

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Adoption of an Agreed Order


AGENDA REQUESTED: August 26, 2009

DATE OF REQUEST: August 7, 2009

NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kerry Howard, 239-0556

CAPTION: Docket No. 2009-0071-MIS. Consideration of the adoption of an agreed order with Exide Technologies in Collin County to require Exide Technologies to comply with certain requirements in the event that contingency measures are required to be implemented by the maintenance plan for the 1978 lead National Ambient Air Quality Standard (NAAQS) for Collin County.

The adopted agreed order with Exide Technologies would make contingency measures for the federally required second ten-year maintenance plan for the 1978 lead NAAQS in Collin County legally enforceable. (Jim Price, Amy Browning)



Chief Engineer



Acting Division Director




Agenda Coordinator

Copy to CCC Secretary? NO X YES

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:

Jim Price, Ph.D., Technical Specialist, 239-1803, Air Quality Division
Amy Browning, Staff Attorney, 239-0891

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Daniel Womack
Kevin Patteson
Betsy Bird
Office of General Counsel
R. Cory Chism
Jim Price
Kerry Howard

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF	§	BEFORE THE
AN AGREED ORDER	§	TEXAS
CONCERNING	§	COMMISSION ON
EXIDE TECHNOLOGIES, INC.	§	ENVIRONMENTAL
ACCOUNT NO. CP-0029-G	§	QUALITY

**AGREED ORDER
DOCKET NO. 2009-0071-MIS**

The Texas Commission on Environmental Quality (the Commission or TCEQ), hereby orders Exide Technologies (Exide), formerly known as GNB Technologies, Inc. (GNB), and, prior to being GNB, known as Gould National Battery, Incorporated, to comply with the requirements herein regarding control of emissions of lead from the facilities referenced below, pursuant to § 382.023 of the Texas Clean Air Act (the Act), Texas Health and Safety Code, Chapter 382, and § 110 of the federal Clean Air Act, 42 U.S.C. § 7401 et. seq., for the purpose of revising the Texas State Implementation Plan (SIP) for control of lead. The Executive Director of the Commission and Exide have agreed on these control requirements, subject to the approval of the Commission. The Executive Director and Exide enter into this agreement for the purpose of implementing the SIP measures in the 2009 Collin County Maintenance Plan for Lead.

I. STIPULATIONS

For the purpose of this Agreed Order, the parties have agreed and stipulated as follows:

1. Section 110 of the federal Clean Air Act, 42 U.S.C. 7401 et. seq., requires Texas to submit SIP revisions to the United States Environmental Protection Agency (EPA) for approval and to demonstrate that such SIP revisions provide protection of the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration increments for lead.

2. Exide owns and operates a secondary lead smelter/lead oxide manufacturing plant, located at 7471 South Fifth Street, Frisco, Collin County, Texas (the plant).

3. The plant consists of one or more sources as defined in § 382.003(12) of the Act.

4. In 1992, GNB entered into Agreed Board Order 92-09(k) (Order 92-09(k)) with the Texas Air Control Board (TACB), predecessor to the TCEQ, and special provisions were included in amendments to Air Quality Permits R-1147A and R-5466D to resolve notices of violations regarding exceedances of the NAAQS for lead. The purpose of Order 92-09 (k) was to assure maintenance of the NAAQS for lead, and required GNB to continue implementation of or to implement certain measures to prevent recurrence of the violations alleged in Order 92-09(k).

5. GNB amended Texas Natural Resources Conservation Commission (TNRCC) Air Quality Permit Nos. 1147A and 3048A to incorporate the provisions of Order 92-09(k) as permanent and enforceable reductions. These permits were renewed in 2006 by Exide. The maximum allowable emission rate of lead in these permits ensure that lead emissions will not exceed 4.27 tons per year (tpy), unless otherwise authorized according to the requirements in paragraph 11 below. GNB and the TNRCC agreed to terminate Order 92-09(k). However, GNB agreed to continue implementation of the requirements of paragraph 8 in Order 92-09(k) as incorporated into Permit No's 1147A and 3048A, or to implement additional measures or control technologies proposed by GNB that were judged by the Executive Director to be similarly effective in controlling lead emissions from the plant. Exide agrees to continue to abide by these representations agreed to by GNB.

6. In 1993, GNB entered into Agreed Board Order 93-12 (Order 93-12) with the TACB to establish contingency measures related to the 1993 Lead State Implementation Plan revisions for Collin County, Texas.

7. GNB implemented the measures in Order 93-12 by: adding a supplemental ventilation baghouse to its metallurgical furnace operation (the reverberatory and blast furnaces); covering its blast furnace bins and installing a water spray system over the bin area; installing a baghouse at the raw materials storage building; installing a feed dryer and baghouse to reduce the possibility of reverberatory furnace explosions due to wet feed; writing and implementing detailed site operation and maintenance plans for its baghouse operations; and installing a Tri-bo Flow® System in all baghouse ducts to detect upset emissions. The parties to Order 99-0351-SIP agreed to terminate Order 93-12; however, Exide agrees to continue implementation of these measures, or to implement additional measures or control technologies proposed by Exide that are judged by the Executive Director to be similarly effective in controlling lead emissions from the plant.

