

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Exide Technologies, Inc.	)	Docket HWCA: P3-12/13-010
	)	
13000 Deerfield Parkway, Suite 200	)	OAH No: 2013050540
	)	
Milton, Georgia 30004	)	
	)	
In the Matter of:	)	
	)	
	)	
Exide Technologies, Inc.	)	STIPULATION AND ORDER
	)	
2700 South Indiana Avenue	)	
	)	
Vernon, California 90058	)	Health and Safety Code
	)	Section 25186.1 & 25186.2
	)	
CAD 097854541	)	
	)	
Respondent.	)	

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Whereas, on April 24, 2013 the California Environmental Protection Agency, Department of Toxic Substances Control ("Department" or "DTSC") issued an Order for Temporary Suspension and an Accusation for Suspension of Interim Status (attached hereto as Exhibits 1 and 2, respectively), (collectively, the "Suspension Order") pursuant to its police and regulatory authority under Health and Safety Code sections 25186.1 and 25186.2, to Exide Technologies, Inc. ("Exide") (collectively the Department and Exide referred to as "the Parties"). Exide is an owner and operator of a facility located at 2700 South Indiana Avenue, Vernon, California 90058 (the "Facility"), which the Department regulates pursuant to a comprehensive statutory and regulatory framework, for the generation,

handling, treatment, transport and disposal of hazardous waste.

Whereas, Exide has interim status authorization from the Department to operate the Facility. Exide has submitted a Part B hazardous waste facility permit application to the Department, which is under review by the Department. Further, in February 2002, the Department issued a Corrective Action Consent Order, Docket No. P 3-01-02-010, to Exide requiring corrective action for the Facility and Exide remains subject to the requirements of that Corrective Action Consent Order.

Whereas, on May 6, 2013, Exide filed a Notice of Defense (attached as Exhibit 3) in this administrative enforcement action requesting a hearing to present its defense to the allegations contained in the Suspension Order.

Whereas, on June 3 through June 5, 2013 an administrative hearing was held before Administrative Law Judge Julie Cabos-Owen in this administrative enforcement action. The administrative hearing did not conclude, and has been continued to an as yet unscheduled date.

Whereas, on June 10, 2013, Exide filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code" in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). As such, Exide is a debtor and debtor-in-possession in bankruptcy case no. 13-11482 (the "Bankruptcy Case").

Whereas, Exide requires Bankruptcy Court authorization to enter into this Stipulation and Order, and Exide will seek approval from the Bankruptcy Court prior to the Department and Exide signing this Stipulation and the Department issuing its Order thereon.

Whereas, on June 13, 2013, Exide filed a verified petition for writ of mandate and ex parte application for temporary restraining order and order to show cause re: preliminary injunction in the Superior Court of Los Angeles County, California, Case No. BS143369, (the “California State Court Action”).

Whereas, on June 17, 2013, the Los Angeles Superior Court granted Exide’s ex parte application and issued a temporary restraining order which stayed the Order for Temporary Suspension and prevented the Department from enforcing it until the hearing and determination on the order to show cause re preliminary injunction.

Whereas, on July 2, 2013, in the California State Court Action, the Los Angeles Superior Court granted Exide’s request for preliminary injunction, subject to specified conditions regarding Exide’s operations of the Facility. The preliminary injunction stayed the Order for Temporary Suspension until this administrative enforcement proceeding is completed.

Whereas, on September 16, 2013, the Los Angeles Superior Court, on its own motion, scheduled an order to show cause for October 15, 2013 regarding lifting the stay and dissolving the preliminary injunction granted on July 2, 2013. Litigation in the California State Court Action continues between Exide and the Department.

Whereas, a dispute exists between the Department and Exide regarding the Suspension Order.

Whereas, Exide has agreed to take certain actions to address air emissions and the storm water conveyance system that were the subject of the Suspension

Order.

Whereas, Exide has agreed to install additional emission control devices at the Facility and to replace its storm water conveyance system at the Facility based on the Schedule for Compliance set forth below.

Whereas, Exide has agreed in cooperation with local health officials and the Department, to institute a soil sampling and blood testing program for properties and residents in the vicinity of the Facility.

Whereas, Exide agrees to continue to adhere to all applicable South Coast Air Quality Management District ("SCAQMD") rules, regulations and standards in connection with Exide's ownership and operation of the Facility.

Whereas, the Department and Exide have agreed to renew efforts to address remaining issues relating to Exide's pending hazardous waste permit application for the Facility.

Whereas, the Department and Exide have agreed to apply certain health risk-based standards for both operational and remediation purposes in connection with the Facility as specified in this Stipulation and Order.

Whereas, the Department and Exide agree that continued outreach to, and communication with, local communities is vital to keep the public apprised and to address public confidence in Exide's Facility operations.

