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8 **BEFORE THE HEARING BOARD OF THE**  
9 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

11 In The Matter of  
12 SOUTH COAST AIR QUALITY  
13 MANAGEMENT DISTRICT,  
14 Petitioner,  
15 vs.  
16 EXIDE TECHNOLOGIES,  
17 [Facility ID No. 124838]  
18 Respondent.

Case No. 3151-32

**[PROPOSED] FINDINGS AND DECISION**

District Rule 1420.1(d)(2)

Hearing Date: December 7, 2016  
Time: 9:00 a.m.  
Place: Hearing Board Room  
21865 Copley Drive  
Diamond Bar, CA 91765

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20 **FINDINGS AND DECISION OF THE HEARING BOARD**

21 Exide Technologies' Petition for Modification of the Order for Abatement was filed on  
22 October 28, 2016, and set for hearing pursuant to notice and in accordance with the provisions of  
23 California Health and Safety Code Section 40823 and District Rule 812.

24 The following members of the Hearing Board were present: Edward Camarena (Chair),  
25 Julie Prussack (Vice Chair), Patricia Byrd, Sen. Nate Holden, and Roger Lerner, M.D. Exide  
26 Technologies was represented by Jeffrey J. Parker and Alison N. Kleaver, Sheppard Mullin  
27 Richter & Hampton LLP. The Executive Officer of the South Coast Air Quality Management  
28 District was represented by Nancy S. Feldman. The public was given an opportunity to testify on

1 each day noted above. The matter was submitted and evidence was received.

2 The Hearing Board finds and decides as follows:

3 **FINDINGS OF FACT**

4 1. The South Coast Air Quality Management District (“Petitioner” or “District”) is a  
5 body corporate and politic established and existing pursuant to Health and Safety Code §40000, *et*  
6 *seq.* and §40400, *et seq.*, and is the sole and exclusive local agency with the responsibility for  
7 comprehensive air pollution control in the South Coast Basin.

8 2. Exide Technologies (“Respondent” or “Exide”) is a Delaware corporation subject to  
9 the jurisdiction of the District. Respondent is a facility located at 2700 South Indiana Street,  
10 Vernon, CA 90023 (the “Facility”). Respondent has been issued a Title V Permit to Operate by  
11 the District.

12 3. Respondent’s Facility is approximately 15.5 acres in size, with a building area of  
13 approximately 220,000 square feet. Respondent ceased lead acid battery recycling activities as  
14 part of a scheduled maintenance shutdown in March 2014. On April 7, 2015, Exide informed the  
15 District that it intended to permanently close the Vernon Facility. Exide is currently subject to  
16 District rules and this Hearing Board’s jurisdiction.

17 4. District Rule 1420.1(d)(1) requires, in relevant part, that, effective January 1, 2016,  
18 no person who owns/operates a lead-processing facility shall discharge into the atmosphere  
19 emissions which contribute to ambient concentrations of lead that exceed 0.11 micrograms per  
20 cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) averaged over 30 days. The ambient air concentrations of lead are  
21 determined by ambient monitors required to be maintained and operated by the Facility or at any  
22 District-installed monitor.

23 5. On or about March 14, 2014, Exide ceased its recycling activities for purposes of  
24 conducting various construction and maintenance activities. The District petitioned for an Order  
25 for Abatement, alleging that Exide’s maintenance and construction activities had caused a  
26 discharge into the atmosphere of emissions containing lead exceeding the limits set by Rule  
27 1420.1(d)(1) and thereby violated Rule 1420.1(d)(1). Exide stipulated to the issuance of an Order  
28 for Abatement, which was issued by the Hearing Board on July 10, 2014, modified on January 13,

1 2015, and modified on February 24, 2016 (collectively referred to as the “Order for Abatement”).

2 6. The Order for Abatement issued on July 10, 2014, incorporates a “Mitigation Plan  
3 for Construction of Risk Reduction Measures, RCRA RFI Sampling, and Major Maintenance  
4 Activities” prepared for Exide by Remediation Services, Inc. (“the Plan”). The Plan is designed to  
5 control dust during planned construction and maintenance activities at the Vernon Facility.

6 7. On January 13, 2015, the Order for Abatement was modified to incorporate an  
7 updated version of the Plan. In addition, the Hearing Board ordered that, for planned activities not  
8 specifically identified in the Revised Dust Mitigation Plan that will potentially generate dust,  
9 Exide shall notify the Deputy Executive Officer for Engineering and Compliance of the activity in  
10 question, propose a plan which includes mitigation measures for said activity (if any are  
11 necessary), and refrain from engaging in that activity until such time as the District approves, in  
12 writing, the proposed mitigation plan for that activity. The Hearing Board further ordered that the  
13 District shall provide comment and/or approval within a reasonable time depending on the nature  
14 of the activity and the schedule or planned completion.

