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VIA E-MAIL AND FEDERAL EXPRESS

Regional Administrator Jared Blumenfeld
Environmental Protection Agency, Region
EPA Pacific Southwest Office
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Re: Exide Technologies' Notice and Request for Extension of Performance Test Deadline under 40 CFR 63.7(a)(4) for NESHAP, 40 CFR 63 Subpart X, Secondary Lead Smelting

Dear Mr. Blumenfeld:

Pursuant to 40 CFR 63.7(a)(4), Exide Technologies ("Exide") respectfully requests an extension of time to conduct performance tests required by the National Emission Standards for Hazardous Air Pollutants ("NESHAP") to assess Exide's compliance with the following emissions limitations at its facility in Vernon, California: (i) Total Hydrocarbons ("THC") from furnace charging operations (40 CFR 63.543(f)), and (ii) THC and dioxins and furans ("D/F") from smelting furnace process vents (40 CFR 63.543(c)).

The current deadline is July 5, 2014. Exide respectfully requests an extension until March 31, 2015, and requests a corresponding extension of the deadline to submit a Notice of Compliance Status (verifying the results of the performance test) until May 30, 2015. *See* 40 CFR 63.9(h)(2)(ii) (providing that notice of compliance status is due at close of business on 60th day following completion of compliance demonstration activity).

Exide's extension request is reasonable and appropriate because the Vernon facility is currently not operating and Exide cannot perform the required tests until it resumes the level of operation required to conduct representative NESHAP performance tests. Exide's non-operation constitutes a "force majeure" event justifying an extension under applicable regulations.[1]

Background

Exide is an integrated recycler of used lead-acid batteries and a manufacturer of new lead-acid batteries for various equipment and products. Exide owns and operates a lead battery recycling

[1] We are submitting this request to EPA Region IX, but we also include the South Coast Air Quality Management District as a recipient.

facility in Vernon, California. The facility operates two types of smelting furnaces: a reverberatory (or "reverb") furnace and a cupola (or "blast") furnace. To reduce emissions from these furnaces, Exide operates an air pollution control system ("APCS"), which includes an afterburner for the blast furnace, baghouses that filter emissions and a wet scrubbing system. The wet scrubbing system consists of: (1) a "Venturi" scrubber, which is a high-pressure device that uses liquid to react with the gases and the small amount of particulate matter that makes it through the baghouse; and (2) a Neptune Scrubber, a "Tray Tower" where the gas stream is brought into contact with caustic liquid to neutralize and remove more contaminants. Both furnaces are routed through the wet scrubbing system, in accordance with the current design specifications and South Coast Air Quality Management District (the "District") permit.

In late 2013, the District began considering a rule that would impose a negative internal static pressure requirement for the furnace vessels themselves. Exide was actively involved in the rule-making process and objected to the proposed rule on numerous grounds. Over Exide's objections, the District adopted the rule in January 2014 and mandated compliance with the negative pressure requirement by April 10, 2014. [*See, District Rule 1420.1(f)(3)*].

Exide diligently attempted to comply with the rule by analyzing the necessary modifications and proposing installation of a second wet scrubber (the "second scrubber") at the Vernon facility. The second scrubber will allow Exide to control the draft to each furnace independently, thereby allowing Exide to maintain the air pressure necessary to comply with the new District standard (the currently permitted APCS design does not allow for consistent compliance with the new negative pressure standard). The design and installation of the second scrubber is a major project. Because the scrubber is a custom-fabricated unit, it is not available "off-the-shelf," but must be specifically designed for integration into the Vernon facility. Then, the scrubber must be permitted, built by the scrubber vendor and installed. In addition to the work related to the scrubber itself, the project also requires Exide to complete significant ductwork and hooding changes, which also require permits from the District.[2]

Due to the substantial design, engineering, installation and testing work required to put the second scrubber into operation, Exide estimated that it would not be operational and fully tested until about December 2014. Accordingly, Exide petitioned the District for a variance extending the date of compliance with the negative pressure requirement until the end of December 2014. The District denied the request. Exide also sought a preliminary injunction extending the negative pressure compliance deadline in California Superior Court, but the court also denied Exide's request.

