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BEFORE THE HEARING BOARD OF THE  
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In the Matter of  
EXIDE TECHNOLOGIES INC.  
[Facility ID No. 124838],  
Petitioner,  
vs.  
SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT,  
Respondent.

CASE NO. 3151-18  
FINDINGS AND DECISION

**FINDINGS AND DECISION OF THE HEARING BOARD**

On May 23, 2008, Exide Technologies, Inc. (“Exide” or “Petitioner”) filed a Petition pursuant to District Rule 3005(g)(5) and Health and Safety Code section 42302 seeking review of the District’s May 13, 2008 action to reopen and revise Exide’s Title V permit.

A hearing was held with respect to this Petition on: June 19, June 26, July 22, July 23, July 30, July 31, August 26, August 27, August 28, September 2, September 3, September 4, September 16, September 17, September 18, October 28, October 29, October 30 and November 5, November 6, November 13, and November 18, 2008 pursuant to notice and in accordance with the provisions of California Health and Safety Code Section 40823 and District Rule 510. The

1 following members of the Hearing Board were present: Edward Camarena, Chair; Laurine E.  
2 Tuleja, Vice-Chair; Joseph D. Auerbach, M.D.;<sup>1</sup> Marti L. Klein; and Barry Read. Petitioner Exide  
3 Technologies, Inc. was represented by Robert L. Collings, Schnader Harrison Segal & Lewis LLP  
4 and Randolph Visser, Sheppard Mullin Richter & Hampton. Respondent South Coast Air Quality  
5 Management District was represented by Teresa R. Barrera, Deputy District Prosecutor, Joseph  
6 Panasiti, Senior Deputy District Prosecutor, and Allen Mednick, Consultant. The public was given  
7 the opportunity to testify. The matter was submitted and evidence received.  
8

### 9 10 SUMMARY

11 District Rule 3005(g) allows the District's Executive Officer to reopen and revise Title V  
12 permits under specified conditions. (Exhibit ("Ex.") 28, pp. 8-9) Subsection (g)(4) prohibits the  
13 District from reopening a Title V permit unless the District provides thirty days of advance notice  
14 to the permit holder, the public, and the United States Environmental Protection Agency (USEPA).  
15 (Ex. 28, p. 9) Subsection (g)(5) allows the Executive Officer to reopen a Title V permit without  
16 providing the required notice if the Executive Officer makes specified findings, "subject to the  
17 permit holder's right to appeal to the Hearing Board pursuant to Health and Safety Code section  
18 42302." (Ex. 28, p. 9). The District revised Exide's Title V permit, and Exide filed its petition  
19 with this Hearing Board, each pursuant to subsection (g)(5).  
20  
21

22 District Rule 1420(d)(1) establishes an ambient lead concentration limit for lead processing  
23 facilities of 1.5 micrograms per cubic meter, based on a thirty-day averaging period and  
24 measurements taken beyond the facility property line.

25 On May 13, 2008, the District served Exide with a letter and revised versions of conditions  
26 C1.2 and C1.3 in Exide's Title V permit. These permit conditions limit the amount of material  
27

28 <sup>1</sup> Dr. Auerbach was not present on September 2, October 28-30 and November 5, 6, 13, and 18, and did not participate

1 processed by Petitioner's cupola furnace and reverbatory furnace, respectively. Among other  
2 actions, the District imposed a production cut of approximately fifty percent (50%), "effective  
3 immediately." In its letter informing Exide of the permit action, the District stated that it was  
4 revising Exide's permit "to prevent violations of District Rule 1420(d)(1)," as well as "to prevent  
5 exceedances of the National Ambient Air Quality Standard for lead" and "to prevent the  
6 occurrence of a public nuisance." (Ex. 7, p. 1). The revised version of condition C1.2, which is  
7 applicable to the cupola furnace, reads as follows:  
8

9 C1.2 The operator shall limit the material processed to no more than 89 ton(s) in any one  
10 day.<sup>2</sup>

11 (A) For the purpose of this condition, material processed shall be defined as the  
12 total weight of all materials charged to the cupola furnace. This condition  
13 shall not apply to baghouse dust generated on-site.  
14

15 (B) The operator may increase the material processed to 132 tons in any one day  
16 only if the ambient concentrations of lead measured over a 60 day period at  
17 all monitoring stations located at or beyond the property line and within 300  
18 meters of Exide [sic] facility are below 1.25 micrograms per cubic meter  
19 averaged over 30 days.  
20

21 (C) The operator may increase the material processed to 178.32 tons in any one  
22 day [the level authorized prior to May 13, 2008] only if the ambient  
23 concentrations of lead measured are  
24  
25  
26

27 in deliberations.

