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Via Certified U.S. Mail; Return Receipt Requested 7015 0470 0001 8211 0664

Mr. Richard Hyde, P.E., MC-109
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 79711-3087

Re: Exide Technologies Frisco Site Remediation; J Parcel VCP certification

Dear Mr. Hyde:

Based on Exide's failure to timely submit adequate Response Action Plans (RAPs) for the Former Operating Plant (FOP) and the Stewart Creek Remediation Area (SCRA), the City has requested that you not issue final approval of the J Parcel VCP remediation until those two RAPs are approved by TCEQ. The purpose of this letter is to provide you with the City's legal and technical justification for that request.

Under 30 TAC 333.10(a) the Executive Director of the TCEQ has clear legal authority to delay issuance of a final VCP certificate of completion for the J Parcel until he is satisfied all necessary reports demonstrating "that no further action is required to protect human health and the environment" have been submitted. In this case, the J Parcel APAR contemplated the TCEQ approved FOP RAP and SCRA RAP as addendums (i.e., reports) to the J Parcel RAP. There are multiple references in the J Parcel APAR regarding the necessity of the FOP RAP and the SCRA RAP being part of the overall protective standards required for completion of the J Parcel VCP. *See* J Parcel APAR, page x (for complete exposure pathways); J Parcel APAR, 1.2 Affected Property and Sources of Release, section 1.2.1; J Parcel APAR, section 3.0 Assessment Strategy, page 3-4 (re monitor well locations due to possible future groundwater contamination from the FOP); J Parcel APAR, section 3.0 Assessment Strategy, section 3.2.3 (re off-site impacts from the FOP and the SCRA); J Parcel APAR, section 6.0, page 6-1 and Terrestrial Screening Level Ecological Risk Assessment, page 11. Therefore, in accordance with the explicit language of

30 TAC 333.10(a), and the J Parcel APAR, the final certificate of completion for the J Parcel VCP should not be issued until the FOP RAP and the SCRA RAP are approved by TCEQ.

Actually, as explained below, for complete protection of the public and the environment, the final certificate of completion for the J Parcel VCP should not be issued until remediation of the FOP is complete.

Throughout the now multiple years of TCEQ staff oversight of the closure, remediation, and post closure care of the Exide site in Frisco, TCEQ staff has required Exide to address the J Parcel (essentially Exide owned buffer area), the FOP (essentially the RCRA permitted area), and the SCRA (primarily City owned property contaminated by Exide) as a comprehensive unit. This requirement is in recognition of the distinct possibility that the FOP, if not properly closed, will be a source of recontamination of the J Parcel and the SCRA (just as the current contamination of these two areas came from the FOP). The City notes that the Crystallizer area of the FOP is, in particular, a likely source of future contamination of the J Parcel. Such recontamination would not be an issue if the FOP is remediated to residential Pb levels (as the J Parcel and the SCRA will be). However, due primarily to removal cost, significant amounts of hazardous Pb levels, and elevated Cd and As levels, are being closed in place on the FOP site. Without absolutely secure engineering controls on the FOP, this hazardous waste will likely be a source of future contamination of the J Parcel and the SCRA through both surface runoff and groundwater migration exposure pathways. *See* the J Parcel APAR sections noted above. This necessity for adequate engineering controls on the FOP provides more than sufficient technical justification to delay final certification of the J Parcel VCP until, at a minimum, the FOP RAP and the SCRA RAP are approved by TCEQ (assuming the FOP RAP is fundamentally that which has been proposed by the City).

In addition, the air monitoring section of the J Parcel RAP anticipates that the FOP is a possible source of particulate recontamination during FOP closure. *See* APAR RAP section 3.2. This is especially true given Exide's insistence, contained in both the J Parcel RAP and Exide's earlier "draft" FOP RAP, on not stopping remediation work during periods of high wind (less than 20 mph).

Proper closure, remediation, and post closure care of Exide's Frisco site is not a difficult undertaking from a technical perspective. Any increased expense at this point to properly close the FOP is due solely to Exide's past illegal, cost cutting waste management practices (as evidenced by multiple TCEQ and EPA administrative orders over the years). This situation has become a political issue due to Exide's continued refusal to accept corporate responsibility for its past actions. Since the Master Settlement Agreement between Exide and the City means the City

will actually be providing most of the funding, it should not even be a financial issue for Exide. Unfortunately, it is quite clear at this point in time that Exide's new corporate management intends to take the City's money and then leave Texas without properly completing closure, remediation, and post closure care at Exide's Frisco site. The ultimate cost will then be paid by Texas taxpayers.

If you, or your staff, have any questions regarding this letter, please do not hesitate to call me at 512-633-6467 or George Purefoy at 972-292-5105.

Respectfully,

Kerry E. Russell

Cc: George Purefoy, City of Frisco
Mack Borchardt, City of Frisco
Richard Abernathy, City of Frisco
Brent Wade, TCEQ