



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

August 1, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 7329

Mr. Donald Barar  
Plant Manager  
Exide Technologies, Inc.  
P.O. Box 250  
Frisco, TX 75034

Re: Exide Technologies, Inc.  
Docket Number RCRA-06-2011-0966

Dear Mr. Barar:

On December 14 – 18, 2009, and March 29, 2010, the U.S. Environmental Protection Agency (EPA) conducted a RCRA Corrective Action inspection as part of a multi-media inspection at the Exide Technologies, Inc. (Exide) facility located at 7471 South 5<sup>th</sup> Street, Frisco, Texas (Facility). This inspection, along with a file review of historical records, indicates potential soil, groundwater, sediment and surface water contamination resulting from activities at the Facility. To address these environmental concerns, EPA hereby issues the enclosed Unilateral Administrative Order (Order) pursuant to Section 3013(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6934.

The Order requires site assessment by Exide, including delineation of soil, sediment, surface water, and groundwater contamination associated with the Facility and identification of remediation options. Specifically, contamination which has the potential to impact human health and ecological health associated with Stewart Creek both on-site and off-site needs to be assessed. Soil, sediment, surface water, and groundwater data should be evaluated against Texas Risk Reduction Program protective concentration levels (and risk-based exposure levels for surface water) for both human health and ecological risks.

Please note the references to the Administrative Record throughout the Order. At any time, Exide may submit additional documents or other materials to be included in the Administrative Record.

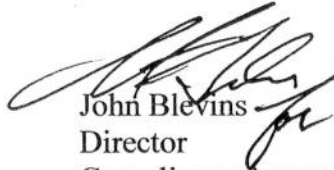
Within five days of receipt of this Order, Exide shall notify EPA in writing of its intention to comply. If such notice is not received, EPA will presume that Exide does not intend to comply. Confirmation should be directed to Sunita Singhvi, Chief of the Corrective Action and Compliance Inspection Section (6EN-HC) at the above address or at [singhvi.sunita@epa.gov](mailto:singhvi.sunita@epa.gov).

Re: Unilateral Administrative Order  
Docket Number RCRA-06-2011-0966  
Exide Technologies, Inc.

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If you have technical questions regarding the Order, you may contact Paul James at (214) 665-6445, or james.paul@epa.gov. If you have legal questions regarding the Order, you may contact Jay Przyborski at (214) 665-6605, or przyborski.jay@epa.gov.

Sincerely,



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: Richard A. Hyde, P.E., Deputy Director  
Office of Compliance and Enforcement  
Texas Commission on Environmental Quality

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	§	ADMINISTRATIVE ORDER
	§	
EXIDE TECHNOLOGIES, INC.	§	
7471 SOUTH 5 <sup>TH</sup> STREET	§	DOCKET NO. RCRA 06-2011-0966
FRISCO, TEXAS 75034	§	
	§	
RESPONDENT	§	Proceedings under Section 3013(a) of
	§	the Resource Conservation and
EPA ID No.: TXD006451090	§	Recovery Act, as amended, 42 U.S.C. §6934
	§	

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## **RCRA SECTION 3013(a) ADMINISTRATIVE ORDER**

### **I. JURISDICTION**

1. This Administrative Order ("Order") is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 3013(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6934(a). The authority to issue this Order has been delegated to the Regional Administrator, EPA Region 6 by EPA Delegation No. 8-20 and further delegated to the Director of the Compliance Assurance and Enforcement Division, EPA Region 6 ("Director") by Delegation R6-8-20. EPA has notified the Texas Commission on Environmental Quality ("TCEQ") that this Order is being issued and is providing a copy to the TCEQ.
2. The State of Texas' RCRA program was authorized under 3006(b) of RCRA, 42 U.S.C. § 6926(b). Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains its authority under Section 3013(a) of the Act.
3. The Administrative Order is based upon the administrative record ("AR") compiled by EPA and incorporated herein by reference. The record is available for review by Respondent and the public at EPA's Regional Office at 1445 Ross Avenue, Dallas, TX 75202.

### **II. PARTIES BOUND**

4. This Order is issued to Exide Technologies, Inc. ("Respondent"), the owner and operator of the facility located at 7471 South 5<sup>th</sup> Street, Frisco, Texas 75034 ("Facility").
5. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
6. No change of ownership, corporate, or partnership status relating to the Facility described in this Order will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by the express terms and conditions of this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.
7. Respondent shall provide a copy of this Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants ("Contractors") retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) working days of the effective date of this Order, or on the date of such retention of services, and shall condition all such contracts on compliance with the terms of this Order.

8. Any documents transferring ownership and/or operation of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Order to its successor-in-interest and written notice of said transfer of ownership and/or operation to EPA.
9. Respondent shall undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference.

### III. STATEMENT OF PURPOSE

10. This Order is issued to Respondent to address EPA's determinations that releases of hazardous wastes at Respondent's Facility may present a substantial hazard to human health and/or the environment by requiring Respondent to conduct monitoring, testing, analysis, and reporting to ascertain the nature and extent of such hazard. In meeting these objectives, Respondent shall prepare and submit for approval to EPA a Workplan to determine the nature and extent of the hazard as described more fully below. After EPA approval of the Workplan, Respondent must then implement the Workplan, including any modifications made by EPA.