Whereas, the Parties wish to avoid the expense of further litigation and to jointly ensure prompt action to achieve the Schedule for Compliance set forth below.

Therefore, without any findings of fact, conclusions of law or admissions of

liability, the Department and Exide enter into and agree to be bound by this Stipulation and Order (“Stipulation and Order”) as follows:

1. Jurisdiction to enter into this Stipulation and Order exists pursuant to Health and Safety Code section 25186.1 and 25186.2.

2. Exide and the Department waive any further rights to a hearing, an appeal and any further proceedings on the Suspension Order in this matter.

3. This Stipulation and Order shall constitute full settlement of the allegations alleged in the Suspension Order and as specified in paragraph 35. It does not limit the Department from taking appropriate enforcement action concerning other matters, including enforcement of this Stipulation and Order. The Order for Temporary Suspension (Exhibit 1) issued by the Department shall be deemed dismissed with prejudice on the effective date of this Stipulation and Order. In addition, Exide agrees to stipulate to dissolution of the preliminary injunction against the Department issued in the California State Court Action and further agrees to stipulate to a dismissal of the entire action in Case No. BS143369, with prejudice, said dismissal to be filed within 10 days of the effective date of this Stipulation and Order. Each side in Case No. BS143369 and OAH Case No. 2013050540, Docket HWCA: P3-12/13-010, is to bear its own attorney’s fees and costs.

4. By entering into this Stipulation and Order, Exide denies the allegations of the Suspension Order. The Parties agree no provision of this Stipulation and Order shall be construed as an admission of any wrongdoing or a violation of any rule, law, statute, ordinance or regulation by Exide.

### SCHEDULE FOR COMPLIANCE

5. Exide and the Department stipulate and agree each shall comply with the following as further specified in paragraphs 5.1 through 5.31 below:

#### Proposed Storm Sewer Piping Plan:

5.1. Exide shall operate and maintain a temporary storm water and washdown water collection system (the "Temporary System") in accordance with the Standard Operating Procedure dated May 20, 2013 and conditionally approved by the Department on May 16, 2013.

5.2. By December 27, 2013, Exide shall remove the Temporary System. Failure to remove the Temporary System by that date shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.3. Exide shall implement the comprehensive interim measure ("IM") removal action workplan (the "IM Workplan") approved by the Department on August 21, 2013.

5.4. Exide shall implement a Department-approved sampling plan to determine the full extent of any contamination (lateral and vertical) in soils surrounding the storm sewer pipe system at the Facility as provided in the Department's July 26, 2013 partial approval of the IM Workplan. Soil sampling may be performed in advance of storm sewer pipe removal activities.

5.5. By December 27, 2013, Exide shall complete implementation of the IM Workplan, as approved by the Department, and sampling activities set forth in sections 5.3 and 5.4 above. Failure to implement the IM Workplan and sampling

activities as provided herein by that date shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.6. Exide has submitted a cost estimate and shall establish, as provided in section 5.32 below, a financial assurance mechanism to fund activities associated with the maintenance and removal of the Temporary System, and the implementation of the IM Workplan and sampling plan described in sections 5.1-5.5 above.

5.7. Exide submitted to the Department a storm sewer pipeline/sump replacement plan ( the “Replacement Plan”) dated July 12, 2013 that was re-issued on August 19, 2013 in response to the Department’s comments dated August 14, 2013. The Department approved the implementation of the Replacement Plan on August 21, 2013.

5.8. Exide has submitted a request to the Department for temporary authorization for implementing the Replacement Plan according to California Code of Regulations, title 22, Chapter 20, article 4 followed by submittal to the Department of a Class 2 modification for the Replacement Plan according to California Code of Regulations, title 22, Chapter 20, article 4 within sixty (60) days after the issuance of the temporary authorization. The Department reviewed the request for temporary authorization to implement the Replacement Plan and approved the request for implementation on August 21, 2013.

5.9. Exide shall notify the Department in writing at least seven (7) days prior to beginning each separate phase of field work associated with implementation of the Replacement Plan. At the request of the Department, and

subject to the Facility's security and safety procedures, Exide shall allow the Department, or its authorized representative to take splits or duplicate samples of all soil, dust, sediment and water (if encountered) samples collected pursuant to this Stipulation and Order.

5.10. Exide shall submit a completion report which contains as-builts and land survey of the new storm sewer system for the Facility within 30 calendar days after completion.

5.11. Exide may request a modification of the Replacement Plan and the Department shall review and approve, approve with specified conditions or disapprove (with explanation) the request for modification.

