


# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** August 7, 2009  
**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director  
**From:** Susana M. Hildebrand, P.E., Chief Engineer   
**Docket No.:** 2009-0071-MIS  
**Subject:** Commission Approval for an Agreed Order with Exide Technologies Battery Recycling Plant in Collin County

## Scope of the agreed order:

Section 175A(b) of the Federal Clean Air Act (FCAA) requires submission of a state implementation plan (SIP) revision to provide for maintenance of the National Ambient Air Quality Standard (NAAQS) for lead for the second ten-year period following redesignation of the nonattainment area to attainment. The SIP revision is being considered separately under Docket No. 2009-0065-SIP. This agreed order would fulfill the requirement to make the SIP provisions affecting Exide Technologies in Collin County legally enforceable.

The maintenance plan must contain: 1) a commitment to monitor ambient air quality to determine whether air quality meets the 1978 lead NAAQS; and 2) a requirement to implement one or more contingency measures if a quarterly average exceeds the 1978 lead NAAQS of 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) or if emissions exceed a specified value. Exide Technologies' battery recycling plant (Exide) in Collin County is the source subject to emission limitations under the lead maintenance plan. During the period of the first ten-year maintenance plan, Exide voluntarily implemented emission reduction measures that met the intended purpose of the two contingency measures listed in the 1999 maintenance plan. The 2009 maintenance plan being considered under Docket No. 2009-0065-SIP contains new contingency measures to meet the requirements of Section 175A(d) of the FCAA.

The adopted agreed order would make the new contingency measures contained in the SIP revision legally enforceable on Exide Technologies. Exide Technologies has reviewed and signed the agreed order with no changes.

## Reasons for the agreed order:

The United States Environmental Protection Agency (EPA) designated a portion of Collin County as nonattainment for the 1978 lead NAAQS on November 6, 1991. The EPA approved the Collin County lead attainment demonstration SIP submission on November 29, 1994. On August 31, 1999, the governor of Texas submitted to the EPA a request to redesignate the nonattainment portion of Collin County to attainment and to approve a ten-year maintenance plan for the area. The EPA redesignated the Collin County nonattainment area to attainment for the 1978 lead NAAQS on October 13, 1999, effective December 13, 1999, and approved the ten-year maintenance plan. The 1999 ten-year maintenance plan expires in December 2009.

The EPA published a new NAAQS for lead in the November 12, 2008, issues of the *Federal Register* (73 FR 67043). The effective date for the new standard was January 12, 2009; however, the EPA states that it is retaining the original 1978 lead NAAQS of 1.5  $\mu\text{g}/\text{m}^3$  until one year after the effective date for designations under the 2008 lead NAAQS of 0.15  $\mu\text{g}/\text{m}^3$ . For areas like Collin County that have lead air quality

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monitoring data, the EPA indicated that it plans to issue area designations that would be effective January 12, 2011, two years after issuance of the 2008 standard. That schedule could keep the 1978 lead NAAQS in force in Collin County until January 2012.

The Office of Legal Services has determined that the new contingency measures contained in the SIP revision for the second ten-year maintenance plan must be legally enforceable. Staff recommends an agreed order as the most efficient vehicle for making contingency measures legally enforceable.

**Statutory Authority:**

Texas Water Code,

- §5.102, General Powers;
- §5.103, Rules; and
- §5.105, General Policy.

Texas Health and Safety Code,

- §382.002, Policy and Purpose;
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.014, Emission Inventory;
- §382.016, Monitoring Requirements;
- §382.017, Rules; and
- §382.023(a), Orders.

FCAA,

- §175A, Maintenance Plans (42 U.S.C., 7505a); and
- §110, Federal Clean Air Act (42 U.S.C., 7410).

**Potentially controversial matters:**

None – The facility affected, Exide Technologies, has agreed that an order is appropriate and signed the order on June 16, 2009.

**Public comment:**

Staff appeared in Frisco at 2:00 p.m. on April 20, 2009, to conduct a public hearing on both the agreed order with Exide Technologies and the second ten-year lead maintenance plan SIP revision for Collin County. Because no member of the public appeared to make comments on either proposal, staff did not open the public hearing.

During the comment period, which closed on April 24, 2009, the Texas Commission on Environmental Quality received two comment letters from the EPA. The only comment specifically pertaining to the agreed order stated that the agreed order with Exide must be submitted to EPA for approval as part of the SIP revision for the lead maintenance plan. No changes were proposed to the agreed order by EPA.

**Significant changes from proposal:**

No changes have been made to the agreed order.

**Key points in adoption schedule:**

**Proposal date:** March 11, 2009

**Anticipated adoption date:** August 26, 2009

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**Agency contacts:**

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**Attachments**

cc: Chief Clerk, 5 copies  
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