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File No. 11630009

August 10, 2009

VIA HAND DELIVERY

Mike Dandurand
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176

RECEIVED
AUG 10 2009

Mary Grisolano
United States Environmental Protection Agency, Region VII
RCRA Corrective Action and Permits Branch
901 N. Fifth Street
Kansas City, KS 66101

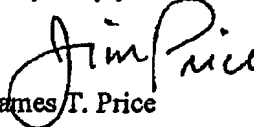
Hazardous waste Program
MO Dept. of Natural Resources

Re: Exide Technologies
Canon Hollow Recycling Facility
Forest City, Holt County, Missouri
Hazardous Waste Management Permit No. MOD030712822

Dear Mr. Dandurand and Ms. Grisolano:

Accompanying this letter are the comments of Exide Technologies in response to Part I and Part II of the draft Hazardous Waste Facility Permit issued for public notice and comment. Exide Technologies is available to explain any of these comments and looks forward to working with you to address them.

Very truly yours,


James T. Price

JTP/sah
Enclosures

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Exide Technologies Comments on Draft RCRA Permit Hazardous waste Program
Part I and Part II – Permit No. MOD030712822 MO Dept. of Natural Resources
(Public Comment Period 06-25-09 through 08-10-09)

No.	Reference	Comment
Part I		
1.	Pg 5 – Introduction (Intro), 1 st Bullet Item	Include revision dated February 7, 2001. This revision contained some revised drawings that were not resubmitted, but rather incorporated by reference in the August 1, 2007 submittal.
2.	Pg 6 – Intro, 5 th Paragraph (par)	The term “any inaccuracies” is too harsh and could be interpreted to include something as minor as typos. The present permit wording does not fit the regulations well and appears to go beyond the regulations. The first sentence in the paragraph should be revised to read as follows, “This Permit may be terminated, revoked and reissued, or modified in accordance with 40 CFR Paragraph 270 Subpart D, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(D).”
3.	Pg 7 – Intro, 3 rd par	There is no basis for the Missouri Department of Natural Resources (MDNR) to incorporate into this permit all the applicable environmental laws and regulations that MDNR may enforce against this facility. Requirements under the Air Pollution Control Program, Hazardous Waste Program, Land Reclamation Program, Solid Waste Management Program, and Water Protection Program are complex and each of these programs has its own enforcement mechanisms. If the facility runs afoul of one of these requirements, the appropriate place to deal with that is under that program, not to jeopardize the facility’s RCRA permit. EPA has issued guidance that supports Exide’s position. MDNR should delete this paragraph or include citation of the appropriate statutory and regulatory authority to suspend or revoke this permit based on non-compliance with other environmental laws.
4.	Pg 7 – Intro, 4 th par	The following sentence should be added to the permit term paragraph, “This permit is issued for a period of ten years, but in accordance with 40 CFR 270.51 as incorporated in 10 CSR 25-7.270(1), if timely application is submitted, the permit continues in effect until a replacement permit is issued.”
5.	Pg 8 – Intro, 3 rd par	At the end of this paragraph, add the following words “in accordance with applicable regulations.”
6.	Pg 8 – Intro, 5 th par	The last two sentences of this paragraph should be revised to clearly reflect if MDNR has authority for complete implementation of the corrective action program. The Part II permit does not appear to retain any corrective action authority for EPA. This paragraph should be clear in defining what areas of corrective action are under MDNR authority and what areas, if any, are implemented by EPA.
7.	Pg 11 – Schedule of Compliance (SOC) I.A.	It is the position of Exide that the intent of 10 CSR 25-7.270(2)(B)7 has been met with the application currently on file with MDNR, unless new requirements are identified during the public comment period.

