



**SUMMARY AND RESPONSE TO COMMENTS
EXIDE TECHNOLOGIES – CANON HOLLOW RECYCLING CENTER
FOREST CITY, MISSOURI
EPA ID# MOD030712822**

The Missouri Department of Natural Resources (hereafter “the Department”) and the U.S. Environmental Protection Agency (hereafter “EPA”) Region 7 issued final hazardous waste permits to Exide Technologies (hereafter “the Permittee”). The Department issued the final Missouri Hazardous Waste Management Facility (MHWMF) Part I Permit. EPA issued the final Hazardous and Solid Waste Amendments Part II Permit. The final permits allow the Permittee to continue to store hazardous wastes in containers and containment buildings, treat hazardous waste in a stabilization unit, dispose of hazardous waste produced by the Permittee in an on-site landfill, and conduct post-closure care of a closed landfill. The permits also contain corrective action conditions to address releases to the environment from Solid Waste Management Units or Areas of Concern as necessary.

The Department conducted public participation activities related to the draft permits, as outlined in the Code of State Regulations 10 CSR 25-8.124(1)(A)10. The Department invited the public to review and offer written comments on the draft permits to the Department and EPA during a 45-day public comment period. The public comment period began the day after the Oregon Times Observer published the legal notice, June 25, 2009, and ended August 10, 2009. A public hearing was held July 28, 2009.

There were no comments brought up at the public hearing. All written comments received during the public comment period concerning the draft MHWMF Part I Permit are listed in this summary and response to comments. A response explaining how each comment was addressed in the final MHWMF Part I Permit is also included. The Department changed certain requirements of the draft MHWMF Part I Permit based on technical or legal issues brought up by the comments. All changes to the draft MHWMF Part I Permit are identified in the responses. This summary and response to comments was prepared according to the requirements of 10 CSR 25-8.124(1)(A)17. EPA will provide a separate summary and response to comments on the Hazardous and Solid Waste Amendments Part II Permit.

COMMENTS FROM DEPARTMENT STAFF:

Comment #1:

Special Permit Condition VIII.A.4. on page 42 of the draft permit reference Missouri Well Construction Rules 10 CSR 23-4. This reference should include 10 CSR 23-1 through 10 CSR 23-4.

Response #1:

The final MHWMF Part I Permit language has been modified to read, “Criteria and procedures for well redevelopment, repair, and replacement shall be performed in accordance with the Missouri Well Construction Rules, 10 CSR 23-1 through 10 CSR 23-4, and Sections 256.600 – 256.640, RSMo.”

Comment #2:

Special Permit Condition VIII.A.5. on page 42 of the draft permit reference Missouri Well Construction Rules 10 CSR 23-4. This reference should include 10 CSR 23-1 through 10 CSR 23-4.

Response #2:

The final MHWMF Part I Permit language has been modified to read, “Any new groundwater monitoring well(s) installed by the Permittee to meet the requirements of this Permit shall be designed and constructed in accordance with the requirements of 40 CFR 264.97, 10 CSR 23-1 through 10 CSR 23-4, Monitoring Well Construction Code of the Missouri Well Construction Rules, and/or well-specific plans and specifications approved by the Department.”

Comment #3:

Based upon the adoption of the Burden Reduction rule; 71 FR 16862; April 4, 2006, all references to independent professional engineer throughout the permit shall be changed to professional engineer, registered in Missouri. This removes the requirement that the engineer be independent.

Response #3:

The final MHWMF Part I Permit language has been modified to remove the requirement that the registered professional engineer be independent.

COMMENTS FROM THE PERMITTEE:

Comment #1:

Page 5 - Introduction (Intro), 1st 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.

Response #1:

The Department agrees with this comment and the final MHWMF Part I Permit language has been modified to read: “The Application submitted by the Permittee August 31, 1998, with revisions dated February 1, 2007, August 1, 2007, and October 30, 2008, and two addenda dated May 28, 2009, (Landfill 2 Permitted Capacity and Request for Abandonment of Monitoring Well OW-13).”

Comment #2:

Page 6 - Intro, 5th 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).”

Response #2:

The Department disagrees with this comment as the final MHWMF Part I Permit language states any inaccuracies that are cause for termination, revocation and reissuance, or modification must be done “... in accordance with 40 CFR Part 270 Subpart D, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(D).” In accordance with 40 CFR 270.41, “When the Director receives any information (for example, inspects the facility, receives information submitted by the Permittee as required in the permit (see §270.30), receives a request for revocation and reissuance under §124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist.” The Department will use sound judgment and technical reasoning to determine if cause for termination, revocation and reissuance, or modification is necessary under 40 CFR 270.41. It is not the Department’s intent to terminate or revoke and reissue the Permit without the support of technical or legal reasoning. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #3:

Page 7 - Intro, 3rd 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.

