

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 24, 2015

### FIRST CLASS MAIL

Matthew A. Love, Director  
Exide Technologies  
P.O. Box 14294  
Reading, Pennsylvania 19612-4294

Aileen Hooks, Attorney  
Baker Botts L.L.P.  
98 San Jacinto Boulevard, Suite 1500  
Austin, Texas 78701-4297

RE: Exide Technologies  
TCEQ Docket No. 2013-2207-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 Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac  
Chief Clerk

BCB/lg

Enclosure

cc: Lena Roberts, Staff Attorney, TCEQ Litigation Division  
Sam Barrett, Regional Contact, TCEQ Regional Office  
Thomas Greimel, Enforcement Coordinator, TCEQ Enforcement Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS  
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
DOCUMENT, WHICH IS FILED IN THE PERMANENT RECORDS

APR 24 2015

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE  
SEAL OF OFFICE ON

*Bridget C. Bohac*  
BRIDGET C. BOHAC, CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
EXIDE TECHNOLOGIES  
RN100218643

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2013-2207-IHW-E

At its APR 15 2015 agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties (as defined below), resolving an enforcement action regarding Exide Technologies ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Respondent, represented by Ms. Aileen Hooks of the law firm of Baker Botts L.L.P. (collectively, the "parties"), presented this agreement to the Commission.

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 Order, Respondent agrees to waive all notice and procedural rights associated with the entry of this Order.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The duties and responsibilities imposed by this Order are binding upon Respondent.

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

I. FINDINGS OF FACT

1. Respondent owns a property located at 7471 South 5<sup>th</sup> Street in Frisco, Collin County, Texas, on which it formerly operated a lead and lead bearing waste reclamation facility (the "Facility"). The Facility consists of several waste management units, one of which is a Class 2 landfill (Notice of Registration ("NOR") waste management unit 012) and

formerly included recycling units. The enforcement actions related to this Order do not include the property enrolled in the TCEQ Voluntary Cleanup Program, VCP No. 2541.

2. The Facility involves or involved the management of industrial solid waste and industrial hazardous waste ("IHW") as defined in TEX. HEALTH & SAFETY CODE ch. 361 and 30 Tex. Admin. Code ch. 335, and is subject to IHW Permit No. 50206, for the storage and processing of hazardous waste (the "Permit") and ISWR No. 30516 for the management of industrial solid waste.
3. An investigation was conducted beginning with a site visit on February 13, 2013, while Respondent was in the process of shutting down its operations, and included a review of documents provided by Respondent on April 11, 2013, regarding the Class 2 landfill. Based on the site visit and document review, TCEQ staff documented that Respondent:
  - a. Failed to obtain a permit or other authorization and meet the requirements for storage of hazardous waste in waste piles. Specifically, in two waste piles, consisting of treated slag ("Treated Slag Piles") located within the east and west sides of the Class 2 landfill, Respondent stored waste, a portion of which did not meet land disposal restriction ("LDR") universal treatment standards ("UTS") and/or was characteristically hazardous for lead, without a permit and without meeting the requirements for storage of hazardous waste in a waste pile;
  - b. Failed to obtain a permit to store hazardous waste. Specifically, Respondent stored super sacks containing waste characteristically hazardous for lead and cadmium in the former Battery Breaker Area, which is not a permitted container storage area ("CSA");
  - c. Failed to limit waste storage and management in a permitted unit to authorized wastes. Specifically, Respondent stored and managed super sacks containing waste characteristically hazardous for lead and/or cadmium in the former Battery Receiving and Storage Area, which is a permitted CSA but not authorized to store this particular waste;
  - d. Failed to label hazardous waste containers with the beginning date of accumulation and with the words "Hazardous Waste." Specifically, Respondent failed to timely label super sacks containing waste characteristically hazardous for lead and/or cadmium in the Battery Breaker Area and the Battery Receiving and Storage Area;
  - e. Failed to obtain a permit or other authorization for disposal and failed to meet the LDR UTS for hazardous waste. Specifically, on April 11, 2013, Respondent provided analytical results of samples of treated blast furnace slag disposed of in cells 1 through 9 of the Class 2 landfill at the Facility, which included some results that exceeded the Toxicity Characteristic Leaching Procedure ("TCLP") concentration of 5.0 mg/l for lead and the UTS of 0.75 mg/l for lead; and