### IV. FINDINGS OF FACT

#### Facility Description:

11. Respondent's Facility covered by this Order is approximately 220 acres and is located at 7471 South 5<sup>th</sup> Street, Frisco, Texas.
12. Respondent's Facility was constructed in 1963 by Burrs Metals, a Division of GNB, to produce Lead Oxide. In 1971-72 battery recycling operations began at this Facility. Exide purchased this Facility in 2000.
13. The Facility's primary production/operation area is located between two branches of Stewart Creek which join and flow in a westerly direction through the Facility property. Stewart Creek empties into Lewisville Lake about five miles downstream of the Facility. (AR-1<sup>1</sup>, page 1-7)
14. The Facility also includes a crystallization plant, several solid waste management units, a wastewater treatment plant, and stormwater pond.
15. The Facility is underlain by the Eagle Ford Shale Formation and the Austin Chalk. The Austin Chalk is approximately eight feet thick and located along the southeast corner of the property. The soil which covers the majority of the property is derived from the Eagle Ford Shale. (AR-1, page 10-8) The soil is mostly classified as clayey with a low to moderate capacity for attenuation of metal ions such as lead. The permeability of the soil ranges from  $4.5 \times 10^{-4}$  to  $7.8 \times 10^{-10}$  cm/sec, with the higher permeability readings in the Eagle Ford Shale below a surficial aquifer. (AR-1, page 13-3)

16. A surficial aquifer which varies in depth from 30 to 35 feet is located beneath the Facility property. (AR-1, page 13-3) Groundwater flow direction is generally from east to west, and locally towards Stewart Creek. (AR-1, page 2-2) The surficial aquifer below the western portion of the property recharges Stewart Creek and in the eastern portion of the property Stewart Creek recharges the surficial aquifer. (AR-1, page 10-15)

17. In 1988, a retention wall ("flood wall") was constructed along the boundary of the production area north of Stewart Creek as part of a run-off control system to route rainfall from the production area to the stormwater pond for treatment. (AR-1, page 4-3)

Facility Processes and Waste Management:

18. The Facility manufactures lead ingots, alloyed lead ingots, and lead oxide. The Facility also manufactures sodium sulfate from their wastewater treatment soda ash scrubber as a byproduct. The Facility operates two furnaces: a reverberatory furnace and a blast furnace. The feed to the Facility's furnaces consists of spent batteries, floor sweep, and on-site generated potentially lead-contaminated material, battery scrap, and lead scrap. (AR-2<sup>2</sup>)

19. The Facility was issued a RCRA Hazardous Waste Permit (#50206) in 1988 which was renewed in 2001. The permit authorizes the Facility to operate two hazardous waste storage units: 1) Battery Receiving/Storage Building (a RCRA hazardous waste container storage area); and 2) Raw Material Storage Building (a RCRA hazardous waste containment building). (AR-3<sup>3</sup>)

20. The Facility is authorized to manage the following wastes in the permitted units:

Container storage area:

- a. Spent lead-acid batteries (EPA waste code D008, D002; lead and corrosive, respectively)

Containment building:

- b. Raw material from lead-acid batteries (D008, lead)
- c. Emission control dust (D008, lead)
- d. Drosses and slags containing processable lead (D008, lead)
- e. Lead parts from other industries (D008, lead)
- f. Sump muds (D008, lead)
- g. Wastewater treatment sludge containing processable lead (D008, lead)
- h. Scrap materials from battery manufacturing (D008, lead)
- i. Flue Dust (D006, D008, K069; cadmium, lead, emission control dust/sludge from secondary lead smelting, respectively)

21. In a Notification of Hazardous Waste Activity submitted in 2009, Exide indicated that it was a Large Quantity Generator (>1000 kg/month) and transporter of hazardous waste including wastes with EPA waste codes D001 (ignitable), D002 (corrosive), D006 (cadmium), D008 (lead), D010 (selenium), D018 (benzene), D039 (tetrachloroethylene), and K069 (emission control dust/sludge from secondary lead smelting). (AR-4<sup>4</sup>, page 3)



22. In their 2008 Biennial Report, Exide reported that they generated 4,175 tons of spent sulfuric acid from battery breaking operations which was managed on-site through chemical precipitation. (AR-4, page 7)

23. During an EPA inspection in 2009, a Facility representative described in more detail the following wastes generated and the disposition of those wastes (AR-13):

- a. Blast furnace slag – constitutes the majority of waste generated by the Facility. It is treated with “Free Flow 100” and cement in what the Facility considers to be a “less than 90-day tank” and is disposed as non-hazardous waste in an on-site landfill.
- b. Reverberatory furnace slag – used as feedstock for blast furnace.
- c. Liquids generated from various processes (e.g. battery breaker, filter press, and truck wash) go to the Facility’s on-site waste water treatment plant (WWTP).
- d. Cardboard and shrink wrap – baled and treated with “Free Flow 100” and disposed off-site at a non-hazardous landfill.
- e. Plastics – shredded, washed, and sent off-site for recycling.
- f. Baghouse dust – used as feedstock in reverberatory furnace.
- g. Refractory brick from furnaces – treated with Free Flow 100 in <90 day tank and disposed in on-site landfill.
- h. Leachate and surface runoff from landfill – collected in solar evaporation pond.
- i. Scrubber packing material – disposed off-site at hazardous waste landfill.
- j. Liquids from WWTP – go to crystallizer unit for recovery of sodium sulfate as a by-product and subsequent discharge of liquid to sanitary sewer.
- k. Once a month, liquid from a “boil out” cleaning process is collected in a “frac” tank and either treated in the WWTP or disposed off-site at a non-hazardous waste landfill.

