

IN THE CIRCUIT COURT OF HOLT COUNTY
STATE OF MISSOURI

FILED

STATE OF MISSOURI ex rel.,)
Attorney General Chris Koster)
and Missouri Department of)
Natural Resources and the Missouri)
Air Conservation Commission,)

OCT 10 2014

VICKI BOOK
CIRCUIT CLERK - DIV. I
HOLT COUNTY, MISSOURI

Plaintiff)

v.)

Case No. 14HO-CC00064

Exide Technologies)

Respondent.)

CONSENT JUDGMENT

Plaintiff State of Missouri, at the relation of Chris Koster, Attorney General, the Missouri Department of Natural Resources (MDNR), and the Missouri Air Conservation Commission (Commission), and respondent, the Exide Technologies Canon Hollow Recycling Facility located 4 miles northwest of Forest City, Missouri (Exide), by and through counsel, hereby consent to the entry of this Consent Judgment.

WHEREAS, the State of Missouri, through MDNR, in consideration of Exide's agreement to complete the control strategies within the time schedules as more fully set forth in the Consent Judgment below, and Exide, in consideration of the State of Missouri's agreement to accept the implementation of said control strategies as sufficient, under current

information and belief, to attain and maintain the federal and Missouri ambient air quality standard for lead and to accept the time schedules for completion of such control strategies as being as expeditious as practicable, agree to entry of this Consent Judgment.

WHEREAS, in 2008, Environmental Protection Agency revised the National Ambient Air Quality Standard for lead (2008 Lead NAAQS). 73 Fed. Reg. 66,964 (Nov. 12, 2008). The revision reduced the NAAQS for lead from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ over specified monitoring and averaging periods. Starting in Spring 2012, some lead air quality monitoring results at the MDNR's recently-installed Forest City / Exide levee monitoring site in northwestern Missouri showed violations of the 2008 lead NAAQS. Ambient air readings violating a NAAQS may trigger State duties to adopt legal requirements to ensure that NAAQS are achieved and maintained.

WHEREAS, MDNR and the Commission are preparing a State Implementation Plan (SIP) revision to achieve attainment and maintenance of the 2008 Lead NAAQS in the area near the Forest City / Exide levee monitoring site, and it is the intent of MDNR and the Commission that this Consent Judgment establish the requirements of the SIP applicable to Exide.

WHEREAS, as part of the 2014 Lead NAAQS Attainment Demonstration SIP, MDNR, the Commission, and Exide hereby agree that

the Court may enter this Consent Judgment, to be binding on the parties, providing for a lead emission reduction program which Exide hereby agrees to undertake and complete on the schedule set forth in this Consent Judgment. The parties, by their signatures hereto, acknowledge that they have read and understand the terms of this Consent Judgment and agree to be bound thereby. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The parties understand and agree that the terms of this Consent Judgment are enforceable by further order of this Court, and, to that end, the Court retains jurisdiction of the matter in order to enforce the terms of this Consent Judgment.

WHEREAS, this matter comes before the Court on the petition filed by the State of Missouri concurrently with this Consent Judgment.

WHEREAS, by agreeing to the terms of this Consent Judgment, Exide does not admit any liability or any violation of law arising from the allegations set forth in the State's Petition.

NOW THEREFORE, without adjudication or admission of any issue of fact and with the consent of the parties, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to implement control measures set forth herein in furtherance of the attainment and maintenance of the 2008 Lead NAAQS.

II. Jurisdiction

2. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to Section 643.151, RSMo, of the Missouri Air Conservation Law.

III. Parties Bound

3. The provisions of this Consent Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations, and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns.

IV. Satisfaction

4. Upon completion of the terms of this Consent Judgment, Exide is relieved of liability for violations alleged in the State's Petition.

V. Injunctive Relief

5. Exide shall undertake and complete the following lead emission reduction program on the schedule set forth below. These control measures

and the associated schedules are the control measures to be implemented to attain and maintain the 2008 Lead NAAQS pursuant to Section 110 of the federal Clean Air Act.

6. Projects Required: Exide shall install the following lead emission control measures:

A. By the date Exide signs this Consent Judgment, Exide has installed South baghouse ("Negative Pressure Baghouse 1") with a minimum design flow rate of 315,000 standard cubic feet per minute ("SCFM") to improve refinery ventilation.

B. By the date Exide signs this Consent Judgment, Exide has installed North baghouse ("Negative Pressure Baghouse 2") with a minimum design flow rate of 315,000 SCFM to improve hygiene ventilation.