- f. Failed to conduct a proper hazardous waste determination or waste classification and failed to completely characterize waste for the purpose of meeting LDRs. Specifically, Respondent provided analytical results of treated blast furnace slag that was disposed of in cells 1 through 9 of the Class 2 landfill and placed in the Treated Slag Piles on the east and west sides of the Class 2 landfill that did not consistently include analyses for cadmium.
4. Respondent received notice of the violations on September 27, 2013.
5. The Facility is located in the portion of Collin County that is an air quality non-attainment area for lead.
6. Site investigations have identified lead as a chemical of concern in Facility soils.
7. The Executive Director recognizes that:
  - a. On or about December 1, 2012, Respondent began the process of decommissioning the Facility. Respondent completed demolition of the lead and lead bearing waste reclamation facility, including the Battery Receiving and Storage Area and the Battery Breaker Area, by August 20, 2013;
  - b. Respondent shipped all super sacks identified as containing treated blast furnace slag characteristically hazardous for lead and/or cadmium offsite for treatment and disposal by March 1, 2013;
  - c. Respondent appropriately labeled the super sacks by February 14, 2013;
  - d. On June 10, 2013, Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code ("U.S.C.");
  - e. Respondent submitted a sampling plan for the Treated Slag Piles on July 3, 2014 (such sampling plan, upon approval by the Executive Director, the "Sampling and Analysis Plan");
  - f. Based on Respondent's analysis of certain sample results, some of the waste in the Treated Slag Piles was removed and disposed of at an authorized facility on or about March 1, 2012; and
  - g. Respondent engaged a consultant to conduct an evaluation to assess the feasibility of and identify potential risks associated with Class 2 landfill closure scenarios and submitted the report by Golder Associates titled *Exide Class 2 Landfill Risk Evaluation of Remedial Alternatives, August 2014* to the TCEQ on August 25, 2014 ("Risk Evaluation").
8. The Class 2 landfill in its entirety is addressed by this Order. Accordingly, Ordering Provision No. 3.a. of TCEQ Agreed Order Docket No. 2011-1712-IHW-E should be terminated.
9. The Risk Evaluation states that the open and capped cells of the Class 2 landfill have a composite liner consisting of a 60-mil high density polyethylene ("HDPE") flexible membrane liner and 2.5-3.0 feet of compacted clay with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec.

10. The information provided by the Risk Evaluation satisfies the liner criteria for designation of the Class 2 landfill as a corrective action management unit ("CAMU").
11. The Risk Evaluation states that the Class 2 landfill has a leachate collection system that is designed to convey leachate to a sump, where it is then pumped to an above ground storage tank.
12. The information provided by the Risk Evaluation satisfies the leachate collection system criteria for designation of the Class 2 landfill as a CAMU.
13. The Risk Evaluation states that cells 1 through 9 have a cap that consists of one foot of soil, covered by three feet of compacted clay, covered by a 40-mil HDPE geomembrane, covered by 18 inches of vegetated topsoil.
14. The information regarding the cap on cells 1 through 9 of the Class 2 landfill, as provided by the Risk Evaluation, satisfies the cap criteria for designation of the Class 2 landfill as a CAMU.
15. The Risk Evaluation demonstrates that the concentrations of lead and cadmium in the waste currently located in cells 1 through 12 of the Class 2 landfill are protective of human health and the environment when properly contained in the Class 2 landfill. The Risk Evaluation further demonstrates the technical impracticability and the elevated short-term risk to human health and the environment associated with excavation and re-treatment of the waste currently located in cells 1 through 12 to the standards in 40 Code of Federal Regulations ("C.F.R.") § 264.522(e)(4)(iv).
16. The information provided by the Risk Evaluation satisfies the adjusted treatment standards for approval of the Class 2 landfill as a CAMU.
17. The Risk Evaluation considered available remedial alternatives and their impacts to human health and the environment and recommends the alternative that poses the least risk to human health and the environment, which is that the waste in the Class 2 landfill remain in place.
18. The Executive Director agrees with the conclusions of, and has approved, the Risk Evaluation.
19. Pursuant to its NOR and Permit, Respondent identified itself as a generator of industrial solid and hazardous waste and an owner/operator of a treatment, storage, or disposal facility with respect to the Facility.
20. According to reports submitted and the results of samples collected at the Facility there have been releases of industrial solid and hazardous wastes and/or hazardous constituents into the environment at the Facility.
21. Respondent generated industrial solid and hazardous waste with respect to the Facility.
22. Respondent generated, stored, processed, and/or disposed of industrial solid and hazardous waste at the Facility.
23. Industrial solid and hazardous waste and/or hazardous constituents identified in the reports and sample results associated with the Facility, if not properly managed, may pose an unacceptable risk to human health and/or the environment.