Past Facility Investigations:

24. In the original 1988 permit, a RCRA Facility Investigation (RFI) was required on the following solid waste management units at the Facility: (AR-5<sup>5</sup>, page 18)

- a. Battery storage area – used for storage of batteries prior to processing
- b. Raw material storage area – used for storage and mixing of furnace charge
- c. Slag landfill – used for disposal of blast furnace slag
- d. North disposal area – used for disposal of rubber chips and blast furnace slag
- e. South disposal area – used for disposal of rubber chips and blast furnace slag
- f. Stewart Creek – lined with slag in the 1960’s to prevent erosion
- g. Old drum storage area
- h. Stewart Creek sediment dredging waste pile – sediment dredged from earlier remediation of Stewart Creek
- i. Product (rubber chip) waste pile – collection point for battery case rubber chips



25. The RFI conducted in 1990-1991 included installation and monitoring of on-site groundwater monitoring wells and delineation of nine solid waste management units (four landfills, four storage areas, and the creek). The RFI report was submitted to TCEQ in 1991. (AR-1) An addendum to the report was submitted in 1993 (AR-6<sup>6</sup>), which concluded in part that:

- a. there had been impacts to surface soil above 1,000 ppm lead in several areas;
- b. there was a potential surface water impact at the 5<sup>th</sup> street culvert;
- c. elevated levels of lead were observed in Stewart Creek sediments;
- d. recommended continued groundwater monitoring;
- e. recommended improved cover of the closed landfills/disposal areas;
- f. recommended delineation of contamination at Stewart Creek and other areas of the Facility (i.e. East of truck staging area, and West of battery storage building) by sampling;
- g. recommended establishing site-specific background lead concentrations for soil and groundwater; and
- h. recommended evaluation of drainage pathways to the 5<sup>th</sup> street culvert.

26. A Phase II RFI workplan was submitted to TCEQ on October 5, 1994. The workplan was approved contingent upon significant modifications and comments made by TCEQ by letter dated February 27, 1998 (AR-7<sup>7</sup>). This letter required the Facility to:

- a. Collect soil samples at the railroad spur unloading area located on the southern side of the North Disposal Area;
- b. Determine the lateral and vertical extent of contamination for all areas around "Waste Management Area 1" (which includes the North Disposal Area);
- c. Based on seepage observed from beneath the Battery Storage Area along Stewart Creek, assume release of contaminants above protective levels and proceed with corrective action and prevent further releases which could impact Stewart Creek;
- d. Determine the lateral and vertical extent of contamination for "Waste Management Area 3" (South Disposal Area) for both soil and groundwater; and
- e. Collect soil samples from truck staging area to determine whether there was a release and the full extent of the release.

27. In 1999, a Stewart Creek Corrective Measures Workplan was conditionally approved by TCEQ. (AR-8<sup>8</sup>) Subsequently, a stretch of more than 2,000 feet of Stewart Creek was remediated.

28. Of those units identified in paragraph 24, four of those units were documented and approved by TCEQ in 2000 as being closed. The closed units are 1) battery storage area; 2) old drum storage area; 3) Stewart Creek sediment dredging waste pile; and 4) product waste pile. (AR-9<sup>9</sup>)

29. In the 2001 permit, the following solid waste management units were identified as requiring a RCRA Facility Investigation (RFI) "to determine whether hazardous waste or hazardous constituents listed in 40 CFR Part 261, Appendix VIII and/or 40 CFR Part 264, Appendix IX have been released into the environment": (AR-3, page 34)

- a. Slag Landfill – used for disposal of slag.
- b. Raw Material Storage Area – permitted as a hazardous waste containment building. Used to mix and store feed for the furnaces.
- c. North and South Disposal Areas – used for disposal of slag and other wastes.
- d. Stewart Creek – lined with slag in the 1960's to prevent erosion.

30. According to Facility representatives, the workplan identified in paragraph 26 was not implemented. Also according to Facility representatives, a RFI Phase II workplan was submitted to TCEQ in 2001 or 2002 but was not approved or implemented. A copy of the workplan was not available at the Facility during the inspection and has not been provided by the Facility to EPA.

31. Groundwater samples collected by the Facility in 2002 identified lead in the surficial aquifer at concentrations exceeding the MCL (0.015 mg/L). (AR-10<sup>10</sup>) Groundwater samples have not been collected at the Facility since 2002.

32. During a TCEQ inspection in 2005, the TCEQ inspector noted that battery chips and slag were exposed at the South Disposal Area and inactive slag landfill. Additionally, an area of what appeared to be seepage in the concrete wall near the Battery Storage Building and Stewart Creek was observed. (AR-11<sup>11</sup>) A Notice of Violation (NOV) was issued by TCEQ for failure to prevent potential discharge to surface soils and/or water by failing to maintain the cover over the pre-RCRA landfill. (AR-12<sup>12</sup>) Exide resolved the NOV by repairing the cover and hydro-seeding.

