

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 20, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director, Office of Air

Docket No.: 2011-0521-MIS

Subject: Commission Approval for Adoption of Agreed Order for Exide Technologies Lead Acid Battery Recycling Plant in Collin County

Background and reason(s) for the Agreed Order:

On October 15, 2008, the United States Environmental Protection Agency (EPA) substantially strengthened the National Ambient Air Quality Standard (NAAQS) for lead. The new standard, set at 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) measured as a rolling three-month average, is 10 times more stringent than the previous standard of 1.5 $\mu\text{g}/\text{m}^3$ measured as a quarterly average. Effective December 31, 2010, the EPA designated an area surrounding Exide Technologies (Exide) located in Frisco, Collin County, as nonattainment for the 2008 lead NAAQS (75 FR 71033).

Section 110(a)(1) of the Federal Clean Air Act (FCAA) requires states to submit a state implementation plan (SIP) revision for areas that have been designated nonattainment to provide for the implementation, maintenance, and enforcement of the NAAQS. For lead, states are required to adopt and submit attainment demonstration SIP revisions within 18 months of designation. In accordance with FCAA, §172 and implementation guidance published with the November 12, 2008, final lead NAAQS (73 FR 66964), the SIP revision contains a reasonably available control measure analysis, a reasonably available control technology analysis, demonstration of attainment through air dispersion modeling, a control strategy demonstration, an emissions inventory, a demonstration of reasonable further progress, and contingency measures.

This Agreed Order between the Texas Commission on Environmental Quality (TCEQ) and Exide will make the control measures and contingency measures contained in the SIP revision legally enforceable.

Scope of the Agreed Order:

A.) Summary of what the Agreed Order will do:

The control measures and contingency measures that have been identified for the Collin County Lead Attainment Demonstration SIP revision will be enforceable through this Agreed Order, which is between the TCEQ and Exide, the primary source of lead in the nonattainment area. The Agreed Order will include legally binding requirements for Exide to relocate, enclose, and install specific control devices for some operational areas and implement other maintenance and control measures as soon as possible but no later than January 6, 2014. The requirements contained in the Agreed Order are listed in paragraphs 15 through 40. The Agreed Order will also include legally binding contingency measures

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that are to be implemented if the area fails to meet milestones described in the Agreed Order.

Instead of implementing control measures identified in the SIP revision and Agreed Order, Exide may close the plant and cease all production activities. Exide shall notify the TCEQ that it intends to select this alternative by November 1, 2012, and the latest date by which Exide would cease operations would be January 6, 2014. Should Exide implement this option, Exide shall remove equipment and demolish facilities within one year of cessation of operations and void all air quality authorizations associated with the plant by December 31, 2015, other than any authorizations required for operation of the wastewater treatment plant.

B.) Scope required by federal regulations or state statutes:

In accordance with FCAA, §172(c) and implementation guidance published with the final 2008 lead NAAQS (73 FR 66964), an attainment demonstration for lead must contain specific elements including control strategies and a contingency plan. This Agreed Order makes enforceable the control strategies and contingency measures that are required for the lead attainment demonstration SIP.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

Statutory authority:

The authority to adopt this Agreed Order is derived from Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.002, which provides that the policy and purpose of the TCAA is to safeguard the state's air resources from pollution; TCAA, §382.011, which authorizes the commission to control the quality of the state's air; TCAA, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Texas Water Code, §5.02, General Powers, and §5.013, General Jurisdiction of the Commission.

FCAA, 42 United States Code, §§7401, *et seq.*, requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state. Additionally, the specific requirements for the 2008 lead NAAQS were published in the November 12, 2008, issue of the *Federal Register* (73 FR 66963).

Effect on the:

A.) Regulated community:

The affected regulated community currently consists only of Exide. The Agreed Order requires Exide to install controls, implement new work practices, and comply with additional monitoring and recordkeeping requirements. For further information, please refer to the executive summary of the Collin County Attainment Demonstration SIP

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revision for the 2008 Lead NAAQS, which contains details of the controls set out in the Agreed Order.

B.) Public:

The general public in the Frisco area will benefit from improved air quality from reduced lead emissions.

C.) Agency programs:

This Agreed Order will have no new effect on agency programs.

Stakeholder meetings:

A stakeholder meeting for the Agreed Order and the Collin County Lead Attainment Demonstration SIP revision was held on January 19, 2011, in Frisco. Stakeholders expressed numerous concerns about air quality, public health, industry-related emissions, proposed control strategies, and property values.

Public comment:

The public comment period opened on June 24, 2011, and closed on August 8, 2011. Notice of the public hearing for this Agreed Order and SIP revision was published in the *Texas Register* and various newspapers. Written comments were accepted via mail, fax, and through the TCEQ's eComments system.

The commission held a public hearing for the proposed Agreed Order and the proposed Collin County Attainment Demonstration SIP revision for the 2008 Lead NAAQS (2011-001-SIP-NR) on July 28, 2011, at 6:00 p.m. at the Frisco City Council Chambers. During the comment period, the commission received comments from Downwinders at Risk, the EPA, Exide, Texas Campaign for the Environment, and 23 individuals.

Significant changes from proposal:

Due to substantial comments from the public and the EPA on the proposed SIP revision and Agreed Order, the SIP and Agreed Order have been revised. Based on the comments received, the TCEQ revised the dispersion modeling analysis to include a calculated background concentration to the maximum predicted concentration to demonstrate compliance with the lead NAAQS and to account for potential fugitive emissions from fully enclosed buildings. The compliance date for the implementation of the control measures has changed from November 1, 2012, to January 6, 2014. This change allows Exide the time to make the necessary improvements and obtain building permits from the City of Frisco as needed.

On June 4, 2012, the City of Frisco and Exide approved an agreement that would result in the sale of approximately 180 acres of undeveloped land surrounding Exide's plant. Under the terms of the agreement, the land around Exide's plant will be sold to the Frisco Community Development Corporation and the Frisco Economic Development Commission Corporation.

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This agreement stipulates that Exide will retain ownership of the federal and state permitted plant site. As part of the proposed agreement, Exide would cease business operations no later than January 6, 2014, and would void its air quality permits by December 31, 2015, other than any authorizations required for operation of the wastewater treatment plant. Exide will assume responsibility for cleaning up the permitted plant site, including removal of all vertical structures with the exception of an administrative office building and wastewater treatment plant. The SIP revision and Agreed Order have been revised to reflect this agreement.

Potential controversial concerns and legislative interest:

The City of Frisco, the citizens of Frisco, and the Honorable Florence Shapiro, Texas Senator, District 8, have expressed considerable concern regarding Frisco's air quality. Parties have also expressed great interest in expediting emission reductions at the Exide facility.

Does this Agreed Order affect any current policies or require development of new policies?

No

What are the consequences if this Agreed Order does not go forward? Are there alternatives to the Agreed Order?

Failure to adopt the Agreed Order will leave the lead attainment demonstration SIP without the required enforceable control strategies that are necessary to allow Collin County to attain the 2008 lead NAAQS. Such a failure would remove a required element of the SIP revision and would potentially result in EPA disapproving the lead SIP revision.

Alternatively, the commission could propose a SIP revision that relies on rule changes as the control strategy for the SIP. This process would require a new proposal, followed by a public notice and comment period, and a revised SIP revision based on the controls required by the rulemaking.

Key points in the adoption Agreed Order schedule:

***Texas Register* publication of public hearing date:** June 24, 2011

SIP revision due to the EPA: June 30, 2012

Agency contacts:

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