under the terms of the Memorandum of Understanding between the U.S. EPA and the TNRCC (predecessor to the TCEQ) the EPA delegated enforcement of the NPDES program to TCEQ; therefore, any proposed penalty should be calculated under the applicable TCEQ penalty policy entitled *Penalty Policy of the Texas Commission on Environmental Quality, September 2002 (RG-253)*.

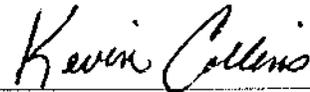
24. U.S. EPA did not provide Exide with fair and adequate notice that EPA would enforce a delegated program against Exide and apply a penalty policy different from the applicable TCEQ penalty policy.
25. U.S. EPA's enforcement based upon factors other than those factors described in TCEQ's penalty policy violates the Equal Protection Clause of the United States Constitution because EPA's enforcement treats similarly situated entities differently under the Clean Water Act.

**REQUEST FOR HEARING**

26. Exide requests a hearing to contest the material allegations in the complaint and the appropriateness of the proposed penalty.

Respectfully submitted,

BAKER BOTTS L.L.P

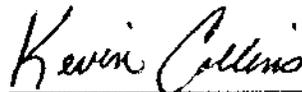


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ATTORNEYS FOR  
EXIDE TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I certify that on February 10, 2012, I served a true and correct copy of this Answer and Request for Hearing on the following persons by certified mail, return receipt requested:



Kevin D. Collins

Original by Facsimile to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
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Dallas, TX 75202-2733

Copy by Certified Mail to:

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