Exide then concluded that it would not be able to meet the April 10, 2014 negative pressure deadline until it completed the second scrubber installation. As a result, Exide voluntarily ceased operation. Exide has begun implementing the design and engineering work necessary to install and test the second scrubber, which will enable it to comply with the new District rule and resume operations. Exide had planned to conduct the THC testing for the Secondary Lead

[2] As described in this letter, Exide has diligently submitted required permit applications, and the design and fabrication of the second scrubber and associated units is well underway.

NESHAP in May of this year, well ahead of the July 5, 2014 deadline, but cannot now do so because the facility is not currently operating.

Based on Available Data, Exide Believes it Was in Compliance with the Relevant NESHAP Standards.

Once it became apparent that Exide would be forced to cease operations at the Vernon facility due to the new District rule, Exide representatives realized that its THC and D/F NESHAP performance test deadline would also be affected. Exide has a compliance deadline of January 6, 2014, which results in a performance test deadline of July 5, 2014. *See* 40 CFR 63.546. Although not required for a "force majeure" extension, Exide reasonably believes that the Vernon facility was in compliance with the applicable NESHAP requirements from January 6, 2014 through the time it ceased operations, based on prior favorable tests for organic compound emissions from the furnace process stack and testing of toxic organic constituents conducted in 2013 for those stacks serving the furnace charging operations. However, because the Vernon facility is currently not in operation, Exide cannot conduct these NESHAP-specified THC and D/F performance tests.[3] Exide understands the need to verify compliance with valid NESHAP testing under representative operational conditions. Exide anticipates that it will be able to conduct these performance tests by March 31, 2015.

Exide Satisfies the Criteria in 40 CFR 63.7(a)(4) for a "Force Majeure" Extension.

A source owner seeking an extension of the performance test deadline under this provision must (1) give notice as soon as practicable, (2) describe the "force majeure event" causing the delay, (3) describe the measures taken to minimize the delay and (4) identify a new date by which the owner proposes to conduct the test. *See* 40 CFR 63.7(a)(4)(i)-(ii). Exide satisfies all of these requirements, as shown below.

1. The Non-Operation of the Exide Facility is a "Force Majeure" Event Preventing Exide from Conducting Performance Tests.

Regulations give the EPA discretion to extend the due date of a performance test when a "force majeure" has caused a delay in testing. 40 CFR 63.7(a)(4). "Force majeure" is defined as "an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility." 40 CFR 63.2.

As described above, Exide has not operated at its Vernon facility since April 10, 2014, after it was denied relief from the new District rule through the rule-making process, administrative

[3] Moreover, the configuration changes that will result from the second scrubber installation will likely result in even better compliance with these NESHAP standards.

proceedings and litigation.[4] Exide is currently working to design, engineer and install a complex second scrubber that will allow it to comply with regulations and enable the facility to resume operations as soon as possible. Until this work is complete and Exide attains compliance with the District's new negative pressure rule, the facility cannot resume operations. It is beyond Exide's reasonable control to conduct the necessary performance tests. In fact, if Exide were to conduct the performance tests while the facility is idle, the tests would not comply with other regulations requiring performance tests to be conducted during "representative performance (i.e., performance based on normal operating conditions)." 40 CFR 63.7(e)(1). "Representative conditions," by definition, cannot not occur during times of non-operation, such as "periods of startup, shutdown, and malfunction." *Id.* Thus, it is beyond Exide's reasonable control to comply with performance test obligations until the facility resumes operation, despite Exide's best efforts and desire to comply. Given these circumstances, it is appropriate to treat the non-operation of the Vernon facility as a "force majeure" and grant Exide's request for a reasonable extension.

