



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

April 23, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 2780 0002 4357 0062

Don Barrar
Plant Manager
Exide Technologies, Inc.
P.O. Box 250
Frisco, TX 75034

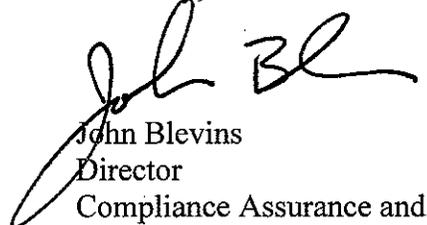
Re: RCRA § 3013 Administrative Order on Consent
Exide Technologies, Inc. – Frisco Battery Recycling Plant

Dear Mr. Barrar:

Please find enclosed an Administrative Order on Consent (Order) pursuant to Section 3013(a) of the Resource Conservation and Recovery Act. The U.S. Environmental Protection Agency (EPA) had issued a Unilateral Administrative Order dated August 1, 2011, requiring site assessment by Exide Technologies, Inc. (Exide), including delineation of soil, sediment, surface water, and groundwater contamination associated with the facility. Exide and EPA later agreed to enter into the enclosed Order, which supersedes and replaces the Unilateral Order in its entirety.

After signing the enclosed Order, please return it to EPA for my signature. The Order will be effective upon the date of signature by both parties. If you have any technical questions, you may contact Paul James at (214) 665-6445 or james.paul@epa.gov. If you have legal questions, please contact Jay Przyborski at (214) 665-6605 or przyborski.jay@epa.gov.

Sincerely,



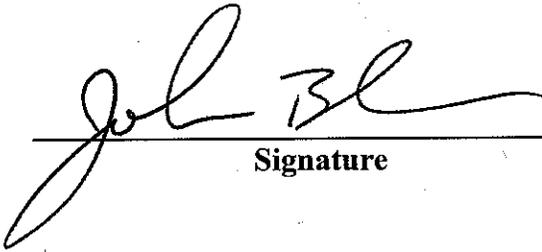
John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Richard Hyde, Deputy Director
Office of Compliance and Enforcement
Texas Commission on Environmental Quality

FOR CONCURRENCE ONLY

**Exide Technologies, Inc.
Administrative Order on Consent
Docket No. RCRA 06-2011-0966**

A handwritten signature in black ink, appearing to be "John Bl", written over a horizontal line.

Signature

4-23-12

Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

EXIDE TECHNOLOGIES, INC.
7471 SOUTH 5TH STREET
FRISCO, TEXAS 75034

RESPONDENT

EPA ID No.: TXD006451090

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ADMINISTRATIVE ORDER
ON CONSENT

DOCKET NO. RCRA 06-2011-0966

Proceedings under Section 3013(a) of
the Resource Conservation and
Recovery Act, as amended, 42 U.S.C. §6934

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RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT

The parties to this Administrative Order on Consent ("Consent Order" or "Order"), the United States Environmental Protection Agency ("EPA") and Exide Technologies, Inc. ("Respondent"), having agreed to entry of this Consent Order, which supersedes and replaces in its entirety that certain unilateral Administrative Order issued under this Docket Number on August 1, 2011, it is therefore ordered and agreed that:

I. JURISDICTION

1. This Consent Order is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 3013(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6934(a). The authority to issue this Order has been delegated to the Regional Administrator, EPA Region 6 by EPA Delegation No. 8-20 and further delegated to the Director of the Compliance Assurance and Enforcement Division, EPA Region 6 ("Director") by Delegation R6-8-20. EPA has notified the Texas Commission on Environmental Quality ("TCEQ") that this Consent Order is being issued and is providing a copy to the TCEQ.

2. The State of Texas' RCRA program was authorized under 3006(b) of RCRA, 42 U.S.C. § 6926(b). Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains its authority under Section 3013(a) of the Act.

3. This Consent Order is issued to Exide Technologies, Inc. ("Respondent"), the owner and operator of the facility located at 7471 South 5th Street, Frisco, Texas 75034 ("Facility"). Respondent consents to issuance of this Consent Order and agrees to comply with its terms and will not contest EPA's authority to issue this Consent Order and enforce its terms. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require Respondent's full or interim compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims and reserves its rights as provided in Paragraph 77 below.