No.	Reference	Comment
8.	Pg 12 – SOC III.A.	Delete the wording “for approval revisions to the” and insert “an updated” in its place. Closure cost estimates were prepared for the Proposed Battery Storage Building and have been reviewed and approved by the department as part of the Class 1 permit modification approval letter for the Closure and Post-Closure Care Plan. The approved cost estimate only needs to be updated to adjust for annual inflation, as is currently required for the operating RCRA units, and included in the financial assurance instrument prior to utilization of the building. A revision of the closure cost estimate for the proposed building should only reflect the annual adjustment calculation.
9.	Pg 14 – Submittal of Required Information, II	Item II should be revised to be consistent with the Part II language as follows, “The Permittee shall submit two copies of all reports, documents, and plans and specifications, requested by EPA under the terms of this Permit to. . .”
10.	Pg 17 – Special Permit Condition (SPC) I.A.	(1) Delete the following portion of the next to last sentence of 1 st paragraph, “is containerized and is managed in accordance with the requirements of Special Permit Condition 1.” MDNR does not have jurisdiction and authority to require non-regulated materials to comply with conditions of this permit. (2) The reference for the K069 listing as 40 CFR 261.31 is incorrect. The correct regulatory reference is 40 CFR 261.32.
11.	Pg 17 & 18 – SPC I.B.	Items B.1, 2, 3, and 4 should be reworded to restrict only hazardous wastes containing free liquids, with the exception of batteries, from the container storage areas. MDNR does not have jurisdiction and authority to require non-regulated materials to comply with conditions of this permit.
12.	Pg 20 – SPC I.C.2.	Labeling requirements for batteries should be deleted from this permit condition. Batteries are exempt from DOT transportation and labeling regulations (reference 49 CFR 172.400a (b) and 49 CFR 173.159(e)).
13.	Pg 21 – SPC I.E.2.d.	This permit condition should be deleted. The regulatory requirements for labeling of palletized batteries are based on DOT regulations and batteries are exempt from DOT labeling requirements. For the most part, the transport of batteries is complete upon receipt at Exide, and if they are exempt from DOT labeling requirements up to their receipt at Exide, it is illogical to require labeling of the same batteries upon receipt and placement in storage at Exide. In addition, spent whole batteries, whether individual or palletized, are easily recognizable as spent batteries and there is no practical reason or justification for requiring spent batteries to be labeled while in storage. Spent batteries in storage can readily be identified, as to the type of waste; and any other relevant information that an inspector may require is readily available at the facility. A requirement for labeling of palletized or individual batteries serves no useful purpose and is an unreasonable burden on the Permittee.

No.	Reference	Comment
14.	Pg 21 – SPC I.E.3.c.	This permit condition should be deleted. The requirement for replacement of missing caps on individual whole batteries is not practical. All that should be required is that leaking batteries not cause releases into the soil or environment. Exide has committed to the immediate cleanup of any observed spillage or leaking acid from batteries, and the removal from storage and processing of any leaking batteries. Due to the minor amount of liquids involved in a spillage or battery leaking situation, the aforementioned response action is adequate to prevent a release into the environment.
15.	Pg 22 – SPC I.E.3.d.	This permit condition should be deleted. Please reference the comment for SPC I.E.2.d. as to the rationale for this comment.
16.	Pg 22 – SPC I.F.1.	This permit condition should be reworded to only address the frequency of inspection and not include a response action. As currently worded, the permit condition goes beyond the inspection requirements of 40 CFR 264.174 in specifying the repair of any size crack in the floor of the container area within 10 calendar days of the identification of a crack. The requirement for no allowance of a crack in the floor and the rapid repair of any identified crack is taken out of context from the containment requirements of 40 CFR 264.175 which addresses a floor crack as part of the overall design and operation of the containment system and its capability to contain leaks and spills until the collected material is detected and removed. The containment requirements in 264.175 addresses the overall capability of the base of the containment system to contain liquids, and also specifies that for containers not holding wastes that contain liquids, a containment system meeting the regulatory requirements is not necessary. Considering the fact that the stored batteries contain only a small volume of liquid in each battery, the requirement for rapid repair of any identified crack in the floor, regardless of magnitude is unnecessary and overly restrictive.
17.	Pg 23 – SPC I.G.1.	Item e. should be added to read as follows, "The containment system base shall be maintained to be sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed."
18.	Pg 24 – SPC I.F.2.f.	This item should be revised to read as follows, "All trailers containing spent batteries shall be parked on a paved surface sufficiently impervious to contain leaks and spills until the collected material is detected and removed."
19.	Pg 25 – SPC II.A.	<p>(1) Add "smelter slag" to the list of wastes authorized for storage in the containment buildings.</p> <p>(2) Delete the following wording at the end of the next to last sentence of the 1st paragraph "and is managed in accordance with the requirements of Special Permit Condition II." Also substitute "hazardous waste" for "waste" in the last sentence of the 1st paragraph. MDNR does not have jurisdiction and authority to require non-regulated materials to comply with conditions of this permit.</p>

