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March 6, 2012

Via Hand Delivery

Mr. Richard Hyde, P.E.
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78753

Re: February 19, 2014 Exide Progress Report; Stewart Creek Slag and Battery Chip Investigation and Removal Plan

Dear Mr. Hyde:

In the above referenced Progress Report Exide alleges that it is being prevented from completing its TCEQ required interim Stewart Creek work by the City of Frisco. That allegation is not true. The City has provided Exide's consultants with access to all City owned property along Stewart Creek for investigation. The City has assisted Exide with obtaining similar access to other privately owned property along Stewart Creek. The City has advised Exide and TCEQ that the City will allow Exide to remove visible battery casing chips and slag from City owned sections of Stewart Creek in accordance with specific requirements to assure a complete remediation of Stewart Creek by Exide.

Exide's November 7, 2013 submittal to TCEQ was titled "Interim Action Work Plan" and was subsequently approved as such by TCEQ. However, in Exide's subsequent discussions with the City and the general public, Exide characterized the November 7 plan as its complete plan for Stewart Creek. For example, Exide representative David Margulies recently advised the Dallas Morning News that "If TCEQ approved Exide's removal plan, then TCEQ believes the plan properly addresses the issue of slag and battery case fragments along Stewart Creek." As a result of Exide's public statements, the City sent a letter to TCEQ explaining the City's concern with the regulatory and technical defects in Exide's November 7 plan and the need for a coordinated response by TCEQ to the multiple ongoing Stewart Creek investigations. A copy of that letter is attached for your reference. Based on TCEQ staff member Larry Champagne's December 16, 2013 Interoffice Memorandum (provided to the City and Exide on December 17,

2013) it is clear TCEQ staff shares the City's concerns regarding Exide's historic contamination of Stewart Creek.

Based on recent discussions with your staff, the City understands that TCEQ will require Exide to undertake a thorough investigation of Stewart Creek downstream of the former Exide operating facility and will require Exide to completely remove all slag, battery casing chips and contaminated media from Stewart Creek. The City understands that, contrary to Exide's public statements, TCEQ considers Exide's Interim Action Work Plan to be only an initial step in Exide's overall regulatory responsibility to rectify its historic contamination of Stewart Creek.

As to the specific issue of removal of currently visible slag and battery chips from City property along Stewart Creek, the City confirms herein the conditions it has verbally provided to your staff at recent meetings.

1. City representatives must be present at all Exide activities on City property related to this matter. The City recommends that TCEQ also have a representative present.
2. All slag/battery chip locations must be accurately located by GPS coordinates before any materials are removed. This is necessary to assure that a thorough investigation of the immediate removal area is completed in the future.
3. The media at <u>all</u> (not just 10% of) slag/battery chip locations must be sampled and samples must be split with the City. The City recommends that media samples include soil fines as well as larger media. The City also recommends that TCEQ split samples with Exide.
4. Exide must assume full legal responsibility for all slag/battery chips removed and provide the City with evidence of proper disposal. This requirement is due to Exide's continued written and public statements that the Stewart Creek contamination "may" have come from Exide's former operating facility. The City does not believe the source of the historic contamination is in doubt in any respect – it could only have come from Exide's former operating facility. If Exide's historic waste (both hazardous and non-hazardous) is being removed from City property, the City requires legal relief from any alleged future responsibility for that waste. In this regard the City is an innocent landowner under applicable Texas statutes and TCEQ regulations.

The City hopes this letter clarifies for TCEQ, Exide, and the public that the City will assist in any reasonable manner to assure Exide's historic contamination of Stewart Creek is

fully investigated and remediated. 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

Cc: Bret Wade, TCEQ
Bill Shafford, TCEQ
Gary Beyer, TCEQ
Margaret Ligarde, TCEQ
Sam Barrett, TCEQ
Sunita Singhi, USEPA
Paul James, USEPA
Tim MacAllister, USCOE
George Purefoy, City of Frisco
Mack Borchardt, City of Frisco
Richard Abernathy, City of Frisco
Wade Wheatley, CJI
Rusty Simpson, SWG
Bruce Cole, Exide
Matt Love, Exide
Aileen Hooks, Baker Botts

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January 9, 2014

Via Certified U.S. Mail, Return Receipt Requested # 7010 0780 0001 9016 5775

Mr. Zac Covar
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78753

Re: *Exide Interim Action Work Plan Slag and Battery Case Fragment Removal and Disposal Exide Technologies Frisco Recycling Center, Frisco, Texas TCEQ Agreed Order Docket No. 2011-1712-IHW-E;IHW Permit No. HW-50206; TCEQ SWR No. 30516;Customer No. CN600129779; Regulated Entity No. RN100218643;EPA ID No. TXD006451090; EPA Administrative Order on Consent RCRA 06-2012-0966*

Dear Mr. Covar:

The City of Frisco ("City") has reviewed the above referenced document which was submitted to TCEQ and EPA on November 7, 2013. The City has also reviewed the TCEQ approval letter dated December 17, 2013. While the City agrees that Exide must address the slag and battery chip contamination of Stewart Creek downstream of the former Exide facility, the City does have some fundamental concerns with the above referenced Work Plan. The City believes the TCEQ approval letter should be modified to address these concerns.