Response #3:

Section 260.395.9, RSMo and 10 CSR 25-7.270(2) incorporating 40 CFR 270.32(b)(1) and (2) “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.” Missouri state law requires everyone to comply with the environmental laws of the state, as applicable. The Permit language simply states the obvious. Further, the Permit language makes it clear that violations of other

environmental statutes may, in certain instances, subject the Permittee to enforcement action under this Permit. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #4:

Page 7 - Intro, 4th 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."

Response #4:

The Department has added the following language to the end of the 4th paragraph: "In accordance with 40 CFR 270.51 as incorporated in 10 CSR 25-7.270(1), if a timely and complete application is submitted, the conditions of the expired Permit continue in force until the effective date or denial of a new Permit."

Comment #5:

Page 8 – Intro, 3rd par: At the end of this paragraph, add the following words "in accordance with applicable regulations."

Response #5:

The Department agrees with this comment and the final MHWMF Part I Permit language has been modified to read, "In addition, assurances of financial responsibility for completing such corrective action must be provided in accordance with 40 CFR 264.101."

Comment #6:

Page 8 – Intro, 5th 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.

Response #6:

The draft MHWMF Part I Permit language appropriately represents the regulations and the Department's authority to implement corrective action requirements. Currently the Department retains authority to implement all corrective action requirements as they pertain to the Permittee. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #7:

Page 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.

Response #7:

The Department disagrees with the comment and interpretation of 10 CSR 25-7.270(2)(B)7. The Department determined that the Permittee has complied with the first requirement of 10 CSR 25-7.270(2)(B)7, as it pertains to the original submittal of the permit application. The second part of 10 CSR 25-7.270(2)(B)7 states, “If a permit is issued, the Permittee shall submit two (2) copies of the entire approved application to the Department.” The Permittee may elect to submit one hard and one electronic copy of the permit application to satisfy the two-copy requirement. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #8:

Page 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.

Response #8:

The Department agrees with this comment and the final MHWMF Part I Permit language has been modified to read, “Submit to the Department an updated closure cost estimate for the Proposed Battery Storage Building.”

Comment #9:

Page 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. . .”

Response #9:

The Department disagrees with this comment. The requirement to submit all documents to the Department as well as EPA is to maintain the same administrative record within each regulatory agency’s file system. This requirement will allow EPA to continue adequate oversight of the Department’s compliance with authorization to administer the state program in lieu of the federal RCRA program. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #10:

Page 17 – Special Permit Condition (SPC) I.A.: (1) Delete the following portion of the next to last sentence of 1st paragraph, “is containerized and is managed in accordance with the requirements of Special Permit Condition I.” 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.*

Response #10:

(1) In accordance with 10 CSR 25-7.270(2), incorporating 40 CFR 270.32(b)(1) and (2): “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.” It is the Department’s position that the requirements for storage of any material in the areas permitted under this Permit shall be managed in accordance with the requirements of this Permit to protect human health and the environment. The Department has determined that managing all wastes within a permitted area of the facility in accordance with the Permit will aid inspections, maintain an orderly facility, and ensure adequate identification of the type and severity of releases as well as the appropriate response actions, all of which ensure protection of human health and the environment. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

(2) The Department has corrected the citation and it now reads, “*In accordance with 40 CFR 261.32, K069’s listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further action is taken.”

Comment #11:

Page 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.

Response #11:

See response to item (1) of comment #10.

Comment #12:

Page 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)).

Response #12:

The labeling requirements will remain in the final MHWMF Part I Permit. If the Permittee is exempt from labeling requirements under DOT labeling regulations, the Permittee is exempt from labeling requirements in storage. The Department does not make a determination on the Permittee’s compliance with DOT requirements. It is the responsibility of the Permittee to make sure it meets all the DOT requirements and/or exemptions.

Comment #13:

Page 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 [sic] 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.

Response #13:

See response to comment #12. Further, the Department has revised the final MHWMF Part I Permit language to read, “The palletized stacks shall be labeled in accordance with applicable USDOT regulations and 10 CSR 25-7.264(2)(I)2;...”

Comment #14:

Page 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.

