

Technical Summary and Executive Director's Preliminary Decision

May 12, 2023

Description of Application

- Applicant:** Frisco Community Development Corporation
Industrial Solid Waste Registration No. 30516
Hazardous Waste Permit No. 50206
Compliance Plan No. 50206
EPA I.D. No. TXD0006451090
- Location:** The Frisco Community Development Site is located at 7471 Old Fifth Street near the intersection of U.S. Highway 289 and State Highway 720 on approximately 94 acres in Frisco, Collin County, Texas. The facility is in central Frisco and bounded to the north by Eubanks Street and to the east by Parkwood Drive and Eagan Way. The site is within the drainage area of Segment 0823 of the Trinity River Basin (North Latitude 33°08'30", West Longitude 96°49'53").
- This facility is not located in an area affected by the Texas Coastal Management Program.
- General:** The Frisco Community Development Site is a former oxide manufacturing, battery recycling, and secondary lead smelting facility located at 7471 Old Fifth Street in Frisco, Collin County, Texas. The current facility covers an approximately 94-acre Former Operating Plant (FOP) area. The FOP includes the facility's former operational areas (including two demolished, inactive permitted units), two closed pre-RCRA landfills (the North Disposal Area and the South Disposal Area), one inactive Class 2 Landfill (the Slag Landfill), and other ancillary facilities. The two demolished, inactive permitted units are the Battery Receiving/Storage Building (a Container Storage Area, Permit Unit No. 002, Notice of Registration [NOR] Unit No. 011) and the Raw Materials Storage Building (a Containment Building, Permit Unit No. 001, NOR Unit No. 005). The permit renewal includes the active Class 2 Landfill Corrective Action Management Unit (CAMU; listed on the Notice of Registration under Waste Management Unit [WMU] 012 as the "Landfill, North Property, 1996," and referred to herein as the North CAMU). The North CAMU is a Class 2 landfill that was established as a CAMU pursuant to Agreed Order Docket No. 2013-2207-IHW-E issued April 15, 2015. The North CAMU will be permitted as a miscellaneous unit. The Remediation Consolidation Area (RCA) CAMU is a proposed CAMU to be established in the existing permit boundaries. The RCA CAMU will contain consolidated remediation wastes and will be permitted as a miscellaneous unit. The construction and establishment of the RCA CAMU is requested in order to contain remediation wastes from response actions required pursuant to Agreed Order Docket No. 2011-1712-IHW-E issued January 30, 2013. The wastes to be managed by the facility include remediation wastes generated by the removal of contaminated soils and sediments from the facility and adjacent areas of concern impacted by facility operations.
- The original permit was issued on May 24, 1988, for a term of ten years. The permit was renewed on March 30, 2001, for an additional ten-year term.
- Request:** Exide Technologies (Exide) originally applied to the TCEQ for a renewal of Permit No. 50206. On September 30, 2010, the TCEQ received Exide's application for a permit renewal; that application was declared administratively complete on October 13, 2010. On October 27, 2016, the TCEQ received Exide's first supplemental application to expand the permit boundary to encompass an existing Corrective Action Management Unit (CAMU). Then, on August 2, 2017, the TCEQ received another supplemental application from Exide to create a

second CAMU; obtain a Compliance Plan to authorize certain remediation and closure activities; update the facility's physical address; and make administrative changes to various plans and reports within the existing permit. TCEQ received revisions to the application from Exide on May 29, 2019, and November 18, 2019. On September 22, 2022, the permit was transferred from Exide Technologies to Frisco Community Development Corporation (FCDC). TCEQ received application materials from FCDC on May 11, 2023. The renewal proposes to amend the permit to revise permit conditions to reflect the decommissioning and closure of the facility, including the removal of permit conditions that are no longer applicable. The renewal also adds the proposed RCA CAMU within the existing permit boundaries as part of facility closure. The RCA CAMU will contain on-site remediation wastes and off-site non-hazardous remediation wastes from the adjacent off-site downstream Stewart Creek affected property and the Railroad Museum Parcel. The permit renewal also requests to expand the existing permit boundaries to include the North CAMU. The CAMUs are categorized as miscellaneous units for permit document purposes. The property's description will be updated to reflect the February 2019 platting and associated survey of the property subject to closure and post-closure care for the two CAMUs, and to add a corrective action program.

