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July 14, 2017

Via Hand Delivery

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 Remediation Activities; Frisco Area

Dear Mr. Hyde:

The City of Frisco appreciates your June 14, 2017 response to its June 2, 2017 letter regarding Exide's apparent failure to explicitly follow the requirements of the J Parcel Response Action Plan (RAP). Your assurance that TCEQ will require Exide to strictly adhere to the J Parcel RAP is the response the City expected to receive and is not surprising given the similar concerns you expressed in your May 9, 2017 warning letter to Exide.

Up until recently all parties agreed that the City would be included in all TCEQ staff discussions related to the J Parcel, the Bowtie, and Stewart Creek. Your previous instructions to your staff reflected that general agreement. It now appears Exide has intentionally excluded the City from many such discussions with TCEQ staff. In his June 20, 2017 letter Exide General Counsel Brad Kalter appears to acknowledge your instructions and agree that Exide will now follow the requirements of the J Parcel RAP. Mr. Kalter also acknowledges that Exide will not conduct further unilateral meetings with TCEQ staff regarding the J Parcel VCP project. Based on recent communications between City staff and Exide representatives, the City believes Exide is honoring that commitment as it relates to the J Parcel. However, as further discussed below, the City needs to also be included in all TCEQ staff discussions regarding Stewart Creek and the Bowtie.

There are two Exide positions expressed in Mr. Kalter's letter that are of continuing concern to the City and should likewise be of concern to TCEQ. First, Mr. Kalter asserts that Exide is not legally responsible for any residual Exide contamination that may be present under Parkwood Drive. Any such contamination was the result of unauthorized industrial solid waste disposal by Exide in the past. Subsequent actions by the City in constructing Parkwood Drive do not relieve Exide of its legal responsibility to properly remediate and dispose of that waste. Such legal responsibility is fundamental to both RCRA and CERCLA. The City notes that Parkwood Drive was realigned in the late 1990s both for the City's benefit and to facilitate an upgrade to Exide's trucking entrance. At that time Exide provided the City with no warning that unauthorized disposal of Exide industrial solid waste had taken place in that area. Although Parkwood Drive is not included in the J Parcel VCP, it must be fully investigated and, if necessary, remediated before the J Parcel VCP can be completed. Otherwise, the J Parcel soil adjacent to Parkwood Drive will be recontaminated by Exide waste leaching from under the street. Such groundwater and soil contamination would ultimately reach Stewart Creek.

Second, and of most concern to the City, Mr. Kalter states that Exide will unilaterally meet with TCEQ staff in regard to the RAPs for the Stewart Creek Remediation Area and the Bowtie (FOP) area. He indirectly asserts that Exide believes the City has no vested legal interest in the proper remediation of either area. Such is just as clearly not true. The City owns most of the Stewart Creek Remediation Area that has been contaminated with illegally disposed Exide industrial solid waste (both hazardous and non-hazardous). As the owner of that property, the City must be included in any discussions Exide has with TCEQ staff regarding the Stewart Creek RAP. Likewise, as a potentially responsible party for municipal solid waste it co-disposed with Exide in the North Landfill in the 1980s, the City must be included in any discussions Exide has with TCEQ staff regarding the FOP RAP. The City requests that you advise your staff that City representatives be included in any such discussions.

An additional concern the City has previously expressed to TCEQ regarding the Stewart Creek contamination is that Lake Lewisville is a primary drinking water source for the City of Dallas. During previous investigations of Stewart Creek, Exide contamination in the form of battery chips was discovered on USCOE property within the Lake Lewisville floodplain. Clearly, lead, cadmium, and arsenic contamination resulting from Exide's past unauthorized disposal of hazardous and non-hazardous industrial solid waste in the Stewart Creek watershed has entered Lake Lewisville. That contamination has been ongoing for many years and continues. The City continues to assert that the City's proposed RAPs for both the FOP and Stewart Creek address the need to keep the contamination contained on Exide property and removes the contamination and its continued leaching on and along Stewart Creek.

When Exide submits the Stewart Creek and FOP RAPs in early August, it will be immediately clear whether or not Exide intends to properly remediate both areas and securely

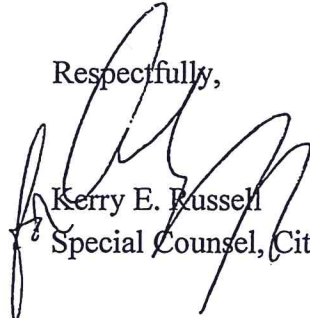


close the RCRA permitted area. Based on Exide's activities to date, the City continues to be concerned that Exide will not do either. Exide continues in its efforts to minimize its financial expense and do as little as possible before leaving Frisco and the State with significant future liability for Exide hazardous waste that remains in Stewart Creek and at the FOP. The City hopes that its concerns prove to be unjustified and that Exide agrees to remove all contamination from Stewart Creek and completely contain the FOP with a slurry wall and cap. If Exide attempts to do anything less, the City remains confident that you will not allow such to occur.

Given Exide's history of repeated bankruptcy filings, without warning to the City or the TCEQ, and extensive environmental liability in Vernon CA, Bristol TN, and Reading PA, the City believes TCEQ should now require Exide to assure the State of Texas, in writing, that (1) it has no intention of again filing for bankruptcy until the Frisco situation is fully resolved, and (2) it has dedicated at least \$60,000,000.00 to meet its current and future financial responsibility for proper remediation and long-term care of Stewart Creek and the Bowtie.

Once again, the City appreciates your continued leadership in requiring Exide to meet its legal responsibility to properly remediate its historic contamination in the Frisco area. If you, or your staff, have any questions regarding this letter, please do not hesitate to call me at 512-633-6467 or Mack Borchardt at 972-292-5127.

Respectfully,

  
Kerry E. Russell  
Special Counsel, City of Frisco

Cc: ✓ Mr. George Purefoy, City of Frisco  
Mr. Mack Borchardt, City of Frisco  
Mr. Richard Abernathy, City of Frisco  
Mr. Brent Wade, TCEQ  
Mr. Brad Kalter, Exide