5.12. Failure to implement the Replacement Plan and Department-approved sampling activities as provided herein shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

Health Impacts Reduction Plan:

5.13. On or before January 1, 2015, Exide shall reduce potential health impacts from stationary air emissions sources at the Facility as determined by the AB2588 Health Risk Assessment to a level such that the theoretical cancer risks to affected workers do not exceed ten in a million, theoretical cancer risks to affected residents and sensitive receptors do not exceed four in a million, and the non-cancer Hazard Index does not exceed 1 for workers, residents or sensitive receptors.

5.14. For purposes of Exide's continuing operations, the Department agrees to apply: (1) prior to January 1, 2015, the SCAQMD Rule 1402 air quality



standards; and (2) on and after January 1, 2015, the air quality standards set forth in section 5.13 above, until the Department takes final action on Exide's Part B hazardous waste facility permit application.

5.15. For purposes of imposing specific permit terms and conditions in a hazardous waste permit for the Facility, the Department shall use a cumulative risk management range of  $10^{-6}$  to  $10^{-4}$ , with  $10^{-6}$  being the point of departure or that level of theoretical cancer risk considered to be de minimis risk. (40 C.F.R. §300.430(e)(2)(i)(A)(2); see also Office of Solid Waste and Emergency Response ("OSWER") #9355.0-30 (4/22/91).) The upper bound of the risk management range,  $10^{-4}$ , shall be considered an unacceptable risk requiring mitigation or remedial action, although feasible mitigation or remediation measures may be required at risks less than  $10^{-4}$ , based on site-specific considerations. (OSWER #9355.0-30 (4/22/91).) In evaluating any mitigation or remedial action measures, the nine balancing criteria in the National Contingency Plan shall be analyzed and applied by the Department. (40 C.F.R. §300.430(e)(9)(iii).)

5.16. For purposes of a cumulative risk evaluation, the risk assessment pursuant to AB2588 shall be considered by the Department as one element of the cumulative risk evaluation (outline approved by the Department on April 17, 2012.) Other elements of the cumulative risk evaluation shall include 1) the Human Health and Ecological Risk Assessment ("HHERA") (HHERA workplan approved by the Department on December 5, 2011) addressing potential impacts to all media from past operations at the Exide Facility; 2) Risk Analysis for Accidental Releases (risk assessment received October 2012) addressing potential releases from handling of

hazardous waste, malfunction of processes, accidental chemical releases, releases from traffic accidents of vehicles, and fire releases; and 3) Mobile Source Risk Assessment (risk assessment is pending) addressing vehicle emissions associated with Exide Facility Operations. (OSWER #9355.3-01 (10/88).)

5.17. For purposes of complying with the California Environmental Quality Act (CEQA, Pub. Res. Code, § 21000 et seq., pursuant to California's State Environmental Impact Report (EIR) Guidelines, 14, Cal. Code Regs., tit. 14, § 15000 et seq.) the Department shall apply the SCAQMD's Air Quality Significance Thresholds in making any permit or other determinations respecting whether the Facility, and its operations, will have significant air quality impacts.

5.18. The Department reserves its right to impose any feasible mitigation measure that may be warranted as a result of Exide's Part B permit application being evaluated in the CEQA process in a manner consistent with the law. Exide reserves its right to contest in the appropriate California forum the Department's above health impact standards, and the Department's application of same as violative of law.

5.19. Exide shall install at the Facility secondary HEPA filter controls on: (a) the material handling baghouse, (b) MAC baghouse, (c) soft lead baghouse, and (d) the hard lead baghouse, as well as (e) reconfigure the secondary HEPA filter controls on the RMPS scrubber, as provided herein. By February 15, 2014, Exide shall complete installation of the HEPA filter controls on the material handling baghouse and reconfigure the secondary HEPA filter controls on the RMPS scrubber (a & e). By September 1, 2014, Exide shall complete installation of all

remaining HEPA filter controls (b, c, & d), subject to AQMD permit approval.

Failure to install the secondary HEPA filter controls as provided herein shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.20. Exide shall install at the Facility a Regenerative Thermal Oxidizer to control organic compound emissions from the feed dryer baghouse. By September 1, 2014, Exide shall complete installation of the feed dryer organic emission control device, subject to AQMD permit approval. Failure to install the feed dryer organic emission control device as provided herein shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.21. By January 1, 2015, Exide shall prepare, in connection with the operation of the Facility, full source test reports and a comprehensive Human Health Risk Assessment following the current SCAQMD Risk Assessment Guidelines as of the Effective Date (as defined in section 37) to determine if objectives required by section 5.13 above have been met.

5.22. In connection with operating the Facility, Exide shall continue to comply with the SCAQMD's Rule 1402 health impact reduction compliance requirements and procedures as follows: (a) by October 4, 2013, conduct source tests to measure the effectiveness of the blast furnace isolation door; and (b) by December 1, 2013, submit a revised risk reduction plan including (i) an updated air toxics emissions inventory and health risk assessment which includes the isolation door source testing results, and (ii) description of the expected emissions and health impacts reduction benefits of the control projects set forth in sections 5.19-5.20 above.