FCDC applied for a new compliance plan which authorizes and requires FCDC to implement a corrective action program for the two CAMUs to monitor the concentration of hazardous constituents in groundwater and remediate groundwater quality to specified standards.

Authority: The permit and compliance plan are required by 30 TAC Sections 335.2 and 335.43, and Section 3005(c) of the Hazardous and Solid Waste Amendments of 1984 (HSWA). TCEQ prepared the permit/compliance plan in accordance with applicable requirements of 30 TAC Chapters 335 and 305, which have been adopted under the authority of the Texas Health and Safety Code Ann., Chapter 361 (Vernon Supp.), and Section 5.103, Texas Water Code Ann. (Vernon Supp.). In addition, a portion of the prepared draft permit and compliance plan is under Federal authority which implements applicable requirements of HSWA for which the TCEQ is not authorized. The permit and compliance plan must be signed by the TCEQ and the U. S. Environmental Protection Agency (EPA) in order for the applicant to have a fully effective Resource Conservation and Recovery Act (RCRA) permit. The TCEQ and the EPA have entered into a Joint Permitting Agreement (JPA) whereby EPA accepts the applicant's information submitted through the State as a Federal application for purposes of implementing HSWA.

Technical Information

The proposed permit renewal includes the following:

- A. Establishes general provisions for construction, operation, closure and post-closure care of the subject facility units (30 TAC Chapter 335, Subchapter F and Chapter 350);
- B. Requires the permittee to establish and maintain financial assurance to provide for proper facility closure and post-closure care in the total amount of \$28,184,428 (30 TAC Section 335.179);
- C. Requires the permittee to control access to the facility (40 CFR 264.14);
- D. Specifies minimum physical conditions, training, routine inspections and emergency procedures for the facility units (30 TAC Sections 335.153 and 335.177, 40 CFR Part 264, Subparts B, C and D);

- E. Standard permit provisions and other requirements pertaining to the management of industrial solid waste, including hazardous industrial solid wastes (40 CFR Part 264, Subpart B);
- F. Land Disposal Restrictions (Provision II.A.7.) which will implement the applicable requirements of HSWA upon issuance of the permit by EPA (40 CFR Part 268);
- G. The following is a list of standard post-closure care requirements for the land based permitted units (40 CFR 264.552):
 - 1. Maintain all storm water conveyance structures in good functional condition;
 - 2. Maintain proper cover on closed units to prevent erosion, ponding, and water infiltration, and maintain all benchmarks;
 - 3. Maintain facility perimeter fence and ensure that all entrances are manned or locked, and ensure TCEQ access to the facility; and
 - 4. Perform groundwater monitoring and, if applicable, any necessary corrective action.
- H. The following is a brief description of waste management units and corresponding regulatory requirements encompassed by this permit:

Container storage area - design and operating requirements for the containment system; management, inspection and air emission requirements for the containers storing wastes; and closure requirements for the containers and containment system. (40 CFR Part 264, Subpart I)

Corrective Action Management Unit (CAMU) - areal configuration of the CAMU; requirements for management of remediation waste; design, construction and operation of the CAMU which includes the composite liner system and the leachate collection and removal system; minimum treatment requirements for waste placed in the CAMU; groundwater monitoring and corrective action requirements; and closure and post-closure requirements. (40 CFR Section 264.552)

Containment building - design and operating requirements for containment buildings which include the floor, walls, and roof; maintenance and inspection requirements; closure and post-closure requirements. (40 CFR Part 264, Subpart DD)
- I. Include any special site-specific provisions added to the permit:
- V.K. Miscellaneous Units
 - 1. The permittee may dispose of a total volume of 82,000 cubic yards of hazardous waste in the RCA CAMU and 190,000 cubic yards of hazardous waste in the North CAMU. The RCA and North CAMUs shall meet the specifications listed in Table V.K. - Miscellaneous Units. The permittee is authorized to operate the permitted CAMUs for waste storage, processing, and disposal subject to the limitations contained herein.
 - 2. RCA CAMU Design and Construction Requirements

The RCA CAMU shall be constructed in accordance with the alternate design requirements for CAMUs in 40 CFR 264.552(e)(3)(ii), and the RCA Engineering Report (Attachment F) of the approved Part B application.

