



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

JAN 04 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7005 1820 0003 7453 9738)

Mr. Donald G. Barar
Plant Manager
Exide Technologies
7471 South Fifth Street
Frisco, TX 75034

Re: Notice of Proposed Assessment of Class II Civil Penalty
Docket Number: CWA-06-2012-1730
TPDES Facility Number: TXU010915

Dear Mr. Barar:

Enclosed is an Administrative Complaint (Complaint) issued to Exide Technologies for violation of Section 301(a) of the Clean Water Act (33 U.S.C. § 1251 *et seq.*). The violation was identified during an inspection of your lead-acid battery recycling facility, conducted by the Environmental Protection Agency (EPA) on December 18, 2009. The results of the inspection were discussed with your representative at the time of the inspection. The violation alleged in the Complaint is the result of discharges of pollutants in storm water from your facility without authorization.

You, as the representative of Exide Technologies, have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$176,741.00 may be assessed against you without further proceedings.

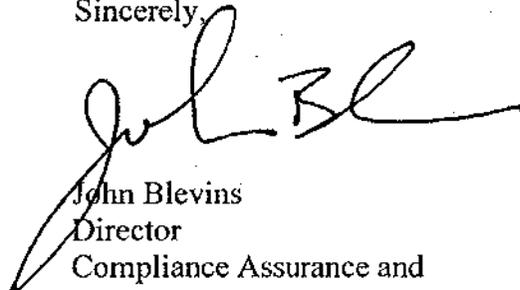
Whether or not you request a hearing, we invite you to confer informally with the EPA. You may represent Exide Technologies, or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

Re: Administrative Complaint
Exide Technologies

2

The EPA is committed to ensuring compliance with the requirements of the NPDES (TPDES in Texas) program, and my staff will assist you in any way possible. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Mr. Everett H. Spencer, of my staff, at (214) 665-8060.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: w/complaint-Regional Hearing Clerk

Ms. Susan Johnson, Manager
Enforcement Section I, MC 169
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

CT Corporation Systems
Registered Agent for Exide Technologies
350 N. St. Paul, Suite 2900
Dallas, TX 75201

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
JAN -5 AM 9:55
REGIONAL HEARING CLERK
EPA REGION VI

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

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class II Administrative Complaint is issued in accordance with, and this action will be conducted under, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Exide Technologies (“Respondent”) is a company, incorporated under the laws of the State of Delaware , and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
2. At all times relevant to this action (“all relevant times”), Respondent owned or operated a secondary lead smelting (battery salvage and recycling) facility, located at 7471 South Fifth Street, in Frisco, Collin County, Texas (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its industrial storm water to the receiving waters of Stewart Creek, then to Lewisville Lake, which is considered a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.
5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the Storm Water General Permit for Industrial Activities on October 30, 2000 ("NPDES general permit"). The NPDES general permit authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

8. Respondent submitted a Notice of Intent ("NOI") to EPA and obtained permit coverage for the facility under the NPDES general permit. Coverage of the facility under the NPDES general permit began on March 14, 2002, and expired on December 12, 2006.

9. Pursuant to Section 402(a) of the Act, and in accordance with the Texas Pollution Discharge Elimination System ("TPDES") delegation program in September 1998, the Texas Commission on Environmental Quality ("TCEQ") issued the Storm Water General Permit for Industrial Activities (August 14, 2006) ("TPDES general permit"). The TPDES general permit authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

10. Respondent failed to re-apply for and obtain coverage before the NPDES general permit expired on December 12, 2006; therefore, any storm water discharges from the facility after December 12, 2006, were not authorized by a permit and were in violation of Section 301 of the Act until Respondent renewed its general permit coverage.

11. Respondent submitted an NOI to TCEQ to re-apply for permit coverage under the TPDES general permit and obtained coverage under permit number TXR05N429 on June 18, 2011. Therefore, Respondent did not have storm water general permit coverage from December 13, 2006 to June 17, 2011.

12. Because Respondent did not have authorization to discharge pollutants in its storm water from the facility from December 13, 2006 to June 17, 2011, each storm water discharge from the facility during this time period was a violation of Section 301 of the Act, 33 U.S.C. § 1311. Respondent had unauthorized discharges of pollutants in its storm water from the facility on at least eighteen (18) occasions between December 13, 2006 and June 17, 2011, in violation of Section 301 of the Act.

13. Each unauthorized discharge event was a violation of Section 301 of the Act, 33 U.S.C § 1311.

14. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500.00.

15. EPA has notified the TCEQ of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

16. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comment filed by the public.

III. Proposed Penalty

17. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of one hundred seventy-six thousand seven hundred and forty-one dollars (\$176,741.00).

18. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which included such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

IV. Failure to File an Answer

19. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an

Answer to the Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

20. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

21. If Respondent does not file an Answer to this complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

22. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

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

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Efren Ordoñez (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

23. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

24. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

25. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

26. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

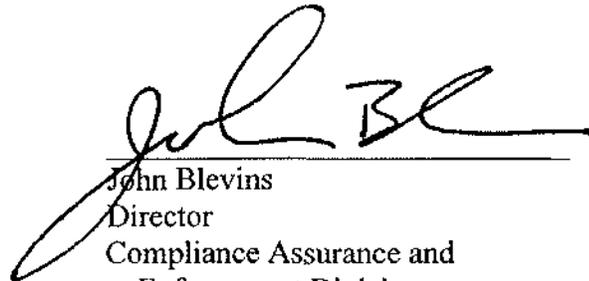
VI. Settlement

27. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Everett H. Spencer, of my staff, at (214) 665-8060.

28. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

29. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a) including one relating to the violations alleged herein.

1.4.12
Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

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

Copy by certified mail,
return receipt requested: Mr. Donald G. Barar
Plant Manager
Exide Technologies
7471 South Fifth Street
Frisco, TX 75034

Ms. Susan Johnson, Manager
Enforcement Section I, MC 169
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

CT Corporation System
Registered Agent for Exide Technologies
350 N. Saint Paul St., Suite 2900
Dallas, TX 75201

Copy hand-delivered: Mr. Efren Ordoñez (6RC-EW)
Water Legal Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: January 5, 2012

Sandra Hardy