No.	Reference	Comment
20.	Pg 26 & 27 – SPC II.B. Pg 24 – SPC I.I. In general, throughout permit	(1) The terms "materials" and "wastes" should be replaced with the term "hazardous wastes." MDNR does not have jurisdiction and authority to require non-regulated materials to comply with conditions of this permit. (2) The reference in SPC II.B. for the K069 listing as 40 CFR 261.31 is incorrect. The correct regulatory reference is 40 CFR 261.32.
21.	Pg 26 – SPC II.B.4.	(1) The 4 th sentence in the paragraph should be revised for clarification to read as follows, "Only the stabilization unit located in the Stabilization/Staging and Storage containment building shall be utilized for treatment of hazardous waste." (2) Add "smelter slag" to the list of wastes approved for treatment in the 5 th sentence of the paragraph.
22.	Pg 28 – SPC II.C.8.a.	The term "significant" should be inserted in the 1 st sentence prior to the word "cracks" to be consistent with the regulatory language of 40 CFR 264.1101.(c)(i).
23.	Pg 29 – SPC II.C.8.c.	This permit condition language should be revised to read as follows: "Operate decontamination stations at the heavy equipment exit of each containment building to prevent the tracking of hazardous waste out of the buildings by decontaminating all waste/material-handling vehicle tires prior to their exiting a containment building. No waste/material-handling vehicle shall exit any containment building without having its tires decontaminated by washing except during periods of freezing temperatures and/or weather conditions conducive to ice formation on travel surfaces. All rinsate shall be collected and properly managed. During periods of freezing temperatures and/or weather conditions conducive to ice formation on travel surfaces, and during any period the decontamination station is inoperable, hazardous waste visible on any waste/material-handling vehicle tires shall be physically removed prior to exiting the building." This language better reflects the regulatory requirement to take measures to prevent tracking of waste from the containment building.
24.	Pg 30 – SPC II.D.3.	The general inspection requirements of 40 CFR 264.15 referenced in this permit condition were addressed in the approved application. A more appropriate regulatory reference for the inspection of containment buildings would be referencing compliance with the operational requirements of 40 CFR 264.1101(c). This permit condition should be revised to read as follows: "At least weekly, all dry storage containment buildings shall be inspected for compliance with 40 CFR 264.1101(c)(1) and Special Permit Condition II.C.8. If a condition is detected that could lead to or has caused a release of hazardous waste, the permittee must repair the condition promptly in accordance with the requirements of 40 CFR 264.110(c)(3)."