- a. The base of the RCA CAMU shall consist of the existing FOP concrete slab, the capped North Disposal Area and capped Slag Landfill, demolition rubble, and soils. The two inactive RCRA permitted units (Raw Material Storage Building and Battery Receiving/Storage Building) are within the footprint of the RCA CAMU.

- b. Run-On and Run-Off Control Systems

The permittee shall design and construct a run-on control system and a run-off management system as specified in the approved Part B Application Section V.G., which is incorporated into this permit through Section I.B. [30 TAC Sections 335.173(g) and (h)]

- c. The permittee shall submit certification of proper CAMU construction prior to the placement of waste in the CAMU. The certification shall be submitted in accordance with Provision II.A.6. Within thirty (30) days of submittal of such certification, the permittee shall submit a certification report which contains the results of all tests conducted. The permittee shall conduct any tests, inspections, or measurements that are deemed necessary in the judgment of the registered professional engineer supervising the unit construction, for the engineer to certify that the CAMU has been constructed in conformance with the design and construction specifications of this permit. The certification report shall, at a minimum, contain the following drawings and test results.

- (1) Scaled plan-view and cross-sectional drawings that accurately depict the areal boundaries and applicable dimensions of the unit; separation distance(s) of the unit from the property boundary; minimum, maximum, and representative elevations of the excavation of the unit, as applicable; minimum, maximum, and representative elevations of the unit; and location, site, volume, materials of construction, and slope, as applicable of all system components.

3. General CAMU Operations

The permittee shall conduct CAMU operations according to the following requirements:

- a. Wastes shall be placed in a manner to minimize formation of bridging or voids to allow adequate compaction to prevent excessive consolidation or settlement after placement;
- b. The initial two (2) feet of waste or soil placed in a CAMU shall be placed with a tracked vehicle (D-6 Caterpillar size or smaller) and shall be composed of bulk or processed non-containerized waste;
- c. Upon compliance with Provision V.K.4.b., all subsequent waste shall be applied in lifts not greater than eighteen (18) inches and compacted to approximately one (1) foot to minimize settlement of CAMU waste;
- d. Daily cover of the active area shall not be required because the waste will not attract birds or animals and does not contain materials susceptible to being

windblown. A Dust Control Plan and an Air Monitoring Plan are included as part of the approved Final Closure Plan in the Part B application. The exposed face of the CAMU shall be limited to the area actively being filled. Area of exposed waste may be covered by a spray applied cover (paper mulch and tackifier) or temporary cover (plastic sheeting);

- e. All collection and holding facilities (e.g. tanks or basins) associated with run-on and run-off control systems shall be maintained and must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system; [30 TAC Section 335.173(i)]
- f. All precipitation that collects in a CAMU, including water that drains into the unit from interior access roads, shall be managed as contaminated water and disposed of accordingly at an authorized on-site waste management unit or at an authorized off-site facility;
- g. While a CAMU is in operation, it must be inspected at least weekly and after storm events in accordance with 40 CFR 264.303(b);
- h. The permittee shall remove leachate from North CAMU collection sumps as often as necessary to ensure that the leachate depth in the leachate collection/leachate detection system is always less than the thickness of the drainage material and never exceeds 12 inches;
- i. The permittee shall inspect each North CAMU leak detection system and record the amount of liquids removed from each leak detection sump at least once each week during the active life and closure period of the unit;
- j. Liquids removed from the North CAMU leachate collection/leachate detection systems shall be classified in accordance with 30 TAC Chapter 335, Subchapter R (Waste Classification) and shall be managed accordingly at an authorized on-site waste management unit or at an authorized off-site facility;
- k. Control of Wind Dispersal of Particulate Matter

The permittee shall cover or otherwise manage the CAMUs to control wind dispersal of particulate matter in accordance with the dust control and air monitoring procedures described in the Closure Plan of the permittee's approved permit application; [30 TAC Section 335.173(j)]

- l. Stabilization of Liquid Wastes

The permittee shall not place liquids or waste containing free liquids, whether or not sorbents have been added (except lab waste in overpacked containers, as described in 40 CFR 264.316) in CAMUs. "Free liquids" are liquids which readily separate from the solid portion of a waste when the waste mixture is at a temperature above 32 °F and ambient pressure.