C. By the date Exide signs this Consent Judgment, Exide has installed Acid Demister stack with a minimum height of 40 feet

D. By the date Exide signs this Consent Judgment, Exide has enclosed all buildings containing the following processes: battery breaking, blast furnace, refining and casting, and slag processing. Exide shall operate the Negative Pressure baghouses 1 and 2 as needed based on furnace operations and the ventilation associated with those operations to achieve negative pressure in the operating process

buildings consistent with the National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting, 40 C.F.R. 63 Subpart X (Secondary Lead NESHAP), revised as of January 5, 2012.

E. Changes may be made to the installed equipment during replacement as long as the replacement equipment assures attainment of the 2008 Lead and compliance with the Secondary Lead NESHAP.

7. Required Practices and Procedures.

A. Baghouse Standard Operating Procedures (SOP): Exide has a Baghouse SOP Manual approved by MDNR on August 19, 2013 pursuant to the Secondary Lead NESHAP, revised as of January 5, 2012, for sources at the facility subject to the Secondary Lead NESHAP. After the applicable deadline for any baghouse projects installed pursuant to Paragraph V.6 (Projects Required) or Paragraph 9 (Projects Required as Contingency Control Measures) and that is not otherwise subject to the Secondary Lead NESHAP, any such newly installed baghouse(s) shall be subject to the Baghouse SOP, and the SOP Manual shall be amended to add procedures applicable to each such baghouse.

B. Baghouse Maintenance or Extended Periods of Non-Production (Shut Downs): Exide may cease the operation of any of the ventilation system units used to achieve the appropriate amounts of

negative pressure as required by paragraph 6.D above in order to perform maintenance on the ventilation system, or if all of the lead processing units within a given building have been turned off and all corresponding production has ceased.

C. Local Exhaust Ventilation (LEV) Operation: Exide shall operate LEVs at the following emission units when the units are operating: (1) Blast Furnace Charging, (2) Furnace lead and slag tapping, and (3) refinery kettles.

D. Fenceline Maintenance: Appendix A indicates the areas where modeling has shown the potential for lead levels in ambient air to violate the 2008 Lead NAAQS. Appendix A contains a map and table of ambient air boundary coordinates as provided in the 2014 Lead NAAQS Attainment Demonstration SIP. Exide must preclude public access at a minimum distance from the facility as indicated by the boundary established in Appendix A. Exide shall notify MDNR of its intent to modify the location of any fenceline used to demonstrate compliance with this paragraph at least ninety (90) days prior to the commencement of construction.

E. Stack Emission Limits. Exide shall limit lead emissions to the atmosphere from certain emission points as set forth in the following table:

| Emission Point | Control Device | Emission Source / Description | Emission Rate (lb/hr) |
|-----------------------|---|---|------------------------------|
| AD | Acid Demister (CD007) | Battery Break Crusher Room | 0.024 |
| EP01 | Wheelabrator Air Pollution Control System | Blast Furnace, Refinery & Casting Process Hoods | 0.322 |
| BH01 | Negative Pressure Baghouse #1 (CD005) | Blast Furnace, Refinery & Casting Bldg. Neg. Pressure | 0.236 |
| BH02 | Negative Pressure Baghouse #2 (CD006) | Other Building Negative Pressure | 0.196 |

Compliance will be determined via stack testing requirements and on a schedule that is consistent with the Secondary Lead NESHAP, revised as of January 5, 2012, except as follows. If any test does not show compliance with the limits herein, Exide will test the stack that tested above the limit within ninety (90) days after the receipt of the stack test report or results. If this subsequent test shows compliance, the prior exceedance will not be considered a violation of this Consent Judgment and compliance testing will return to a schedule consistent with the Secondary Lead NESHAP, revised as of January 5, 2012.

F. Truck Traffic: Frequency and Hours of Operation. Exide shall limit truck traffic to the frequency and hours of operation as set forth in the following table.

| Group | Route Description | Total Trips Per Month | Unrestricted Trips Per Month* |
|--------------|----------------------|-----------------------|-------------------------------|
| A | Cores/Scrap | 368 | 0 |
| | Industrials | | |
| B | Furnace Coke | 87 | 4 |
| | Lime (bulk) | | |
| | Furnace Fluxes | | |
| C | Trash | 61 | 3 |
| | Acid (bulk) | | |
| | Plastic Chips | | |
| D | Cement (bulk) | 22 | 1 |
| | Oxygen (liquid) | | |
| E | Lead Products | 260 | 13 |
| F | Slag Mix to Landfill | 217 | 11 |
| G | Service | 26 | 1 |
| Total | | 1040 | 34 |

*Note: Restricted trips only use the haul roads 12 hours per day (7AM-7PM). Unrestricted trips use the haul roads 24 hours per day.