#### EPA Inspection

33. The week of December 14 – 18, 2009, EPA conducted a multi-media [RCRA, Clean Water Act (CWA), Clean Air Act (CAA), and the Emergency Planning and Community Right-to-know Act (EPCRA)] compliance inspection at Respondent's Facility. In addition to the compliance portion of the inspection, a RCRA Corrective Action case development inspection was also conducted, with a subsequent sampling inspection conducted on March 29, 2010. (AR-13<sup>13</sup>)

34. During the Corrective Action inspection, the following concerns were identified:
- a. Exposed battery chips and slag were observed and photographed at the North and South Disposal Areas; (AR-13, photos 62 – 65)
  - b. Equipment containing process wastes was observed and photographed in a "boneyard" on the west side of the Facility. These included a roller belt with battery chips, a kettle with refining drosses, and a "grizzly screen" with pieces of slag, a bail of untreated cardboard and shrink wrap, and several "supersacks" containing what appeared to be building insulation. Also observed was a piece of hydraulic equipment which had two full hydraulic tanks that were leaking fluid onto the ground. (AR-13, photos 77 – 89)

- c. Liquid was observed and photographed to be leaking from a frac tank at the crystallizer unit. (AR-13, photos 36 – 41) A visible drainage pathway was observed leading from the frac tank to the edge of a concrete ramp. Analytical results for the contents of the frac tank over the past year indicate that the contents of the tank were hazardous waste due to toxicity for selenium and cadmium on several occasions. (AR-14<sup>14</sup>)
- d. Along the outside edge of the flood wall between the Facility process area and Stewart Creek, liquid appeared to be seeping from beneath the wall resulting in standing water and white crystalline substance on the ground between the wall and the creek. (AR-13, photos 93 – 109)

35. On March 29, 2010, EPA collected samples of the saturated soil and white crystalline substance between the flood wall and the creek and tested the pH of the standing water. Analytical results exceeded EPA's media-specific soil screening level for lead in industrial soil (800 ppm) in three of the samples and elevated pH was observed in the same samples: (AR-15<sup>15</sup>)

- a. Sample EX-SS-02: collected south of the slag treatment tank;  
Lead – 1,370 ppm  
pH – 10
- b. Sample EX-SS-03: collected near SW corner of slag treatment tank;  
Lead – 1,040 ppm  
pH – 9.4
- c. Sample EX-SS-04: collected near south wall of container storage area;  
Lead – 5,610 ppm  
pH – 11

## **V. DETERMINATIONS AND CONCLUSIONS OF LAW**

Based on the Findings of Fact set out above, and the administrative record, the Director has determined that:

36. Respondent's Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined in 40 C.F.R. § 260.10.

37. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and in 40 C.F.R. § 260.10.

38. Respondent is an "owner" and "operator" of the Facility located at 7471 South 5<sup>th</sup>, Frisco, Texas 75034 within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined in 40 C.F.R. § 260.10.

39. Section 1004(27) of RCRA, 42, U.S.C. § 6903(27), defines the term "solid waste" to mean "any garbage, refuse ... and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations ...".

40. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" to mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

41. According to TCEQ permit number 50206, the Facility is permitted to store both characteristic hazardous waste and listed hazardous wastes, specifically hazardous wastes identified under the following hazardous waste codes: D002, D006, D008, and K069.

42. Additionally, according to the Notification of Hazardous Waste Activity, the Facility generates and transports characteristic and listed hazardous wastes including: D001, D002, D006, D008, D010, D039, and K069.

43. The regulations at 40 C.F.R. § 260.10 define the term "hazardous waste constituent" to mean "a constituent that caused the Administrator to list the hazardous waste in part 261, subpart D, of this chapter, or a constituent listed in table 1 of § 261.24 of this chapter."

44. The hazardous wastes the Facility generates, transports, and/or is permitted to store, contain hazardous constituents that include, but are not limited to, corrosives and metals.

45. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), and 40 C.F.R. § 260.10 define the term "disposal" to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

46. As described in paragraphs 24-35, hazardous wastes at the Facility have been handled in a manner that has resulted in their release to the environment. This release of hazardous wastes, which includes hazardous constituents such as metals, at Respondent's Facility may present a substantial hazard to human health and/or the environment.

47. The constituents identified at Respondent's Facility, under certain conditions of dose, duration, or extent of exposure, constitute a threat to human health. The following information was compiled from "Chemical, Physical, and Biological Properties of Compounds Present at Hazardous Waste Sites", prepared by Clement Associates, Inc., dated September 27, 1985; publications of the Agency for Toxic Substances and Disease Registry ("ATSDR"); the Report on Carcinogens, 8th Summary 1998 Edition (RoC) published by the National Institute of Environmental Health Science ("NIEHS"); EPA's Integrated Risk Information System ("IRIS");

*Handbook of Toxic and Hazardous Chemicals and Carcinogens*, Fourth Edition, 2002, Noyes Publications; and 40 C.F.R. Part 141:

**Lead:** Lead is a heavy metal that is indestructible. It is stored mainly in the bone. It has induced kidney tumors in mice and rats. Lead is also a reproductive hazard, and it can adversely affect the brain and central nervous system by causing encephalopathy and peripheral neuropathy. Chronic exposure to low levels of lead can cause subtle learning disabilities in children. Exposure to lead can also cause kidney damage, retardation of physical growth, and anemia. The action level for lead in drinking water, as noted in 40 CFR 141, Subpart I, is 0.015 mg/l. IRIS lists lead as a Group B2 (probable human) carcinogen.

