IHW/30516/CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
EXIDE TECHNOLOGIES	**§**	
RN100218643	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-1712-IHW-E

At its JAN 30 2013 agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Exide Technologies ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Ms. Jennifer Keane of the law firm of Baker Botts L.L.P., presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

This Agreed Order hereby incorporates by reference the following outstanding requirements of Exide under that certain Administrative Order on Consent entered into by Exide and the United States Environmental Protection Agency ("EPA") effective May 2, 2012, Docket No. RCRA 06-2011-0966 (redesignated by EPA as Docket Number RCRA 06-2012-0966 for administrative purposes) ("Consent Decree"), namely the requirements regarding (i) finalization of the implementation of the requirements of the revised sampling and analysis workplan prepared by Conestoga Rovers & Associates and submitted to EPA on November 15, 2011 and approved by EPA as of December 2, 2011 (the "Workplan") and (ii) revision and finalization of the site investigation report, the initial submittal of which was prepared by Pastor, Behling & Wheeler, LLC and submitted to EPA on July 12, 2012, addressing the requirements and goals outlined in the Workplan and including a summary of all actions taken to comply with the Consent Decree and an evaluation/comparison of data collected to appropriate Texas Risk Reduction Program ("TRRP") protective concentration levels or risk-based exposure limit for surface water (the "Site Investigation Report")]. As noted, the Site Investigation Report will be incorporated into the Affected Property Assessment Report ("APAR") required by Ordering Provision Nos. 3.c.i. and 3.c.ii. of this Agreed Order.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a lead and lead bearing waste reclamation facility at 7471 South 5th Street in Frisco, Collin County, Texas on the following described property (the "Facility"):

   BEING a tract of land situated in the LH. McNeil Survey, Abstract No. 618, the William McNeil Survey, Abstract No. 591, and the W.B. Watkins Survey, Abstract No. 1004, entirely in the City of Frisco, Collin County, Texas, being part of Tract 1 of a 88.44 acre remainder tract of land according to Collin County Deed Record Document Volume 1769, Page 299, dated 1/26/83, Collin County, Texas, and also part of a 29.7 acre tract of land according to Collin County Deed Record Document Volume 3154, Page 520, dated 10/25/89, Collin County, Texas, and also part of a 55.48 acre tract of land according to Collin County Deed Record Document Volume 2034, Page 751, dated 11/8/84, Collin County, Texas, and being more particularly described as follows: BEGINNING at a 1/2" iron rod found for the southeast corner of a parcel of land described in a Deed according to Collin County Public Record Document No. 93-0017953, dated 3/1/93, Collin County, Texas; THENCE North 11°09'48" East along the west line of a parcel of land described in a Deed according to Collin County Public Record Document No. 93-0017953, dated 3/1/93, Collin County, Texas , a distance of 577.100 feet to a point; THENCE South 78°48'23" East along the southern prescriptive Right of Way of Eubanks Street, a distance of 704.94 feet to a point; THENCE South 82°07'06" East, along said Right of Way, a distance of 230.06 feet to a point; THENCE South 10°05'41" West along the westerly Right of Way of Parkwood Blvd. as described in Exhibit 4-D of a Right of Way agreement described in Document No. 94-0099426 of the Deed Records of Collin County Texas, a distance of 480.04 feet to a point; THENCE, along said westerly Right of Way, a tangent curve to the left with a radius of 900.00 feet, a tangent length of 246.41 feet, a central angle of 30°37'23", the radius of which bears South 79°54'19" East, the chord of which bears South 05°13'00" East for a distance of 475.32 feet; Thence along the arc of said curve for a distance of 481.03 feet to a point; THENCE South 25°16'49" East, a distance of 149.13 feet to a set 1/2" iron rod for a point; THENCE South 02°36'34" East, a distance of 1567.69 feet to a point; THENCE South 89°57'58" West, a distance of 1137.80 feet to a set 1/2" iron rod for a point; THENCE North 14°05'21" West, a distance of 371.75 feet to a point; THENCE South 87°57'33" West, a distance of 618.92 feet to a point; THENCE North 03°33'22" East, a distance of 393.55 feet to a point; THENCE North 86°26'28" West, a distance of 300.81 feet to a point; THENCE North