24. The Risk Evaluation supports the designation of the Class 2 landfill at the Facility as a CAMU, and such designation is a protective, effective, reliable and cost-effective method of managing the CAMU-eligible waste that remains at the Facility.
25. The following wastes are CAMU-eligible wastes that are authorized to be contained in the Class 2 landfill: the treated slag that currently exists in cells 1 through 12, waste in the Treated Slag Piles that meets Class 2 specifications, the re-treated slag that is currently contained in nine roll-off boxes located within the footprint of the Class 2 landfill at the Facility, and the Class 2 non-hazardous remediation waste associated with clean-up activities for VCP No. 2541 (J Parcel) and other Class 2 remediation waste approved in the Final Closure Plan.
26. The information in the Risk Evaluation provides support for the conclusion that the Class 2 landfill satisfies all applicable regulatory criteria for its designation as a CAMU under 30 TEX. ADMIN. CODE ch. 335 and 40 C.F.R. § 264.552(c).

## II. CONCLUSIONS OF LAW

1. Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to obtain a permit or other authorization and meet the requirements for storage of hazardous waste in waste piles, in violation of 30 TEX. ADMIN. CODE §§ 335.2, 335.43, 335.152(a)(10) and 335.431; 40 C.F.R. §§ 264.13, 264.250, 264.251, 264.252, 264.253, 264.254, 264.258, 268.50(a) and 268.50(c); and IHW Permit No. 50206, General Facility Standards, C.1.d.
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to obtain a permit or other authorization to store hazardous waste, in violation of 30 TEX. ADMIN. CODE §§ 335.2 and 335.43; and IHW Permit No. 50206, General Facility Standards, C.1.d.
4. As evidenced by Finding of Fact No. 3.c., Respondent failed to store and manage authorized waste in a permitted unit, in violation of 30 TEX. ADMIN. CODE § 335.152; and IHW Permit No. 50206, Wastes and Waste Analysis, B.1, B.4 and C.1.f.
5. As evidenced by Finding of Fact No. 3.d., Respondent failed to label hazardous waste containers with the beginning date of accumulation and with the words "Hazardous Waste," in violation of 30 TEX. ADMIN. CODE § 335.69(a)(2) and (a)(3) and 40 C.F.R. § 262.34(a)(2) and (a)(3).
6. As evidenced by Findings of Fact No. 3.e., Respondent failed to obtain a permit for disposal of hazardous waste and meet the LDR UTS for that waste, in violation of 30 TEX. ADMIN. CODE §§ 335.2 and 335.431 and 40 C.F.R. §§ 268.34(b) and 268.40.
7. As evidenced by Findings of Fact No. 3.f., Respondent failed to conduct a proper hazardous waste determination and waste classification and completely characterize

waste for the purpose of meeting LDRs, in violation of 30 TEX. ADMIN. CODE §§ 335.62, 335.503(a), and 335.504 and 40 C.F.R. §§ 262.11.