Response #14:

In accordance with the EPA determination (see 47 FR 12318, March 22, 1982; see also 40 CFR 264.314(c)(3)), an individual spent whole battery is a container. The Department has determined that a battery without a cap is considered an open container. In accordance with 40 CFR 264.173, a container shall remain closed unless waste is being added or removed. The Department has determined that the comment does not justify the lack of a cap, as it is in direct conflict with the regulations. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #15:

Page 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.

Response #15:

The labeling requirements will remain in the final MHWMF Part I Permit. If the Permittee is exempt from labeling requirements under DOT labeling regulations, the Permittee is exempt from labeling requirements in storage.

Comment #16:

Page 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.

Response #16:

Pursuant to Section 260.395.9, RSMo, and in accordance with 10 CSR 25-7.270(2), incorporating 40 CFR 270.32(b)(1) and (2): “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.” The Department agrees that the inspection requirements of 40 CFR 264.174 do not specify the response action to noted deficiencies during an inspection. It is the Department’s decision to include such response action requirements under this section to ensure protection of the environment and to reduce impacts resulting from releases from structurally compromised containment systems. The Department did not modify the final MHWMF Part I Permit. This requirement is not written to require immediate action to address all cracks (e.g., hairline cracks that are not expected to compromise containment of leaks, spills and precipitation). It will be at the discretion of the inspector to determine if a crack is significant to the extent that it warrants a response action.

Comment #17:

Page 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.”

Response #17:

Special Permit Condition I.G.1.a reads as follows, “A base shall underlie the containers, which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.” The Department did not modify the final MHWMF Part I Permit.

Comment #18:

Page 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.”

Response #18:

The Department has modified the final MHWMF Part I Permit language to read as follows, “All trailers containing spent batteries shall remain on a surface which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.”

Comment #19:

Page 25 – SPC II.A.: (1) Add “smelter slag” to the list of wastes authorized for storage in the containment buildings.

(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.

Response #19:

(1) The Department has added “smelter slag” to the list of wastes authorized for storage in the containment buildings.

(2) See response to item (1) of comment #10.

Comment #20:

Page 26 & 27 – SPC II.B., Page 24 SPC – I.I., and in general throughout the 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.

Response #20:

(1) See response to item (1) of comment #10.

(2) The Department has corrected the reference to the K069 listing throughout the Permit to read 40 CFR 261.32.

Comment #21:

Page 26 – SPC II.B.4.: (1) The 4th 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 5th sentence of the paragraph.

Response #21:

(1) The Department has revised the final MHWMF Part I Permit language to read as follows, “Storage of material in the Stabilization/Staging & Storage containment building shall not exceed 355 cubic yards of material. The Permittee shall not store any materials that contain free liquids in this area. The Permittee shall not store any wastes in the Slag Product Work Area of this containment building, as identified on Figure 2. Only the Stabilization Unit located in the Stabilization/Staging & Storage containment building shall be used for treatment of hazardous waste. Air pollution control scrubber sludge, smelter slag, wastewater sludge generated at the on-site treatment plant and soils excavated on site for remediation purposes may be treated in the Stabilization Unit. Treatment in the Stabilization Unit shall not exceed a rate of 10 short tons per hour.”

(2) The wording “smelter slag” has been added to the list of wastes approved for treatment.

Comment #22:

Page 28 – SPC II.C.8.a.: The term “significant” should be inserted in the 1st sentence prior to the word “cracks” to be consistent with the regulatory language of 40 CFR 264.1101.(c)(i).

Response #22:

The Department has not replaced the word “cracks” with the words “significant cracks” This requirement is not written to require immediate action to address all cracks (e.g., hairline cracks that are not expected to compromise containment of leaks, spills and precipitation). It will be at the discretion of the inspector to determine if a crack is significant to the extent that it warrants action.

Comment #23:

Page 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.

Response #23:

In accordance with 40 CFR 264.1101(c)(iii), the Permittee shall “Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed.” The regulations clearly state the equipment must be decontaminated. There is no provision limiting the decontamination procedures to tires or any one part of the equipment. All equipment must be decontaminated to the extent required to prevent tracking hazardous waste out of the unit. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #24:

Page 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).”

Response #24:

The Department has revised the final MHWMF Part I Permit language to read, “At least weekly, the Permittee shall inspect all dry storage containment buildings for compliance with 40 CFR 264.1101(c)(1) and Special Permit Condition II.C.8. At least annually, the Permittee shall inspect the entire floor of all containment buildings for cracks, including areas under stored wastes and equipment. The annual inspection requirement may be met by partial inspections of the floor during movement of material in and out of the storage areas. Floor areas under permanently mounted equipment are exempt from this requirement. If a condition is detected that could lead to or has caused a release of hazardous waste, the Permittee shall repair the condition promptly, in accordance with the requirements of 40 CFR 264.1101(c)(3). Inspection results shall be recorded in the facility operating record.”