05°11'33" East, a distance of 452.43 feet to a point; THENCE North 46°28'37" West, a distance of 473.74 feet to a point, said point being in the easterly 100' Right of Way of the Burlington Northern Rail Road, as conveyed in Volume 121, Page 20, of the Deed Records of Collin County, Texas; THENCE North 24°02'29" East along said Easterly Rail Road Right of Way, a distance of 226.63 feet to a point; THENCE South 47°36'15" East, a distance of 260.96 feet to a point; THENCE South 55°12'30" East, a distance of 380.86 feet to a point; THENCE North 73°41'48" East, a distance of 214.20 feet to a point; THENCE North 77°50'18" East, a distance of 550.63 feet to a point; THENCE North 05°02'58" East, a distance of 272.29 feet to a point; THENCE North 04°48'06" East, a distance of 443.41 feet to a point; THENCE North 78°52'38" West, a distance of 105.04 feet to the PLACE OF BEGINNING and containing 87.73 acres of land, more or less. SAVE AND EXCEPT THE FOLLOWING 7.43 ACRE TRACT: BEING part a 55.48 acre tract of land situated in the L.H. McNeil SURVEY, Abstract No. 618, City of Frisco, Collin County, Texas, said tract described in Collin County Deed Record Volume 2034, Page 751, dated 11/8/84, Collin County, Texas, and being more particularly described as follows: BEGINNING at a 3/4 pipe found for the southwest corner of the tract of land described above, said pipe also being in the eastern one hundred foot (100') Right of Way of Burlington Northern Rail Road according to Collin County Deed Record Volume 121, page 20, Collin County, Texas, said pipe also being in the northwest corner of a tract of land described in Collin County Deed Record Volume 3154, page 520, Collin County, dated 10/25/89, Collin County, Texas; THENCE North 24° 02' 29" East, 807.590 feet along the eastern Right of Way of Burlington Northern Rail Road according to Collin County Deed Record Volume 121, Page 20, Collin County, Texas to a point for corner; THENCE South 46° 28' 37" East, 473.738 feet; THENCE South 05° 11' 33" West, 452.431 feet; THENCE North 86° 26' 28" West, 632.788 feet to a 3/4 pipe found for the PLACE OF BEGINNING and containing 7.43 acres of land, more or less.

2. The Facility involves or involved the management of industrial solid and hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. During an investigation completed on June 29, 2011, TCEQ staff documented the Respondent:

   a. Discharged or allowed the imminent threat of a discharge of IHW to water in the state in five areas as follows: (1) liquid discharging through cracks and seeps in and along the "barrier wall" beneath a stormwater pipe to the on-site portion of Stewart Creek generated by stormwater; (2) white solids and white liquid on the southwest corner and south side of the Slag Treatment Building, respectively; (3) soil and material resembling slag on the Facility grounds below the opening on the north face of the Slag Treatment Building; (4) white solids and material resembling battery chips in a drainage swale west of the Crystallizer; and (5) exposed battery chips and slag associated with eroded cover material east of the South Disposal Area [a pre-Resource Conservation and Recovery Act ("RCRA") landfill]. Analytical results of soil samples from areas (1) through (3) indicate total lead and Toxicity Characteristic Leaching Procedure ("TCLP") lead concentrations ranging from 3,560 milligrams per kilogram (mg/kg) to 47,100

mg/kg and 2.86 milligrams per liter (mg/l) to 59.3 mg/l, respectively. In addition, analytical results for soil samples from area (4) indicate a total lead concentration of 694 mg/kg, a TCLP lead concentration of 3.92 mg/l and a sulfates concentration of 6,040 mg/kg;

b. Stored and processed untreated hazardous blast furnace slag waste [Texas Waste Code ("TWC") 0006304H] in a waste pile in an area adjacent to the blast furnace;