28 <sup>2</sup> The prior version of condition C1.2 limited material processed to no more than 178.32 ton(s) in any one day. Ex. 8,  
p. 1.

1 (1) below 1.0 micrograms per cubic meter averaged over 30 days, as  
2 calculated over a 60 day period at all monitoring stations located at  
3 or beyond the property line and within 300 meters of Exide's  
4 facility, or,

5  
6 (2) below 1.25 micrograms per cubic meter averaged over 30 days, as  
7 calculated over a 120 day period at all monitoring stations located at  
8 or beyond the property line and within 300 meters of Exide's  
9 facility.

10  
11 (D) If Exide increases its throughput pursuant to the foregoing, and the ambient  
12 concentrations of lead measured over a 30 day period at any monitoring  
13 station located at or beyond the property line and within 300 meters of  
14 Exide [sic] facility exceed 1.5 micrograms per cubic meter averaged over 30  
15 days, Exide shall limit the material processed to no more than 89 tons in any  
16 one day. Exide shall not increase the amount of material processed in any  
17 one day unless it complies with the foregoing conditions.  
18

19 See Exhibit 9, p. 48.  
20

21 The revised version of condition C1.3 contains language for the reveratory furnace that is  
22 identical to condition C1.2; the tonnage limits specified in condition C1.3 differ from those in  
23 condition C1.2, but they are proportionally the same for the two furnaces. (Exhibit 9, p. 49)

24 On May 14, 2008, Exide curtailed its production, as required in the revised permit  
25 conditions. (Copeland 9/3 RT 17:19-18:11)  
26

27 On May 23, 2008, Exide filed its petition with this Hearing Board seeking review of the  
28 District's May 13 permit revisions and requesting various forms of relief. Among other things,

1 Exide sought an order vacating newly revised permit conditions C1.2 and C1.3 and allowing Exide  
2 to resume full production. (Petition p. 7, para. 10)

3 Based on monitoring data indicating that Exide met the terms of conditions C1.2(C) and  
4 C1.3(C), the District allowed Exide to resume full production on June 24, 2008. (Copeland 9/3  
5 RT 18:12-14)

6 Because Exide has now resumed full production, there is no longer any remedy that this  
7 Board could order with respect to that portion of Exide's May 23, 2008 petition seeking an order  
8 allowing Exide to immediately return to full production. Therefore, the Hearing Board will not  
9 address the propriety of the Executive Officer's action of May 13, 2008 requiring a production cut  
10 of approximately fifty percent (50%). However, permit conditions C1.2 and C1.3 are ongoing  
11 requirements that would again impose immediate, automatic fifty percent (50%) production cuts if  
12 offsite monitors detect ambient lead levels exceeding a specified concentration over a specified  
13 period at any time in the future. Therefore, the Hearing Board hereby reviews the applicability,  
14 reasonableness and propriety of conditions C1.2 and C1.3 as they apply to Exide's ongoing  
15 operations and production.  
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#### 20 **HEARING BOARD AUTHORITY AND STANDARD OF REVIEW**

21  
22 District Rule 3005(g)(5) gives a permit holder the right to appeal a permit revision "to the  
23 Hearing Board pursuant to Health and Safety Code section 42302." Section 42302 provides that if  
24 a permit application is denied, the applicant may request the Hearing Board "to hold a hearing on  
25 whether the permit was properly denied." Section 42309 lists remedies that the Hearing Board  
26 may order following such a hearing. Therefore, in considering Exide's petition for review of the  
27 Executive Officer's action in this matter, the Hearing Board will consider whether the permit was  
28

1 properly revised, and if the Hearing Board finds that the permit was not properly revised, what  
2 remedy it should order. As the moving party, Exide bears the burden of proving, by a  
3 preponderance of the evidence, that the Executive Officer's action was not proper. (Cal. Evid.  
4 Sec. 115)

## 8 FINDINGS OF FACT

### 10 General Background

11 Exide is a Delaware corporation that operates a secondary lead smelter (Facility ID No.  
12 124838) at 3700 South Indiana Street, Vernon, California, 90023 ("the Facility"). (Ex.13.)

