

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Exide Technologies
2700 South Indiana Street
Los Angeles, CA 90058

ID No. CAD097854541

Respondent.

Docket HWCA 2009-2208

STIPULATION AND ORDER

Health and Safety Code
Section 25187

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

1. A dispute exists regarding the Enforcement Order issued by the Department on August 12, 2010, and the First Amendment to Enforcement Order issued by the Department on March 6, 2012 (Docket No. HWCA 2009/2208) (collectively, "First Amendment to Enforcement Order;" Orders Attached as Exhibit 1).
2. The parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety Code section 25187.
4. Respondent waives any right to a hearing in this matter.
5. This Order shall constitute full settlement of the violations alleged in the First Amendment to Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.

6. By entering into this Order, Respondent does not admit any of the alleged violations.

RESPONDENT'S OPERATION

7. The Department authorized Respondent to manage hazardous waste pursuant to an Interim Status Document issued on December 12, 1981 for its Facility located at 2700 South Indiana Street, Los Angeles, CA (Facility). Respondent submitted a Hazardous Waste Permit Application (Part B Application) on November 8, 1988. On April 19, 2010, the Facility submitted a new permit application which is currently under review by the Department. Respondent may continue to manage hazardous waste, but shall do so pursuant to its Interim Status Document and in accordance with the provisions of this Stipulation and Order.

If and when Respondent's permit becomes effective, that permit will supersede the terms governing the management of hazardous waste in Paragraph 8 of this Order. Respondent shall follow the terms and conditions of its permit rather than the hazardous waste management terms set forth in Paragraph 8 of this Order.

If the Department decides to not issue a permit to Respondent, this Order shall not be construed as authorization to the Respondent to continue to manage hazardous waste. If the Department decides not to issue a permit to Respondent, the Department shall invoke the permit denial procedures pursuant to California Health and Safety Code section 25186 and Chapters 20 and 21 of title 22 of the California Code of Regulations.

SCHEDULE FOR COMPLIANCE

8. Respondent shall comply with the following:

8.1 Effective immediately, Respondent shall not store hazardous waste dross on its loading dock without authorization from the Department.

8.2 Pending review of Respondent's revised permit application (see Paragraph 7 herein), which application includes permitting the Storm Water Retention Pond as a surface impoundment, Respondent shall comply with Paragraph 8.3 herein and its subsections. The Storm Water Retention Pond is currently an unauthorized storage unit and cannot be used to store hazardous waste.

8.3 Effective immediately, Respondent shall operate and maintain the Facility Storm Water Retention Pond as follows:

8.3.1 Respondent shall maintain the integrity of the Facility's Storm Water Retention Pond and the Pond's liner;

8.3.2 Respondent shall measure the water level in the Facility's Storm Water Retention Pond daily during periods when the Pond contains measurable quantities of water above the upper level of the sumps (3 inches or greater from the bottom of the Pond). When the level of the Pond is lower than 3 inches and/or can no longer be measured by inches, Respondent shall estimate the level of water in the Pond in either inches, or by volume, and record this estimate in its daily log.

8.3.3 Respondent shall record all rain events at the Facility by recording when the rain begins and when it ends;

8.3.4 Respondent shall record when all pumping from the Facility's Storm Water Retention Pond begins and ends;

8.3.5 Any Storm Water Retention Pond pump failure at the Facility must be repaired or replaced within 48 hours of failure;

8.3.6 The Facility shall withdraw a minimum volume of 80,000 GPD of water from the Storm Water Retention Pond until the Pond contains 3 inches or less of water. Within one hour after the water level reaches 3 inches from the bottom of the Pond, Respondent shall initiate removal of any lead-containing material, including sludge, from the entire surface area of the Pond. Removal of lead-containing material is required to be completed as soon as possible, and no later than 6 calendar days after the time initiation of the removal was required.

8.3.7 Respondent shall maintain accurate records detailing when the Facility's Storm Water Retention Pond is empty;

8.3.8 If Respondent removes sludge from the Facility's Storm Water Retention Pond, Respondent shall notify the Department in writing or electronically (by e-mail or facsimile) that it has removed sludge from the Storm Water Retention Pond. In the event that the sludge is not treated or processed on-site, Respondent shall notify the Department of the final disposition of the sludge from the Facility's Storm Water Retention Pond.

8.3.9 Respondent shall comply with all applicable waste discharge requirements, if any, issued to the Facility by the State Water Resources Control Board or a California regional water quality control board.

8.4 Respondent must notify the Department immediately in writing if Respondent is unable to meet any of the compliance requirements set forth in this Order.

9. Submittals: All submittals from Respondent pursuant to this Order shall be sent to:

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

10. Communications: Any approval and decision of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a 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 its obligation to comply with this Order.

11. 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.

12. 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.

13. 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 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 such Stop Work Order.

14. 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 further actions as are necessary to protect public health or welfare or the environment.

15. 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 may 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. Unless records are protected as trade secrets, include confidential business information, or are protected under evidentiary privilege, 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.

16. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data, including, but not limited to the records required by paragraph 8, generated by Respondent or on Respondent's behalf in any way pertaining to compliance with 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 five 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.

17. 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 this Order.

18. 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.

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

20. 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 or term. .

PAYMENTS

21. Within 30 days of the effective date of this Order, Respondent shall pay the Department a total of \$195,000.00, of which \$82,000 is a penalty for the violations occurring in 2009 and 2010, and \$113,000 is a penalty for the violations occurring in 2011. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

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

A photocopy of the check shall be sent:

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

To:
Debra Schwartz
Office of Legal Counsel
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, CA 91311

If Respondent fails to make 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.

OTHER PROVISIONS

22. Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil 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.

23. Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, 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..

24. Effective Date: The effective date of this Order is the date it is signed by the Department.

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

Dated: March 4, 2013.


Respondent: _____

Dated: 3-13-2013


Department of Toxic Substances Control