

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	§ Case No. 13-11482 -KJC
	§ Chapter 11
EXIDE TECHNOLOGIES	§
	§ Final Hearing: July 24, 2013 at 10:00 a.m.
Debtor.	§ Relates to Dkt. 17 and 79

**DECLARATION OF HENRY J. HILL IN SUPPORT OF THE
JOINDER BY THE CITY OF FRISCO, TEXAS IN THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S OBJECTION
TO DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
DEBTOR (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§
105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), AND 364(e) AND (B) TO UTILIZE
CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE
PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§
361, 362, 363 AND 364 AND (III) SCHEDULING FINAL HEARING PURSUANT TO
BANKRUPTCY RULES 4001(b) AND (c)**

I, Henry J. Hill, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that:

1. My name is Henry J. Hill. I am the Deputy City Manager of the City of Frisco, Texas ("Frisco"). I am over the age of twenty one and am competent and otherwise qualified to make this Declaration.

2. I am an authorized representative of Frisco, a party in interest, in this bankruptcy case. I have personal knowledge of the facts set forth herein, which are true and correct.

3. I have been the Deputy City Manager for Frisco since 2003. Previously, I was the City Manager and Assistant City Manager for the City of Melbourne, Florida, from 1988 to 2003. I have a Bachelor of Arts Degree from Harvard University, and a Master of Arts Degree in Political Science from the University of Florida.

4. Frisco is a Home Rule city organized under the laws of the State of Texas. Frisco was the fastest-growing city in the United States between 2000 and 2009. Frisco has a current population of approximately 135,000.

5. This Declaration is filed in support of the Joinder by the City of Frisco in the Objection of the Texas Commission on Environmental Quality's Objection to the Debtor's Motion for Interim and Final Orders (I) Authorizing the Debtor (a) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 106, 361, 362, 364(c)(1), 364(c)(2), 364(d)(1) and 364(e), and (b) to Utilize Cash Collateral Pursuant to § 363, (II) Granting Adequate Protection to Pre-Petition Secured Creditors Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c).

6. In my capacity as the Deputy City Manager I provide general administrative support for the City Manager. I am also responsible for the Public Works, Parks and Recreation, Communications, Library, Convention and Visitors Bureau, and Human Relations Departments. In that capacity, I have dealt with, and have had partial oversight responsibility for, City personnel and City consultants who are monitoring the demolition of the existing Exide plant and facilities, monitoring the testing of the real property owned by Exide for contamination, and monitoring the clean-up of the Exide property as well as land outside the boundaries of the Exide property which lay within the Frisco City Limits.

7. The Exide Frisco Battery Recycling Center is located at 7471 South Fifth Street in Frisco, Collin County, Texas (the "Exide Frisco Site"). The Exide Frisco Site was a secondary lead smelter which was active from 1964 through November 30, 2012. From public information provided by Exide, the Exide Frisco Site processed used lead-acid batteries and other lead-bearing materials

into several lead products. That process produced a slag spoil which was disposed of, in part, in an on-site landfill permitted for Class II, non-hazardous waste. The process also produced battery-case chips ("Battery Chips"), which were disposed of off-site, and waste acid, which was treated through the on-site wastewater-treatment system. This facility ceased operations on November 30, 2012.

8. On June 6, 2012, Exide and Frisco entered into a Master Settlement Agreement (the "Agreement") to (a) close the Exide Frisco Site subject to satisfaction of the requirements of the Texas Commission on Environmental Quality (TCEQ) under the Texas Risk Reduction Program (TRRP) and (b) remediate, under the Voluntary Cleanup Program (VCP), and then sell approximately 170 acres of the land surrounding the Exide Frisco Site to Frisco and its development corporations (the "J Parcel") after issuance of the Final Certificate of Completion by the TCEQ on that acreage. Under the Agreement, Exide would (a) perform any necessary cleanup of the property to be sold, and (b) provide release of the liens held by secured lenders on the J Parcel as conditions precedent to the closing. Exide would retain ownership of the remaining property at the Exide Frisco Site. Frisco agreed to pay a premium for the J Parcel, considering the potential contamination, to cause Exide to cease operations, to facilitate environmental cleanup of the Exide plant and the Exide Frisco Site, and to put into place necessary protection of downstream properties. A true and correct certified copy of the Agreement is attached hereto and incorporated herein as Exhibit "A."

9. On May 2, 2012, Exide entered into a Consent Order with the United States Environmental Protection Agency, RCRA Docket No. 06-2012-0966, (the "Consent Decree") which required Exide to (a) finalize the implementation of a revised sampling and analysis plan for the Exide Frisco Site and (b) to finalize and submit a Site Investigation Report. The Consent Decree was incorporated by reference into the Agreed Order in Docket No. 2011-1712-IHW-E between

Exide and the TCEQ dated January 30, 2013, (the "Agreed Order"). A true and correct certified copy of the Agreed Order is attached hereto and incorporated herein as Exhibit "B." The Consent Decree and the Agreed Order defined, in part, the actions to be taken by Exide on the Exide Frisco Site.

