



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

August 12, 2011

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Aileen Hooks
Baker Botts LLP
98 San Jacinto Boulevard
Suite 1500
Austin, Texas 78701-4078

Re: Exide Technologies, Inc.
Docket No. RCRA-06-2011-0966

Dear Ms. Hooks:

I write on behalf of the U.S. Environmental Protection Agency, Region 6 (EPA), in response to your August 8, 2011 letter addressing the Unilateral Administrative Order (Order) pursuant to Section 3013 of the Resource Conservation and Recovery Act (RCRA). The Order issued to Exide Technologies, Inc. (Exide) results from EPA's determination that releases of hazardous waste may present a substantial hazard to human health and the environment. This determination is supported by the findings documented in the Order and accompanying Administrative Record. Most notably, lead concentrations of up to 5,610 ppm (roughly seven times in excess of EPA's media-specific soil screening level for lead in industrial soil (800ppm)) are documented adjacent to Stewart Creek.

On December 14-18, 2009, EPA conducted a multi-media inspection at Exide's Frisco, Texas, facility to determine compliance with the Clean Water Act, Clean Air Act, Emergency Planning and Community Right-to-Know Act, and RCRA. On March 29, 2010, samples were collected to support the RCRA Compliance and Corrective Action portions of the inspection. On December 9, 2010, EPA returned to Exide to collect additional information related to RCRA areas of concern. Exide received copies of the inspection reports, along with a comprehensive summary, on May 10, 2011. EPA issued the 3013 Administrative Order to Exide on August 1, 2011 as a result of these inspections.

At the time of the writing of this letter, Exide and EPA have agreed to meet next week regarding the concerns presented in your August 8, 2011 letter, most significantly the work required by the Order and coordination with the Texas Commission on Environmental Quality

(TCEQ). We look forward to meeting with you and and take this opportunity to provide a preliminary response.

The findings described in the Order and accompanying Administrative Record reflect EPA's authority to require corrective action at the Exide facility. Even so, EPA appreciates Exide's desire to supplement the Administrative Record and will give fair consideration to any materials Exide submits. Your letter highlights the implementation of a Phase II RFI and submission of a Phase II RFI report to TCEQ as an information gap in the Administrative Record. EPA and TCEQ have requested such information from Exide on several occasions to no avail. During a TCEQ inspection in 2005, the Exide Environmental Manager at the time informed the inspector that a Phase II Work Plan was submitted to TCEQ in 2001 or 2002 but had not been approved. This was documented in the TCEQ inspection report which was shared with Exide and is part of the Administrative Record. Prior to the EPA inspection in 2009, EPA noted that the facility had submitted a Phase II Work Plan to TCEQ which had been approved contingent upon significant modifications in 1998 (a copy of this approval letter is included in the Administrative Record). During the EPA inspection, the same Environmental Manager stated that Exide did not agree with the modifications and had submitted a revised Phase II Work Plan in 2001 that had not been approved or implemented. At the time of inspection, Exide was unable to locate a copy of this Work Plan or any record of its implementation. The EPA inspection report documenting this exchange was also shared with Exide. Exide contacted neither TCEQ nor EPA with corrections or supplemental information to these reports regarding the Phase II RFI. Finally, on December 18, 2009, EPA requested in writing documents from Exide, including the Phase II Work Plan. On February 1, 2010, Exide's Environmental Manager replied in writing that he was unable to locate this Work Plan. If Exide has now located a Phase II RFI Report or Work Plan and can show its implementation, EPA agrees that the documentation should be included in the Administrative Record.

Your letter also notes the absence of the EPA Frisco Neighborhood Soil Survey Summary in the Administrative Record. EPA accepts this submission for consideration, but cautions that this Survey is unrelated to areas of concern described in the 3013 Order. You correctly point out that EPA's Survey concludes "no further testing or remedial action is necessary for those areas that were sampled." The purpose of the Survey, however, was to investigate off-site contaminant accumulation in soil due to air emissions from the facility. EPA's conclusions in the Soil Survey bear no weight on the findings described in the 3013 Order, which address on-site contamination resulting from releases of hazardous constituents to soil, groundwater, and surface water, and potential off-site contamination resulting from releases to Stewart Creek.

EPA also receives for consideration the RCRA 2020 Clean-up Baseline Table for Corrective Action. EPA notes that the environmental indicator determinations documented on

this table were, in the case of the Frisco Recycling Center, a snapshot in time of an active facility and are subject to change as new information becomes available.

EPA appreciates that Exide promptly notified us of its intent to comply with the Order. We have found Exide responsive to our concerns and more than willing to communicate with us regarding a path forward. For this reason, EPA is baffled that Exide was not prepared for the arrival of the 3013 Order requiring corrective action. Preceding the release of the inspection report, EPA invited Exide to meet and discuss our areas of concern. At this meeting held on May 10, 2011, EPA candidly and transparently outlined areas of concern and explained that these issues would likely result in enforcement actions including corrective action. EPA also called Exide as a courtesy upon issuance of the Order. If Exide remains unsure as to EPA's intentions, please view this letter as notice that EPA continues to explore further enforcement.

In conclusion, EPA wishes to assuage Exide's concern that we intend for any duplication of effort due to overlapping obligations to both the state and federal agencies. TCEQ reviewed the 3013 Order prior to issuance and continues to work with EPA to ensure that the site investigation and remediation at Exide is efficient and will not place unnecessary burdens on the facility or the agencies. It is in all parties' best interest to resolve this matter in a productive and streamlined manner, and EPA is committed to working with Exide and TCEQ to ensure this outcome.

Sincerely,

A handwritten signature in cursive script, reading "Jay Przyborski". The signature is written in dark ink and is positioned centrally below the word "Sincerely,".

Jay Przyborski