G. Recordkeeping and Reporting. Recordkeeping and reporting under this Consent Judgment are addressed by the recordkeeping and reporting requirements applicable to the facility pursuant to the Secondary Lead NESHAP, revised as of January 5, 2012. In addition, Exide shall keep records of truck traffic as necessary to demonstrate compliance with the hours of operation and monthly frequency limits established in this paragraph.

8. Property Acquisitions in Monitoring Areas

Exide shall notify MDNR of any real property it acquires or transfers in the Forest City area where an MDNR monitor is located or where an Exide fence line required by paragraph V.7.D. to preclude public access is located within ninety (90) days of the transaction. This notification shall include a copy of the deed or a legal description of the property, the interest to be acquired or transferred and the parties to the transaction.

9. Projects required as Contingency Control Measures

A. Exide shall complete construction or installation, commence operation of project and control measures, and achieve normal operations within one hundred eighty (180) days of the effective date of this Consent Judgment. If the valid and accepted air quality data for any rolling three-month average after that date violates the $0.15 \mu\text{g}/\text{m}^3$ three-month rolling average lead standard, Exide shall undertake the Immediate contingency measure specified in the following table.

| Facility | Contingency Measure Number | Contingency Measure Description | Time Frame |
|--------------|----------------------------|--|--------------------------------------|
| Canon Hollow | 1 | Increase the in-plant road cleaning to 10 hours each working day | Immediately after receipt of results |

Additionally, within 180 days from receipt of written or electronic notification from MDNR, submit to MDNR an investigative study identifying the potential or likely source(s) of emissions principally contributing to the exceedance so that a strategy may be developed to eliminate the likelihood of another exceedance. The study will list all best practices and best available technologies identified from industrial smelter or metal manufacturing facilities with similar fugitive emissions control challenges, and, for each technology or practice, will (i) identify those technologies and/or practices that Exide deems technically feasible and cost effective, (ii) quantify associated emissions reductions expected to result from the use of the practices or technologies, and (iii) provide a time frame for implementation of each in a manner that allows attainment of the NAAQS in the most cost-effective manner and schedule. Exide will provide justification for any projects deemed not to be technically feasible or cost effective or necessary for attainment.

projects deemed not to be technically feasible or cost effective or necessary for attainment.

B. Within 60 days of its receipt of the study, MDNR will advise Exide whether the projects and timelines proposed by Exide are acceptable and if MDNR agrees that any of the identified technologies or practices are not technically feasible or cost effective or necessary. Upon approval or after 60 days with no comment, those projects identified in the study for completion and the deadlines therein shall become a part of this Consent Judgment and fully enforceable hereunder as contingency measures and shall be completed pursuant to the deadlines. The immediate contingency measure specified above need not be a contingency measure proposed under the study if it is not selected under the study criteria, and may be halted upon completion of the measures specified in the approved study plan.

C. Exide shall notify MDNR within twenty (20) business days of Exide's completion of those contingency projects required by paragraph A above. Within 60 days of completion of all required contingency projects, Exide shall propose additional contingency measure(s) and a proposed timeframe for completion to be added to this Consent Judgment. In proposing the additional contingency measure(s), Exide shall revisit any of the best practices and best

available technologies that were identified in the study above and previously deemed not to be technically-feasible or cost effective. Upon approval by MDNR, the additional contingency measure(s) shall become a part of this Consent Judgment and be fully enforceable hereunder. If Exide identifies and demonstrates to MDNR's satisfaction alternative control measure(s) that would achieve attainment with the NAAQS, Exide may substitute the new measure(s) for the contingency measure(s) identified above, upon approval of the MDNR's Director of the Air Pollution Control Program. Any substitute contingency measure shall be implemented under a reasonable time frame to be established with the approval of the State as a modified contingency schedule.

D. Nothing in this agreement shall prevent Exide from implementing the contingency measures prior to receiving notification from MDNR.

VI. Stipulated Penalties and Force Majeure

10.