**Cadmium:** Cadmium is a heavy metal and is classified as a probable human carcinogen. There is sufficient evidence of the carcinogenicity of Cadmium in rats and mice via inhalation and intramuscular and subcutaneous injection. Cadmium has caused an increase of lung tumors in rats. Cadmium has an MCL in drinking water of 0.005 mg/l.

**Selenium:** Subacute selenosis could occur from exposure to large doses of selenium over a longer period of time resulting in neurological dysfunction (impaired vision, ataxia, disorientation) and respiratory distress. Chronic exposure of humans to elevated levels of selenium can cause the characteristic "garlic odor" of excess selenium excretion in the breath and urine, thickened and brittle nails, hair and nail loss, lowered hemoglobin levels, mottled teeth, skin lesions, neurotoxicity (peripheral anesthesia, acroparesthesia and pain in the extremities, fatigue, anorexia, gastroenteritis, hepatic degeneration, and enlarged spleen.

48. Respondent, as owner and operator of the Facility, is the party responsible for conducting the actions ordered herein. These actions are reasonable and necessary to ascertain the nature and extent of any potential hazard to human health or the environment.

## **VI. ORDER**

49. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent is hereby ordered to perform the following actions in the manner and by the dates specified herein.

### **SAMPLING AND ANALYSIS WORKPLAN**

50. Within thirty (30) days of the receipt of this Order, Respondent shall submit a sampling and analysis workplan ("Workplan") for monitoring, testing, analysis, and reporting, to ascertain the nature and extent of the hazard posed by the hazardous wastes and/or hazardous constituents that are present at or may have been released from Respondent's Facility. Respondent is hereby ordered to implement the Workplan once approved, or modified and approved, by EPA.



51. The Workplan shall, at a minimum, contain the following components:

- a. A preliminary facility-specific Conceptual Site Model (CSM) [see Corrective Action Strategy "CAS" Appendix A; [http://www.epa.gov/earth1r6/6pd/rcra\\_c/pd-o/capp-a.pdf](http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/capp-a.pdf)], and identification of data gaps in the CSM;
- b. A plan and timetable for sampling and analysis of soil to characterize the nature and extent of horizontal and vertical contamination, and to identify source areas and potential source areas, including but not limited to, areas in the vicinity of the North Disposal Area, South Disposal Area, Raw Material Storage Area, Inactive Slag Landfill, Boneyard, Bail Stabilization Area, Crystallization Unit Frac Tank, and seepage along the flood wall. The soil sampling program shall include the collection of background soil samples (not impacted by facility operations) to account for any natural background metal concentrations. The plan shall include the locations and depth(s) of the soil samples, collection and analytical methods, and the parameters for analysis.
- c. A plan and timetable for the collection and analysis of surface water and sediment samples associated with Stewart Creek. Surface water and sediment sampling shall focus on the upstream side of the facility, within the facility at or immediately downstream of source/potential source areas, on the downstream side of the facility at the property boundary, and any off-site sampling that may be needed to determine the nature and extent of contamination. In the event that the creek is dry, soil samples shall be collected for analysis in lieu of surface water and sediment samples, in similar locations. The plan shall include the locations of the surface water and sediment (or soil) samples, collection and analytical methods, and the parameters for analysis.
- d. A plan and timetable for characterizing the groundwater flow direction(s) and groundwater quality. The plan shall focus on the collection of groundwater samples upgradient of, within, and downgradient of source areas/potential source areas (including but not limited to, the areas identified in paragraph "b" above). The plan shall include the location and depth(s) of monitoring wells, well construction methods, well sampling methods, analytical methods, and the parameters for analysis.
- e. A provision for access for employees, agents, and contractors of EPA at all reasonable times for purposes of inspection and verifying compliance with the provisions of this Order, in accordance with and pursuant to the authority of Section 3007 of RCRA § 6927;
- f. A timetable for the work to be performed, including submittal of quarterly progress reports and a final report; and

- g. A cost estimate for the work to be performed.
52. The Workplan shall be designed to define the nature, location, extent, direction and rate of movement of any hazardous wastes and/or hazardous constituents which are present at or have been released from the Facility. The Workplan shall document the procedures Respondent shall use to conduct the investigations necessary to fill in gaps in the CSM, including:
- a. Characterize the potential pathways of migration of hazardous waste and/or hazardous constituents;
  - b. Characterize the sources of hazardous waste and/or hazardous constituent contamination;
  - c. Define the degree and extent of hazardous waste and/or hazardous constituent contamination;
  - d. Identify actual or potential receptors; and
  - e. Identify potential remediation options.
53. In accordance with the timetable in the Workplan, or within forty-five (45) days of completion of any additional work required pursuant to Paragraph 56 ("Additional Work"), Respondent shall submit a final report to EPA addressing the Workplan requirements and goals outlined in Paragraphs 50 – 52 above. The final report shall also include:
- a. A summary of all actions taken to comply with this Order;
  - b. An evaluation/comparison of data collected to appropriate Texas Risk Reduction Program (TRRP) protective concentration levels (PCLs) (or risk-based exposure limit, "RBEL", for surface water) which can be found at:  
<http://www.tceq.texas.gov/remediation/trrp/trrppcls.html>; and
  - c. Recommendations for further actions, including remediation options.
54. EPA acknowledges that Respondent may have completed some of the tasks required by this Order and/or that Respondent may have available some of the information and data required by this Order. Such previous work may be used to meet the requirements of this Order, upon submission to and formal approval by EPA.