Of primary concern to the City is the apparent conflict between some activities suggested in the Work Plan and the current VCP projects the City has undertaken to address portions of Stewart Creek that have been impacted by Exide's wastes. There are three active VCP projects (VCP ID # 2122, VCP ID #2592, and VCP ID # 2632) and one more to be filed shortly.

VCP ID # 2122 relates to the former Stewart Creek wastewater treatment plant site immediately downstream of Exide's property. This property was contaminated by Exide wastes prior to the WWTP closure in the 1990s. The other VCP projects relate to the City's Grand Park (also known as Grand Lakes) development which is further downstream. A major portion of Stewart Creek downstream of the Exide site is covered by these VCP projects.

Based on previous discussions with you, it has been the City's understanding that TCEQ is providing overall management review of all of these projects to assure coordination between the various TCEQ staff sections involved. Based on Mr. Beyer's December 17 approval letter, it does not appear such coordination is actually taking place since Exide's Work Plan clearly does not address the situation in as comprehensive a manner as that proposed in the City's VCP applications. Mr. Beyer's approval letter also appears to be in conflict with the December 17, 2013 TCEQ VCP staff directive for additional work on the Stewart Creek WWTP VCP project to address Exide's historic contamination of Stewart Creek. Given the number of TCEQ staff members involved in the various Exide related projects, the City agrees that executive level TCEQ management of the overall Exide situation is required to assure coordination of the various investigation and remediation projects.

Based on the City's initial investigation of Stewart Creek for contamination from Exide's wastes, the segments of the stream impacted above background include City property, private property, and USACE property. Data from that investigation has been previously provided to TCEQ. The data was also provided to Exide prior to its submittal of the above referenced document. The City's VCP applications provide the type of comprehensive work plan protocols that should be required for proper investigation and remediation of Stewart Creek. The City believes that those portions of Stewart Creek outside of the City's control should be investigated and remediated by Exide under the same protocols.

The City notes initially that Exide's proposed Work Plan does not reference any regulatory guidance to support the proposal. In contrast the City previous investigations have generally followed applicable TCEQ guidance, such as the *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods* (RG-415), revised August 2012. The City believes that Exide should be required to follow this and other applicable TCEQ guidance in its investigation of Stewart Creek.

Generally, Exide is proposing to conduct a visual inspection of the streambed, take limited surface samples, and remove any slag or battery chips found. The slag and battery chips are Exide waste (whether pre or post-RCRA) that was improperly disposed. This includes slag and battery chips that were disposed without regulatory authorization even though the waste came from a RCRA permitted facility. Both that waste and associated contaminated media must be removed regardless of the time it may have been disposed in Stewart Creek.

Given the documented history of slag and battery chip contamination of Stewart Creek by Exide, the Work Plan protocol is not sufficient to identify and remove all of the contamination. A systematic, comprehensive sediment sampling protocol should be implemented. This protocol should include: (1) minimum distance between samples; (2) preferential collection of fine grained sediment rather than sand/gravel; and (3) testing for all contaminants of concern that could have originated from the Exide site.

Following identification of all contaminated areas, complete removal of contaminated sediment to appropriate ecological PCLs is required to satisfy public concern since the Grand Lake project will include much of this area. Simply removing the slag and battery chips will not remove the residual sediment contamination.

After remediation is completed by the City and Exide, Exide should be required to evaluate the Stewart Creek drainage area every six months for a minimum period of five (5) years. This time frame should be extended if subsequent recontamination of Stewart Creek is discovered. Given Exide's current bankruptcy situation, Exide should also be required to post financial assurance during the same timeframe to cover the monitoring costs and any subsequent remediation that might be required.

The City is incorporating into its Grand Lake project sedimentation basins upstream of the public access areas of the park to assure no future contamination from the Exide site reaches public areas. This is a necessary preventative measure given the current uncertainty regarding final closure requirements for the Exide site.

The City will continue to work in cooperation with Exide to assure Stewart Creek is properly investigated and remediated. To that end the City has authorized Exide to access City controlled property for investigation activities and has assisted Exide with similar private property access. However, the City will insist on control of all remediation activities on City property to assure removal of all Exide related contamination to appropriate levels is achieved.

The City appreciates TCEQ's continued assistance in this regard. If you, or your staff, have any questions in regard to this submittal, please do not hesitate to call Mack Borchardt at 972-292-5127 or me at 512-633-6467.

Respectfully,

Kerry E. Russell

Cc: Bret Wade, TCEQ
Sunita Singhi, USEPA
Tim MacAllister, USACE
George Purefoy, City of Frisco
Mack Borchardt, City of Frisco
Dan Pearson, Hillco Partners
Wade Wheatley, Cook Joyce, Inc.
Rusty Simpson, Southwest Geoscience
Bruce Cole, Exide
Matt Love, Exide

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Mr. Zac Covar, MC-109
TCEQ Executive Director
Post Office Box 13087
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