5.23. For purposes of reviewing Exide's Part B permit application for the Facility, the Department shall use the Comprehensive Risk Assessment (updated air toxics emission inventory and health risk assessment), the outline for which was approved by the Department on April 17, 2012.

5.24. If SCAQMD requires any additional measures as part of the Rule 1402 risk reduction plan approval, Exide shall install such measures at the Facility within one year of Exide being so notified of the requirement by the SCAQMD, or, as otherwise required/approved by the SCAQMD, whichever is earlier. Exide shall notify the Department of the timeline set by the SCAQMD. Notwithstanding the above, Exide reserves all legal rights to appeal or otherwise challenge in the appropriate California forum any such SCAQMD-required additional measures.

Blood Lead Testing Program:

5.25. Exide agrees to fund a blood lead testing program in the area surrounding the Facility to be implemented by the Los Angeles County Department of Public Health ("LACDPH"). The initial geographic scope of the blood testing is to be within a polygon area bordered on the south along Gage Avenue from South Soto Street to Eastern Avenue; bordered on the west along South Soto Street from Gage Avenue to Highway 60; bordered on the north along Highway 60 to Interstate 710; bordered on the east along Interstate 710 to Interstate 5 and Interstate 5 east to Eastern Avenue and along Eastern Avenue to Gage Avenue. In consultation with the Department, Exide will consider for approval any subsequent recommendation by the LACDPH, based on the outcome of the initial test results, to expand the study's initial geographic boundaries up to an area not to exceed an outward radius

of three miles around the Facility. 5.26. Exide agrees to request the LACDPH to implement the blood lead testing program within 30 days of an agreed testing protocol between Exide and the LACDPH for a blood lead test program. The blood lead testing itself shall be run for six (6) consecutive months from the initial start date

Residential/Sensitive Receptors Surface Soil Sampling:

5.27. Following the Department's approval, Exide shall prepare and implement, in connection with its operation of the Facility, an Off-Site Soil Sampling Protocol ("Sampling Plan") for Arsenic; Lead; Antimony; Cadmium; Chromium (will require Hexavalent Chromium analysis if Chromium is above Hexavalent Chromium California Human Health Screening Level (CHHSL); Polynuclear Aromatic Hydrocarbons; Polychlorinated Biphenyls; on residential properties, schools and daycare facilities. Residential sampling shall focus on those areas with the highest predicted maximum exposed individual resident ("MEIR") for lead and arsenic north and south of the Facility as represented in Exide's recent AB2588 Health Risk Assessment of January 2013. In addition to the above required analysis, the Sampling Plan shall require analysis for dioxins and furans on five (5) representative properties agreed to by the Parties in the north and south MEIR areas.

5.28. The Sampling Plan shall include a study to establish background levels of the constituents in soil listed in section 5.27, above, to be approved by the Department. Lead in soils shall be delineated at residential/sensitive receptor areas until 80 mg/kg of lead in soils, or background, whichever is higher, is

reached.

5.29. Exide submitted to the Department a Sampling Plan dated May 16, 2013. On May 28, 2013, the Department provided comments on the Sampling Plan. By October 1, 2013, Exide shall submit a revised Sampling Plan to the Department incorporating the Department's comments. The Sampling Plan implementation shall be completed no later than 90 days after the Department's approval of the Sampling Plan. Failure to implement the Sampling Plan within the above time period shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.30. Following Department approval, Exide shall prepare and implement a Surface Soil and Dust Sampling Plan for lead on properties immediately adjacent to the Exide Facility. By September 1, 2013, Exide shall initiate field work and provide findings to the Department by November 15, 2013. Failure to complete the Surface Soil and Dust Sampling Plan by December 1, 2013 shall subject Exide to stipulated penalties as provided in this Stipulation and Order.

5.31. By May 31, 2014, Exide shall perform a Site Specific Human Health Risk Assessment on Residential and Non-Residential exposure scenarios utilizing the data generated as a result of sections 5.27-5.30 above. Subsequently, the Department and Exide shall develop risk-based clean-up levels for corrective action purposes based upon the Site Specific Human Health Risk Assessment pursuant to the February 25, 2002 Corrective Action Consent Order.

Financial Assurance:

5.32. Within thirty (30) days of the Effective Date, Exide shall deposit the

Financial Assurance Fund (defined below) in a segregated account to be maintained by Exide for the purpose of paying the costs and expenses necessary to implement the storm sewer piping and health impact requirements set forth in Sections 5.1-5.31 of this Stipulation and Order (collectively, "Environmental Measures"). As used herein, the "Financial Assurance Fund" means the sum of \$7,730,000.00 less amounts expended by Exide for Environmental Measures prior to funding of such Financial Assurance Fund.