15 8. Since the issuance of the Order for Abatement, the parties have regularly  
16 supplemented and amended the Plan as needed to address planned construction and maintenance  
17 activities that were expected to generate dust. Exide notifies the District in advance of undertaking  
18 any such activities and submits a mitigation plan for dust mitigation tailored to the activity at issue.  
19 The District reviews the protocol, amends it if necessary, and issues an approval to Exide to  
20 incorporate the new measure into the Plan and to proceed with the project.

21 9. On September 4, 2015, the District amended Rule 1420.1 to require the submission  
22 of a closure plan to the District when a large lead battery acid recycling facility notifies the  
23 Executive Officer in writing of its intention to close its facility. Exide submitted a closure plan to  
24 the District on December 2, 2015. District staff is conducting a substantive review of the plan.

25 10. On February 24, 2016, the Order for Abatement was modified to extend the  
26 expiration date and specify additional terms applicable during the time the Order for Abatement is  
27 in force. The Order for Abatement, as modified on February 24, 2016, expires on December 15,  
28 2016.

1           11.     To start regulatory closure of the Facility, Exide submitted to the Department of  
2 Toxic Substances Control (“DTSC”) a Closure Plan detailing the equipment that needs to be  
3 closed and the process and sequence for closure. After DTSC approves Exide’s Closure Plan, the  
4 District must modify Exide’s Title V Permit and approve Exide’s Compliance Plan for Closure  
5 under District Rule 1420.1. Absent extension of the Order for Abatement, during this time Exide  
6 could be prevented from taking some preparatory actions to close the Facility, which would delay  
7 the completion of regulatory closure and benefit no one because all stakeholder interests are  
8 aligned: (1) Exide is committed to start formal closure promptly, (2) the DTSC wants Exide to start  
9 closure promptly, (3) the community wants Exide to start closure promptly, and (4) the District  
10 does not oppose Exide’s desire to start closure promptly, so long as the existing Order for  
11 Abatement remains in place to help prevent fugitive dust emissions during the work.

12           12.     Respondent does not object to continuing to implement the Plan identified in the  
13 Order for Abatement to mitigate fugitive dust emissions generated by planned construction and  
14 maintenance activities at the Facility, and to seek approval from the District for any additions or  
15 amendments to the Plan as may be necessary to address upcoming planned construction and  
16 maintenance activities at the Facility that are expected to generate dust, pending approval of the  
17 Rule 1420.1 closure plan.

18           13.     The Order for Abatement also requires Exide to reimburse the District for the cost  
19 of having a third party consultant oversee planned maintenance and construction activities  
20 expected to generate lead dust. The third party consultant, Tetra Tech, maintains a contract with  
21 the District and, at present, is on site almost every day at the direction of the District.

22           14.     The District maintains that it is critical to the deconstruction of the Facility, as well  
23 as the completion of other construction and maintenance projects at the Facility, for Exide to  
24 comply with the dust control and other mitigation measures set forth in the Plan and that the  
25 presence of the third party consultant provides continued assurance to the District and the impacted  
26 community that due care is being exercised to assure compliance. The District agrees to pay for  
27 the services of the third party consultant to monitor activities at the Facility that fall outside of the  
28 scope of the Order for Abatement.

1           15.     The parties agree to extend the Order for Abatement so Exide can perform certain  
2 closure-related tasks (such as mobilizing contractors, conducting site clearing and preparatory  
3 activities, and removing certain non-operational equipment), conduct maintenance tasks that  
4 become necessary from time to time, and perform sampling and other on-site investigation  
5 required by DTSC that may generate fugitive dust (*e.g.*, drilling borings to take soil samples).  
6 Therefore, the parties agree to extend the Order for Abatement until the earlier of: (a) District  
7 approval of Exide’s Rule 1420.1 closure plan, (b) September 29, 2017, or (c) initiation of the  
8 approved DTSC Closure Plan, which requires a third party Dust Mitigation Oversight Contractor.

9           16.     The parties agree that the terms and conditions of this Modified Order for  
10 Abatement impose acceptable requirements for the retention and payment of the third party  
11 consultant employed by the District to monitor ongoing activities at the Vernon Facility.

12           17.     In order to ensure that all terms and conditions set forth in the Plan are legally  
13 enforceable, Respondent is stipulating to entry of this Modified Order for Abatement pursuant to  
14 California Health & Safety Code §42451(b).

15 **CONCLUSIONS**

16           1.     The parties have jointly agreed to enter into this Modified Order for Abatement.

17           2.     The issuance of this Modified Order for Abatement will not constitute a taking of  
18 property without due process of law.

19           3.     The issuance of this Modified Order for Abatement is not expected to result in the  
20 closing or elimination of an otherwise lawful business.