13 Respondent South Coast Air Quality Management District is a body corporate and politic  
14 established and existing pursuant to Health and Safety Code § 40400, et seq., and is the sole and  
15 exclusive local agency with the responsibility for comprehensive air pollution control in the South  
16 Coast Basin.  
17

### 18 Facility

19 The Facility is approximately 26 acres in size, with a building area of approximately  
20 220,000 square feet, and over 100 employees who work on a three-shift, seven-day work schedule.  
21 (Copeland 9/3 RT 87:7-9, Copeland 6/19 RT 6:119, 118:6-12, Ex. 21B pp. 6, 9) A diagram of the  
22 Facility is found at Ex. 13, p. 005.  
23

24 The Facility recycles lead batteries. Exide purchases substantial numbers of spent batteries  
25 to recover the lead, acid and plastic. (Copeland 6/19 RT 117:6-118:13, Copeland 6/19 134:24-  
26 142:19, and Copeland 9/2 RT 153:6-154:1). Trucks transport batteries into the Facility where  
27 they are weighed and removed via forklift to the raw materials processing (RMPS) building, and  
28

1 then dumped into a vibrator that sends them to a conveyor belt. (Copeland 6/19 RT 134:24-  
2 136:4.)

3 The batteries next go through a crusher or hammermill, which is a large machine shredder  
4 with hammers to smash the batteries. (Copeland 6/19 RT 137:8-21.) The plastic in the cases is  
5 recovered to make new battery cases and the acid is treated and either reused or discharged. The  
6 lead is recycled at a rate of about 97 percent (97%) of the lead in the batteries.  
7

8 The lead bearing materials are separated into grid, metal, and filter cake and transferred via  
9 overhead conveyor to the reverb storage room in the RMPS building, where they are then dropped  
10 into piles. (Copeland 6/19 RT 138:23-24; Haynes 9/17 RT 103:18-24.) The materials are then  
11 scooped up by a front end loader and dropped into a hopper that feeds another conveyor belt  
12 heading toward the rotary dryer. (Haynes 9/17 RT 105:8-13.) The conveyor and the rotary dryer  
13 are both located in an underground tunnel which is open to the atmosphere. (Haynes 9/17 RT  
14 115:10-24.)  
15

16 From the dryer, materials are fed to the reverberatory furnace after which the molten  
17 materials are transferred either to refining kettles or the blast furnace. The lead produced in the  
18 blast furnace is also poured into refining kettles and is then poured into molds where it cools and  
19 hardens. Materials are then transferred to the finished lead warehouse via gravity flow, conveyor  
20 belt, or forklift. (Copeland 6/19 RT 139:13-141:25; Kemp 7/22 RT 19:5-23; Ex. 31, p. AQMD  
21 EXIDE 00000663.)  
22

23 Exide's manufacturing capacity for finished lead is approximately 340 tons per day. (Ex.  
24 13, p. 003.) A general diagram of lead recycling appears on Exhibit 21B, page 10.  
25

### 26 Emission Controls

27 In 2006, Exide emitted almost 4000 pounds of lead into the air. (Ex. U, p. 2.) Exide  
28 captures gases from the furnaces through one set of controls, fugitives from the charging of

1 furnaces through another, and dust in the buildings through a separate ventilation and filtration  
2 system. (Kemp 6/26 RT 154:9-155:18)

3 The raw materials processing (RMPS) building is not under negative pressure. (Copeland  
4 6/19 RT 138:14-19.) The tunnel between the RMPS building and the dryer is approximately 80  
5 feet long and is not under negative pressure. (Haynes 9/17 RT 116:4-15) A three-foot portion of  
6 the conveyer leaves the tunnel and is not enclosed but is covered by a roof. (Copeland 9/2 RT  
7 164:1-11.) The rotary dryer is approximately 35 feet long. (Copeland 6/19 RT 139:5.) It has its  
8 own baghouse and is under negative pressure. (Copeland 6/19 RT 139:7-8.)