II. PARTIES BOUND

4. The provisions of this Consent Order shall apply to and be binding upon EPA and Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

5. No change of ownership, corporate, or partnership status relating to the Facility described in this Order will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by the express terms and conditions of this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

6. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants ("Contractors") retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) working days of the effective date of this Order, or on the date of such retention of services, whichever is later, and shall condition all such contracts on compliance with the terms of this Order.

7. Any documents transferring ownership and/or operation of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Order to its successor-in-interest and written notice of said transfer of ownership and/or operation to EPA.

8. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference.

III. STATEMENT OF PURPOSE

9. In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct monitoring, testing, analysis, and reporting to determine the nature and extent of any release of hazardous waste and/or hazardous constituents at or from the Facility. To meet these objectives, Respondent prepared and submitted to EPA for approval a Workplan to determine the nature and extent of any hazard as described more fully below. EPA approved and Respondent has agreed to implement the Workplan. Respondent neither admits nor denies any findings, determinations or conclusions made by EPA in this Order.

IV. EPA'S FINDINGS OF FACT

Facility Description

10. Respondent's Facility covered by this Order is approximately 220 acres and is located at 7471 South 5th Street, Frisco, Texas.

11. Respondent's Facility was constructed and began operations in approximately 1964 by Burrs Metals, a Division of GNB, to produce lead oxide and began operations. In approximately 1969 battery recycling operations began at this Facility. The Facility recycles spent lead-acid batteries and other lead-bearing scrap materials. The scrap lead is smelted and refined to produce lead, lead alloys, and lead oxide. Exide purchased this Facility in 2000.

12. The Facility's primary production/operation area is located between two branches of Stewart Creek which join and flow in a westerly direction through the Facility property. Stewart Creek empties into Lake Lewisville (formerly known as the Garza-Little Elm Reservoir) approximately five miles downstream of the Facility.

13. The Facility consists of a battery storage building, battery breaker operations, raw materials storage, a laboratory, a blast furnace, a reveratory furnace, an oxide production facility, lead refining operations, on-site landfills, a wastewater treatment plant, and a stormwater retention pond.

14. The Facility was issued a RCRA Hazardous Waste Permit (#50206) in 1988, which was renewed in 2001, and is currently undergoing renewal. 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).

Past Facility Investigations

15. In the original 1988 permit, a RCRA Facility Investigation (RFI) was required on the following solid waste management units at the Facility:

- a. Battery storage area – used for storage of batteries prior to processing
- b. Raw material storage area – used for storage and mixing of furnace charge
- c. Slag landfill – used for disposal of blast furnace slag
- d. North disposal area – used for disposal of rubber chips and blast furnace slag
- e. South disposal area – used for disposal of rubber chips and blast furnace slag
- f. Stewart creek – lined with slag in the 1960's to prevent erosion
- g. Old drum storage area
- h. Stewart creek sediment dredging waste pile – sediment dredged from earlier remediation of Stewart Creek
- i. Product (rubber chip) waste pile – collection point for battery case rubber chips

16. The RFI conducted in 1990-1991 included installation and monitoring of on-site groundwater monitoring wells and delineation of nine solid waste management units (four landfills, four storage areas, and the creek). The RFI report was submitted to TCEQ in 1991 and an addendum to the report was submitted in 1993.

17. A Phase II RFI workplan was submitted to TCEQ on October 5, 1994. The workplan was approved with modifications by TCEQ by letter dated February 27, 1998. A Phase II RFI Report dated August 28, 1998 was submitted to the TCEQ in August, 1998.

18. In 1999, a Stewart Creek Corrective Measures Workplan was conditionally approved by TCEQ. Subsequently, a stretch of more than 2,000 feet of Stewart Creek was remediated.

19. Of those units identified in Paragraph 15, certification of closure was approved by TCEQ in 2000 for the following four units: 1) battery storage area; 2) old drum storage area; 3) Stewart Creek sediment dredging waste pile; and 4) product waste pile.