8. Certain materials found at the Facility are industrial solid and/or hazardous waste, and/or hazardous constituents as defined by § 1004(5) of the Resource Conservation and Recovery Act ("RCRA"), § 3001 of RCRA, 40 C.F.R. Part 261, TEX. HEALTH & SAFETY CODE ch. 361, and 30 TEX. ADMIN. CODE ch. 335.
9. Industrial solid and/or hazardous waste, hazardous substances, and/or hazardous constituents were disposed of at the Facility.
10. There is and/or has been a release of industrial solid and/or hazardous wastes, and/or hazardous constituents into the environment from the Facility.
11. The Class 2 Landfill CAMU designated by this Order is consistent with RCRA and TEX. HEALTH & SAFETY CODE ch. 361 and is necessary to protect human health and/or the environment.
12. As evidenced by Findings of Fact Nos. 9 and 10, the Class 2 landfill's composite liner meets the CAMU requirements for liners, in accordance with 40 C.F.R. § 264.552(e)(3)(i).
13. As evidenced by Findings of Fact Nos. 11 and 12, the Class 2 landfill's leachate collection system meets the CAMU requirements for leachate collection systems, in accordance with 40 C.F.R. § 264.552(e)(3)(i).
14. As evidenced by Findings of Fact Nos. 13 and 14, the cap on cells 1 through 9 of the Class 2 landfill meets the CAMU requirements for a cap, in accordance with 40 C.F.R. § 264.552(e)(6)(iv).
15. Pursuant to 40 C.F.R. § 264.552(e)(4)(v) and as evidenced by Findings of Fact Nos. 15 and 16, the waste currently in cells 1 through 12 of the Class 2 landfill meets adjusted treatment standards when properly contained in the Class 2 landfill.
16. As evidenced by Finding of Fact No. 25, the materials to be consolidated or placed into the Class 2 landfill CAMU are "CAMU-eligible wastes," as defined by 40 C.F.R. § 264.552.
17. As required by 40 C.F.R. § 264.552(d), and as evidenced by Findings of Fact Nos. 9 through 18 and 24 through 26, the Risk Evaluation provides sufficient information to enable the TCEQ to designate the Class 2 landfill at the Facility a CAMU (Attachment A, "Planned Cap Extent") and to ensure that the criteria for this CAMU designation under 40 C.F.R. § 264.552 and 30 TEX. ADMIN. CODE ch. 335 have been satisfied.
18. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of statutes within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
19. Pursuant to TEX. WATER CODE § 7.073, the Commission has the authority to assess an administrative penalty against Respondent and order Respondent to take corrective action.

20. As evidenced by Finding of Fact No. 7.d., Exide Technologies filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code [specifically, 11 U.S.C. Section 362(a)] does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 U.S.C. Section 362(b)(4). Accordingly, TCEQ [a governmental unit as defined under 11 U.S.C. Section 101(27)] is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. A Bankruptcy Rule 9019 Motion ("9019 Motion") has or will be filed with the U.S. Bankruptcy Court for the District of Delaware, in which the Debtor's bankruptcy case is pending (case number: 13-11482), requesting authorization for Exide's entry into this Order and approval of the compromise and settlement of this enforcement action, expressly conditioned on approval by the TCEQ Commissioners.

An administrative penalty in the amount of two million four hundred fifty-one thousand nine hundred eighty-four dollars (\$2,451,984.00), is justified by the facts recited in this Order, and considered in light of the factors set forth in Tex. Water Code § 7.053.

### III. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of two million four hundred fifty-one thousand nine hundred eighty-four dollars (\$2,451,984.00), as set forth in Section II, Paragraph 20 above, for violations of TCEQ rules and state statutes, such penalty to be treated and allocated as set forth in an order of the Bankruptcy Court approving such treatment and allocation. The assessment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve only the violations set forth by this 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. Payments for the portion of the administrative penalty determined by the Bankruptcy Court order approving the compromise to be entitled to administrative expense priority shall be made payable in accordance with the terms of that order.
2. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, implement procedures to ensure the use of waste handling practices that comport with 30 TEX. ADMIN. CODE chs. 330 and 335 during Facility closure and remediation;
  - b. Conduct proper hazardous waste determinations and waste classifications and characterize waste generated during Facility closure and remediation for the purpose of meeting applicable LDRs, in accordance with 30 TEX. ADMIN. CODE