An absorbent is defined as a material that is capable of physically holding a liquid within pores or interstices by such physical forces as tension or capillary action. An adsorbent is defined as a material that is capable of physically adhering a liquid to its (the material's) surface(s) through

molecular polar forces. The terms "absorbent" and "adsorbent" shall both be indicated whenever the term "sorberent" is used in this permit;

m. Stabilization of LDR Wastes

Appropriate stabilization methods shall be used for waste streams requiring treatment to meet the 40 CFR Part 268 treatment standards. Successful stabilization is achieved if post-treatment analyses demonstrate that applicable treatment standards are achieved in accordance with the land disposal restrictions of 40 CFR Part 268; and

n. Waste to Liner Compatibility

The permittee shall ensure that wastes to be placed in a CAMU will not impair the function of the synthetic liner. At a minimum, waste to liner compatibility testing shall be conducted for those wastes whose compatibility with the selected membrane liner has not been conducted and the effects are unknown. For wastes and liners upon which tests have been conducted and the results and/or effects are known (manufacturer's literature, other experimental literature, etc.), additional testing will not be required. The permittee shall maintain test results and/or documentation that confirms waste to liner compatibility at the facility.

4. CAMU Location Survey

The permittee shall maintain the following items in the operating record:

- a. A map with the exact location and dimensions (including depth) of each CAMU with respect to permanently surveyed benchmarks; and
- b. A record of the areal and vertical location of each waste placed into a CAMU.

VII.B. Financial Assurance

1. The permittee shall, subject to the limitation provided in the next paragraph, secure and maintain financial assurance in compliance with 30 TAC Chapter 37, Subchapter P and 30 TAC Sections 335.152 and 335.179.
2. The permittee (Frisco Community Development Corporation, a Texas Non-Profit Corporation or "CDC"), the City of Frisco, Texas ("Frisco"), and the Texas Commission on Environmental Quality ("TCEQ") are parties to a Consent Decree and Settlement Agreement Regarding the Non-performing Exide-Frisco Site ("Settlement Agreement"). The Settlement Agreement was incorporated into the Fourth Amended Joint Chapter 11 Plan of Exide Holdings, Inc. and its affiliated debtors, which was confirmed by the United States Bankruptcy Court for the District of Delaware on October 26, 2020. The CDC, Frisco, and TCEQ are also parties to a related Remediation Funding Trust Agreement ("Trust Agreement"). Pursuant to paragraphs 12, 13, and 14 of the Settlement Agreement and Section IV.A. of the Trust Agreement, the sums described in paragraphs 12, 13, and 14 of the Settlement Agreement satisfy the financial assurance obligations of the permittee to cover the estimated costs of closure, post-closure care, and remediation of the Exide-Frisco site.

3. In accordance with Provision II.A.15., the permit or property, including portions of the property, may not be transferred to a new owner and/or operator without satisfying the financial assurance requirements of 30 TAC Chapter 37, Subchapter P, and 30 TAC Sections 335.152 and 335.179. Prior to any sale, lease, or other disposition of all or part of the property covered under this permit, the permittee must notify and shall seek approval of the Executive Director prior to the transfer in accordance with 30 TAC Sections 305.64 and 305.69.