20. The 2001 permit contains a provision that required the performance of an RFI on the following solid waste management units: 1) slag landfill; 2) raw material storage area; 3) north and south disposal areas; and 4) Stewart Creek.

21. Groundwater samples collected by the Facility at 4 of the 18 monitoring wells sampled from 2002-2005 detected lead in the surficial aquifer at concentrations above the MCL (0.015 mg/L). There is no post-2005 groundwater data available for the Facility.

22. During a TCEQ inspection in 2005, the inspector noted exposed fragments of lead-acid battery cases and slag at the South Disposal Area and inactive slag landfill. Subsequently, the caps in these two areas were repaired. Additionally, the TCEQ inspector observed an area of what appeared to be seepage through the concrete wall near the Battery Storage area, which is near Stewart Creek.

EPA Inspection

23. The week of December 14 – 18, 2009, EPA conducted a multi-media [RCRA, Clean Water Act (CWA), Clean Air Act (CAA), and the Emergency Planning and Community Right-to-know Act (EPCRA)] compliance inspection at Respondent's Facility. In addition to the compliance portion of the inspection, a RCRA Corrective Action case development inspection was also conducted, with a subsequent sampling inspection conducted on March 29, 2010.

24. During the Corrective Action inspection, EPA identified concerns relating to (a) the presence of exposed fragments of lead-acid battery cases and slag at the North and South Disposal Areas; (b) equipment containing process wastes and a piece of hydraulic equipment observed to be leaking fluid at the Facility equipment storage area referred to as the "boneyard;" (c) liquid observed to be leaking from a frac tank at the crystallizer unit; and (d) liquid which appeared to be seeping from beneath the flood wall between the Facility process area and Stewart Creek resulting in standing water and white crystalline substance on the ground between the wall and the creek.

25. It is known from process knowledge that fragments of lead-acid battery cases and slag have the potential to contain lead at levels that may exceed the threshold for a characteristic hazardous waste.

26. EPA obtained analytical data from Exide for the 2009-2011 timeframe for liquid in the frac tank indicating levels of selenium and cadmium exceeding the threshold for characteristic hazardous wastes.

27. On March 29, 2010, EPA collected samples of the saturated soil and white crystalline substance between the flood wall and the creek and tested the pH of the standing water. Analytical results of the material sampled exceeded EPA's media-specific soil screening level for lead in industrial soil (800 ppm) in three of the samples and elevated pH was observed in the same samples:

V. EPA'S DETERMINATIONS AND CONCLUSIONS OF LAW

28. Based on the Findings of Fact made by EPA set out above, EPA has determined that there are potentially significant environmental or human health effects associated with the hazardous waste which is present at, or released at, or from, the Facility.

29. EPA hereby determines that the presence of hazardous waste that is or has been managed at the Facility and/or the release of hazardous waste which has been treated, stored or disposed of at the Facility may present a substantial hazard to human health or the environment.

30. EPA further determines that the monitoring, testing, analysis and reporting set forth in this Consent Order are reasonable to ascertain the nature and extent of the hazard at the Facility.

VI. WORK TO BE PERFORMED

31. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent agrees to and is hereby ordered to perform the following actions in the manner and by the dates specified herein.

VII. SAMPLING AND ANALYSIS WORKPLAN

32. On September 20, 2011, Respondent submitted a sampling and analysis workplan ("Workplan") prepared by Conestoga Rovers & Associates for monitoring, testing, analysis, and reporting, to ascertain the nature and extent of the hazard posed by the hazardous wastes and/or hazardous constituents that are present at, or may have been released from, Respondent's Facility. A revised Workplan was submitted on November 15, 2011. EPA approved the revised Workplan as of December 2, 2011. Respondent agrees to and is hereby ordered to implement the Workplan.