2. Exide Has Taken and Will Continue to Take Measures to Minimize the Delay.

In order to conduct the required NESHAP performance tests, Exide must first resume operations at its Vernon facility. Exide has taken and will continue to take every appropriate action to ensure that the Vernon facility resumes operation as soon as possible. Specifically, the following efforts demonstrate Exide's diligence and good faith attempts to eliminate all unnecessary delay:

- Exide completed design and engineering work for installation of the second scrubber, and submitted permit applications to the District in April 2014. (*See* Attachment A (Permit Application Engineering Report), B (Permit Application Forms), C (Permit Application Appendices).)
- Exide cannot begin installation of the second scrubber until the District approves its permit application. However, in the meantime, Exide is completing necessary preparations for the installation, such as ordering custom parts and reconfiguring and installing ventilation hooding. This work is currently ongoing.
- Exide has provided detailed information to the District in response to questions about the installation of the second scrubber and the permit application, to ensure that Exide's permit application is processed as expeditiously as possible.
- Exide anticipates that the District will approve Exide's permit application in approximately July 2014.
- Exide has been diligently working on a mitigation plan to ensure that, once the second scrubber is permitted, its installation does not result in any fugitive emissions.

[4] Exide originally ceased operations in March 2014 to conduct maintenance, then decided not to resume operations in April 10, 2014 because Exide could not comply with the new District rule.

- Exide has scheduled contractors to begin working on the installation as soon as the permit is approved.
- Exide anticipates that the second scrubber will be completed by the end of December 2014.

Once the second scrubber has been fully installed and tested and the Vernon facility resumes operation, Exide will be able to conduct the required NESHAP performance tests. In the meantime, Exide will continue to complete all necessary planning, so that the NESHAP performance tests can be conducted without delay after the Vernon facility resumes operation and attains required representative conditions.

3. Exide Proposes March 31, 2015 as the New Date by Which to Conduct the Performance Tests.

As explained above, Exide currently anticipates that it will obtain approval of its permit application for the second scrubber in approximately July 2014, then promptly begin installation, complete installation by the end of December 2014 and resume operations at the Vernon facility by January 1, 2015. Exide proposes to conduct the required NESHAP performance tests within the first 60-90 days of operation. Accordingly, Exide requests that the NESHAP performance test deadline be extended to March 31, 2015.

4. Exide Provided Notice as Soon as Practicable.

By this letter, Exide hereby gives notice, as required under 40 CFR 63.7(a)(4)(i), to the EPA that the non-operation of the Vernon facility will delay Exide's Secondary Lead NESHAP performance test obligations for THC and D/F. Section 63.7(a)(4)(i) states that notice should be given "as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline . . . ." This notice is being given as soon as practicable. Exide has been involved in administrative proceedings and litigation over the proposed negative pressure rule since October 2013. However, it was not until after the California Superior Court denied its request for a preliminary injunction in April 2014 that Exide concluded it had no other alternative but to temporarily cease operations at the Vernon facility. One it ceased operations, Exide refined a schedule for second scrubber installation and carefully examined all potential regulatory impacts before determining that it would be unable to conduct the required NESHAP performance tests by July 5, 2014. Exide submitted this request as soon as practicable given the circumstances, thereby satisfying the notice obligations under 40 CFR 63.7(a)(4)(i).

Conclusion

For the reasons stated, Exide's request is supported by good cause, and Exide satisfies the requirements for a "force majeure" extension of the performance test deadline under 40 CFR 63.7(a)(4). Exide respectfully requests that this deadline be extended to March 31, 2015. Accordingly, Exide also requests that the deadline for submitting a Notice of Compliance Status, verifying the results of the performance test, be set on May 30, 2015, 60 days after March 31,

2015. *See* 40 CFR 63.9(h)(2)(ii) (providing that notice of compliance status is due at close of business on 60th day following completion of compliance demonstration activity).

We have attached the initial second scrubber permit materials, which may be useful to the District in considering this request.[5] However, please let us know if it would be helpful for Exide to provide additional data, technical information or other materials.

Sincerely,

Olivier Theard
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[5] Due to file size limitations, attachments are included in the hardcopy version and not the email version of this letter.