No.	Reference	Comment
25.	Pg 31 – SPC V.	Revise the 1 st sentence of the 2 nd paragraph to read as follows "Prior to construction of any new phase of Landfill 2 construction, and as applicable. . . ." The documents specified in this paragraph are not applicable to beginning construction of Phase III of Landfill 2 since a base liner is not required for Phase III.
26.	Pg 32 – SPC.V.A.	(1) Add "smelter slag" to the wastes approved for acceptance at the landfill in the 1st paragraph. (2) The reference for the K069 listing as 40 CFR 261.31 is incorrect. The correct regulatory reference is 40 CFR 261.32.
27.	Pg 34 – SPC V.C.10.	Substitute "wash" for "decontamination" and insert "wheels" behind equipment in the 1 st sentence. Insert "wheels" behind equipment in the 3 rd sentence. In addition, the term vehicle should be singular instead of plural in the 1 st and 3 rd sentences. This terminology better reflects the intent of the wash station to prevent tracking of waste from the landfill onto the roadway.
28.	Pg 35 – SPC V.C.16.	All references to Phase III should be deleted from this permit condition. The documents/activities referenced in this condition are dealing with construction of a composite liner landfill base system that is required for Phase I and Phase II. No such base system, or other type of construction, is required for the preparation of Phase III and is therefore not applicable. Upon completion of Phase III, a final cover system is required which will require such documents, but this is covered under the landfill closure which is part of SPC VI.
29.	Pg 39 – SPC VI.H.	The term "Landfill 2" should be inserted prior to the word "closure" in the 1 st sentence of this permit condition to clarify that the requirements for this restriction is limited to Landfill 2. The last sentence of this permit condition should be deleted, as the requirement that Exide comply with Missouri's Environmental Covenant Act is not appropriate since this permit condition requirement is merely a notification and not a restrictive covenant.
30.	Pg 41 – SPC VIII.A.2.	Add the following sentence to the end of the comment, "The Final SAP/Quality Assurance Project Plan shall be revised as necessary to be consistent with groundwater and surface water monitoring permit conditions."
31.	Pg 49 – Table 1	Table 1 footnotes the listed detection limits as the lowest achievable practical quantitation limit available from the Permittee's contract laboratory. The achievable limits for Exide's contract lab are very close to those listed in Table 1; however, the limits specified in Table 1 do not accurately reflect the lowest achievable limit for Exide's lab for all of the listed parameters. The lab is currently evaluating the purchase of additional analysis equipment that could influence the detection limits currently applicable for Exide. Exide will consult further with their lab on equipment utilization, and submit separately a listing of the lowest achievable practical quantitation limits that would be available from Exide's contract lab at the anticipated time of issuance of the final permit.

No.	Reference	Comment
32.	Pg 51 – Corrective Action (CA) Conditions	Beginning on Page 51 is the portion of the permit addressing Corrective Action Conditions. The comments that follow here are to those conditions. The references to the sections are "CA ___", for Corrective Action, followed by the Corrective Action section number.
33.	Pg 60-61 – Section CA-VII	The requirement to submit a CMS work plan to MDNR and EPA within 45 calendar days of notification of the requirement to conduct a CMS is too short and is not practical.
34.	Pg 65-80 – Section CA-XIII Corrective Action Cost Estimates and Financial Assurance	This section contains an extensive set of requirements for estimating costs for corrective action and posting financial assurance mechanisms. Page 65 cites a number of statutes and regulations, but those regulations do not apply to financial assurance for corrective action but rather to financial assurance for the operating portion of the permit. Financial assurance for the operating portion of the permit fundamentally is different from financial assurance for corrective action. It is inappropriate for the permit to attempt to impose these types of operational cost estimate and financial assurance requirements on corrective action.
35.	Pg 65-66 – Section CA-XIII.A.1. Corrective Action Cost Estimates	The provision barring offsets for salvage value fails to recognize the values that such components can have at a facility such as this one. If the sale of wastes, facility structures or equipment, land, or other assets associated with the facility would generate money for corrective action, Exide should be entitled to recognize that economic reality in making its cost estimates. The provision for submitting cost estimates within 60 days is improper and appears to be based on closure requirements. Submittal of a written cost estimate within 180 days would be more appropriate.
36.	Pg 66 – Section CA-XIII.A.1.d. and 2.a. Corrective Action Cost Estimates	The statement, "discounting is not allowed," is not realistic or appropriate, and is arbitrary and capricious. This especially is the case when coupled with the annual adjustment for inflation provision. Exide should not be required both to adjust for inflation but not discount to present value for future costs.
37.	Pg 67 – Section CA-XIII.B. Corrective Action Financial Assurance	The opening section reserves too much authority in MDNR and does not reference any regulatory support.
38.	Pg 68 – Section CA-XIII.B.2.c., Corrective Action Financial Assurance	This section improperly purports to require Exide to consent to the provisions of this section. This section should limit its requirements to information reasonably required by MDNR to make a decision, and Exide should not be required to consent.
39.	Pg 69 – Section CA-XIII.B.3. Certified Mail	It is not clear what purpose is served by requiring financial assurance instruments and related documents to be sent by certified mail. Electronic mail, Federal Express, U.S. Mail, and other delivery systems should be acceptable.
40.	Pg 69 – Section CA-XIII.B.5. Inadequate Financial Assurance Instrument	This section reserves too much discretion to MDNR to determine whether a financial assurance instrument is adequate, and there is no regulatory citation or objective standard against which such a determination would be measured.