33. In accordance with the timetable in the Workplan, Respondent shall submit a final report to EPA addressing the requirements and goals outlined in the Workplan. The final report shall also include:

- a. A summary of all actions taken to comply with this Consent Order; and
- b. An evaluation/comparison of data collected to appropriate Texas Risk Reduction Program (TRRP) protective concentration levels (PCLs) (or risk-based exposure limit, "RBEL", for surface water) which can be found at: <http://www.tceq.texas.gov/remediation/trrp/trrppcls.html>.

34. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data required by this Consent Order. Such previous work may be used to meet the requirements of this Order, upon submission to and formal approval by EPA.

VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL

35. All work performed by Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. At least fifteen (15) days before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Order. Additionally, Respondent shall ensure that when a license is required by law or regulation, only licensed individuals shall be used to perform any work required by this Order.

IX. ADDITIONAL WORK

36. Based on work performed under the Workplan described above, EPA may request that Respondent perform additional monitoring, testing, analysis, and/or reporting to complete the objectives of the Workplan, by notifying Respondent in writing and specifying the basis for its request for such additional work. Respondent will consider any such request by EPA. Within fifteen (15) days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If Respondent agrees to perform such additional work, Respondent shall, if requested by EPA, submit for EPA approval a workplan for the additional work within sixty (60) days of receipt of EPA's request for a workplan for such additional work, or according to an alternative schedule agreed upon by EPA and Respondent. If Respondent does not agree to perform such additional work or Respondent and EPA cannot agree upon a workplan for such additional work, the procedures of Section XVIII. DISPUTE RESOLUTION shall apply. EPA also reserves its rights under applicable law to issue an order requiring such additional work.

X. SUBMISSIONS/EPA REVIEW

37. EPA will review Respondent's Workplan, and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission.

38. Within twenty (20) days of the date of Respondent's receipt of EPA's comments on the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission.

39. Within thirty (30) days following Respondent's receipt of EPA's written approval of a submission or portion thereof, Respondent shall begin implementation of such approved document or portion.

40. If the site work extends beyond a three month period, Respondent shall provide EPA with quarterly progress reports demonstrating that the activities associated with this Consent Order are being carried out. The deadline for submittal of the first such report shall be the fifteenth day of the month following the end of the third month following the effective date of this Consent Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Consent Order is effective. These quarterly progress reports shall be due on the fifteenth day of the month following the end of the quarter.

41. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent.

42. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Order shall be in writing and shall be sent as follows:

Two (2) copies (one (1) hard copy, double-sided if possible and one (1) electronic copy) of all documents to be submitted to EPA, unless otherwise provided in the Workplan or agreed to by EPA, shall be sent to:

Sunita Singhvi, Chief, Corrective Action and Compliance Inspection
Hazardous Waste Enforcement Branch
RCRA Corrective Action and Compliance Inspection Section
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200 (6EN-HC)
Dallas, TX 75202-2733
Attention: Paul James
Phone: (214) 665-6445
Fax: (214) 665-7446
Email: james.paul@epa.gov

Documents to be submitted to Respondent shall be sent to:

Mr. David McKercher
Plant Manager
Exide Technologies
P.O. Box 250
Frisco, TX 75034
Email: David.Mckercher@exide.com

With a copy to:

Mr. Matthew A. Love
Exide Technologies
P.O. Box 14294
Reading, PA 19612-4294
Email: matt.love@exide.com

Electronic submission to the specified e-mail address for a party shall be acceptable and shall constitute delivery as long as the submission is followed by a mailed hard copy.

43. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of Respondent.

A person is a "duly authorized representative" only if: (a) the authorization is made in writing; and (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position). For purposes of

this Order, EPA recognizes as duly authorized representatives of Respondent the person holding the title of "Plant Manager" of the Facility and the person holding the title of "Vice President, Global Environment, Health and Safety" for Respondent. In all instances in which this Order requires submissions to EPA, each submission must be accompanied by the following certification signed by a "duly authorized representative:"

"I certify that this document and all attachments were prepared under my direction or supervision. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I certify that this submittal and all attachments were prepared in compliance with the RCRA § 3013 Administrative Order on Consent entered into between EPA and Exide Technologies; docket number RCRA-06-2011-0966. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____

Name: _____

Title: _____

Date: _____

XI. QUALITY ASSURANCE/QUALITY CONTROL

44. All sampling undertaken pursuant to this Order shall be performed in accordance with the EPA-approved Workplan.

45. Respondent shall develop a Quality Assurance Project Plan ("QAPP") for all sampling and analysis conducted under this Order. Workplans shall contain quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in the approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

46. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).

47. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

48. Respondent shall monitor to ensure that the quality assurance procedures specified in the EPA-approved workplan are followed. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test

Methods for Evaluating Solid Waste, Physical/Chemical Methods” (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols. EPA may reject any data that does not meet the requirements of the approved workplan or EPA approved analytical methods and may require resampling and additional analyses.

49. Respondent shall ensure that the laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory’s performance or QA/QC, resampling and additional analysis may be required.

XII. PROJECT COORDINATOR

50. EPA hereby designates as its Project Coordinator:

Paul James
RCRA Corrective Action and Compliance Inspection Section
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200 (6EN-HC)
Dallas, Texas 75202-2733
Phone: (214) 665-6445
Fax: (214) 665-7446
Email: james.paul@epa.gov

51. Respondent hereby designates as its Project Coordinator:

Matthew A. Love
Director, Global Environmental Remediation
Exide Technologies
Spring Valley Road & Montrose Avenue
Reading, PA 19605
Phone: (610) 921-4054
Fax: (610) 921-4062
Email: matt.love@exide.com

52. Respondent shall ensure that its Project Coordinator (original or replacement) has the ability and qualifications to effectively perform this role. All persons under the direction and supervision of the Respondent’s Project Coordinator must possess all necessary professional licenses required by federal and state law.

53. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Consent Order and function as the principal project contact.

54. To the maximum extent possible, all communication between Respondent and EPA, and all documents, reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order shall be directed through the Project Coordinators unless otherwise provided in this Consent Order or agreed by the parties.

55. Respondent shall provide EPA, and EPA shall provide Respondent, with a written notice of any change in its Project Coordinator. To the extent possible, such notice shall be provided at least seven (7) days prior to the change in Project Coordinator.

56. The absence of the EPA Project Coordinator shall not be cause for the stoppage or delay of work.

XIII. IMMINENT AND SUBSTANTIAL ENDANGERMENT

57. Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, should 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. In addition, EPA may take action under any other applicable statutory or regulatory authority upon making the appropriate findings required for such action under the applicable statutory or regulatory authority.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

58. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Consent Order.

59. Respondent shall notify EPA and TCEQ, in writing and by electronic mail, at least fifteen (15) days in advance of collection of any samples at the Facility conducted pursuant to this Order.

60. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Order, provided that such sampling shall not delay EPA's proposed sampling activities.

61. Nothing in this Order shall limit or otherwise affect EPA's authority to collect samples pursuant to any applicable law, including, but not limited to, RCRA, the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

62. EPA will make available to Respondent the results of sampling and/or tests or other data from the Facility similarly generated by EPA.

XV. ON-SITE AND OFF-SITE ACCESS

63. EPA and/or any EPA authorized representative(s) are authorized, allowed, and permitted, pursuant to § 3007(a) of RCRA, 42 U.S.C § 6927(a), to enter and freely move about all property at the Facility following site-specific health and safety rules, including rules requiring that visitors be constantly accompanied by an employee of Respondent at all reasonable times for the purposes of enforcing the requirements of RCRA, including:

- a. Interviewing site personnel and contractors, inspecting records, operating logs, and contracts related to the Facility;
- b. Reviewing the progress of Respondent in carrying out the terms of this Order;
- c. Conducting such tests as EPA deems necessary;
- d. Using a camera, video camcorder, sound recorder, or other documentary type equipment; and
- e. Verifying the reports and data submitted to EPA by Respondent.

64. Respondent shall provide access at reasonable times to the Facility and all records and documentation that pertain to work undertaken pursuant to this Consent Order, and conditions at the Facility relevant to such work, to EPA and its employees, contractors, agents, consultants, and representatives.