c. Disposed of blast furnace slag not meeting the Land Disposal Restrictions ("LDR") Universal Treatment Standard ("UTS") for hazardous waste in an active Class 2 landfill. The analytical results of the blast furnace slag for grab samples taken from the east side of the landfill [Notice of Registration ("NOR") waste management unit 012] at the Facility detected total lead concentrations of 32,800 and 36,200 mg/kg and TCLP lead concentrations of 18.3 and 25.52 mg/l [EPA hazardous waste ("HW") code D008] which exceed LDR UTS of 0.75 mg/l TCLP for lead. In addition, analytical results for cadmium detected total concentrations of 433 and 437 mg/kg, and TCLP cadmium concentrations of 1.43 and 1.57 mg/l (EPA HW code D006) which exceed the LDR UTS of 0.11 mg/l TCLP for cadmium;

d. Had hazardous waste (equipment wash down water mixed with dust suppression water) covering the floor of the Slag Treatment Building (NOR Unit No. 008). The quantity of water exceeded the capacity of the sump used to collect it and the water had been in contact with untreated slag (TWC 0006304H), untreated refractory brick (EPA HW Code D008), the battery crusher, and a concrete mixing truck;

e. Did not have the Facility personnel take part in an annual review of the initial program of classroom instruction or on-the-job training that ensures the Facility's compliance with hazardous waste management procedures and response to emergencies;

f. Did not record Facility inspections in an inspection log or summary regarding possible error, malfunction or deterioration as set out in Table III.D (Inspection Schedule) of the Facility permit and as contained in the permit application submittals;

g. Did not conduct a hazardous waste determination and waste classification on contaminated personal protective equipment ("PPE") located in drums throughout the Facility, berm material located near the west side of the South Disposal Area which contains untreated blast furnace slag, battery chips and contaminants resulting from use as a firearm shooting range, and on miscellaneous debris stored in a bin and generated in the truck/tire washing station located between the wastewater treatment plant and slag treatment building;

h. Did not update the Facility NOR to include a 30 cubic yard roll-off container used to store hazardous polyvinyl chloride piping material;

i. Had significant deterioration of the floor and part of the wall of the permitted container storage area (IHW Permit Unit No. 002; NOR Unit No. 011) known as the Battery Receiving/Storage Building. In addition, standing water resulting from rain water had accumulated and was not flowing toward the sumps;

j. Did not prevent liquid in contact with hazardous waste from being tracked by personnel on their footwear and by a front-end loader vehicle out of the Raw Materials Storage Building;

k. Allowed doorways on the north and west sides of the permitted containment building (IHW Permit Unit No. 001; NOR Unit No. 005) known as the Raw Materials Storage Area to be covered only by curtains consisting of vertical plastic strips which did not completely close; and

l. Did not have a waste analysis plan ("WAP") for all incoming, non-exempt, solid waste, including floor sweepings, dross, and sump mud.

4. The Respondent received notice of the violations on or about September 15, 2011.

5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

a. Facility personnel took part in an annual review of classroom instruction on hazardous waste management procedures on September 6, 2012;

b. Updated the NOR to include a 30 cubic yard roll-off container used to store hazardous polyvinyl chloride piping material on January 16, 2012;

c. Repaired the floor and part of a wall of a permitted container storage area known as the Battery Receiving/Storage Building on November 23, 2011

d. Installed enclosures on the doorways on the north and west sides of the permitted containment building known as the Raw Materials Storage Area on November 23, 2011; and

e. Submitted a WAP which addresses incoming waste on January 4, 2012.

6. The Executive Director also recognizes the following:

a. Respondent investigated the presence of treated blast furnace slag exceeding the LDR UTS for hazardous waste in the Class 2 landfill by collecting and analyzing

samples of in-place waste between June 2011 and December 2011 and submitted a summary of its landfill investigation to TCEQ in a report dated March 13, 2012;

b. Respondent evaluated alternatives for and developed a response action work plan for the removal and treatment of treated blast furnace slag in the Class 2 landfill exceeding the LDR UTS; and

c. Respondent ceased operation of the Facility on or before November 30, 2012.