VII.C. Financial Assurance for Closure

1. The cost estimate for closure of all existing permitted units covered by this permit is \$1,811,555 (2022 dollars) as shown on Table VII.E.1. - Permitted Unit Closure Cost Summary. The cost estimate for closure of all proposed units covered by this permit is \$24,007,225 (2022 dollars) as shown on Table VII.E.1. - Permitted Closure Cost Summary.
2. In accordance with Provision VII.B.2., the sums described in paragraphs 12, 13, and 14 of the Settlement Agreement satisfy the financial assurance obligations of the permittee to cover the estimated cost of closure of the Exide-Frisco site.
3. Financial assurance is subject to the following:
 - c. At least sixty (60) days prior to management of waste in the proposed permitted units listed in Table VII.E.1. - Permitted Unit Closure Cost Summary, the permittee shall submit documentation of a financial assurance mechanism demonstrating the amount of financial assurance required for closure of those units in accordance with 30 TAC Section 37.31.
 - d. During the active life of the facility, the current cost estimate for closure, including any adjustments after permit issuance, shall be adjusted for inflation according to the methods described in 30 TAC 37.131.
 - e. The amount of financial assurance for closure of existing units may be reduced by the amount listed in Table VII.E.1. - Permitted Unit Closure Cost Summary, upon certification of closure of an existing permitted unit, in accordance with Provisions VII.A.4. and VII.A.6., and upon written approval of the Executive Director.
4. The permittee shall submit to the Executive Director, upon request, such information as may be required to determine the adequacy of the financial assurance for closure.

VII.J. Financial Assurance for Post-Closure

1. The cost estimate for post-closure care of all existing units covered by this permit is \$2,216,649 (2022 dollars) as shown on Table VII.E.2. - Permitted Unit Post Closure Cost Summary. The cost estimate for post-closure care of all proposed units covered by this permit is \$3,765,605 (2022 dollars) as shown on Table VII.E.2. - Permitted Unit Post Closure Cost Summary.
2. In accordance with Provision VII.B.2., the sums described in paragraphs 12, 13, and 14 of the Settlement Agreement satisfy the financial assurance obligations of the permittee to cover the estimated cost of post-closure care of the Exide-Frisco site.
3. Financial assurance is subject to the following:

- a. At least sixty (60) days prior to management of waste in the proposed permitted units listed in Table VII.E.2. – Permitted Unit Post-Closure Cost Summary, the permittee shall submit documentation of a financial assurance mechanism demonstrating the amount of financial assurance required for post-closure care of those units in accordance with 30 TAC Section 37.31.
 - b. During the active life of the facility, the current cost estimate for post-closure care, including adjustments after permit issuance, shall be adjusted for inflation according to the methods described in 30 TAC Section 37.131.
4. The permittee shall submit to the Executive Director, upon request, such information as may be required to determine the adequacy of the financial assurance for post-closure care.

The proposed compliance plan includes the following:

- A. Defines the point of compliance and requires FCDC to perform groundwater monitoring in specified point of compliance wells and alternate point of exposure wells for the duration of:
 1. 30 years at the North CAMU; and,
 2. 30 years at the RCA CAMU (30 TAC Section 335.166)
- B. Defines the Groundwater Protection Standard (GWPS) which specifies hazardous constituent concentration limits to be monitored at the point of compliance and alternate point of exposure wells by operation of the corrective action program (30 TAC Section 335.158);
- C. Authorizes Alternate Concentration Limits (ACLs) for the GWPS that are protective of human health and the environment in accordance with 30 TAC Section 335.160(b). The ACLs are based on Surface Water Quality Standards specified in 30 TAC Chapter 307 and Protective Concentration Levels established under 30 TAC Chapter 350.
- D. Specifies procedures to determine if the GWPS has been exceeded at the point of compliance or alternate point of exposure (30 TAC Section 335.166 and Chapter 350);
- E. Defines the Corrective Action Program consisting of a plume management zone at the North CAMU and a plume management zone in conjunction with a funnel and gate permeable reactive barrier at the RCA CAMU;
- F. Requires groundwater monitoring to measure the effectiveness of the Corrective Action Program;
- G. Requires the permittee to provide financial assurance for corrective action monitoring program and remediation systems, and sampling and analysis costs, for the duration of compliance periods;
- H. The uppermost GWBU at the Site is comprised of the clay-rich colluvial soils that lie on top of the Eagle Ford Shale. The Eagle Ford Shale acts as an aquiclude unit at the base of the uppermost GWBU. The Eagle Ford Formation occurs at depths between approximately 13.5 to 26 feet below ground surface (bgs) in the vicinity of the North CAMU and at depths between approximately 10 and 30 feet bgs in the vicinity of the RCA CAMU. Groundwater within the upper GWBU generally occurs under unconfined conditions at depths between approximately 10 and 25 feet bgs; however, shallow (perched) water has been recorded at depths of less than one foot bgs in the vicinity of the Production Area (most likely attributing to stormwater seeping through cracks in the