The Financial Assurance Fund and any and all earnings, interest, income, dividends, capital gains and other amounts earned on or derived from the Financial Assurance Fund shall remain property of Exide's bankruptcy estate; provided, however, that the Financial Assurance Fund shall only be used for payment of Environmental Measures. Exide shall pay for Environmental Measures directly from the Financial Assurance Fund. Periodically, but not less frequent than monthly, or upon the request of the Department, Exide shall deliver a written itemization to the Department describing with reasonable specificity the payments made from the Financial Assurance Fund for Environmental Measures including a description of the work performed, specific costs for the work, and invoices or cost advances paid to vendors, contractors, and third parties. Exide shall at the time it deposits funds into the Financial Assurance Fund deliver to DTSC a written itemization describing with reasonable specificity the amounts it has already expended including a description of the work performed, specific costs for the work, and invoices or cost advances paid to vendors, contractors, and third parties for Environmental Measures. Notwithstanding anything herein to the contrary, in the

event that Exide delivers a written notice (the "Closure Notice") to the Department that Exide has ceased operations at the Facility pursuant to paragraph 34, the restrictions on Exide's use of the Financial Assurance Fund shall be abrogated and of no further force or affect.

It is the intent of the Parties that additional financial assurance ("Additional Financial Assurance") for specific corrective action projects directly related to the health impact requirements of this Stipulation and Order be provided, if required, by supplementing the Financial Assurance Fund, or by such other financial assurance vehicle as agreed to by Exide and the Department once the Department and Exide develop and finalize the health risk-based corrective action clean-up levels pursuant to the February 25, 2002 Corrective Action Consent Order. Any Additional Financial Assurance must be agreed to, in writing, by the Parties. The Department acknowledges that, during the pendency of its bankruptcy, Exide will be required to obtain the review and approval of the bankruptcy court for any Additional Financial Assurance.

#### OTHER REQUIREMENTS AND PROVISIONS

6.0. Submittals: All submittals from Exide pursuant to this Stipulation and Order shall be sent to:

Rizgar Ghazi  
Branch Chief  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826



Edward Nieto  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

Bill Veile  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

Peter Ruttan  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

All correspondence to Exide pursuant to this Stipulation and Order shall be sent to:

Bud DeSart, Sr. Director of Commercial Operations  
Vernon Recycling Center  
2700 S. Indiana Street  
Vernon, California 90058

Joe Preuth, V.P. Recycling  
Exide Technologies, Inc.  
13000 Deerfield Parkway  
Milton, Georgia 30004

Fred Ganster, Director, Environmental Health & Safety  
Exide Technologies  
13000 Deerfield Parkway  
Milton, Georgia 30004

John Hogarth, Plant Manager  
Vernon Recycling Center  
2700 S. Indiana Street  
Vernon, California 90058

Ed Mopas, Environmental Manager  
Vernon Recycling Center  
2700 S. Indiana  
Vernon, California 90058

All submittals by Exide to the Department (reports, closure plans, removal

action plans, etc.) must be certified by an appropriately licensed California Professional Engineer if required by the Business and Professions Code.

7.0. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Exide 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 Exide shall be construed to relieve Exide of its obligation to obtain such formal approvals as may be required.

8.0. Quality Assurance: All sampling and analyses performed by Exide under this Stipulation and Order shall follow applicable Department and U.S. EPA guidance for sampling and analyses. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling monitoring, and analytical activities. Any deviations from the approved workplans must be approved by the Department prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

The names, addresses, and telephone numbers of the California State-certified analytical laboratories Exide proposes to use must be specified in the applicable workplans.

All workplans required under this Stipulation and Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their

intended uses.

9.0. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Stipulation and Order fails to comply with this Stipulation and 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 Exide with recommended changes and a date by which Exide must submit to the Department a revised document incorporating the recommended changes.

10.0. Compliance with Applicable Laws: Exide shall carry out the obligations under this Stipulation and Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety. Nothing in this Stipulation and Order shall excuse Exide from meeting any more stringent requirement that may be imposed by any applicable law or by any change in applicable law. Nothing in this Stipulation and Order is intended nor shall it be construed to preclude any other State or local agency, department, board, or entity from taking appropriate enforcement actions or otherwise exercising its authority under any law, statute or regulation.

11.0. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not occurring or conducted in compliance with this Stipulation and Order) are creating an imminent or substantial danger to the health or welfare of people on the site or

in the surrounding area or to the environment, the Department may order Exide to stop further implementation for such period of time as needed to abate the endangerment (a "Stop Work Order"). Any deadline in this Stipulation and Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order, and no stipulated penalties will be assessed if such circumstance or activity constitutes an event of force majeure under section 25.

