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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 24, 2013

VIA E-SIGNATURE CONFIRMATION #91 3408 2133 3931 7328 2444
RETURN RECEIPT REQUESTED

Ms. Vanessa Coleman
Exide Technologies
P.O. Box 250
Frisco, TX 75034

Re: Notice of Enforcement for Investigations at:
Exide Frisco Battery Recycling Plant
7471 5th St., Frisco (Collin County), Texas
IHW Permit No. 50206; SWR No. 30516; Investigation Nos. 1098924

Dear Ms. Coleman:

On February 13, 2013, Ms. Dorothy Lewis of the Texas Commission on Environmental Quality (TCEQ) DFW Region Office conducted an investigation of the above-referenced regulated entity to evaluate compliance with applicable requirements for Industrial Solid Waste and Municipal Hazardous Waste. During this investigation, certain alleged violations were documented. Enclosed is a summary which lists the investigation findings and recommended corrective actions. Additional recommended corrective actions may be provided by the Enforcement Division.

In the listing of the alleged violation(s), we have cited applicable requirements, including TCEQ rules. Please note that both the rules themselves and the agency brochure entitled *Obtaining TCEQ Rules* (GI 032) are located on our agency website at <http://www.tceq.state.tx.us> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from either the DFW Region Office at 817-588-5800 the Central Office Publications Ordering Team at 512-239-0028. Copies of applicable federal regulations may be obtained by calling Environmental Protection Agency's Publications at 800-490-9198.

One or more of the violations documented during the subject investigation includes unauthorized activity and you are hereby advised that continued operation is not authorized.

Also, please be advised that the Legislature has granted enforcement powers to the TCEQ to carry out its mission to protect human health and the environment. Due to the apparent seriousness of the alleged violations, formal enforcement action has been initiated, and additional

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violations may be cited upon further review. We encourage you to immediately begin taking actions to address the outstanding alleged violations.

In responding with prompt corrective action, the administrative penalty to be assessed may be limited.

The Commission recognizes that the great majority of the regulated community wants to prevent pollution and to comply with environmental laws. We dedicate considerable resources toward making voluntary compliance achievable. But where compliance has not been met it is our duty to protect the public and the environment by enforcing the state's environmental laws, regulations, and permits.

Also, if you believe the violations documented in this notice have been cited in error, **and** you have additional information that we are unaware of, you may request a meeting to discuss this enforcement matter. To request a meeting, send a letter describing the additional information to the address shown below.

Manager, Solid Waste Section
Enforcement Division, MC 219
Re: Enforcement Review Meeting Request
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

If you or members of your staff have any questions, please feel free to contact Ms. Dorothy Lewis in the DFW Region Office at (817) 588-5824.

Sincerely,



Sam Barrett
Waste Section Manager
DFW Region Office
Texas Commission on Environmental Quality

SLB/dl

Attachment: Summary of Investigation Findings

Summary of Investigation Findings

EXIDE FRISCO BATTERY RECYCLING PLANT

7471 5TH ST

FRISCO, COLLIN COUNTY, TX 75034

Investigation #

1098924

Investigation Date: 02/13/2013

Additional ID(s): 30516

TXD006451090

50206

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track No: 514156

Compliance Due Date: To Be Determined

30 TAC Chapter 335.152(a)(10)

30 TAC Chapter 335.170

30 TAC Chapter 335.2

40 CFR Chapter 264.250

40 CFR Chapter 264.251

40 CFR Chapter 264.252

40 CFR Chapter 264.253

40 CFR Chapter 264.254

40 CFR Chapter 264.258

PERMIT IHW Permit No. 50206: Section II.C.1.d

Alleged Violation:

Investigation: 1098924

Comment Date: 09/09/2013

According to 30 TAC 335.2 (ref. by IHW Permit No. 50206: Section II.C.1.d), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency.

During the investigation, TCEQ DFW Region staff observed approximately 3,600 cubic yards of treated blast furnace slag separated into two piles. These piles were located on the east and west sides of the active Class 2 landfill (NOR Unit No. 012). According to sample results, this waste exceeded the toxicity characteristic for lead on three occasions. Exide began accumulating treated blast furnace slag in these piles in August 2011 and ceased in May 2012. Exide does not have a permit authorizing these two waste piles.