Comment #25:

Page 31 – SPC V.: Revise the 1st sentence of the 2nd 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.

Response #25:

The Department has revised the final MHWMF Part I Permit language to read as follows, “Prior to construction of any new phase of Landfill 2, construction plans and specifications along with construction quality assurance/quality control (QA/QC) plans suitable for bid submittals for each phase shall be submitted to the Department for review and approval, as applicable. As required by 10 CSR 25-7.264(2)(N)1.A.(III)(b), the Permittee shall place only wastes generated by its operator into the landfill.”

Comment #26:

Page 31 – 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.

Response #26:

(1) The wording “smelter slag” has been added to the list of wastes approved for treatment.

(2) The Department has corrected the reference to the K069 listing throughout the final MHWMF Part I Permit to read 40 CFR 261.32.

Comment #27:

Page 34 – SPC V.C.10.: Substitute “wash” for “decontamination” and insert “wheels” behind equipment in the 1st sentence. Insert “wheels” behind equipment in the 3rd sentence. In addition, the term vehicle should be singular instead of plural in the 1st and 3rd sentences. This terminology better reflects the intent of the wash station to prevent tracking of waste from the landfill onto the roadway.

Response #27:

Pursuant to Section 260.395.9, RSMo, and in accordance with 10 CSR 25-7.270(2), incorporating 40 CFR 270.32(b)(1) and (2), “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment,” the Department intends to retain the language of this Permit condition as it was developed from the requirements for containment buildings and is necessary to prevent tracking of hazardous waste out of Landfill 2. There is no provision limiting the decontamination procedures to wheels or any one part of the waste management equipment. All equipment must be decontaminated to the extent required to prevent tracking hazardous waste out of the unit. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #28:

Page 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.

Response #28:

The Department has added the term “applicable” to the first paragraph. The Department has revised the final MHWMF Part I Permit language to read as follows: “The Permittee shall not dispose of any waste into the newly constructed Phase II or Phase III of Landfill 2 until the following requirements, as applicable, are completed.”

Comment #29:

Page 39 – SPC VI.H.: The term “Landfill 2” should be inserted prior to the word “closure” in the 1st 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.

Response #29:

The Department has added the term “Landfill 2” before the word closure as this section pertains to the closure of Landfill 2. In accordance with 40 CFR 264.116, as incorporated by 10 CSR 25-7.264(g)(2), “No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable subpart G regulations.” Additionally, in accordance with 10 CSR 25-7.270(2), incorporating 40 CFR 270.32(b)(1) and (2), “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.” It is the Department’s position that land use restrictions and associated institutional and/or engineering controls related to a permitted facility shall comply with the Missouri Environmental Covenants Act and follow the model language contained therein. The final MHWMF Part I Permit language has been modified to read: “In accordance with 10 CSR 25-7.264(2)(G)3 and 4, upon certification of Landfill 2 closure, the Permittee shall record a restriction on an instrument which is normally examined during a title search that in perpetuity will notify potential purchasers of the property that the land has been used to manage hazardous waste. The Permittee shall submit a notarized statement to the Department certifying that the restriction has been recorded with the Holt County Recorder of Deeds. The Permittee shall comply with the Missouri Environmental Covenants Act.”

Comment #30:

Page 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.”

Response #30:

The Department has modified the final MHWMF Part I Permit language to read, “The Permittee shall submit a final SAP/Quality Assurance Project Plan for the Department’s approval within 60 calendar days of the effective date of this Permit to reflect any additional requirements contained in this Permit. The final SAP/Quality Assurance Project Plan shall be revised as necessary to be consistent with groundwater and surface water monitoring permit conditions.”

Comment #31:

Page 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.

Response #31:

The Department’s position is that the Permittee shall use the lowest practical quantitation limit available from the Permittee’s contract laboratory. The Department understands the Permittee’s contract laboratory may change in the future or that the current laboratory capabilities may change in the future, resulting in changes to the maximum detection limits. The Department expects the Permittee to maintain a laboratory with the capabilities to achieve detection limits below applicable groundwater protection standards. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #32:

Page 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.

Response #32:

This comment does not address technical or legal issues within the draft MHWMF Part I Permit; consequently, no response is required.

Comment #33:

Page 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.

Response #33:

The Department respectfully declines to modify the time requirement for submittal of a CMS workplan. The Department understands that meeting required timelines is not always feasible and retains the ability to grant extensions to formally submitted requests in accordance with Corrective Action Condition XIV. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #34:

Page 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.