concrete). Groundwater flow is generally toward the southwest in the vicinity of the North CAMU. Flow direction in the vicinity of the RCA CAMU is anticipated to be towards the west with the installation of the funnel and gate permeable reactive barrier system.

Contamination verified in the uppermost aquifer and the draft compliance plan requires:

1. Corrective action with groundwater monitoring at the North CAMU and RCA CAMU; and
2. RCRA Facility Investigation (RFI), Corrective Measure Study (CMS) and Corrective Measure Implementation (CMI) form 20 solid waste management units

Public Notice

The public notice issued in conjunction with the final draft permit satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901 *et seq.* and 40 CFR 124.10. The TCEQ and EPA have entered into a joint permitting agreement whereby RCRA permits or compliance plans will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Ann., Chapter 361, and with RCRA, as amended. If TCEQ and EPA decide to issue a final permit and compliance plan to this facility, the permit and compliance plan will implement both the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the federally authorized State requirements. However, the State of Texas has not received full HSWA authority. Therefore, if the draft permit and compliance plan contains HSWA requirements for which the TCEQ is not authorized, both the TCEQ and EPA must issue the permit and compliance plan in order for the applicant to have a fully effective RCRA permit. Any jointly issued permit and compliance plan provisions will be fully enforceable under State and Federal law. Areas in which the TCEQ is not authorized by EPA are denoted in the draft permit and compliance plan with an asterisk (*). Persons wishing to comment or request a hearing on a HSWA requirement denoted with an asterisk (*) in the draft permit and compliance plan should also notify EPA in writing as follows: Chief, RCRA, Brownfields, & Solid Waste Branch, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102. EPA will accept hearing requests submitted to the TCEQ.

Opportunity for Hearing

Before a permit and compliance plan can be issued, extended, or renewed, the TCEQ will provide an opportunity for a hearing to the applicant and persons affected. If a hearing is requested, the Commission will determine whether to grant or deny the hearing requests. If the hearing requests are denied, the draft permit and compliance plan may be considered for issuance by the Commission or the Executive Director. If the hearing requests are granted, the hearings will be conducted by the State Office of Administrative Hearings. EPA will reach a decision on the HSWA portion of the joint permit and compliance plan based on the hearing record developed by the TCEQ. The EPA portion of the permit and compliance plan implementing nonauthorized HSWA provisions will become effective thirty (30) days after the date of issuance if changes were required.

Decisions regarding the permit and compliance plan provisions issued under State authority may be reconsidered in response to a Motion for Rehearing or a Motion for Reconsideration and by appeal to a District Court in Travis County. Decisions regarding the permit and compliance plan provisions issued under Federal authority may be reconsidered in accordance with the procedures of 40 CFR 124.19.

Preliminary Decision

- General: The Executive Director made a preliminary decision that this proposed permit and compliance plan renewal, if issued, meets all the statutory and regulatory requirements.
- Special: The proposed permit and compliance plan renewal does not authorize variances or alternatives to required standards.
- Parties have requested a hearing on the proposed permit and compliance plan renewal.

Additional Information

A. Technical information:

Chris Shaw, Project Manager
Industrial & Hazardous Waste Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
Mail Code MC 130
P. O. Box 13087
Austin, Texas 78711-3087
512/239-2335

B. HSWA information:

For applications which do not contain combustion units:
Melissa Smith, Section Chief
RCRA, Brownfields, & Solid Waste Branch
U.S. Environmental Protection Agency
Region VI - LCRR
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
214/665-7170
smith.melissa@epa.epa.gov

C. Procedural and public hearing information:

Office of Public Interest Counsel
Texas Commission on Environmental Quality
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