9  
10 The reverberatory and blast furnaces each have their own baghouses. (Kemp 7/22 RT 19:16-  
11 23.) The building which houses the furnaces has a negative pressure system. (Copeland 9/3 RT  
12 119:23-120:2; Copeland 9/3 RT 98:18-99:5; Copeland 9/3 RT 120:16-121:2)

13  
14 **Permit, Standards and Regulations Applicable to the Facility**

15 The Facility is designated by the District as Facility I.D. No. 124838, and operates under a  
16 Title V permit issued by the District.

17 The USEPA National Ambient Air Quality Standard for lead and its compounds (both  
18 primary and secondary standards) is 1.5 micrograms per cubic meter, maximum arithmetic mean  
19 averaged over a calendar quarter. (50 CFR 50.12; Ex. M; Kemp 6/26 RT 122:3-11) This standard  
20 is based on measured lead concentrations in a representative sample of air. (Kemp, 6/26 RT 123:8-  
21 22)

23 District Rule 1420 (Ex. 18A) applies to lead emissions from facilities that use or process  
24 lead-containing materials, such as the Facility. District Rule 1420(d) states that no person shall  
25 discharge into the atmosphere “emissions which cause ambient concentrations of lead to exceed  
26 1.5 micrograms per cubic meter, averaged over 30 days, beyond the property line of a facility.”  
27  
28

1 (Ex. H.) Rule 1420 is not federally enforceable under the Facility's Title V permit. (Ex. 9, sec.  
2 K., p. 092).

3 Section (f) of Rule 1420 requires that facilities emitting over two tons per year of lead  
4 submit a compliance plan detailing how the facility plans to comply with the rule, and that the plan  
5 be approved by the District. An amended version of Exide's Rule 1420 compliance plan was  
6 approved by the District on May 7, 2008 (Ex. 4).

### 8 Air Monitors

9 An ambient air monitor (also known as a "sampler") is designed to measure particulate  
10 matter in a volume of air over a pre-determined amount of time, in this case, 24 hours. A pump  
11 draws in air and a flow controller maintains the correct volume of air for the 24-hour period. The  
12 air is pulled through a glass filter which captures the particles drawn to it. A timer controls the  
13 sampling period. (Wilson 6/26 RT 52-55.)

14 The Rehrig Pacific ("Rehrig") manufacturing facility is located directly across the street  
15 from Exide. It is the nearest location from Exide in the prevailing downwind direction. (Ex. 35;  
16 Kemp 7/22 RT 61:23-62:1; 142.)

17 The District received approximately ten complaints from employees of Rehrig in the last  
18 two years, most relating to dust fallout on their cars and in the employee parking lot and about the  
19 possible presence of lead in the dust. (Haynes 9/18 RT 11:4-12-2.)

20 On September 21, 2007, the District's laboratory issued an analysis of a bulk sample  
21 gathered by the District during a complaint investigation at Rehrig. That sample tested positive for  
22 the presence of lead. (Ex. C, p. AQMD.EXIDE 243-244.)

23 In response to the complaints and laboratory analyses revealing the presence of lead, the  
24 District placed an ambient air sampler on Rehrig's parking lot. (Ex. 1, p. 001.) The purpose of the  
25 sampler was to "address potential health concerns for people at Rehrig Pacific and ensure  
26 compliance with Rule 1420." (Id.)