If the Department determines an activity, or data or information becomes known to the Department, demonstrating that an activity undertaken pursuant to this Stipulation and Order is creating an imminent or substantial danger to the public, the Department shall apply the procedures set forth in Section 5.4 of the February 25, 2002 Corrective Action Consent Order, Docket No. P3-01/02-010, provided, that if Exide disputes any decision rendered pursuant to those procedures, Exide may seek direct and immediate judicial review in an appropriate California forum.

12.0. Liability: Nothing in this Stipulation and 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 Exide, except as specifically provided in this Stipulation and Order. Notwithstanding compliance with the terms of this Stipulation and Order, Exide may be required to take further actions as are necessary to protect public health or welfare or the environment. Further, nothing in this Stipulation and Order shall constitute or be construed as an admission of liability by or on behalf of Exide for any conditions or claims arising as a result of past, current, or future operations, acts or omissions of Exide. Exide

specifically denies all liability and reserves all legal rights and defenses.

13.0. Government Liabilities: The State of California shall not be liable for injuries or damages to person or property resulting from acts of omissions by Exide or related parties specified in section 27 (Parties Bound) in carrying out activities pursuant to this Stipulation and Order, nor shall the State of California be held as a party to any contract entered into by Exide or its agencies in carrying out activities pursuant to this Stipulation and Order.

14.0. Reservation of Rights: By entering into this Stipulation and Order, and except as otherwise provided herein, the Department does not waive the right to take further enforcement actions and Exide does not waive the right to challenge any such actions in an appropriate California forum. Nothing in this Stipulation and Order shall be construed to preclude or prejudice the Department from taking further action with regard to any remediation required as a result of the release of hazardous wastes, constituents of hazardous waste or hazardous substances at or from the Facility, and the Department expressly reserves all such rights. Exide reserves all rights to challenge any such action in an appropriate California forum. This Stipulation and Order is without prejudice to the Department to exercise its authority to impose any conditions, requirements, standards or actions pursuant to a hazardous waste permit, nor is this Stipulation and Order intended or shall be construed to mean that the Department will approve or deny the pending Part B permit application for the Facility and Exide reserves all rights to challenge any such actions in an appropriate California forum. This Stipulation and Order shall not be construed as a release, waiver, or limitation on any rights, remedies,

powers, or authorities, that the Department or Exide has under any statutory regulatory, or common law authority, except as otherwise expressly provided in this Stipulation and Order.

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

16.0. Site Access: Subject to the Facility's security and safety procedures, Exide shall provide access at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Stipulation and 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 Exide in carrying out the terms of this Stipulation and Order; and conducting such tests as the Department may deem necessary. Exide shall permit such persons to inspect and copy all records, files, photographs and documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Stipulation and Order to the extent consistent with applicable law. If the Department is requested or required to disclose or produce proprietary trade secrets, confidential business information or otherwise privileged information, documents or data received pursuant to this Stipulation and Order, the

Department shall comply with the procedures established pursuant to the California Public Records Act, Government Code section 6250 et seq., and Health and Safety Code sections 25173 and 25185(d).

17.0. Sampling, Data, and Document Availability: Exide shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Exide or on Exide's behalf in any way pertaining to work undertaken pursuant to this Stipulation and Order to the extent consistent with applicable law. As provided above, if the Department is requested or required to disclose or produce proprietary trade secrets, confidential business information or otherwise privileged information, documents or data received pursuant to this Stipulation and Order, the Department shall comply with the procedures established pursuant to California Public Records Act, Government Code section 6250 et seq., and Health and Safety Code sections 25173 and 25185(d).

Exide shall notify the Department in writing at least seven (7) days prior to beginning each separate phase of field work. At the request of the Department, Exide shall provide or allow the Department and its authorized representatives to take splits or duplicates of any samples collected by Exide for the Proposed Storm Water Sewer Piping Plan pursuant to this Stipulation and Order, including soil, dust, sediment and water (if encountered). Similarly, at the request of Exide, the Department shall provide or allow Exide and its authorized representatives to take splits and duplicates of any samples collected by the Department pursuant to this Stipulation and Order, including soil, dust, sediment and water (if encountered).

Exide shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Stipulation and Order. All such data, reports, and other documents shall be preserved by Exide for a minimum of six years after the conclusion of all activities under this Stipulation and Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Exide shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Exide shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Stipulation and Order.