65. To the extent that activities required by this Order, or by any approved Workplan(s) prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use reasonable efforts to obtain site access agreements in a timely manner from the present owners of such property. Reasonable efforts shall include, but not be limited to requiring Respondent to pay reasonable rental costs and compensation for losses sustained by owner or occupant of the realty. Respondent shall provide EPA's Project Coordinator with a copy of any access agreements. Access agreements shall provide access to Respondent, its contractor(s), the United States, EPA, the State, and their representatives, including contractors. Any such access agreements shall be incorporated by reference into this Order. In the event that site access agreements are not obtained within thirty (30) days of the specific workplan approval, Respondent shall notify EPA by telephone by the end of the business day following the expiration of the above thirty (30) day period and shall within seven (7) days of the oral notification, notify EPA in writing of the failure to gain such site access agreements regarding both the lack of, and efforts to obtain, such agreements. If EPA is able to obtain access, Respondent shall perform work described in this Order.

66. Nothing in this Order limits, constrains, or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

XVI. INFORMATION SUBMITTED TO EPA

67. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to or obtained by EPA pursuant to this Order, including any photographs, videos, documents or copies taken or made by

EPA pursuant to paragraph 63. In accordance with 40 C.F.R. § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Respondent shall have the burden of demonstrating to EPA that such privilege exists. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and in the manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

68. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Order, Respondent shall identify the document, the privilege claimed and the basis therefore in writing. For the purposes of this Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable statute or case law. EPA may dispute any such claim of privilege.

XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

69. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XIX, "FORCE MAJEURE AND EXCUSABLE DELAY," in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

- a. For any failure to commence, perform or complete work as prescribed in this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each of the next seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter;
- b. For any failure to submit any draft or final workplans, plans, or reports as required by this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each of the next seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter; and
- c. For any failure to submit other deliverables as required by this Consent Order: \$500 per day for one to seven days or part thereof of noncompliance, and \$1,000 per day for each of the next seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter.

70. All penalties shall begin to accrue on the date that a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the

simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

71. All penalties owed to EPA under this Section XVII shall be due within thirty (30) days of receipt of a demand for payment, unless Respondent invokes the DISPUTE RESOLUTION procedures under Section XVIII, below. Such demand for payment shall describe the noncompliance and shall indicate the amount of penalties due.

72. All penalty payments shall be made by certified or cashier's check, or wire transfer, payable to the Treasurer of the United States of America and 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 check(s) should be remitted to:

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 check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 U.S. 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"

All payments shall reference Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and

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

73. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVIII, "DISPUTE RESOLUTION." Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within twenty-one (21) days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in Paragraph 72 of this Section.

74. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

75. The assessment of stipulated penalties set forth in this Section XVII shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

XVIII. DISPUTE RESOLUTION

76. If a dispute arises under this Consent Order, the procedures of this Section ("DISPUTE RESOLUTION") shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.

77. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or decision made by EPA pursuant to this Consent Order, or requests for additional monitoring, testing, analysis, and/or reporting to complete the objectives of the Workplan made pursuant to Section IX, "ADDITIONAL WORK," Respondent shall notify EPA in writing of its objections, and the basis thereof, within fourteen (14) days of receipt of EPA's disapproval, or decision. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision. EPA determinations shall be made by the Associate Director of the Hazardous Waste Enforcement Branch, U.S. EPA Region 6. All EPA determinations under this Paragraph 77 are final and become part of this Consent Order

78. Except as provided in Paragraphs 71 and 73 above, the existence of a dispute, as defined in this Section XVIII, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

XIX. FORCE MAJEURE AND EXCUSABLE DELAY

79. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. Such events do not include: increased costs of performance; changed economic circumstances; failure to obtain federal, state or local permits; reasonably foreseeable weather conditions; or weather conditions which could have been overcome by due diligence.

80. In the event of a *force majeure*, Respondent shall notify EPA, orally or by electronic or facsimile transmission as soon as possible, but no later than 96 hours after Respondent becomes aware or should have been aware of the *force majeure* event and shall within ten (10) days of the time Respondent becomes aware or should have been aware of the *force majeure* event notify EPA in writing of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Paragraph 80 shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If EPA determines that the failure to give notice was not prejudicial to EPA, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

81. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXIII "SUBSEQUENT MODIFICATION." Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVIII, "DISPUTE RESOLUTION."