1 By May 13, 2008, the District had accumulated data from the monitor placed at the Rehrig  
2 parking lot showing ambient lead levels consistently over the 1.5 micrograms per cubic meter 30-  
3 day average limit in Rule 1420(d)(1). The monthly ambient lead averages for samples collected  
4 with the monitor at the Rehrig parking lot for the period November 2007 through April 2008  
5 ranged from 1.68 to 2.88 micrograms per cubic meter. (EX. 45A)

6 Petitioner disputed the validity of the data alleging that the Rehrig monitor was improperly  
7 sited as of the date of the Executive Officer's decision. On or about May 15, 2008, the original  
8 monitor was subsequently moved to a new location within the Rehrig parking lot, and two  
9 monitors were added at that site. Petitioner has not challenged the validity of the data from the  
10 relocated and new monitors. The Hearing Board does not address the validity of these monitoring  
11 data as it is not relevant to its conclusion, decision and order in this matter.

12 The three monitors at Rehrig continue to collect samples of the ambient air on a daily  
13 basis. The average monthly concentration for May 2008 at the Rehrig monitor was 0.90  $\mu/m^3$ .  
14 (Ex. N, 45A.) The average monthly concentration for June 2008 at the Rehrig monitor was 0.60  
15  $\mu/m^3$ . (Ex. 45A.). Both months were below the Rule 1420(d)(1) standard.

16 **Current Status and Issues for Action**

17 Pursuant to conditions C1.2(C) and C1.3(C), Exide was allowed to resume full production  
18 on June 24, 2008. (Copeland, 9/3/08 RT 18:12-24). Inasmuch as Exide has now resumed full  
19 operations, the Hearing Board will not address the propriety of the Executive Officer's revision of  
20 conditions C1.2 and C1.3 resulting in an immediate reduction of approximately fifty percent (50%)  
21 of full production from May 14, 2008 to June 23, 2008. The Hearing Board turns its attention to  
22 the applicability, reasonableness and propriety of conditions C1.2 and C1.3 as they apply to  
23 Exide's ongoing operations.  
24

25 Section D of each condition provides that Exide's production could be cut again under  
26 specified conditions. Section (D) provides as follows:  
27  
28

1 (D) If Exide increases its throughput pursuant to the foregoing, and the ambient  
2 concentrations of lead measured over a 30 day period at any monitoring station  
3 located at or beyond the property line and within 300 meters of Exide [sic] facility  
4 exceed 1.5 micrograms per cubic meter averaged over 30 days, Exide shall limit the  
5 material processed to no more than 89 tons in any one day. Exide shall not increase  
6 the amount of material processed in any one day unless it complies with the  
7 foregoing conditions.  
8

9 See Exhibit 9, pp. 48-49.

10 These conditions also include an iterative process which allows Exide to resume increased  
11 production levels as ambient lead concentrations decrease. Specifically, paragraphs (B) and (C) of  
12 these conditions provide as follows:  
13

14 (B) The operator may increase the material processed to 132 tons in any one day only if  
15 the ambient concentrations of lead measured over a 60 day period at all monitoring  
16 stations located at or beyond the property line and within 300 meters of Exide [sic]  
17 facility are below 1.25 micrograms per cubic meter averaged over 30 days.  
18

19 (C) The operator may increase the material processed to 178.32 tons in any one day [the  
20 level authorized prior to May 13, 2008] only if the ambient concentrations of lead  
21 measured are  
22

23 (1) below 1.0 micrograms per cubic meter averaged over 30 days, as calculated  
24 over a 60 day period at all monitoring stations located at or beyond the  
25 property line and within 300 meters of Exide's facility, or,  
26  
27  
28

1 (2) below 1.25 micrograms per cubic meter averaged over 30 days, as  
2 calculated over a 120 day period at all monitoring stations located at or  
3 beyond the property line and within 300 meters of Exide's facility.  
4

5 Ex. 9, pp. 48 & 49.  
6

7 There is no limit contained in the permit as to the number of times that this production  
8 curtailment may be triggered and imposed, or that Exide may subsequently resume its previous  
9 production limits pursuant to the iterative process contained in the conditions.  
10

11 **Revised Conditions C1.2 and C1.3 are unreasonable and improper because future**  
12 **production must be reduced by approximately fifty percent (50%) based on data from "any**  
13 **monitoring station" that exceeds specified concentrations.**  
14

15 Dr. Chung Liu is the Deputy Executive Officer for Science and Technology Advancement.  
16 His responsibilities include monitoring, laboratory analysis and source testing. (Liu, 9/4 RT 49:12-  
17 50:7).  
18