18.0. Costs: Exide is liable for all costs associated with the matters covered by this Stipulation and Order, including, but not limited to all costs incurred by the Department in reviewing workplans and overseeing the work required by this Stipulation and Order but excluding attorney's fees and costs associated with the administrative hearing and court proceedings arising from the Suspension Order. Any costs pre-dating June 10, 2013, the date Exide filed a voluntary petition for relief under Chapter 11 in the Bankruptcy Court, may be regarded as general unsecured claims. The Department shall retain all cost records associated with the work performed under this Stipulation and Order as required by State law. The Department shall make all documents which support the Department's cost determination available for inspection upon request, as provided by the Public Records Act. Approval and allowance for the payment of the Department's post-petition oversight costs shall be subject to approval by the Bankruptcy Court, which may be granted in the Bankruptcy Court's order approving the Stipulation and



Order. If approved by the Bankruptcy Court, the Department may present to Exide invoices for oversight costs and Exide shall pay the Department such costs within thirty (30) days of presentment without the need of either Party to seek further Bankruptcy approval to present the invoice or to make the payment.

19.0 Alternative Technology: Exide may submit a request to the Department for its consideration and approval to use any technology as an alternative to those required to be used by Exide pursuant to this Stipulation and Order. Any technology proposed may require submittal of a permit modification and require approval from the Department.

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

21.0. Extension Requests: If Exide is unable to perform any activity or submit any document within the time required under this Stipulation and Order, Exide may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. All requests shall be in advance of the date on which the activity or document is due.

22.0. 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. Exide shall comply with the new schedule specified by the Department, which shall be incorporated by reference into this Stipulation and Order.

23.0. Additional Enforcement Actions: The Department does not waive the right to take further enforcement actions and Exide does not waive the right to challenge or appeal any Department enforcement order in an appropriate California forum, except to the extent provided in this Stipulation and Order.

24.0. Stipulated Penalties for Noncompliance: Exide shall be liable for stipulated penalties in the amount of \$5,000 per day for the first three (3) days and \$10,000 per day thereafter per violation as specified in sections 5.5, 5.13, 5.20, 5.21 and 5.29 above. No penalties shall be paid from the financial assurance fund set up pursuant to section 5.32, above. Subject to Exide's right to appeal or challenge stipulated penalties imposed pursuant to this Stipulation and Order, in an appropriate California forum, Exide shall pay any stipulated penalty within thirty (30) days of receiving the Department's demand for payment without the need for further Bankruptcy Court approval by the Department to request payment by Exide or by Exide to make the payment. In the event that stipulated penalties are assessed against Exide by the Department during the pendency of the Bankruptcy Case, such post-petition penalties will be afforded administrative expense priority and be deemed as an allowed administrative expense and such post-petition penalties are to be paid by Exide upon demand by the Department without the need to seek further Bankruptcy approval; provided, however Exide shall retain the right to challenge the allowance of any such stipulated penalties on any ground in an appropriate California forum. In the event that Exide submits such a challenge, upon final determination, Exide shall pay the penalty, if any, upon demand from the Department without the need for further Bankruptcy Court approval.

All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Stipulation and Order as provided by Health and Safety Code sections 25188, 25189 and 25189.2 and other applicable provisions of law. However, the Department will not assess duplicate penalties if delay of one obligation has a causal effect upon a subsequent and related obligation.

This provision shall not preclude the Department from seeking, nor Exide from challenging in an appropriate California forum, additional sanctions as provided for by law or regulation, including but not limited to civil penalties or other civil or administrative liability if Exide's failure to comply with the terms of this Stipulation and Order also is a violation of any law, regulation or obligation over which the Department has jurisdiction.

This provision shall not preclude the Department taking, nor Exide from challenging in an appropriate California forum, further action against Exide seeking penalties for violation of interim status requirements or the Hazardous Waste Control Law (Health & Saf. Code, §25100 et seq.), or equitable relief for matters not specifically addressed by this Stipulation and Order.

25.0. Force Majeure: Exide shall cause all work to be performed within the time limits set forth in this Stipulation and Order unless an extension is approved or performance is delayed by events that constitute an event of force majeure. For

purposes of this Stipulation and Order, an event of force majeure is an event arising from circumstances beyond the control of Exide that delays performance of any obligation under this Stipulation and Order, provided Exide has undertaken all appropriate planning and preventative measures to avoid any foreseeable circumstances. Increases in cost of performing the work specified in this Stipulation and Order shall not be considered circumstances beyond the control of Exide. For purposes of this Stipulation and Order, events which constitute a force majeure shall include, without limitation, events such as acts of God, war, civil commotion, unusually severe weather, labor difficulties, shortages of labor, materials or equipment, equipment breakdown or failure not resulting from operational error, neglect or improper operation or maintenance procedures, government moratorium, delays in obtaining necessary permits or approvals due to action or inaction by third parties, earthquake, fire, flood, or other casualty. Exide shall notify the Department in writing immediately after the occurrence of the force majeure event. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Exide to minimize the delay and the timetable by which these measures shall be implemented. If the Department does not agree that the delay is attributable to a force majeure event, then the matter may be subject to the dispute resolution procedures set forth in section 19.0 of the February 25, 2002 Corrective Action Consent Order.