XX. RESERVATION OF RIGHTS

82. EPA expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by Respondent pursuant to this Order, to require that Respondent correct and/or re-perform any work disapproved by EPA. EPA reserves the right to issue an order requiring Respondent perform tasks in addition to those stated in the Workplan(s) or in this Order, consistent with the objectives of this Order; provided, however, should EPA determine that such additional work is necessary, prior to the issuance of any such order, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary, afford Respondent the opportunity to meet or confer with EPA to discuss the requested additional work, and afford Respondent the opportunity to agree to perform the additional work.

83. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under § 3013(e) of RCRA, 42 U.S.C. § 6934(e). This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, CWA, the Safe Drinking Water Act ("SDWA"), CAA, or any other statutory, regulatory, or common law enforcement authority of the United States.

84. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, site characterization, remedial investigation, feasibility study, response/corrective actions or reporting it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

85. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Order.

86. In the event EPA suspends the work or any other activity at the Facility, EPA may extend affected schedules under this Order for a period of time equal to that of the suspension of the work plus reasonable additional time for resumption of activities. If the delay pursuant to this Section is caused by Respondent or its contractor's non-compliance with this Order, then any extension of the compliance deadlines shall be at EPA's sole discretion. Any extensions in the schedules set out in this Order or in its attachments must be made by EPA in writing.

87. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the parties acknowledge and agree that EPA's approval of the Workplan does not constitute a warranty or representation that the Workplan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondents

of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

88. No action or decision by EPA pursuant to this Order shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

89. Except as otherwise provided herein, Respondent expressly reserves all of its rights and defenses.

90. Notwithstanding any other provision to the contrary contained in this Order, Respondent reserves whatever rights it may have to object to any order issued by EPA other than this Order or to assert defenses to any action that may be brought by EPA to seek recovery of costs of performance of any work addressed by this Order.

91. EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities by this Order.

XXI. OTHER APPLICABLE LAWS

92. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

93. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

94. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. The time for Respondent's performance under this Consent Order may be extended upon written approval by EPA while Respondent uses its best efforts to obtain state and local permits required for any activities required by the Workplan, including specifically, but not limited to, permits for installation of non-temporary groundwater monitoring wells.

XXII. OTHER CLAIMS

95. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or

corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous waste constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

96. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XXIII. SUBSEQUENT MODIFICATION

97. Except as provided in Paragraph 99 of this Section XXIII, this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order. Any oral agreement between EPA and Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Respondent, shall have as its effective date the date of such oral agreement.

98. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XVII, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

99. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators, which agreement may be evidenced by an exchange of emails. Such modifications shall have as an effective date the date on which the agreement is signed or a confirmatory email is sent by the EPA Project Coordinator or his supervisor.

100. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXIV. SEVERABILITY

101. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

XXV. TERMINATION AND SATISFACTION

102. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XX (Reservation of Rights), Section XXI (Other Applicable Laws), and Section XXII (Other Claims).

XXVI. PERMIT INTEGRATION

103. If, subsequent to the issuance of this Order, a RCRA permit, including renewal of or a modification to the existing permit, is issued to the Facility, the requirements of this Order may be incorporated by reference or in detail into that permit. The requirements of this Order shall terminate upon the issuance by TCEQ of a renewal of or modification to the RCRA permit for the Facility if the outstanding requirements of Respondent under this Consent Order are incorporated into the permit and if the incorporation and subsequent termination are mutually agreed to by Exide and EPA.

XXVII. EFFECTIVE DATE

104. The effective date of this Consent Order shall be the date upon which both parties have signed the document.

IT IS SO AGREED AND ORDERED:

DATE: _____

BY: _____

John Blevins
Director
Compliance Assurance and
Enforcement Division
U.S. Environmental Protection Agency

DATE: _____

BY: _____

Name:
Title:
Exide Technologies, Inc.
RESPONDENT