#### **MINIMUM QUALIFICATIONS FOR PERSONNEL**

55. All work performed by Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. At least fifteen (15) days before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any



contractors or subcontractors to be used in carrying out the terms of this Order. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order.

#### **ADDITIONAL WORK**

56. Based on work performed under the Workplan described above, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of hazardous wastes and/or hazardous waste constituents at or from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval, a workplan for the additional work. EPA will specify the contents of such workplan. Such workplan shall be submitted by Respondent within sixty (60) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

#### **OPPORTUNITY TO CONFER**

57. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent or its representative may confer in person or by telephone with EPA regarding this Order. The opportunity to confer with EPA may be pursued by the Respondent either before or after the Workplan is due, but not later than thirty (30) days after the issuance of this Order. At such conference, Respondent may discuss the following with EPA: the Order, its applicability to the Respondent, the correctness of any factual determinations upon which the Order is based, the appropriateness of any action which Respondent is hereby ordered to undertake, and any other relevant and material issue.

58. Scheduling a conference does not relieve Respondent of its obligation to complete the tasks within the timeframes specified in this Section.

#### **VII. SUBMISSIONS/EPA REVIEW**

59. EPA will review Respondent's Workplan, and any other documents submitted pursuant to this Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission.

60. Within fifteen (15) days of the issuance date of EPA's comments on the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission.

61. Within ten (10) days following EPA's written approval of a submission or portion thereof, Respondent shall implement such approved document or portion.
62. Respondent shall provide EPA with quarterly progress reports if the site work extends beyond a three month period demonstrating that the activities associated with this Order are being carried out. The first such report shall be submitted within three months after the effective date of this Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Order is effective. These quarterly progress reports shall be due on the fifteenth day of the month following the end of the quarter.
63. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent.
64. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Order shall be in writing and shall be sent as follows:

Two (2) copies (one (1) hard copy, double-sided if possible and one (1) electronic copy) of all documents to be submitted to EPA, unless otherwise provided in the Workplan or agreed to by EPA, shall be sent to:

Sunita Singhvi, Chief, Corrective Action and Compliance Inspection  
Hazardous Waste Enforcement Branch  
RCRA Corrective Action and Compliance Inspection Section  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200 (6EN-HC)  
Dallas, TX 75202-2733  
Attention: Paul James  
Phone: (214) 665-6445  
Fax: (214) 665-7446  
Email: james.paul@epa.gov

Documents to be submitted to Respondent shall be sent to:

Mr. Donald Barar  
Plant Manager  
Exide Technologies  
P.O. Box 250  
Frisco, TX 75034

65. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of Respondent.

66. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section IX (Project Coordinator) of this Order. In all instances in which this Order requires submissions to EPA, each submission must be accompanied by the following certification signed by a "duly authorized representative":

"I certify that this document and all attachments were prepared under my direction or supervision. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I certify that this submittal and all attachments were prepared in compliance with the RCRA § 3013 Unilateral Administrative Order issued to Exide Technologies in May 2011; docket number RCRA-06-2011-0966. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### **VIII. QUALITY ASSURANCE/QUALITY CONTROL**

67. All sampling undertaken pursuant to this Order shall be performed in accordance with the EPA-approved terms and schedules.

68. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan ("QAPP") for all sampling and analysis conducted under this Order. Workplans shall contain quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in the approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

69. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).
70. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
71. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the workplan. EPA may reject any data that does not meet the requirements of the approved workplan or EPA analytical methods and may require resampling and additional analysis.
72. Respondent shall ensure that the laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

## **IX. PROJECT COORDINATOR**

73. EPA hereby designates as its Project Coordinator:

Paul James  
RCRA Corrective Action and Compliance Inspection Section  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200 (6EN-HC)  
Dallas, TX 75202-2733  
Phone: (214) 665-6445  
Fax: (214) 665-7446  
Email: james.paul@epa.gov

74. Within ten (10) days of Respondent's receipt of this Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.
75. Respondent shall ensure that its Project Coordinator (original or replacement) has the ability and qualifications to effectively perform this role. All persons under the direction and supervision of the Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

76. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Order and function as the principal project contact.

77. All communication between Respondent and EPA, and all documents, reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinators unless otherwise provided in this Order or agreed by the parties.

78. Respondent shall provide EPA, and EPA shall provide Respondent, with a written notice of any change in its Project Coordinator. To the extent possible, such notice shall be provided at least seven (7) days prior to the change in Project Coordinator.