19 Dr. Liu testified that the language in revised Subparagraph (D) of conditions C1.2 and  
20 C1.3, requiring a production cut based on data from "any monitoring station," is "loose language."  
21 (Liu, 9/4 RT 142:15) Dr. Liu acknowledged that the "loose language" used in the revised permit  
22 conditions is not meant to include monitoring stations that do not follow District procedures.  
23 Instead, the throughput cuts mandated in those conditions should be triggered only by data from  
24 monitoring stations operated by Exide, the District, "or any other regulatory agency consistently  
25 using the methodology that we established." (Liu, 9/4 RT 142:15-16, 143:210-24).  
26  
27  
28

1 Dr. Liu acknowledged that the District receives data “all the time” from citizens who  
2 collect samples “doing their own analysis,” but “it’s not going to be looked upon as legit data.”  
3 (Liu, 9/4 RT 142:17-25). He testified that it would not be appropriate to enforce conditions C1.2  
4 and C1.3 based on data from “any monitoring station,” even though the express permit language  
5 imposes no limits on the type of monitoring that could be used to require a production cut. (Liu,  
6 9/4 RT 143:2-24.)  
7

8 The District’s revision of permit conditions C1.2 and C1.3 was unreasonable and improper  
9 to the extent that such revision adopted language in subsection (D) mandating limits on the amount  
10 of material processed at Exide’s facility if data from “any monitoring station” at specified  
11 locations exceeds limits set forth in the conditions.  
12

13  
14 **Revised Conditions C1.2 and C1.3 are unreasonable and improper because the District**  
15 **believes that Exide’s amended Rule 1420 Compliance Plan should be adequate to achieve**  
16 **compliance**

17 On May 7, 2008, six days prior to the Executive Officer’s action on May 13, 2008, the  
18 District approved Exide’s amended Rule 1420 compliance plan. While some of the plan  
19 requirements took effect immediately, others had later compliance dates. As a result, Exide was  
20 not required or expected to fully implement the plan requirements as of May 13, 2008. Exide  
21 testified that it had timely met all of the required deadlines up until that date. This was  
22 corroborated by District testimony. (Nazemi 6/19 RT 76:7-13)  
23

24 District testimony indicated that while implementation of Exide’s Rule 1420 compliance  
25 plan does not guarantee compliance with the rule, it was expected that that plan would achieve  
26 this. (Nazemi 6/19 RT 73:13-18) The same expectation can be assumed to exist for any plan or  
27 permit condition imposed on a facility by the District.  
28

1 Now that Exide's amended Rule 1420 plan is in place and compliance with the rule has  
2 been demonstrated, there is no reason to retain Conditions C1.2 and C1.3 in Exide's Title V  
3 permit unless the District has a reasonable basis on which to assume that Exide will repeatedly  
4 violate the Rule 1420((d)(1) limit. No testimony was provided by the District to support that  
5 assertion. Therefore, it is appropriate for the District to rely on Exide's amended Rule 1420  
6 compliance plan to ensure that this facility remains in compliance with the rule, just as would be  
7 assumed for any other facility in the process of implementing a District-approved compliance  
8 plan, rather than continuing to include this onerous condition in Exide's Title V permit.  
9

10  
11 **Revised Conditions C1.2 and C1.3 are unreasonable and improper because a fifty percent**  
12 **(50%) reduction in production may be considerably more than might be needed to cure any**  
13 **future exceedance of the specified ambient concentrations of lead and because there may be**  
14 **a less onerous cure for a future exceedance.**  
15

16 The Executive Officer revised permit conditions C1.2 and C1.3 to limit production by  
17 approximately fifty percent (50%) based, in part, on monitoring data for the period of November  
18 2007 through April 2008 wherein the measured 30-day average lead concentrations ranged from  
19 1.68 micrograms per cubic meter to 2.88 micrograms per cubic meter.  
20