No.	Reference	Comment
41.	Pg 73-74 – Section CA-XIII.B.9. Corrective Action Performance Failure	This section reserves too much discretion to MDNR and does not refer to any regulations nor to any objective standards. Moreover, if MDNR issues notice of a performance failure, Exide would be required to provide cash to fund the trust fund sufficient to complete the remaining corrective action activities. These requirements are not realistic nor supported by regulation, and they could cause financial harm to Exide based on incorrect decisions by MDNR.
42.	Pg 75-80 – Section CA-XIII.B.11. Corrective Action Financial Assurance Instruments	The permit purports to reserve too much discretion in MDNR to determine which financial instruments would be appropriate. The regulations cited by this section are for operating requirements, not for corrective action financial assurance. Thus, there is no regulatory basis for this section of the permit, nor does the permit state an objective basis for any of this section's requirements. Many of the provisions state that the instruments must pay into a fund if directed by MDNR. This requirement is not supported by regulation, is inappropriate, and potentially abusive. With regard to the requirements for an insurance policy, it may not be practical to require the insurance company to be regulated by a federal or state agency inasmuch as insurance carriers that write environmental pollution insurance generally are non-admitted carriers in the various states. The requirements imposed upon a permittee using the financial test or corporate guaranty to achieve financial assurance are overly broad, unduly restrictive, and not supported by applicable regulations.
43.	Pg 80 – Section CA-XIV	This section's procedures for review and approval and procedures for disapproval should be expanded. Subsection C, in particular, should be expanded to allow Exide to appeal departmental decisions in accordance with state law and regulations and to include any departmental finding, order, decision, or assessment, not just plans or report modifications.
44.	Pg 81 – Table 2	The RCRA Facility Investigation Report requirement should be deleted from Table 2. This requirement is a corrective action condition and is included in Table 3.
45.	Pg 82 – Table 2	The annual progress report requirement is a corrective action condition and should be moved to Table 3.
46.	In general, throughout permit	The United States Environmental Protection Agency has issued new regulations on what constitutes a "waste" and "solid waste" under RCRA. Recyclable materials, in particular, will be treated differently under that regulation. At this time, those regulations are not part of Missouri's regulations, but at some future point, they may be. This permit should specify how it will incorporate those changes as they are made to Missouri's regulations.
47.	In general, throughout permit	Part I of the Permit references a regulatory citation for many of the permit conditions and appears to be a quote of the applicable regulation. However, in several cases, the complete regulatory language has not been included, or else the regulatory language was changed. Exide agrees that references to the applicable regulatory authority for permit conditions is appropriate. However, Exide objects to the draft permit language, as revised or partially omitted,

