

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Exide Technologies
2700 South Indiana Street
Los Angeles, California 90058

ID No. CAD 097 854 541

Respondent.

Docket HWCA 2008-1742

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Exide Technologies (Respondent).

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

1.3. The Department authorized Respondent to manage hazardous waste by an Interim Status Document issued in 1981.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1.1 Respondent violated the California Code of Regulations, title 22, section 66265.12, in that on or about May 2, 2008, the Respondent failed to notify DTSC four weeks in advance in writing that it planned to receive (import) hazardous waste (lead acid batteries) from a foreign source. The Respondent failed to notify DTSC of the date the waste was expected to arrive at the Site; to wit: Respondent received spent lead acid batteries from Canada without giving DTSC prior notification of receiving this hazardous waste.

2.1.2. Respondent violated the California Code of Regulations, title 22, section 66265.31, in that on or about April 30, 2008 and May 5, 2008, the Respondent failed to maintain and operate the Site to minimize the possibility of a release, to wit: On April 30, 2008 and May 5, 2008, DTSC observed, during the walk-through of the Waste Water Treatment plant, Reaction tank 1, and Equalization tanks 1 and 2 were leaking hazardous waste from their crossovers, as well as observing that a Clarifier was leaking.

2.1.3. Respondent violated the California Code of Regulations, title 22, section 66265.193, subdivision (e) (1) (C), in that on or about April 30, 2008, the Respondent failed to maintain the floor of the secondary containment free of cracks and gaps, to wit: it was observed during the walk-through of the waste water treatment plant, that a section of the floor of the secondary containment surrounding the tanks, which is adjacent to the acid tank and reaction tanks, contained gaps and cracks.

2.1.4. Respondent violated the California Code of Regulations, title 22 , section 66265.15, subdivisions (c) & (d), in that on or about March 1 and April 1, 2008, the Respondent failed to document in its inspection logs for the waste water treatment plant for the months of March and April 2008, on how it remediated leaking tanks that were discovered during inspections, to wit: in the inspection logs for the months of March and April 2008, it was noted that the North and South Oxidation tanks, Reaction Tanks 1, 2, and 3, Equalization Tanks 1 and 2, the Waste Water Treatment Plant Sump, and the Waste Water Treatment Plant Acid Storage Tank were leaking, but no remediation action was documented in the inspection logs indicating that the tanks were repaired.

2.1.5. Respondent violated the California Code of Regulations, title 22, section 66265.53, subdivision (e), in that on or about May 2 and May 5, 2008, the Respondent failed to submit a copy of the contingency plan to the local authorities who would respond to an emergency at the Site, to wit: The Respondent could not provide documentation that it submitted a copy of its contingency plan to the local police department, fire department, hospital, state and local emergency response teams that would respond to an emergency at the Site

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1 Effective immediately the Respondent shall notify DTSC in writing four weeks in advance that they plan to accept hazardous waste from a foreign source. This includes hazardous waste lead acid batteries or any other type of hazardous waste battery.

3.1.2. Within 30 days of the effective date of this Order the Respondent shall submit to DTSC documentation describing in detail how they repaired the leaks in the Reaction Tank 1, Equalization Tanks 1 and 2 and the Clarifier. The Respondent shall also submit photos of the repaired above mentioned tanks and clarifier.

3.1.3. Within 30 days of the effective date of this Order the Respondent shall submit to DTSC documentation describing in detail how they repaired the gaps and cracks in the floor of the secondary containment system that surrounds the Waste Water Treatment plant. The Respondent shall also submit photos of the repaired floor.

3.1.4. Effective immediately Respondent shall describe the remedial action taken when a problem is noted during inspections of their hazardous waste management units. Also within 30 days of the effective date of this Order, the Respondent shall document in their tank inspection logs for March and April 2008, the remedial action taken to prevent the North and South Oxidation tanks, Reaction Tanks 1, 2 and 3, Equalization 1 and 2, the Waste Water Treatment Plant Sump, and the Waste Water Treatment Plant Acid Storage Tank.

3.1.5. Within 15 days of the effective date of this Order, the Respondent shall provide documentation to DTSC that they provided a copy of their contingency plan to all the local authorities that would respond to an emergency at the site.

3.1.6 The Respondent entered into a Consent Order; docket number HWCA 2005-0970, dated August 16, 2006 (Order), with DTSC. In that Order, Respondent agreed, pursuant to section 5.3 of the Order, that if it committed one or more Class One Violations within two years of the effective date of the Order, the total Settlement amount, minus all sums paid, would be due and owing to DTSC. DTSC believes and

alleges that the above-cited Class 1 violations were committed by the Respondent within two years of the date of the Order. As a result, the balance of the Settlement amount is now due and owing in the amount of ten thousand dollars (\$10,000). Within 15 days of the effective date of this Order, the Respondent shall pay to the Department the remaining Settlement Amount of 10,000 dollars owed for Consent Order Agreement 2005-0970.

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

To: Roberto Kou
Acting Performance Manager
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

To: Mukul Agarwal
Supervising Hazardous Substances Scientist
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

To: Debra Schwartz
Senior Staff Counsel
Office of Legal Affairs
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding

reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. 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. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. 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. 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. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and 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. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, 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.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

4.5. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$82,500.00. Payment is due within 30 days from the effective date of the Order. Respondent's check 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:

To: Roberto Kou
Acting Performance Manager
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

To: Mukul Agarwal
Supervising Hazardous Substances Scientist
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

To: Debra Schwartz
Senior Staff Counsel
Office of Legal Affairs
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

RIGHT TO A HEARING

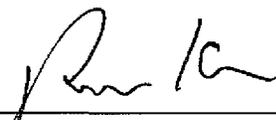
6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7 This Order is final and effective fifteen days from the date it is served on

Respondent, unless Respondent requests a hearing within the fifteen-day period

Date of Issuance October 12, 2009



Roberto Kou, Acting Performance Manager
Enforcement and Emergency Response
Program
Department of Toxic Substances Control
Chatsworth