10. The cleanup and closure of Exide Frisco Site that began in December 2012 was also addressed in part by Exide Permit HW-50206 issued on March 31, 2001. A first step in the closure process is decontamination and demolition of the various buildings, infrastructure, and associated equipment. In December 2012, Exide posted plans at <http://www.exidefriscoclosure.com> describing its plans for decontamination and demolition of the site, including dust control and air monitoring. The TCEQ issued a letter dated February 26, 2013, stating that there was no Agency objection to the decontamination and demolition plans. The Exide Frisco Site decontamination and demolition was commenced prior to the bankruptcy filing.

11. On October 25, 2012, Exide and Frisco entered into a Voluntary Cleanup Program Agreement (the "VCP Agreement") with the TCEQ regarding the J Parcel. A true and correct certified copy of the VCP Agreement is attached hereto and incorporated herein as Exhibit "C." In the VCP Agreement, Exide has agreed to use cleanup levels for lead that are at least as stringent as standard residential cleanup requirements to include a cleanup level of 250 parts per million. The VCP Agreement requires Exide to submit an Affected Property Assessment Report (APAR) to TCEQ not later than September 13, 2013.

12. On April 29, 2013, Exide, through W & M Environmental Group, Inc., issued its "Interim Action Work Plan for Slag and Battery Case Fragment Removal and Disposal" (the "Interim Work Plan"). On July 1, 2013, the TCEQ issued its approval letter of the "Interim Work

Plan.” This Interim Work Plan limits the cleanup activities to removal of Battery Chips which can be recovered using hand tools and is not a comprehensive remediation plan. A true and correct copy of the Interim Work Plan is attached hereto as Exhibit “D.” The Interim Work Plan will not accomplish the necessary remediation to satisfy the requirements of the Agreement.

13. The investigation of the contamination of the Exide Frisco Site has now expanded to areas beyond the borders of the Exide property based on investigations conducted by both the TCEQ and Frisco in Stewart Creek, a tributary that runs through the Exide Frisco Site westward and ultimately enters Lewisville Lake which is a major water reservoir for North Texas. Battery Chips and slag from the Exide plant have been found in and on either side of Stewart Creek and investigations are now underway to determine both the extent of the contamination, its severity, the potential method of remediation, and the costs of remediation. No data is yet available to make reasonable estimates of costs on any of these issues. However, if the studies reveal additional contamination which presents a threat to public health and safety, action may be required from Frisco to address these issues if they are not immediately addressed by the Debtor.

14. Frisco has taken action on more than three previous occasions of its own volition to protect the public from the contamination created by the Exide plant. Three of the most recent are: First, on December 10, 2007, Frisco enrolled a 3.3 acre parcel lying south of Stewart Creek and adjacent to the Exide property known as the Stewart Creek Wastewater Treatment Plant Site in the Voluntary Cleanup Program (the “Stewart Creek Wastewater VCP Application”). A true and correct certified copy of the Stewart Creek Wastewater VCP Application is attached hereto and incorporated herein as Exhibit “E.” The Stewart Creek Wastewater Treatment Plant Site was found to contain Battery Chips and slag from the Exide plant, and Frisco initiated a cleanup of both the Battery Chips

and the slag on this parcel. Second, on September 28, 2011, Frisco submitted a Self Implementation Notice (SIN) on a 12 acre parcel north of Stewart Creek and in close proximity to the Exide property for voluntary cleanup. Third, on July 8, 2013, Frisco enrolled an additional 340 acres of land known as "Grand Park," which is land lying West of and not adjacent to the Exide property, in the TCEQ's Voluntary Cleanup Program to investigate the contamination issues in the portions of Stewart Creek which traverse Grand Park (the "Grand Park VCP Application"). A true and correct certified copy of the Grand Park VCP Application is attached hereto and incorporated herein as Exhibit "F." On July 17, 2013, the TCEQ accepted the Grand Park VCP Application for assistance and review of site investigation and cleanup activities. The land lying between the Exide property and Grand Park as well as the land lying West of Grand Park, including those remaining portions of Stewart Creek leading to Lewisville Lake, are not currently subject to any Voluntary Cleanup Program applications and/or agreements with the TCEQ. The extent and degree of contamination in those areas remain unknown but present a potential threat to public health and safety as well as an additional Exide cleanup responsibility.