21 Mr. Chen testified that on qualitative bases, reducing production would have a proportional  
22 impact on reducing fugitive emissions. (Chen, 8/27 RT 966:24-967:23). Mr. Nazemi testified that  
23 "...cutting production would directly reduce the emissions." He further testified "And we used a  
24 direct proportion cut to address this exceedance in my mind." (Nazemi, RT 8/28 1173:23-1174:8)

25 Subsections D of conditions C1.2 and C1.3 would require a fifty percent (50%) reduction  
26 in production even if the measured ambient lead concentration was only marginally above 1.5  
27 micrograms per cubic meter. For example, a 30-day average of 1.6 micrograms per cubic meter is  
28

1 less than seven percent (7%) above the 1.5 microgram per cubic meter standard but that  
2 concentration level would automatically require a fifty percent (50%) production cut. If production  
3 is assumed to be directly or approximately proportional to emissions, a fifty percent (50%)  
4 reduction in production appears excessive and a much lesser reduction could achieve the desired  
5 goal.

6 Mr. Cole testified that the fifty percent (50%) reduction in production resulted in "...close  
7 to \$5 million of bottom line loss to the business over a 35-day period." (Cole, 6/19 RT 163:15-  
8 164:9) Pursuant to conditions, C1.2 and C1.3, if Exide were required to curtail production by half,  
9 the earliest that it could return to seventy-five percent (75%) or full production would be 60 days.  
10 A 60-day reduction in production could thus result in a loss of well over \$5 million.

11 Mr. Copeland also testified that if curtailments continued for any significant additional  
12 period, "...effective immediately we would have to reduce the direct labor in two departments by  
13 fifty percent (50%) to match the production curtailment."  
14

15 The District's revision of permit conditions C1.2 and C1.3 was unreasonable and improper  
16 to the extent that an automatic fifty percent (50%) reduction in production may be excessive and  
17 costly whereas depending on the measured concentration, a much lesser production reduction may  
18 achieve the same goal resulting in a much lower financial and employment impact to Exide.  
19  
20

21  
22 **Revised Conditions C1.2 and C1.3 are unreasonable and improper because any future**  
23 **exceedance of the 1.5 micrograms per cubic meter limits in C1.2 and C1.3 may not be the**  
24 **result of the same conditions that caused the exceedances between November 2007 and April,**  
25 **2008.**

26 Conditions C1.2 and C1.3 automatically apply the same corrective measure (fifty percent  
27 (50%) reduction in production) to any future exceedance of the 1.5 micrograms per cubic meter air  
28

1 measurement as was applied to the correction of the conditions that led to the exceedances  
2 between November 2007 and May 2008, regardless of the reason for the future exceedance.

3 There are many potential sources of lead emissions within the Exide facility. These may  
4 emanate directly from equipment or from re-entrainment of lead bearing dust deposited on  
5 surfaces throughout the facility

6 Thus, a future exceedance of the 1.5 micrograms per cubic meter might be the result of a  
7 different set of circumstances or conditions than the cause of the past exceedances. For example,  
8 an exceedance could be the result of an undetected leak in a baghouse bag or a leak in a duct  
9 conducting emissions from emitting equipment to the baghouse. In such a case, a reduction in  
10 production might reduce emissions but might not assure compliance whereas repair of the leak, the  
11 root cause of such exceedance, could achieve the desired goal.

12 The District's revision of permit conditions C1.2 and C1.3 was unreasonable and improper  
13 to the extent that a fifty percent (50%) reduction in production in the event of a future exceedance  
14 of the 1.5 micrograms per cubic meter limit might not be the correct and most cost-effective means  
15 of achieving the desired goal.

16  
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19  
20 **Revised Conditions C1.2 and C1.3 are unreasonable and improper because Exide could**  
21 **never be allowed to resume full production if the measured lead at all monitoring stations**  
22 **averaged below the 1.5 micrograms per cubic meter in Rule 1420 but above 1.25 micrograms**  
23 **per cubic meter in condition C1.2(C)(2).**

24 Pursuant to conditions C1.2(D) and C1.3(D), if ambient lead concentrations exceed 1.5  
25 micrograms per cubic meter averaged over 30 days, Exide must again reduce its production by  
26 approximately fifty percent (50%).  
27  
28

1 Pursuant to Subsections (B) of conditions C1.2 and C1.3, Exide may resume approximately  
2 seventy-five percent (75%) production if the ambient concentrations of lead measured over a 60-  
3 day period at all monitoring stations located at or beyond the property line and within 300 meters  
4 of the Exide facility are below 1.25 micrograms per cubic meter averaged over 30 days.