§§ 335.2, 335.62, 335.431, 335.503, and 335.504 and 40 C.F.R. § 262.11, 264.13, 268.7, 268.34, and 268.40;

- c. Conduct all work associated with this Order in a manner that will employ good housekeeping practices and dust suppression measures that will minimize to the greatest extent practicable air emissions of particulate matter and lead. Respondent shall evaluate air monitoring data from the monitoring system and shall also use E-BAM monitors to monitor air quality while potentially dust generating work is being conducted. Respondent shall dedicate one person with the authority to stop work to monitor the E-BAM alarms, take 30-minute block readings from the E-BAM monitors, and monitor the wind direction and wind speed with a localized meteorological station. If sustained wind speed (the wind speed obtained by averaging the measured values over a ten-minute period) exceeds 20 miles per hour, all waste disturbing activities must cease until the sustained wind speed declines to 20 miles per hour or lower for at least 15 consecutive minutes. Multiple (three or more) E-BAM monitors shall be located in the vicinity of the Class 2 landfill according to wind direction, so as to adequately monitor air quality downwind of the work. Additionally, air samples shall be collected every other day, beginning with the first day of work, with high volume pumps that draw approximately 10 liters of air, and analyzed for metals concentrations, including lead and cadmium. Respondent will adhere to the following portions of the previously TCEQ approved (dated January 31, 2013, as revised) Perimeter Air Monitoring Plan for Response Actions at the Class 2 Non-Hazardous Waste Landfill ("Perimeter Air Monitoring Plan"): the procedures relating to stop-work levels for wind (p. 5), and the procedures and stop-work levels relating to "Initial Action Levels and Response," Table 1 (p. 9). Respondent shall also comply with the provisions of 30 Tex. Admin. Code § 106.533 (Air Quality Permit by Rule for Remediation);
- d. Within 40 calendar days of the later of the (i) effective date of this Order, or (ii) the date Respondent receives approval of the Sampling and Analysis Plan from the Executive Director, initiate installation and maintain an interim cover consisting of either one foot of clean fill material or an HDPE membrane at least 8-mil thick and secured in place for cells 10 through 12 of the Class 2 landfill in order to minimize emissions of particulate matter and lead from the open areas of these cells; and
- e. Within 15 days after completion of the installation of the interim cover required by Ordering Provision No. 2.d., submit the construction details of the interim cover and an operation and maintenance plan for the interim cover to the Executive Director for approval. Respondent shall respond to any comments or changes requested by the Executive Director concerning the interim cover and the operation and maintenance plan within 15 days of receiving such requests. The construction details and operation and maintenance plan shall be submitted to:

Industrial and Hazardous Waste Permits Section  
Waste Permits Division, MC 126  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with copies to:

Remediation Division, MC 225  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- f. With respect to the Treated Slag Piles:
- i. Within 50 days of the later of (A) the effective date of this Order, or (B) the date Respondent receives approval of the Sampling and Analysis Plan from the Executive Director, implement the Sampling and Analysis Plan; and
  - ii. Within 80 days of the later of (A) the effective date of this Order, or (B) the date Respondent receives approval of the Sampling and Analysis Plan from the Executive Director, dispose of the Treated Slag Piles located within the east and west sides of the Class 2 landfill, utilizing dust suppression procedures that will minimize air emissions of particulate matter and lead. Such disposal may occur: (1) in the Class 2 landfill if the waste meets the definition of Class 2 waste in 30 TEX. ADMIN. CODE ch. 335, and/or (2) at a facility authorized to accept the waste, in accordance with the results of the Sampling and Analysis Plan. If any portion of the waste is placed in the Class 2 landfill, Respondent shall cover such waste daily with an interim cover consistent with that specified in Ordering Provision No. 2.d.

- g. Within 75 days after the later of the (A) effective date of this Order, or (B) the date Respondent receives approval of the Sampling and Analysis Plan from the Executive Director, submit written certification in accordance with Ordering Provision No. 2.w. below, to demonstrate compliance with Ordering Provisions Nos. 2.a. through 2.f.
  
