

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Exide Technologies
2700 South Indiana Street
Los Angeles, California 90023

ID No. CAD097854541

Respondent.

Docket HWCA 2005-0970

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Exide Technologies (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 2700 South Indiana Street, Los Angeles, California 90023 (Site).

1.3. Inspection. The Department inspected the Site on May 31, 2005, and June 14 and 16, 2005.

1.4. Authorization Status. The Department authorized Respondent to manage hazardous waste by Interim Status Document issued on December 18, 1981.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of

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the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.7. Admissions. Respondent does not admit the violations alleged below, except as follows: Respondent admits the facts alleged below for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code, section 25100, *et seq.*, within 5 years of the date the violations occurred.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code, sections 25188 and 25201, in that on or about May 31, 2005, and June 16, 2005, the facility stored used batteries in the West Yard without authorization and also violated the compliance schedule set forth in that certain Consent Agreement and Stipulation for Entry of Final Judgment, Docket No. BC 160942, filed in the Superior Court of the County of Los Angeles on March 5, 1997.

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2.1.2. Respondent violated, California Code of Regulations, title 22, section 66265.31, in that on or about May 31, 2005 and June 16, 2005, the facility failed to maintain and operate the facility to minimize the possibility of a release, to wit: both a clarifier and a pump were leaking water at the Wastewater Treatment Plant and in Battery Storage Area 107, acid was leaking from two batteries. The acid from one of the batteries flowed in the direction of a manhole.

2.1.3. Respondent violated, California Code of Regulations, title 22, section 66266.81, subdivision (a)(7)(D), in that on or about May 31, 2005, Respondent failed to label approximately three hundred pallets of batteries with the date they were received at the facility.

2.1.4. Respondent violated California Code of Regulations, title 22, section 66266.81, subdivision (b), in that on or about May 31, 2005, the facility failed to store approximately 25 damaged batteries in nonreactive, structurally secure, closed containers capable of preventing the release of acid and lead, and failed to label the containers with the date the first battery was placed inside of the container, i.e., the initial date of accumulation.

2.1.5. Respondent violated California Code of Regulations, title 22, section 66265.35, in that on or about May 31, 2005, the facility failed to provide adequate aisle space between pallets of used batteries, bins of used batteries and lead material, and between drums of hazardous waste, that were stored in Battery Storage Areas 103, 104, 105, 106, 107 and 108.

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2.1.6. Respondent violated California Code of Regulations, title 22 section, 66262.34, in that on or about May 31, 2005, on four trailers containing hazardous waste (plastics) the information required by subdivision (f) was not marked and visible for inspection on each trailer.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Respondent has corrected the violations set forth above.

3.1.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division
Department of Toxic Substance Control
1011 North Grandview Avenue
Glendale, California 91201

And

William Jones
Los Angeles County Fire Department
Health Hazardous Material Section
5285 Rickenbacker Road
Commerce, California 90040

And

Robert Wienke
Supervising Civil Engineer
Enforcement Group
Los Angeles County Sanitation Districts
1955 Workman Mill Road
Whittier, California 90607-4998

3.3. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.4. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary.

Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

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3.5. Sampling, Data, and Document Availability.

3.5.1. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.5.2. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.6. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order, nor shall the State of California or the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

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3.7. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above and/or this schedule for compliance and were approved by the Department are hereby incorporated into this Order.

4. OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

4.6. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$39,000 ("Settlement Amount"), which includes \$10,000 as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Payment, in the amount of \$25,000, is due within 30 days from the effective date of the Order.

5.3. If Respondent shall have been alleged to have committed one or more Class One violations (as defined by California Code of Regulations, title 22, section 66260.10) within two years following the effective date of this Order, and said violation(s) ("Subsequent Violation(s)") is (are), at any time, sustained by operation of law, agreement, or the decision of any person authorized by law to sustain a violation, the total Settlement Amount, minus credit for all sums paid, shall then be immediately due and owing, without further notice. Nothing in this paragraph is intended to prohibit Respondent from exercising its right to appeal a finding of Subsequent Violation(s), if any, under the law, and any such time to file such an appeal must run before the provisions of this paragraph are exercised.

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5.4. In the event that no Subsequent Violation has been alleged and sustained as set forth in paragraph 5.3 above, and two years following the effective date of this Order shall have elapsed, then \$10,000 of the Settlement Amount shall be forgiven.

5.5. The Settlement Amount shall be reduced by \$4,000 if, and only if, Respondent sends at least 2 employees to the California Compliance School, Modules I - V, and submits to the Department, within 180 days of the effective date of this Consent Order, Certificates of Completion thereof.

5.6. In the event that the above Certificates of Satisfactory Completion are not both received by the Department within 180 days of the effective date of this Consent Order, \$4,000 shall then become due and payable.

5.7. Respondent's check(s) shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division
Department of Toxic Substance Control
1011 North Grandview Avenue
Glendale, California 91201

And

James J. Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

5.8. If Respondent fails to make any payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: August 9, 2006

Exide Technologies

Original signed by Carlos E. Pena
Plant Manager

Dated: August 16, 2006

Department of Toxic Substances Control

Original signed by Florence Gharibian
Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division
Department of Toxic Substance Control

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