5 Pursuant to Subsections C(1) of conditions C1.2 and C1.3, Exide may then return to full  
6 production if the measured ambient concentrations of lead are below 1.0 micrograms per cubic  
7 meter averaged over 30 days, as calculated over a 60-day period at all monitoring stations located  
8 at or beyond the property line and within 300 meters of Exide's facility. In addition, pursuant to  
9 Subsections C(2) of conditions C1.2 and C1.3, Exide may return to full production if the measured  
10 ambient concentrations of lead are below 1.25 micrograms per cubic meter averaged over 30 days,  
11 as calculated over a 120-day period at all monitoring stations located at or beyond the property line  
12 and within 300 meters of Exide's facility.  
13  
14

15 Based on these conditions, if the measured ambient concentrations of lead at all stations  
16 were 1.3 micrograms per cubic meter averaged over 30 days for an indefinite period, Exide would  
17 be in compliance with Rule 1420 (d)(1) and the federal NAAQS standard for lead, but could never  
18 resume full production, or even seventy-five percent (75%) production because the ambient levels  
19 would always be above 1.25 micrograms per cubic meter.  
20

21 The District's revision of permit conditions C1.2 and C1.3 was unreasonable and improper  
22 to the extent that Exide could never resume full production or even seventy-five percent (75%)  
23 production though it may comply with the limit of Rule 1420(d)(1) and not cause an exceedance of  
24 the federal NAAQS for lead.  
25  
26  
27  
28

CONCLUSION

The action of the Executive Officer in revising permit conditions C1.2 and C1.3 was unreasonable and improper as it applies to Exide's ongoing operations.

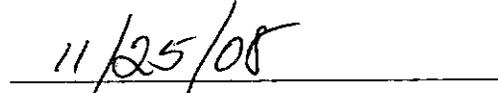
ORDER

Good cause appearing, this Hearing Board orders that the May 13, 2008 revisions to permit conditions C1.2 and C1.3 in Exide's Title V permit (facility ID 124838) are revoked, and the version of those conditions in existence immediately prior to the May 13, 2008 action are reinstated.

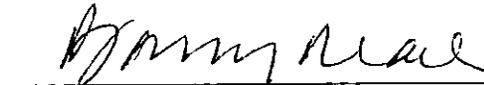
FOR THE BOARD:

  
Edward Camarena, Chair

DATE SIGNED:



I VOTE NO:

  
Barry Read

**PROOF OF SERVICE BY MAIL**

I, the undersigned, declare that I am employed in the **County of Los Angeles, State of California**. I am over the age of eighteen years and I am not a party to the within action. My business address is **21865 Copley Drive, Diamond Bar, California 91765**.

On **December 5, 2008** I deposited in the **United States Mail at Diamond Bar, California**, an envelope sealed and addressed to

**RANDOLPH C VISSER, ESQUIRE  
SHEPHERD, MULLIN,  
RICHTER & HAMPTON LLP  
333 SOUTH HOPE STREET  
48<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90071-1448**

**KENNETH COPELAND  
VERNON, PLANT MANAGER, EXIDE TECHNOLOGIES  
2700 S INDIANA STREET  
LOS ANGELES, CA 90023**

**CASE FILE NO. 3151-18**

which, envelope contained a true and correct copy of the attached **Findings and Decision and/or Minute Orders** before the **Hearing Board**, which envelope was then sealed and placed for collection, mailing and deposit on the above date, in the **United States Postal Service**, following ordinary business practices.

I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the **United States Postal Service**; this correspondence would be deposited with the **United States Postal Service** on the above date in the ordinary course of business.

I declare under penalty of perjury under the laws of the **State of California** that the foregoing is true and correct.

Executed on **December 5, 2008** at **Diamond Bar, California**

  
**Candy Boyajian**  
**Office Assistant**