79. The absence of the EPA Project Coordinator shall not be cause for the stoppage or delay of work.

#### **X. IMMINENT AND SUBSTANTIAL ENDANGERMENT**

80. Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

#### **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

81. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Order.

82. Respondent shall notify EPA and TCEQ, in writing and by electronic mail, at least fifteen (15) days in advance of collection of any samples at the Facility conducted pursuant to this Order.

83. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Order, provided that such sampling shall not delay EPA's proposed sampling activities.

84. Nothing in this Order shall limit or otherwise affect EPA's authority to collect samples pursuant to any applicable law, including, but not limited to, RCRA, the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").



85. EPA will make available to Respondent the results of sampling and/or tests or other data from the Facility similarly generated by EPA.

## **XII. ON-SITE AND OFF-SITE ACCESS**

86. EPA and/or any EPA authorized representative(s) are authorized, allowed, and permitted, pursuant to § 3007(a) of RCRA, 42 U.S.C § 6927(a), to enter and freely move about all property at the Facility following site-specific health and safety rules, including rules requiring that visitors be constantly accompanied by an employee of Respondent at all reasonable times for the purposes of enforcing the requirements of RCRA, including:

- a) Interviewing site personnel and contractors, inspecting records, operating logs, and contracts related to the Facility;
- b) Reviewing the progress of Respondent in carrying out the terms of this Order;
- c) Conducting such tests as EPA deems necessary;
- d) Using a camera, video camcorder, sound recorder, or other documentary type equipment; and
- e) Verifying the reports and data submitted to EPA by Respondent.

87. Respondent shall provide access at reasonable times to the Facility and all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives.

88. To the extent that activities required by this Order, or by any approved Workplan(s) prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use reasonable efforts to obtain site access agreements in a timely manner from the present owners of such property. Reasonable efforts shall include, but not be limited to, requiring Respondent to pay reasonable rental costs and compensation for losses sustained by owner or occupant of the realty. Respondent shall provide EPA's Project Coordinator with a copy of any access agreements. Access agreements shall provide access to Respondent, its contractor(s), the United States, EPA, the State, and their representatives, including contractors. Any such access agreements shall be incorporated by reference into this Order. In the event that site access agreements are not obtained within thirty (30) days of the specific workplan approval, Respondent shall notify EPA by telephone within 24 hours after expiration of the above thirty (30) day period and shall within seven (7) days of the oral notification, notify EPA in writing of the failure to gain such site access agreements regarding both the lack of, and efforts to obtain, such agreements. If EPA is able to obtain access, Respondent shall perform work described in this Order.

89. Nothing in this Order limits, constrains, or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

### **XIII. INFORMATION SUBMITTED TO EPA**

90. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Order. In accordance with 40 C.F.R. § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Respondent shall have the burden of demonstrating to EPA that such privilege exists. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and in the manner permitted by 40 CFR Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

91. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Order, Respondent shall identify the document, the privilege claimed and the basis therefore in writing. For the purposes of this Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable statute or case law. EPA may dispute any such claim of privilege.

### **XIV. DELAY IN PERFORMANCE**

92. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this Order shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

### **XV. RESERVATION OF RIGHTS**

93. EPA expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by Respondent pursuant to this Order, to require that Respondent correct and/or re-perform any work disapproved by EPA, and to require that Respondent perform tasks in addition to those stated in the Workplan(s) or in this Order, consistent with the objectives of this Order.

94. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation, the assessment of penalties under § 3013(e) of RCRA, 42 U.S.C. § 6934(e). This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, CWA, the



Safe Drinking Water Act ("SDWA"), CAA, or any other statutory, regulatory, or common law enforcement authority of the United States.

95. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, site characterization, remedial investigation, feasibility study, response/corrective actions or reporting it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

96. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Order.

97. In the event EPA suspends the work or any other activity at the Facility, EPA may extend affected schedules under this Order for a period of time equal to that of the suspension of the work plus reasonable additional time for resumption of activities. If the delay pursuant to this Section is caused by Respondent or its contractor's non-compliance with this Order, then any extension of the compliance deadlines shall be at EPA's sole discretion. Any extensions in the schedules set out in this Order or in its attachments must be made by EPA in writing.

98. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the parties acknowledge and agree that EPA's approval of the Workplan does not constitute a warranty or representation that the Workplan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondents of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

99. No action or decision by EPA pursuant to this Order shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

100. Except as otherwise provided herein, Respondent expressly reserves all of its rights and defenses.

101. EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities by this Order.

## **XVI. FORCE MAJEURE**

102. Respondent shall perform the requirements of this Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure.

103. Respondent shall have the burden of proving that any delay is or will be caused by a force majeure. EPA shall make the final determination as to whether certain events constitute a force majeure.

104. For the purpose of this Order, a force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, their contractors, or any entity controlled by Respondent that delays the performance of any obligations under this Order despite Respondents' best efforts to fulfill the obligation. Such events do not include: increased costs of performance; changed economic circumstances; failure to obtain federal, state, or local permits; or weather conditions which could have been overcome by due diligence.