- h. Within 120 days after the effective date of this Order, submit for Executive Director review and approval a Final Closure Plan for the Class 2 Landfill CAMU (“Final Closure Plan”), demonstrating how the Class 2 Landfill CAMU will be closed in accordance with 40 C.F.R. §§ 264.112 and 264.552. The Final Closure Plan shall include:
  - (1) The design criteria and basis of the final closure method(s) with detailed descriptions of both how the Class 2 Landfill CAMU will be closed and how such closure will be conducted to meet the requirements of 40 C.F.R. §§ 264.112 and 264.552 and Ordering Provision No. 2.h.(3);
  - (2) Detailed descriptions of groundwater monitoring, leachate collection, and storm water run-on and run-off control, and any other activity necessary to ensure that such closure meets the elements of 40 C.F.R. §§ 264.112 and 264.552;
  - (3) Detailed final engineering design plans for the cap to be installed on cells 10-15. The cap shall comply with the requirements of 40 C.F.R. § 264.552 and shall be fully integrated with the existing cap over cells 1-9 so as to provide a unified cap over the entire landfill. For cells 10-15, the cap shall, at a minimum, consist of a multi-layer final cover system (“MLFCS”) as follows:
    - i. A 3-foot thick layer of compacted clay or an equivalent geosynthetic clay liner (“GCL”) system;
    - ii. A geomembrane as approved by the Executive Director installed over the compacted clay (or GCL) surface;
    - iii. A geotextile will be placed on top of the geomembrane;
    - iv. A 1.5-foot thick layer of general clean fill material will be placed on top of the geotextile; and
    - v. A 1.5-foot thick layer of topsoil would then be placed above the general clean fill layer and hydroseeded;
  - (4) A quality assurance/quality control plan to be followed during implementation of the final closure method(s);

- (5) A description of waste management practices to be followed during implementation of the final closure method(s), including removal and decontamination of equipment and devices used in the CAMU waste management and closure activities;
  - (6) Contingency plans and procedures to be followed during implementation of the final closure method(s);
  - (7) Detailed operation and maintenance plans;
  - (8) Detailed monitoring plans, including air monitoring and dust suppression plans, for the final closure method(s);
  - (9) An implementation and activity schedule for the final closure method(s); and
  - (10) A copy of the Risk Evaluation referenced in Finding of Fact No. 7.
- i. Within 120 days after the effective date of this Order, publish the Final Closure Plan on the Exide Technologies Frisco Recycling Center Closure community notice website, currently located at <http://www.exidefriscoclosure.com>, and provide the opportunity to submit written comments on the Final Closure Plan for a period of 30 days after the plan is published.
  - j. Within 120 days after the effective date of this Order, publish notice of the Final Closure Plan in a newspaper that serves the community in which the Facility is located and provide the opportunity to submit written comments on the Final Closure Plan for a period of 30 days after the notice is published.
  - k. Within 30 days after the end of the comment period in Ordering Provisions Nos. 2.i. and 2.j., prepare and submit to the Executive Director a response to the public comments received regarding the Final Closure Plan. Such response shall be simultaneously published on the Exide Technologies Frisco Recycling Center Closure community notice website, referenced in Ordering Provision No. 2.i.
  - l. Any samples of waste and environmental media collected pursuant to this Order shall be collected and analyzed in accordance with the latest edition of EPA Guidance SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, or other agency-approved methods.
  - m. Any engineered designs and/or plans submitted to the TCEQ pursuant to this Order shall be sealed by a Professional Engineer licensed by the State of Texas.
  - n. Any geological designs, reports, and/or plans submitted to the TCEQ pursuant to this Order shall be sealed by a Professional Geologist licensed by the State of Texas.