A. If Exide fails to complete construction of the control measures set out in this Consent Judgment by the dates specified, Exide may be subject to stipulated penalties according to the following schedule. The penalties are per day, per violation, and may be assessed

by MDNR beginning with the first day of violation after the scheduled deadline date.

| <u>Period of Noncompliance</u> | <u>Penalty per Day of Violation</u> |
|---|-------------------------------------|
| First through 30th day of noncompliance | \$500.00 |
| 31st through 60th day of noncompliance | \$2,000.00 |
| 61st through 90th day of noncompliance | \$3,000.00 |
| 91st day of noncompliance and beyond | \$5,000.00 |

B. If a performance test conducted under the requirements of Paragraph 7.E of this Consent Judgment fails to demonstrate compliance with the emission limits stated therein, Exide may be subject to stipulated penalties according to the following schedule:

First test failure - \$1,000

Second test failure - \$2,000

Third test failure - \$3,000

Fourth (and beyond) test failure – \$5,000

C. If Exide fails to comply with any other requirements of this Consent Judgment, Exide may be subject to stipulated penalties according to the following schedule. The penalties are per day, per

violation, and may be assessed by MDNR beginning with the first day of violation after the scheduled deadline date.

| <u>Period of Noncompliance</u> | <u>Penalty per Day of Violation</u> |
|---|-------------------------------------|
| First through 30th day of noncompliance | \$200.00 |
| 31st through 60th day of noncompliance | \$400.00 |
| 61st through 90th day of noncompliance | \$600.00 |
| 91st day of noncompliance and beyond | \$800.00 |

11. If any violation is enforceable under more than one provision of this Consent Judgment or regulatory requirement, MDNR will only seek to enforce the Stipulated Penalties under this Consent Judgment , but not both, against Exide.

12. All penalties assessed shall be paid within forty-five (45) days of the date of receipt of notification of the assessment of a stipulated penalty from MDNR unless Exide challenges the penalty pursuant to the Dispute Resolution procedure outlined in Section VII. If the penalty is challenged, it shall be paid thirty (30) days after the Commission's determination that Exide owes the stipulated penalty, and that Exide has failed to use, or has exhausted, its rights to review the Commission's decision. If Exide exercises

its right to appeal a decision of the Commission, payment will be due thirty (30) days after a final decision on appeal.

13. All penalties shall be paid by check made payable to the State of Missouri (Holt County Treasurer), and delivered to the Collections Specialist, Attorney General of Missouri, P.O. Box 899, Jefferson City, Missouri 65102-0899.

14. The penalties set forth herein shall not apply in the event of a force majeure, as defined in this section. For the purposes of this Consent Judgment, force majeure shall be defined as any event arising from causes beyond the control of Exide or its contractors and of any entity controlled by Exide or its contractors, which delays or interferes with the performance of any obligation under this Consent Judgment notwithstanding Exide's best efforts to avoid such an event and fulfill the obligation. The requirement that Exide exercise "best efforts to avoid such an event" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any force majeure event (1) as it is occurring, and (2) following the force majeure event such that the adverse effect or delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Judgment, changed financial circumstances, or other financial or budgetary issues. Failure to apply for a

required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of the Consent Judgment, are not Force Majeure events.

15. If any event occurs that is likely to delay or interfere with the performance of an obligation under this Consent Judgment, whether or not caused by a force majeure event, Exide shall notify MDNR by telephone within five (5) business days of Exide becoming aware of such event. Within ten (10) business days thereafter, Exide shall provide in writing to the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize its effects; a schedule for implementation of any measures to be taken to mitigate the event; and a statement as to whether, in the opinion of Exide, such an event may cause or contribute to the endangerment of public health, public welfare, or the environment. Exide shall include with any notice all available documentation supporting the claims that the delay was attributable to a force majeure. Failure to comply with these requirements shall preclude Exide from asserting any claim of force majeure.

16. If the State agrees that the delay or anticipated delay is attributable to a force majeure event, then the State may agree to extend the time for Exide to perform the obligation(s) under this Consent Judgment that is affected by the force majeure event for the time necessary to complete

these obligations. The State will notify Exide in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, by itself, extend the time for performance of any other obligation.

17. If the State does not agree that a force majeure event has occurred, or does not agree on the length of any time extension sought by Exide, Exide may seek review of the State's decision on the issue pursuant to the Dispute Resolution procedures set forth in Section VII of this Consent Judgment. In any such proceeding, to qualify for a force majeure defense Exide shall have the burden of demonstrating by a preponderance of the evidence that the delay or noncompliance has been or will be caused by a force majeure event, that its duration was or will be warranted under the circumstances, that Exide exercised or is exercising due diligence by using its best efforts to avoid and mitigate its effects, and that Exide complied with the requirements of Paragraphs 15-16 above. Should Exide carry the burden set forth in this section, the delay or noncompliance at issue shall be deemed not to be a violation of the affected obligation of this Consent Judgment.