In addition, Exide failed to meet the standards required in 30 TAC 335.170, 30 TAC 335.152(a)(10), and 40 CFR 264 Subpart L (except 264.256, 264.257, and 264.259) necessary to manage hazardous waste in waste piles.

Recommended Corrective Action: TCEQ requests that Exide cease managing hazardous wastes in waste piles. The TCEQ also requests that Exide manage the treated blast furnace slag in the waste piles in an appropriate manner to be approved by the TCEQ. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514160

Compliance Due Date: To Be Determined

30 TAC Chapter 335.431

40 CFR Chapter 268.50(a)

40 CFR Chapter 268.50(c)

Alleged Violation:

According to 40 CFR 268.50(a) (ref. by 30 TAC 335.431), the storage of waste subject to a treatment standard is prohibited unless the waste is being stored to accumulate such quantities as are necessary to facilitate proper recycling, treatment, or disposal.

According to 40 CFR 268.50(c) (ref. by 30 TAC 335.431), an owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

During the on-site investigation, TCEQ DFW Region staff observed two large piles of treated blast furnace slag on the east and west sides of the active portion of the Class 2 landfill. Exide began accumulating this waste stream in waste piles from August of 2011 to May 2012. TCEQ DFW Region staff noted this waste as being stored for approximately 18 months on February 13, 2013. According to sample analyses, waste stored in these waste piles exceeded the Land Disposal Restriction (LDR) Universal Treatment Standards (UTS) several times.

Recommended Corrective Action: TCEQ requests that Exide cease the storage of wastes exceeding the LDR UTS in waste piles. The TCEQ also requests that Exide manage the treated blast furnace slag in the waste piles in an appropriate manner to be approved by the TCEQ. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514162 **Compliance Due Date:** To Be Determined
30 TAC Chapter 335.2

PERMIT IHW Permit No. 50206: Section II.C.1.d

Alleged Violation:

Investigation: 1098924

Comment Date: 09/03/2013

According to 30 TAC 335.2 (ref. by IHW Permit No. 50206: Section II.C.1.d), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency.

During the investigation on-site, TCEQ DFW Region staff observed super sacks filled with treated blast furnace slag stored in the former Battery Breaker area. The slag in the super sacks exhibited the toxicity characteristic for lead and/or cadmium. TCEQ DFW Region staff noted Exide did not obtain authorization to store hazardous waste in the Battery Breaker area.

Recommended Corrective Action: The TCEQ requests that Exide cease the storage of hazardous waste in the Battery Breaker area. The TCEQ also requests that Exide manage the hazardous treated blast furnace slag in an appropriate manner to be approved by the TCEQ. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514164 **Compliance Due Date:** To Be Determined
30 TAC Chapter 335.152

PERMIT IHW Permit No. 50206: Section IV.B.4

PERMIT IHW Permit No. 50206: Section II.C.1.f

PERMIT IHW Permit No. 50206: Section IV.B.1

Alleged Violation:

Investigation: 1098924

Comment Date: 09/03/2013

According to IHW Permit No. 50206: Section IV.B.1 and Table IV.B, the Battery Receiving/Storage Building (Permit Unit No. 001; NOR Unit No. 11) is only authorized for the storage of spent lead acid batteries.

According to IHW Permit No. 50206: Section IV.B.4, Exide is required to follow the permit amendment or modification requirements of 30 TAC 305.62 and 30 TAC 305.69 prior to the accepting of any additional wastes not authorized by IHW Permit No. 50206: Table IV.B in the CSA.

According to 30 TAC 335.152, the regulations contained in 40 CFR Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted.

During the on-site investigation, TCEQ DFW Region staff observed super sacks filled with treated blast furnace slag stored in the former Battery Receiving and Storage Area, a permitted RCRA container storage area (CSA). The slag in the super sacks exhibited the toxicity characteristic for lead and/or cadmium. TCEQ DFW Region staff noted the Battery Receiving/Storage Building is only permitted for the storage of spent lead acid batteries. TCEQ DFW Region staff noted Exide did not obtain authorization from the TCEQ to store super sacks of blast furnace slag in this area.