8. Exide agrees to comply with the emission limits and standard operating procedures for process sources, process fugitive sources, and fugitive dust sources from the National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelters (the lead MACT).

9. Exide will maintain records for the period of the second (2009) Maintenance Plan (the period from ten to twenty years from the date of redesignation to attainment by the EPA) sufficient to demonstrate compliance with the requirements in paragraphs 5, 7, and 8 above and make those records available upon request by the TCEQ or any other air pollution control agency with jurisdiction.

10. This Agreed Order does not authorize or prohibit any modification of the plant listed above, nor does it authorize or prohibit the construction of any abatement equipment that may be necessary to achieve the emission limits set in this Agreed Order, other than that which is specifically authorized in this Agreed Order.

11. The 1993 Lead SIP revision contained an attainment demonstration using dispersion modeling of quarterly lead impacts in Collin County, Texas. That modeling was based on 4.27 tpy of lead, the actual emissions of lead provided by GNB in its 1992 emissions inventory. Exide may increase actual emissions above 4.27 tpy of lead only through (a) qualification for an amendment to Permits 1147A and/or 3048A and/or a new permit issued pursuant to 30 Texas Administrative Code (TAC) Chapter 116, and (b) an air dispersion modeling demonstration that such an increase in emissions is not expected to cause a violation of the lead NAAQS. Exide may use exemptions from permitting or permits by rule at the plant to make changes at the plant or to add new equipment, provided that use of such exemptions or permits by rule will not increase actual emissions above 4.27 tpy of lead.

12. Exide agrees to continue to maintain all air pollution abatement equipment in good working order and operate it properly during normal operations.

13. Definitions for purposes of this Agreed Order:

A. The term "condition" is defined as (1) an exceedance of the quarterly arithmetic average lead NAAQS of 1.5 micrograms per cubic meter at any TCEQ ambient air quality monitoring site in the Collin County lead nonattainment area or (2) an exceedance of 4.27 tpy as reported in Exide's annual emissions inventory for lead when that exceedance has not resulted from (a) qualification for an amendment to Permits 1147A and/or 3048A and/or a new permit issued pursuant to 30 TAC Chapter 116 and (b) an air dispersion modeling demonstration that such an increase in emissions will not cause a violation of the lead NAAQS.

B. The term "contingency measure" is defined to include the following actions:

1. Automation of the scale and feed for the reverberatory furnace.
2. The installation of water misting dust suppression system beyond the system already required by permit 1147A.

3. An alternative measure proposed by Exide that results in emission reductions which, at a minimum, shall be equivalent to the emission reductions achievable by contingency measure 13.B.1 or 13.B.2 above. Any alternative contingency measure proposed by Exide must be approved by the Executive Director prior to implementation.

14. If at any time during the period of the maintenance plan for attainment of the lead NAAQS a condition occurs, the Executive Director of the TCEQ shall notify Exide within thirty (30) days of the discovery of the condition that the contingency measures must be evaluated and that, at a minimum, one of the measures must be implemented. Within sixty (60) days of such notification, Exide will inform the TCEQ as to which of the specified [in paragraph 13.B.(1) and (2) above] or alternative contingency measures will be implemented by Exide. Exide will complete the implementation of the selected contingency measure within 180 days of Exide's notification to the Executive Director or within 180 days of the Executive Director's approval of an alternative contingency measure.

15. The Commission and Exide agree that the Commission has jurisdiction to enter this Agreed Order, and Exide is subject to the Commission's jurisdiction.

16. To better safeguard the air resources of this state, Exide agrees to comply with the terms of this Agreed Order.

II. ORDER

It is therefore ordered by the Texas Commission on Environmental Quality that Exide Technologies shall, from and after the date of this Agreed Order:

1. Implement and/or continue to implement all requirements in and maintain compliance with paragraphs 5, 7, 8, and 9 above; and
2. Comply with the requirements of paragraph 14 above if a condition occurs.

The provisions of this Agreed Order shall apply to and be binding upon Exide Technologies, Inc., its successors, assigns and upon those persons in active concert or participation with them who receive actual notice of this Agreed Order by personal service or otherwise. Exide Technologies, Inc. is hereby ordered to give notice of this Agreed Order to any successor in interest prior to transfer of ownership of all or any part of its plant, located at 7471 South Fifth Street, Frisco, Collin County, Texas and, within ten days of any such transfer, provide the Texas Commission on Environmental Quality with written certification that such notice has been given.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.



Donald G. Barar, Plant Manager
Authorized representative of
Exide Technologies, Inc.

06/23/2009
Date



Stephanie Bergeron Perdue
Deputy Director
Office of Legal Services
Texas Commission on Environmental Quality

6/26/2009
Date