VII. Dispute Resolution

18. Any dispute that arises with respect to the meaning, application or implementation for any provision of this Consent Judgment may be subject

to dispute resolution as provided herein, unless the Consent Judgment provision provides that dispute resolution is not available. Any dispute which arises with respect to the meaning, application or implementation of this Consent Judgment shall in the first instance be the subject of informal negotiations between Exide and MDNR. Notice of a dispute shall be given by the party alleging the dispute, shall be addressed in writing to the MDNR Director, and copied to the opposing party. Such notice shall state the specific grounds for the dispute, including any supporting documentation and the relief requested.

19. The MDNR and Exide shall have thirty (30) days from the receipt of the notice of the dispute to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing and this Consent Judgment modified, if appropriate. If the parties to the dispute are unable to reach agreement within the thirty (30) day period and this period is not extended in writing by mutual agreement of the parties, the matter will be submitted to the Commission. The opposing party may file suggestions in opposition and include any documentation relevant to deciding the dispute. Said suggestions and documentation shall be submitted within fourteen days of submission of the matter to the Commission. The Commission will issue a written decision following its review of the record submitted by the parties.

20. The parties will then be entitled to judicial review pursuant to Section 536.140, RSMo. The filing of a notice of dispute shall not automatically extend, postpone, or affect any party's obligations under this Consent Judgment with respect to the disputed issue. This provision shall not be construed to prevent either party from requesting a stay of the party's obligations under this Consent Judgment.

IX. Reservations

21. Nothing in this agreement shall be construed as a waiver of any obligation of Exide or as a permit to Exide under any other environmental laws applicable to Exide.

X. Modifications

22. This Consent Judgment may be modified or amended only by written modification between the parties and with the approval of the Court.

23. In the event Exide ceases operation of lead emission units subject to this Consent Judgment, Exide shall notify MDNR and will be relieved of the injunctive relief or other required practices that were for the purpose of reducing lead emissions from the subject unit.

XI. Contacts

24. All notices, reports, submissions, correspondence, or communications on requirements of this Consent Judgment shall be directed by mail or electronic mail as follows:

If to the State:

To the Missouri Department of Natural Resources:

Planning Section Chief
Air Pollution Control Program
Missouri Department of Natural Resources
1659 East Elm Street
Jefferson City, Missouri 65101 With copies to

Chief Counsel
Agriculture and Environment Division
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

If to Exide:

Plant Manager
25102 Exide Drive
Forest City, MO 64451

With copies to

Frederick Ganster
Exide Technologies
3000 Montrose Avenue
Reading, PA 19605

XII. Termination

25. In the event the specific control requirements, emission standards, or record keeping and monitoring requirements are incorporated into other federally enforceable documents such as construction permits or regulations that have been approved by the U.S. Environmental Protection

Agency as part of Missouri's SIP, the parties may terminate the corresponding provisions of this Consent Judgment by written agreement. The parties agree to meet and discuss measures to allow for the substitution of enforceable requirements in other documents and the termination of this agreement upon the request of either party.

XIII. Effective Date

26. This Consent Judgment is effective upon entry by the Court.

SIGNATURES

EXIDE TECHNOLOGIES

BY: David Mckee Interim Plant Manager

DATE: 9/25/14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: Kyra L Moore
for Leanne Tippet Mosby, Director
Division of Environmental Quality

DATE: 9/5/14

MISSOURI AIR CONSERVATION COMMISSION

BY: Lucy J Pen
~~David Zimmerman~~, Chairperson
Gary Pendergrass


DATE: 09-25-14

ATTORNEY GENERAL OF MISSOURI
Chris Koster, Attorney General

BY: Kara Valentine for
Kara Valentine
Assistant Attorney General

DATE: 9-25-14

SO ORDERED.



Circuit Judge

Date: Oct 10, 2014

Consent Judgment Exide Canon Hollow CJ14H0CC00064

EPA Rulemakings

CFR: 40 C.F.R. 52.1320(d)(31)
FRM: 81 FR 65897 (9/26/2016)
Effective Date: October 6, 2016
PRM: 81 FR 10182 (2/29/2016)
State Submission: 10/22/2014
State Effective Date: 10/10/2014
APDB File: MO-366; EPA-R07-OAR-2015-0835
Description: EPA is finalizing approval of Missouri's SIP to address violations of the lead NAAQS near the Exide Technologies - Canon Hollow facility in Holt County, Missouri.

Difference Between the State and EPA-Approved Regulation

None.