- o. Financial assurance for closure and post closure for the Class 2 landfill is required to be posted by September 7, 2015, in the amount of nine hundred thousand dollars (\$900,000.00) for closure and nine hundred thousand dollars (\$900,000.00) for post-closure care. To the extent one or more approved financial assurance mechanisms are not already in place for the closure and post-closure care for the Class 2 landfill, provide financial assurance for the remaining amount for closure and/or post-closure care, as applicable, by September 7, 2015. The financial assurance mechanisms shall be in an amount sufficient to cover the cost of implementation of the proposed final closure method(s) by a third party and any requisite post-closure care, and shall be a financial assurance mechanism approved by the TCEQ that complies with applicable provisions of 30 Tex. Admin. Code chs. 37 and 335. The financial assurance mechanism shall be submitted to:

Financial Assurance Team  
Revenue Operations Section, Financial Administration Division, MC 184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with copies to:

Industrial and Hazardous Waste Permits Section  
Waste Permits Division, MC 126  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Remediation Division, MC 225  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- p. The Executive Director will review the Final Closure Plan. During this review, Respondent shall respond completely and adequately, in good faith, to any

comments or changes requested by the Executive Director concerning the submitted Final Closure Plan within ten business days after the date of such requests, or by another deadline specified by the Executive Director in writing.

- q. Within 65 days after the submission of the Final Closure Plan, submit written certification in accordance with Ordering Provision No. 2.w., to demonstrate the timely submission of the Final Closure Plan under Ordering Provision No. 2.h. and compliance with Ordering Provisions Nos. 2.i., 2.j., 2.k., and 2.o.
- r. Initiate implementation of the final closure method(s) for the Class 2 Landfill CAMU in accordance with the schedule in the Final Closure Plan as approved by the Executive Director.
- s. Within 10 days after initiating implementation of the Final Closure Plan for the Class 2 Landfill CAMU, submit written certification in accordance with Ordering Provision No. 2.w., below, to demonstrate compliance with Ordering Provision No. 2.r.
- t. Within 30 days after approval of the Final Closure Plan for the Class 2 Landfill CAMU by the Executive Director, amend the financial assurance mechanism required by Ordering Provision No. 2.o. to comport with the approved final closure method(s) in the Final Closure Plan, and any other changes required by the Executive Director. Such amendment shall be submitted as set forth in Ordering Provision No. 2.o.
- u. Within 45 days after approval of the Final Closure Plan for the Class 2 Landfill CAMU by the Executive Director, submit written certification in accordance with Ordering Provision No. 2.w., to demonstrate compliance with Ordering Provision No. 2.t.
- v. Within 15 days after completion of closure as specified in the Final Closure Plan, submit written certification in accordance with Ordering Provision No. 2.w., to demonstrate compliance with the closure requirements set forth in the approved Final Closure Plan.
- w. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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 certifications 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 76118-6951

3. Ordering Provision No. 3.a. of TCEQ Agreed Order Docket No. 2011-1712-IHW-E is terminated by this Order.
4. Respondent shall plan, implement, perform, and complete all actions required by this Order in accordance with the standards, criteria, specifications, requirements, and schedules set forth herein.
5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and are binding upon Respondent. Respondent is ordered to give notice of the Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. The provisions of this Order (other than Ordering Provision No. 1 which will be governed by the 9019 Motion and the Bankruptcy Court's order of approval of such motion), including but not limited to, financial assurance requirements, shall be binding upon any successor and assign that holds title to the property on which the Class 2 landfill is located, including any Reorganized Debtor under the Debtor's confirmed Plan of Reorganization.
8. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

9. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. The parties understand that the speed of work may be impacted by dust suppression efforts and by uncontrollable delays in permitting processes, but this understanding does not negate the requirement to submit a written extension request. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above. When a deadline under this Order falls on a weekend or state holiday, such deadline shall be deemed to be the next business day.
10. 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 Order.
11. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
12. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
13. In accordance with TEX. WATER CODE §7.071, this Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this 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 Order may be admissible if offered by Respondent in a proceeding to confirm, establish or prove: the entry of this Order; the scope of this settlement including the actions required of Respondent under this Order; the final administrative resolution of violations covered by this Order; and the payment by Respondent of a penalty under this Order.
14. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

15. Pursuant to 30 Tex. Admin. Code § 70.10(b) and Tex. Gov't Code § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties. Notwithstanding anything to the contrary herein, the effectiveness of this Order is subject to Bankruptcy Court approval.