No.	Reference	Comment
		if MDNR intends to by its inclusion to somehow change the applicable terms of the regulations. The statutes and regulations speak for themselves and MDNR cannot, by describing them, change the substance of what they require as applied to this facility. Exide objects to the permit language to the extent the Department intends to do so.
Part II		
48.	In general, throughout permit	<p>This portion presents the comments of Exide Technologies to Part II of the draft Hazardous Waste Management Permit presented for public notice and comment in connection with the Exide Technologies Canon Hollow Recycling Center in Holt County, Forest City, Missouri.</p> <p>Part II appears to grant no additional authorities to Exide. The MDNR is authorized by EPA to operate all parts of the RCRA program applicable to the Exide facility. It does not appear this Part II permit issued by EPA authorizes anything not already authorized by the MDNR permit (Part I). Thus, Part II is duplicative, and Exide objects to Part II as duplicative and superfluous. Further, under the provisions of the Eighth Circuit ruling in Harmon Industries, because MDNR has an authorized program, EPA's efforts to impose this Part II are improper.</p>
49.	In general, throughout permit	Part II contains a number of definitions and recitations of regulatory requirements. While such provisions supply context and understanding, in several instances complete regulatory language has not been included or the regulatory language was changed. Exide objects to the draft permit language, as revised or partially omitted, if EPA intends to change the applicable regulations. EPA should not be allowed by such definitions and regulatory references to vary the substantive terms of the regulations applicable to the facility. If that is the intent of these definitions and regulatory recitations, Exide objects to them as improper.
50.	Pg 1 & 2 Permit Application Inaccuracies	The term "any inaccuracies" is too harsh and could be interpreted to include something as minor as typos. The present permit wording does not fit the regulations well and appears to go beyond the regulations. The second sentence in the first paragraph on page 2 should be revised to read as follows, "This Permit may be terminated, revoked and reissued, or modified in accordance with 40 CFR Paragraph 270 Subpart D.
51.	Pg 14 – Section I.D.6.g. Duty to Provide Information	To the extent this provision goes beyond the applicable regulation, it is improper, inappropriate, and should be deleted.
52.	Pg 14 – Section I.D.6.h. Inspection and Entry	To the extent this provision goes beyond the applicable regulation, it is improper, inappropriate, and should be deleted.
53.	Pg 14 – Section I.D.6.i. Monitoring and Records	To the extent this provision goes beyond the applicable regulation, it is improper, inappropriate, and should be deleted.
54.	Pg 15 – Section I.D.6.j. Reporting Planned Changes	To the extent these provisions go beyond applicable regulations, they are inappropriate, unnecessary, and should be deleted.

No.	Reference	Comment
55.	Pg 16 – Section I.D.6.k. Reporting Anticipated Non-Compliance	This provision does not cite a regulatory basis. To the extent there is none, and to the extent this provision goes beyond the provisions of the applicable regulation, it is inappropriate, unnecessary, and should be deleted. Further, these provisions are unduly burdensome.
56.	Pg 16 – Section I.D.7. Transfer of Permits	To the extent this provision goes beyond the applicable regulations, it is inappropriate, unnecessary, and should be deleted.
57.	Pg 17 – Section I.D.8. Twenty-Four Hour Reporting	Reports should not be required unless reportable quantities of reportable substances under the law will be exceeded. This provision cites no regulatory support. To the extent this provision goes beyond the requirements of an applicable regulation, it is inappropriate and should be deleted. The provision purporting to specify examples should be deleted.
58.	Pg 18 – Section I.D.9. Other Non-Compliance	<p>The provisions of this section are duplicative of other substantive provisions in the permit. They appear to serve no purpose except to increase the size of any penalty that might be imposed for a failure to comply with a Permit Condition. Accordingly, this provision should be deleted.</p> <p>Further, these informational provisions might prohibit the facility from being able to take advantage of EPA's policy on self-assessments, environmental audits, and voluntary disclosures. They should be eliminated.</p>