Response #34:

The Department does not agree or disagree with the individual comments related to Corrective Action Condition XIII., rather the Department intends to address these issues during the final remedy selection process through a Permit modification. The Department's position is that during a final remedy selection process, the detailed financial assurance requirements for completing such corrective action, in accordance with 40 CFR 264.101, will be added to the Permit through a modification. The Department has decided to modify the final MHWMF Part I Permit language to read:

“Corrective Action Cost Estimates and Financial Assurance

- A. Within 120 days after this Permit has been modified to include a final remedy, the Permittee shall demonstrate continuous compliance with the financial assurance requirements in effect at that time for corrective action being performed under state law. The effective financial assurance requirements for corrective action shall be consistent with and/or substantially equivalent to that specified in 40 CFR Part 264 Subpart H, as incorporated by reference in 10 CSR 25-7.264. The amount of financial assurance shall be based on the Permittee's cost estimate for the approved final remedy as contained in the approved CMS Final Report or equivalent.
- B. Annually, within 60 days before the anniversary date of the establishment of the financial assurance instrument, the Permittee shall adjust the corrective action cost estimate to account for inflation in accordance with 40 CFR 264.142(b) and any other

changes in the costs associated with the implementation, operation, maintenance, and monitoring of the approved final remedy. If the cost estimate increases, documentation of adequate financial assurance for that increase shall be submitted to the Department within 60 days after the increase in the cost estimate.”

The final MHWMF Part I Permit language, within Corrective Action Condition IX., has been modified to read, “Following the approval of the CMS Report or equivalent, the Department will prepare a Statement of Basis (SB) summarizing the corrective measures alternatives that were evaluated by the Permittee, including the Department’s basis of support for the proposed final remedy. Following the Department’s preparation of the Statement of Basis, a permit modification will be initiated pursuant to 40 CFR 270.41 or 270.42(c), as applicable, to facilitate public review and comment on the Statement of Basis and proposed final remedy and, thereafter, final remedy approval by the Department and implementation of the approved final remedy by the Permittee. In accordance with 40 CFR 270.41, this Permit will be modified by the Department to require the Permittee to provide assurances of financial responsibility for completing corrective action, in accordance with 40 CFR 264.101(b).”

Comment #35:

Page 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.

Response #35:

See the response to Comment #34.

Comment #36:

Page 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.

Response #36:

See the response to Comment #34.

Comment #37:

Page 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.

Response #37:

See the response to Comment #34.

Comment #38:

Page 68 – Section CA-III.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.

Response #38:

See the response to Comment #34.

Comment #39:

Page 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.

Response #39:

See the response to Comment #34.

Comment #40:

Page 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.

Response #40:

See the response to Comment #34.

Comment #41:

Page 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.

Response #41:

See the response to Comment #34.

Comment #42:

Page 75-80 – Section CA-XIII.B.1.1. 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.

Response #42:

See the response to Comment #34.

Comment #43:

Page 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.

Response #43:

The section in question is only applicable to plans and reports. The Permittee may initiate an appeal of any final Department decision in accordance with 10 CSR 25-2.020 and Sections 260.395.11 and 621.250, RSMo, as the Permit does not supersede or alter the appeals procedure provided in state law. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #44:

Page 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.

Response #44:

Table 2 contains a list of documents required to be submitted to the Department. At this time there is a RFI workplan under Department review, and, after approval, will result in the Permittee being required to submit a RFI report. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #45:

Page 82 – Table 2: The annual progress report requirement is a corrective action condition and should be moved to Table 3.

Response #45:

Table 2 contains a list of documents required to be submitted to the Department. The regulations require the Permittee to submit an annual progress report to the Department by March 1 each calendar year. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #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.

Response #46:

All changes made to the state regulations, that affect the Permit language or operations regulated under the Permit, will be incorporated in the MHWMF Part I Permit through a permit modification. The final MHWMF Part I Permit language will remain the same as the draft MHWMF Part I Permit language.

Comment #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, 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.

Response #47:

The Department does not intend to change the substance or terms of the regulations with this final permit. Furthermore, the Department was unable to respond with specific language, as the comment is non-specific, as written. In accordance with Section 260.395.9, RSMo and 10 CSR 25-7.270(2), incorporating 40 CFR 270.32(b)(1) and (2), “Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.” It is the Department’s decision to issue the final MHWMF Part I Permit as written, and any additional requirements contained therein are considered necessary to protect human health and the environment.