Recommended Corrective Action: The TCEQ requests that Exide cease the storage of non-hazardous and hazardous wastes, excluding spent lead acid batteries, in the Battery Receiving/Storage Building. The TCEQ also requests the proper management of the treated blast furnace slag, both hazardous and non-hazardous. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514165 **Compliance Due Date:** To Be Determined

30 TAC Chapter 335.152(a)(2)

40 CFR Chapter 264.35

PERMIT IHW Permit No. 50206:Table V.B.

Alleged Violation:

Investigation: 1098924

Comment Date: 09/03/2013

According to 40 CFR 264.35 (ref. 30 TAC 335.152(a)(2)), the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated that aisle space is not needed for any of these purposes.

According IHW Permit No. 50206: Table V.B, Exide is required to maintain an aisle spacing of 2.3 feet.

During the on-site investigation, TCEQ DFW Region staff observed that aisle space maintained by Exide was less than 2.3 feet.

Recommended Corrective Action: The TCEQ requests that Exide maintain an aisle space of 2.3 feet unless Exide can demonstrate that aisle space is not needed. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514167 **Compliance Due Date:** To Be Determined

30 TAC Chapter 335.69(a)(2)

30 TAC Chapter 335.69(a)(3)

40 CFR Chapter 262.34(a)(2)

40 CFR Chapter 262.34(a)(3)

Alleged Violation:

Investigation: 1098924

Comment Date: 09/03/2013

According to 30 TAC 335.69(a)(2) and 40 CFR 262.34(a)(2), a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

According to 30 TAC 335.69(a)(3) and 40 CFR 262.34(a)(3), a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste."

During the on-site investigation, TCEQ DFW Region staff observed super sacks, containing hazardous treated blast slag, that were not properly labeled with an accumulation start date or the words "Hazardous Waste."

Recommended Corrective Action: The TCEQ requests that Exide properly label all hazardous waste containers with an accumulation start date and the words "Hazardous Waste." TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514173

Compliance Due Date: To Be Determined

30 TAC Chapter 335.2

Alleged Violation:

Investigation: 1098924

Comment Date: 09/09/2013

According to 30 TAC 335.2, no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency.

On July 16, 2013, the TCEQ DFW Region Office received an inter-office memorandum (IOM) from the TCEQ's IHW Permits Section detailing the results of records submitted by Exide on April 11, 2013. These records included sample analyses of treated blast furnace slag disposed in some of the capped cells of the Class 2 Landfill. According to these sample analyses, the treated blast furnace slag disposed in these cells exhibited the toxicity characteristic for lead on several occasions. TCEQ DFW Region staff noted Exide does not have a RCRA permit authorizing the land disposal of hazardous waste.

Recommended Corrective Action: The TCEQ requests that Exide cease the unauthorized disposal of hazardous wastes. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514177

Compliance Due Date: To Be Determined

30 TAC Chapter 335.431

40 CFR Chapter 268.34(b)

40 CFR Chapter 268.40

Alleged Violation:

According to 40 CFR 268.40 (ref. by 30 TAC 335.431), a restricted waste cannot be land disposed until it is treated to meet the Universal Treatment Standards unless it qualifies for an exemption or a variance.

According to 40 CFR 268.34(b), "Effective November 26, 1998, the following waste is prohibited from land disposal: Slag from secondary lead smelting which exhibits the Toxicity Characteristic due to the presence of one or more metals."

On July 16, 2013, the TCEQ DFW Region Office received an inter-office memorandum (IOM) from the TCEQ's IHW Permits Section detailing the results of records submitted by Exide on April 11, 2013. These records included sample analyses of treated blast furnace slag disposed in some of the capped cells of the Class 2 Landfill (Cells 1-9). TCEQ DFW Region staff noted Exide disposed of treated blast furnace slag and refractory brick in these capped cells after the effective date of the Land Disposal Restriction (LDR). According to these sample analyses, the treated blast furnace slag, a restricted waste, disposed in these cells exceeded the Universal Treatment Standard (UTS) for lead on several occasions.