26.0. Costs and Attorney's Fees: With respect to this administrative enforcement proceeding and the California State Court Action, each party shall

bear its own costs and attorney's fees, except as provided in section 18, above.

27.0. Parties Bound: This Stipulation and Order shall apply to and be binding upon Exide and its successors, and assignees, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Stipulation and Order. Exide shall disclose the terms and conditions of this Stipulation and Order to all employees, consultants or independent contractors who are assigned or engaged to assist Exide comply with its obligations and duties hereunder.

28.0. Integration: This Stipulation and Order constitutes the entire agreement between the Parties as to the settlement of the subject dispute and may not be amended, supplemented, or modified, except as provided in this agreement.

29.0. Compliance with Waste Discharge Requirements: To the extent required by law, Exide shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

30.0. Time Periods: Unless otherwise specified, time periods begin from the effective date of this Stipulation and Order and "days" means calendar days. In computing any period of time under this Stipulation and Order, where the last day would fall on a Saturday, Sunday or federal or State holiday, the period shall run until the next business day.

31.0. Authority to Enter Into This Stipulation and Order: Each signatory to this Stipulation and Order, certifies that he or she is fully authorized by the Party he or she represents to enter into this Stipulation and Order, to execute it on behalf of

the party represented, and to legally bind that party.

32.0 Dispute Resolution: Except as otherwise provided in this Stipulation and Order, any dispute arising between Exide and the Department in connection with this Stipulation and Order shall be subject to the dispute resolution procedures set forth in section 19.0 of the February 25, 2002 Corrective Action Consent Order; provided, that if Exide disputes any decision rendered pursuant to those procedures, Exide may seek direct and immediate judicial review of the dispute in an appropriate California forum.

33.0 Choice of Forum: The Parties agree California law applies to this Stipulation and Order and that any disputes are subject to review in a California court of competent jurisdiction.

34.0 Facility Closure: In the event that Exide delivers a written notice to the Department that Exide has ceased operations at the Facility, this Stipulation and Order shall automatically terminate, except for section 35, and Exide shall comply with all requirements related to closure of the Facility, including but not limited to corrective action.

35.0 Covenant Not to Sue: Except as otherwise provided in this Stipulation and Order, the Parties covenant not to sue or pursue any and all further civil and administrative claims, demands, causes of action and/or liabilities arising out of, related to or resulting from the conduct alleged in the Suspension Order, which conduct took place prior to the execution of this Stipulation and Order. The Department specifically reserves its right to consider any and all underlying facts pertaining to the conduct alleged in the Suspension Order for purposes of

evaluating Exide's compliance history and for purposes of making any permit determinations. Exide reserves its right to dispute the underlying facts of the conduct alleged in the Suspension Order and contest any permit determination made by the Department.

36.0 Severability: If any provision of this Stipulation and Order is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Stipulation and Order, and the remaining portions of this Stipulation and Order shall continue in full force and effect, unless enforcement of this Stipulation and Order as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Stipulation and Order.

37.0. Effective Date: The effective date of this Stipulation and Order shall be the date on which the Stipulation and Order is signed by the Department except that the Stipulation and Order will not become effective until any order entered by the Bankruptcy Court approving the Stipulation and Order has become a final order. If for any reason this Stipulation and Order is not approved by the Bankruptcy Court, or does not become a final order (and such condition to the Effective Date is not waived by Exide and the Department), this Stipulation and Order shall be null and void. As used herein, a "Final Order" means an order of the Bankruptcy Court (a) as to which the time of appeal shall have expired and as to which no appeal shall then be pending; provided, however, the Parties reserve the right to waive any appeal period or (b) if a timely appeal shall have been filed or sought, the order which is the basis of the appeal shall have been affirmed by the

highest appellate court to which such appeal could have been presented and/or the time for taking further appeals has expired.

IT IS SO STIPULATED:

Dated:\_\_\_\_\_

\_\_\_\_\_  
**Name and Title**

Exide Technologies, Inc.

Approved as to form:

Dated:\_\_\_\_\_

\_\_\_\_\_

Randolph C. Visser

Sheppard, Mullin, Richter & Hampton

Counsel for Exide Technologies

IT IS SO STIPULATED AND ORDERED:

Dated:\_\_\_\_\_

\_\_\_\_\_

Name and Title

Department of Toxic Substances Control



Approved as to form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy J. Bothwell

Department of Toxic Substances Control

Senior Staff Counsel