15. Paragraph 6.13 of the Superpriority Debtor-in-Possession Credit Agreement (the "Credit Agreement") does not appear to allow the Debtor to use any portion of the proceeds from the proposed financing to pay for the costs that are currently known to be necessary and will be incurred to remediate the Exide Frisco Site, Grand Park or Stewart Creek as well as those costs which may be determined to be necessary by on-going environmental studies. The Events of Default under the Credit Agreement include Covenant Defaults which appear in Paragraph 8.2. A Covenant Default includes a failure to produce earnings before income taxes, depreciation and amortization

("EBITDA") which complies with the requirements of Sections 7.4 and 7.5. Schedule 1.1 of the Credit Agreement defines the term "EBITDA" in part as follows:

"EBITDA" means, at any date of determination, with respect to the Company and its Restricted Subsidiaries, for the applicable period, the sum (without duplication) of (a) Net Income; plus (b) to the extent Net Income has been reduced thereby, ... (v) any unusual or non-recurring gain (or loss), together with any related provision for taxes on any such unusual or non-recurring gain (or the tax effect of any such unusual or non-recurring loss), realized by the Company or any Restricted Subsidiary during such period, including, without limitation (A) any charges, costs, fees and expenses directly incurred as a result of restructuring activities (including, without limitation, severance cost and facility closures) and discontinued operations (other than such charges, costs, fees and expenses to the extent constituting losses arising from such discontinued operations), (B) **non-recurring cost and expenses incurred in connection with cost reduction or environmental compliance initiatives of the Company and its Restricted Subsidiaries in an aggregate amount not to exceed \$5 million during the term of the Agreement**

To the extent net income is allowed to be used to fund an "environmental compliance initiative," including those required by the VCP Agreement, the Consent Decree the Agreed Order, and the Agreement, that usage is effectively limited to \$5,000,000.00 in the aggregate during the term of the Credit Agreement. The term "Maturity," which would equal the term of the agreement, is defined in Schedule 1.1 as:

...the earliest to occur of (a) the first Business Day that occurs 16 months after the Closing Date, (b) the acceleration of the Advances and the termination of the Commitments pursuant to Section 9.1, (c) 45 days after the entry of the Interim Financing Order if the Final Financing Order has not been entered by the Bankruptcy Court prior to the expiration of such 45-day period and (d) the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date thereof) of a Reorganization Plan that is confirmed pursuant to an order entered by the Bankruptcy Court.

Therefore, the funds necessary to fund “environmental compliance initiative(s)” could be garnered only out of less than one and one-half years of earnings assuming those expenditures did not reduce the EDITDA below the required contractual levels. Based on the Debtor’s earnings history reported on its Form 10-K for the period ending March 31, 2012, filed with the Securities and Exchange Commission (the “SEC”) on June 7, 2012, and the Form 10-K for the period ending March 31, 2013, filed with the SEC on June 14, 2013, the Debtor has, and continues to experience, losses or diminished earnings which would not allow the Debtor to comply with the terms of the Credit Agreement and would eliminate the possibility of using the Debtor’s net income for remediation costs.

16. The Debtor’s Form 10-K for the period ending March 31, 2013, makes the following statement concerning its environmental liabilities:

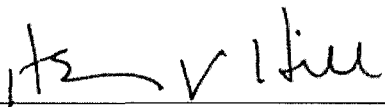
The Company has established liabilities for on-site and off-site environmental remediation costs where such costs are probable and reasonably estimable and believes that such liabilities are adequate. As of March 31, 2013 and March 31, 2012, the amount of such liabilities on the Company’s Consolidated Balance Sheets was approximately \$25.4 million and \$27.7 million, respectively. Because environmental liabilities are not accrued until a liability is determined to be probable and reasonably estimable, not all potential future environmental liabilities have been included in the Company’s environmental liabilities. Therefore, changes in estimates or future findings could have a material adverse effect on the Company’s financial condition, cash flows, or results of operations.

Since the costs associated with the remediation of the Exide Frisco Site have not yet been completely ascertained, but are estimated by Frisco’s environmental consultants to be a minimum of \$15.0 million and potentially exceed \$100.0 million, it is probable that those costs are not included in the foregoing environmental liability estimates. Without regard to whether the Exide Frisco Site remediation costs are or are not included, this significant liability cannot, under the terms of the

Credit Agreement, be funded. Therefore, the taxpayers of Frisco and the State of Texas may be required to finance the Debtor's environmental remediation obligations. Moreover, the proposed Credit Agreement does not allow the collateral which is proposed to secure the advances made under the Credit Agreement to be surcharged to recoup those tax dollars. This is the primary basis of Frisco's objection.

17. The Credit Agreement does not, from Frisco's perspective, serve the best interest of Frisco as a party in interest in this case. It does not permit the Debtor to address, financially or otherwise, the public health and safety concerns created by the contamination at the Exide Frisco Site as well as those lands lying downstream from that site in Grand Park or in Stewart Creek. If the Debtor is handcuffed in its ability to undertake remediation of the Exide Frisco Site, Grand Park, and/or Stewart Creek, Frisco and other governmental entities may be compelled to immediately respond to these public health and safety concerns as Frisco has previously done. Delay is not an option since that could potentially further jeopardize public health and safety. Therefore, Frisco must have the right to pursue a Section 506(c) surcharge to recoup the taxpayer funds which will be expended under such circumstances for the benefit of the Debtor, the proposed debtor-in-possession lenders, and the other parties to this case.

Dated: July 19, 2013


Henry J. Hill