Recommended Corrective Action: The TCEQ requests that Exide cease the unauthorized disposal of waste exceeding the LDR UTS. TCEQ DFW Region staff also requests that Exide submit documentation demonstrating corrective action to the TCEQ Enforcement Division for review. It is also requested that an additional copy of this documentation be transmitted to the TCEQ DFW Region Office. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514180

Compliance Due Date: To Be Determined

30 TAC Chapter 335.503(a)

30 TAC Chapter 335.504

30 TAC Chapter 335.62

40 CFR Chapter 262.11

Alleged Violation:

Investigation: 1098924

Comment Date: 09/09/2013

According to 30 TAC 335.62, a person who generates a solid waste must determine if that waste is hazardous pursuant to 335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the Sections of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

According to 30 TAC 335.503(a), all industrial solid and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be classified according to the sections of this subchapter.

According to 30 TAC 335.504, a person who generates a solid waste must determine if that waste is hazardous using the methods described in 30 TAC 335.504 (1, 2, & 3).

According to 40 CFR 262.11, a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste.

Based on review of analytical results provided to the TCEQ by Exide on April 11, 2013, TCEQ DFW Region staff noted Exide failed to adequately test for cadmium when performing hazardous waste determinations/waste classifications on the treated blast furnace slag in the waste piles and in the capped Class 2 landfill cells. TCEQ staff noted Exide only tested for lead although cadmium was identified as exhibiting the toxicity characteristic in the treated blast furnace slag.

Also, between May 29, 2012 and January 22, 2013, 161 loads (~3,388.64 tons) of treated blast furnace slag was transported to the DFW Recycling and Disposal Facility (DFW Landfill) for disposal as Class 2 waste. The waste profile documentation submitted to the TCEQ by DFW Landfill for this waste stream included sample analyses (from January 2012 to May

2012) that only tested for lead. The waste profile addendum did not include cadmium as an underlying hazardous constituent, but instead listed lead, arsenic, barium, selenium, and antimony. These sample analyses were conducted in 2012 after Exide was made aware that the treated blast furnace slag also exhibited a toxicity characteristic for cadmium in 2011.

Recommended Corrective Action: The TCEQ requests that Exide identify all constituents of concern, including cadmium, when performing proper hazardous waste determinations/waste classifications on the treated blast furnace slag. It is requested that Exide submit records to the TCEQ Enforcement Division and DFW Region Office documenting that the entity performed the necessary corrective actions to resolve this alleged violation. Additional recommended corrective actions will be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.

Track No: 514182

Compliance Due Date: To Be Determined

30 TAC Chapter 335.431

40 CFR Chapter 264.13(a)(1)

40 CFR Chapter 268.7(c)(2)

Alleged Violation:

Investigation: 1098924

Comment Date: 09/09/2013

According to 40 CFR 264.13(a)(1), "Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter."

According to 40 CFR 268.7(c)(2) (ref. by 30 TAC 335.431), "Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to 40 CFR 266.20(b), the owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in 260.11 of this chapter), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subpart D of this part. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by 264.13 or 265.13 of this chapter.

Based on review of analytical results provided to the TCEQ by Exide on April 11, 2013, TCEQ DFW Region staff noted Exide failed to adequately test for cadmium on the treated blast furnace slag in the waste piles and in the capped Class 2 landfill cells when determining if constituents in the waste exceeded the Land Disposal Restriction (LDR) Universal Treatment Standards (UTS). TCEQ staff noted Exide only tested for lead although cadmium was identified as exceeding the LDR UTS in the treated blast furnace slag.

Also, between May 29, 2012 and January 22, 2013, 161 loads (~3,388.64 tons) of treated blast furnace slag was transported to the DFW Recycling and Disposal Facility (DFW Landfill) for disposal as Class 2 waste. The waste profile documentation submitted to the TCEQ Region Office by DFW Landfill for this waste stream included sample analyses (from January 2012 to May 2012) that only tested for lead. The waste profile addendum did not include cadmium as an underlying hazardous constituent, but instead listed lead, arsenic, barium, selenium, and antimony. These sample analyses were conducted in 2012 after Exide was made aware in 2011 that the cadmium concentrations in the treated blast furnace slag also exceeded the UTS.

Recommended Corrective Action: The TCEQ requests that Exide properly determine all applicable Land Disposal Restriction Universal Treatment Standards for all of its restricted waste streams, specifically for the treated blast furnace slag. It is requested that Exide submit records to the TCEQ Enforcement Division and DFW Region Office documenting that the entity performed the necessary corrective actions to resolve this alleged violation. Additional recommended corrective actions may be provided by the TCEQ Enforcement Division and/or the TCEQ Office of Waste.