105. In the event of a force majeure, Respondent shall notify EPA, orally or by electronic or facsimile transmission as soon as possible, but no later than 72 hours after Respondent becomes aware or should have been aware of the force majeure event and shall within seven (7) days of the time Respondent becomes aware or should have been aware of the force majeure event notify EPA in writing of any event which Respondent claims constitutes a force majeure. Such notice shall state the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure of Respondent to comply with the force majeure notice provision shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirement, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Order after it becomes or should have become aware of any event which may delay such compliance.

106. If EPA determines that the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure plus reasonable additional time for resumption of activities. The time of performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA shall determine whether subsequent requirements are to be delayed and the time period granted for any delay. Respondent shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

## **XVII. OTHER APPLICABLE LAWS**

107. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

108. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

109. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. The time for Respondent's performance under this Order may be extended upon written approval by EPA while Respondent uses its best efforts to obtain state and local permits required for any activities required by the Work plan, including specifically, but not limited to, permits for installation of non-temporary groundwater monitoring wells.

## **XVIII. OTHER CLAIMS**

110. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous waste constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

111. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

## **XIX. SEVERABILITY**

112. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

## **XX. TERMINATION AND SATISFACTION**

113. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XV (Reservation of Rights), Section XVII (Other Applicable Laws), and Section XVIII (Other Claims).

## **XXI. SURVIVABILITY/PERMIT INTEGRATION**

114. If, subsequent to the issuance of this Order, a RCRA permit or other order is issued to the Facility, the requirements of this Order may be incorporated by reference into that Order or permit.

115. Any requirements of this Order shall not terminate upon the issuance of a RCRA permit or order unless all Order requirements are expressly replaced by the requirements in the permit or all provisions of this Order have been fully complied with to EPA's Satisfaction in accordance with Section XX (Termination and Satisfaction, of this Order).

## **XXII. POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY**

In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action in accordance with Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), to require compliance with such Order and to assess a civil penalty (consistent with 40 CFR Part 19) not to exceed \$7,500 for each day during which such failure or refusal occurs.

## **XXIII. EFFECTIVE DATE**

116. The effective date of this Order shall be the date on which it is signed by the EPA Region 6.

EXIDE TECHNOLOGIES, INC. (TXD006451090)  
DOCKET NO: RCRA-06-2011-0966

IT IS SO ORDERED:

DATE: 8-1-11

BY: 

John Blevins

Director

Compliance Assurance and

Enforcement Division

U.S. Environmental Protection Agency

FOR COMPLAINANT


EXIDE TECHNOLOGIES, INC. (TXD006451090)  
DOCKET NO: RCRA-06-2011-0966

IN THE MATTER OF: EXIDE TECHNOLOGIES, INC. (TXD006451090)  
DOCKET NO: RCRA-06-2011-0966

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing ADMINISTRATIVE ORDER is maintained with the Administrative Record in RCRA files at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and that a true copy of the ADMINISTRATIVE ORDER was sent by Certified Mail, Return Receipt Requested to:

Mr. Donald Barar  
Plant Manager  
Exide Technologies  
P.O. Box 250  
Frisco, TX 75034

  
Enforcement Paralegal  
Region 6

**Administrative Record**

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- <sup>1</sup> AR-1 RCRA Facility Investigation for GNB Incorporated; Prepared by Lake Engineering, Inc; May 8, 1991.
- <sup>2</sup> AR-2 EPA Region 6 Multi-Media Inspection Report; September 13, 2010.
- <sup>3</sup> AR-3 Permit for Industrial Solid Waste Management Site; Permit No. HW-50206; March 30, 2001.
- <sup>4</sup> AR-4 RCRA Site Detail Report; Handler ID TXD006451090; Report run on November 6, 2009.
- <sup>5</sup> AR-5 Permit for Industrial Solid Waste Management Site; Permit No. HW-50206; May 24, 1988.
- <sup>6</sup> AR-6 Addendum to the RCRA Facility Investigation for GNB Incorporated; Prepared by Lake Engineering, Inc.; December 10, 1993.
- <sup>7</sup> AR-7 Letter from TNRCC to GNB regarding RFI Phase II Work Plan Approval; February 27, 1998.
- <sup>8</sup> AR-8 Letter from TNRCC to GNB regarding Stewart Creek Corrective Measures Implementation Workplan Approval; not dated, estimate time frame 1999-2000.
- <sup>9</sup> AR-9 Letter from TNRCC to GNB regarding Acceptance of Closure Certification for 4 Solid Waste Management Units; January 13, 2000.
- <sup>10</sup> AR-10 Frisco Monitoring Well Data; March-02.
- <sup>11</sup> AR-11 TCEQ Investigation Report Exide Technologies; Investigation #396096; 06/02/2005-07/01/2005.
- <sup>12</sup> AR-12 Letter from TCEQ to Exide regarding Notice of Violation for Compliance Evaluation Inspection; August 30, 2005.
- <sup>13</sup> AR-13 EPA Corrective Action Inspection Report; 12/14/09 – 12/18/09, 3/15/10 – 3/16/10, 3/29/10.
- <sup>14</sup> AR-14 Transmittal of analytical results from Oxidor Laboratories to Exide Technologies regarding frac tank samples; February 11, 2009 – October 13, 2009.
- <sup>15</sup> AR-15 EPA Final Analytical Report for Exide Technologies; Sample Collection Date 3/29/10; Report Date 04/27/10.