7. The Response Action Work Plan (dated December 7, 2012) prepared for Respondent by W&M Environmental Group, Inc. and approved by the Executive Director by letter dated December 7, 2012, provides for the removal, retreatment and disposal of slag not meeting the LDR UTS from the Class 2 landfill in a manner designed to protect human health and the environment, including minimizing and monitoring the creation of dust.

8. The Respondent has submitted a payment to the TCEQ in the amount of $296,434.00 with the notation "Re: Exide Technologies, Docket No. 2011-1712-IHW-E" to

Financial Administration Division
Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and Tex. Water Code chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., the Respondent failed to prevent the unauthorized discharge or imminent threat of discharge of IHW to water in the state, in violation of 30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121.

3. As evidenced by Finding of Fact No. 3.b., the Respondent failed to meet the requirements for storage of hazardous waste in a waste pile, in violation of 30 TEX. ADMIN. CODE §335.152(a)(10) and 40 CODE OF FEDERAL REGULATIONS ("CFR") §§ 264.250(a), and 264.251.

4. As evidenced by Finding of Fact No. 3.c., the Respondent failed to meet the treatment standards for hazardous waste that is restricted from land disposal, in violation of 30 TEX. ADMIN. CODE § 335.431 and 40 CFR § 268.34(b).

5. As evidenced by Finding of Fact No. 3.d., the Respondent failed to assure that the tank system contained no free liquids and thus failed to prevent the threat of a release of solid waste, in violation of 30 TEX. ADMIN. CODE §§ 335.4 and 335.69(a)(1)(b) and 40 CFR § 265.190(a).

6. As evidenced by Finding of Fact No. 3.e., the Respondent failed to have the Facility personnel take part in an annual review of the initial program of classroom instruction or on-the-job training, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(1) and 40 CFR § 264.16(c) and (d) and IHW Permit No. 50206, Permit Section ("PS") III.B.

7. As evidenced by Finding of Fact No. 3.f., the Respondent failed to record Facility inspections in an inspection log or summary regarding possible error, malfunction or deterioration, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(1) and (a)(4), 40 CFR §§ 264.15(b)(1) and (d) and 264.73(b)(5), and IHW Permit No. 50206, PSs I.B and III.D.

8. As evidenced by Finding of Fact No. 3.g., the Respondent failed to conduct a hazardous waste determination and waste classification, in violation of 30 TEX. ADMIN. CODE §§ 335.62, 335.503(a), and 335.504 and 40 CFR § 262.11.

9. As evidenced by Finding of Fact No. 3.h., the Respondent failed to update the Facility's NOR, in violation of 30 TEX. ADMIN. CODE § 335.6.

10. As evidenced by Finding of Fact No. 3.i., the Respondent failed to have a container storage area containment system that is free of cracks or gaps and that is sloped or designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(7), 40 CFR § 264.175(b)(1) and (2), and IHW Permit No. 50206, PP V.B.3.

11. As evidenced by Finding of Fact No. 3.j., the Respondent failed to prevent the tracking of liquid in contact with hazardous waste out of a containment building, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(20), 40 CFR §§ 264.1100(a) and (e), 264.1101(c)(1)(iii), and IHW Permit No. 50206, PP V.C.1.

12. As evidenced by Finding of Fact No. 3.k., the Respondent failed to completely enclose a containment building to prevent exposure to the elements and assure containment of managed wastes, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(20), 40 CFR §§ 264.1100(a), 264.1101(a)(1), and 264.1101(a)(2), and IHW Permit No. 50206, PP V.C.1.

13. As evidenced by Finding of Fact No. 3.l., the Respondent failed to have a WAP for all incoming non-exempt, solid waste, in violation of 30 TEX. ADMIN. CODE § 335.152(a)(1) and (4), 40 CFR §§ 264.13 and 264.73(b)(3), and IHW Permit No. 50206, PS IV.A.

14. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the TEX. WATER CODE and the TEX. HEALTH & SAFETY CODE within the Commission's jurisdiction; for

violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

15. Pursuant to TEX. WATER CODE § 7.073, the Commission has the authority to assess an administrative penalty against the Respondent and order the Respondent to take corrective action.