#### IV. DESIGNATION OF THE CLASS 2 LANDFILL CAMU

Now, therefore, the TCEQ further orders that:

In making this CAMU designation, the Executive Director has considered all relevant factors specified under 40 C.F.R. Part 264, Subpart S, and 30 TEX. ADMIN. CODE ch. 335. The Risk Evaluation demonstrates how the Class 2 Landfill CAMU will be consistent with applicable and relevant regulatory standards and serves as the basis for the Executive Director's CAMU designation ordered herein. Based on these considerations, the Executive Director hereby concludes that the construction, operation, and closure of the Class 2 Landfill CAMU at the Facility, as described in the Risk Evaluation and this Order, and as will be incorporated in the permit amendment and associated permit process, is a reliable and cost-effective method of managing Class 2 CAMU-eligible wastes from the ongoing decommissioning and remediation projects listed in Finding of Fact No. 25 or any other Facility CAMU-eligible wastes which may be approved or conditionally approved for disposal in the CAMU by the Executive Director. The actions contemplated under this Order are consistent with RCRA and TEX. HEALTH & SAFETY CODE ch. 361, are protective of human health and the environment, and are hereby approved by the Commission.

1. The unit included and incorporated into the designated CAMU is the Class 2 landfill (Attachment A, "Planned Cap Extent").
2. Within 180 days after approval by the Executive Director of the Final Closure Plan for the Class 2 Landfill CAMU, Respondent shall submit all applicable parts of a Part B application as an amendment to the previously submitted Renewal Application for the Facility to incorporate this new CAMU unit and address the post-closure care and re-noticing related to the Class 2 Landfill CAMU in accordance with or following the requirements of 30 TEX. ADMIN. CODE chs. 281, 305, and 335, as applicable. If required, a Post Closure Authorization Application shall be submitted as a modification to TCEQ IHW Permit No. 50206. Respondent shall also file any other permit modifications that become necessary during the course of the currently ongoing plant decommission for corrective action, closure and post-closure care with or in advance of the modification application for the Class 2 landfill post-closure care. The Post Closure Authorization Application shall be submitted to the addresses set forth in Ordering Provision 2.e.

3. Until the Post Closure Authorization, which will apply reporting provisions, is effective, Respondent shall provide information on the status of CAMU activities, including post-closure activities, in annual reports that shall be filed on January 25 of each year, beginning January 25, 2016.
4. Respondent shall require that all of its contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed under this Order will comply with the terms of this Order.
5. Respondent shall be responsible for and liable for completing all of the obligations under this Order, regardless of whether the activities specified herein are to be performed by employees, agents, contractors, or consultants of the Respondent, or by employees, agents, contractors, or consultants of any party to whom the property is transferred before or after execution of this Order.
6. Any documents transferring ownership and/or operations of the Facility from Respondent to a successor-in-interest shall include written notice and a copy of this Order. Respondent shall provide written confirmation of the notice and a copy of this Order being provided to the new owner and/or operator and, except for transfer to the Reorganized Debtor, written notice of the transfer of ownership and/or operations of the Facility to TCEQ no less than ninety (90) days prior to the transfer consistent with requirements set out in 30 TEX. ADMIN. CODE §305.64(g). Transfer of any of the obligations of Respondent under this Order to any third party is subject to approval by the Executive Director, except for transfer to the Reorganized Debtor.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw  
For the Commission

[Signature]  
For the Executive Director

March 12, 2015  
Date

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

I also understand that failure to comply with the Ordering Provisions, if any, in this order 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;
- 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.

[Signature]  
Signature

12 March 2015  
Date

PHILLIP A DAMASKA  
Name (Printed or typed)  
Authorized Representative of  
Exide Technologies (subject to Bankruptcy Court approval)

EVP & CFO  
Title

If mailing address has changed, please check this box and provide the new address below:

\_\_\_\_\_