16. An administrative penalty in the amount of five hundred ninety-two thousand eight hundred sixty-eight dollars ($592,868.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid two hundred ninety-six thousand four hundred thirty-four dollars ($296,434.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, two hundred ninety-six thousand four hundred thirty-four dollars ($296,434.00) of the administrative penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including the SEP Agreement and any payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order, and the Executive Director may require Respondent to pay all or part of the conditionally offset administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of five hundred ninety-two thousand eight hundred sixty-eight dollars ($592,868.00) as set forth in Section II, Paragraph 16 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Exide Technologies, Docket No. 2011-1712-IHW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Respondent shall implement and complete a SEP as set forth in Conclusion of Law No. 16, above. The amount of two hundred ninety-six thousand four hundred thirty-four dollars ($296,434.00) of the assessed administrative penalty is conditionally offset based on the condition that Respondent implement and complete a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon full, final, and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.

3. The Respondent shall undertake the following technical requirements:

   a. No later than (7) days after the effective date of this Agreed Order, initiate the Response Action Work Plan approved by the Executive Director to remove and retreat all lead-bearing and cadmium-bearing slag which exceeds LDR UTS and properly dispose of such retreated slag, all in accordance with the approved Response Action Work Plan.

   b. Within 60 days after the effective date of this Agreed Order:

      i. Implement measures, including, but not limited to, those described in "Sampling Procedures for Slag Treatment," to prevent disposal of waste in the active landfill that exceeds LDR Treatment Standards; and

      ii. Submit to the Executive Director for approval a groundwater monitoring program at the active landfill to be implemented following receipt of written approval from the Executive Director.

   c. Within 150 days after the effective date of this Agreed Order:

      i. Submit an APAR for the unauthorized discharges located on the southwest corner, south side, and below the opening on the north face of the Slag Treatment Building, the east side of the South Disposal Area, at the drainage swale west of the Crystallizer, and the on-site portion of the Stewart Creek embankment, sediments, and surface water, pursuant to 30 TEX. ADMIN. CODE § 350.91 and corrective action obligations specified in IHW Permit No. 50206, PS IX, to the Executive Director for approval. The Site Investigation Report will be incorporated into the APAR under

this provision and Ordering Provision No. 3.c.ii, below. If response actions are necessary, comply with all applicable requirements of the TRRP found in 30 Tex. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 Tex. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 Tex. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F; and corrective action obligations specified in IHW Permit No. 50206, PS IX;

ii. Submit an APAR for the RCRA Facility Investigation units listed in IHW Permit No. 50206, PS IX.C. and also for any and all solid waste management units ("SWMUs") and areas identified by previous TCEQ and EPA investigations and any new releases discovered subsequent to issuance of the permit in October 1986, as required by IHW Permit No. 50206, PS IX.A. If response actions are necessary, comply with all applicable requirements of the TRRP found in 30 Tex. ADMIN. CODE ch. 350 as noted in Ordering Provision No. 3.c.i. If the Response Action Plan ("RAP") does not propose a permanent remedy, then it shall be submitted as part of a new Compliance Plan ("CP") application as specified in PS IX.B.6. The RAP shall contain detailed final engineering design and monitoring plans and schedules necessary to implement the selected remedy. Implementation of the corrective measures shall be addressed through a new CP as specified in PS IX.B.6; The APAR required by Ordering Provision No. 3.c.i above may be satisfied by submittal of a single APAR covering both requirements.

iii. Dispose of the berm material located near the west side of the South Disposal Area at an authorized facility; and

iv. Implement proper operational changes and engineering controls to prevent the release of untreated slag and refractory brick from the Slag Treatment Building and ensure the integrity of and maintain the cover of the South Disposal Area to prevent the release of battery chips near the South Disposal Area.

d. Within 180 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2 through 3.c.iv. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who

manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification and supporting documentation shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 77118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the

Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

8. This Agreed Order shall terminate upon compliance with all the terms and conditions set forth herein.

9. In accordance with TEX. WATER CODE §7.071, this Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute. This Agreed Order may be admissible if offered by Respondent in any proceeding to confirm, establish or prove: the entry of this Agreed Order; the scope of this settlement including the actions required of Respondent under this Agreed Order; the final administrative resolution of violations covered by this Agreed Order; and the payment by Respondent of a penalty under this Agreed Order.

10. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing" ,and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the date of delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier , as provided by 30 TEX. ADMIN. CODE § 70.10(b).

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw
For the Commission

C M Sweeney
For the Executive Director

January 11, 2013
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Exide Technologies. I am authorized to agree to the attached Agreed Order on behalf of Exide Technologies, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Exide Technologies waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Paul Hirt
Signature

December 7, 2012
Date

Paul Hirt
Name (Printed or typed)
Authorized Representative of
Exide Technologies

President, Americas
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2011-1712-IHW-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Exide Technologies
Penalty Amount:	Five Hundred Ninety-Two Thousand Eight Hundred Sixty-Eight Dollars ($592,868)
SEP Offset Amount:	Two Hundred Ninety-Six Thousand Four Hundred Thirty-Four Dollars ($296,434)
Type of SEP:	Contribution to a Pre-Approved Third-Party Recipient
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc.
Project Name:	*Tire Collection Events and Cleanup of Abandoned Tire Sites*
Location of SEP:	Collin County; Trinity River Basin; Trinity Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon payment of the amount in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Tire Collection Events and Cleanup of Abandoned Tire Sites* project. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to coordinate with local city and county government officials and private entities to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling or to clean sites where tires have been disposed of illegally. A preference will be given to Collin County for the location of such events or cleanup.

RC&D shall ensure that collected tires, debris, and waste are properly transported to and disposed at an authorized disposal site, and if a licensed hauler is needed for tires or other regulated waste collected from sites, RC&D shall ensure that only properly licensed haulers are used for transport and disposal of tires and regulated wastes. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director, be applied to another pre-approved SEP.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide an environmental benefit by providing communities with a free and convenient means for safe and proper disposal of tires and by reducing the dangers and health threats associated with illegally dumped tires.

The health risks associated with illegal dumping are significant. Areas used for illegal tire dumping may be easily accessible to people, especially children, who are vulnerable to the physical hazards posed by abandoned tires. Rodents, insects, and other vermin attracted to dump sites may also pose health risks. Tire dump sites which contain scrap tires pose an ideal breeding ground for mosquitoes, which can breed 100 times faster in the warm, stagnant water standing in scrap tire casings. Severe illnesses, including West Nile Virus, have been attributed to disease-carrying mosquitoes. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of air, surface water, ground water, and soil. In addition, neighborhoods have been evacuated and property damage has been significant due to tire dump sites that caught fire. Illegal tire dumping can also impact drainage of runoff, making areas more susceptible to flooding when wastes block waterways. Open burning at tire dump sites can cause forest fires and erosion as fires burn away trees and undergrowth. Tire dumping has a negative impact on trees and wildlife, and runoff from tire dumpsites may contain chemicals that can contaminate wells and surface water used for drinking.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Revenue

Within 30 days after the effective date of this Agreed Order, Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to **Texas Association of RC&D SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of RC&D Areas, Inc.
Ken Awtrey, Executive Director
P.O. Box 635067
Nacogdoches, Texas 75961

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Litigation SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full payment of the SEP Offset Amount, as described in Section 2 above, and submittal of the required reporting, as described in Section 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to perform its obligations under this Attachment A, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 7, 2013

CERTIFIED MAIL

Paul Hirt, President
Exide Technologies
13000 Deerfield Parkway, Building 200
Milton, Georgia 30004

Jennifer Keane, Attorney
Baker Botts L.L.P.
98 San Jacinto Boulevard
Austin, Texas 78701-4078

RE: Exide Technologies
TCEQ Docket No. 2011-1712-IHW-E; Registration No. 30516
Agreed Order Assessing Administrative Penalties and Requiring Certain Action

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

Bridget C. Bohac

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Margaret Ligarde, Staff Attorney, TCEQ Litigation Division
Sam Barrett, Regional Contact, TCEQ Regional Office
Sharon Blue, SEP Coordinator, TCEQ Enforcement Division
Thomas Greimel, Enforcement Coordinator, TCEQ Enforcement Division