21 **ORDER**

22           THEREFORE, good cause appearing, this Board orders the parties to immediately comply  
23 with the following conditions and increments of progress:

24           1.     During the Modified Order for Abatement period specified in paragraph 6, below,  
25 Respondent shall comply with all terms, conditions and mitigation measures identified in the Plan  
26 attached hereto as Appendix A. The terms of the Plan shall apply to all planned or unplanned  
27 construction and maintenance activities at the Facility that are expected to generate fugitive dust,  
28 not activities that are not expected to generate fugitive dust or routine regulatory compliance

1 activities.

2           2.       Except in emergency situations, Respondent shall provide no less than seven days'  
3 written notice of planned construction and maintenance activities to be performed at the Facility.  
4 In emergency situations, Respondent shall provide written notice as soon as reasonably possible.  
5 Respondent shall indicate in the notice whether the work is being performed pursuant to the Plan  
6 or if Exide has deemed the scheduled work to fall outside the scope of the Plan. Such notice shall  
7 be provided to the Deputy Executive Officer for Engineering or his designee. For non-emergency  
8 situations, the District shall exercise best efforts to provide comment and/or determination of  
9 whether the activity requires a mitigation plan or not within three District business days. For  
10 emergency situations, the District shall provide comment and/or approval as soon as reasonably  
11 possible. If there is a dispute between Exide and the District regarding whether a particular  
12 planned construction or maintenance activity is expected to generate dust and, therefore,  
13 necessitate a mitigation plan and oversight by the third party consultant, Exide shall prepare the  
14 mitigation plan and pay for oversight under protest, subject to receiving a refund from the District  
15 of the costs of mitigation and third party consultant oversight as ordered by the Hearing Board.  
16 Notwithstanding the expiration of this Modified Order of Abatement pursuant to paragraph 6,  
17 below, the Hearing Board shall retain jurisdiction to hear and decide all claim(s) for refund that are  
18 filed by Exide within 60 days after the expiration date. Exide shall pay, through the District, for  
19 the services of the third party consultant's monitoring activities at the Facility for planned and  
20 unplanned construction and maintenance activities that are expected to generate dust, but not for  
21 monitoring of non-dust generating activities or routine regulatory compliance activities.

22           3.       The District may determine that the services of the third party consultant would  
23 benefit public health and safety and so may direct the consultant to monitor activities at the  
24 Facility other than planned or unplanned construction and maintenance activities that are expected  
25 to generate dust. In that event, the District shall pay for the services of the third party consultant.

26           4.       Because the Exide Vernon facility is no longer recycling or operating its furnaces,  
27 and the facility will not restart those operations, the District does not expect Exide to perform  
28 source testing as may be required by District rules or permit conditions. However, the District

1 may determine that source testing or other emissions testing is necessary for such other activities  
2 that may take place at the Facility and which may generate air emissions other than fugitive dust.  
3 If Exide needs to engage in any such activities, Exide will notify the District in writing (attention  
4 Laki Tisopulos, [ltisopulos@aqmd.gov](mailto:ltisopulos@aqmd.gov)) and will not undertake the proposed activity until the  
5 District determines whether source tests or other emissions testing is required beforehand. If Exide  
6 disagrees with the District's determination, it shall return to the Hearing Board to address whether  
7 source tests or other emissions tests are necessary.

8         5. Fifteen days after the end of each calendar quarter, Respondent shall file with the  
9 Hearing Board a status report summarizing the progress on all work being performed pursuant to  
10 this Modified Order for Abatement. A copy of this report shall be served upon the General  
11 Counsel's Office for the District (attention Nancy S. Feldman [[nfeldman@aqmd.gov](mailto:nfeldman@aqmd.gov)]) and  
12 Engineering (attention Laki Tisopulos [[ltisopulos@aqmd.gov](mailto:ltisopulos@aqmd.gov)]). Upon receipt of any status report,  
13 the Hearing Board may, at the discretion of any single member, schedule a status hearing. The  
14 status hearing shall be scheduled with a minimum of 10 days' notice and shall be calendared for  
15 the first week of the month following the filing of the status report.

16         6. This Modified Order of Abatement shall remain in effect, and the Hearing Board  
17 shall retain jurisdiction over this matter, until the earlier of: (a) District approval of a Rule 1420.1  
18 closure plan submitted by Respondent, (b) September 29, 2017, or (c) initiation of the approved  
19 DTSC Closure Plan, which requires a third party Dust Mitigation Oversight contractor.

20         7. The Hearing Board may modify this Modified Order for Abatement without the  
21 stipulation of the parties upon a showing of good cause after making the findings required by  
22 Health and Safety Code Section 42451(a) and District Rule 806(a). Any modification of this  
23 Modified Order for Abatement shall be made only at a public hearing held upon 10 days published  
24 notice and appropriate written notice to Respondent.

25         8. This Modified Order for Abatement is not and does not act as a variance, and  
26 Respondent is subject to all rules and regulations of the District, and with all applicable provisions  
27 of California law. Nothing herein shall be deemed or construed to limit the authority of the  
28 District to issue Notices of Violation, or to seek civil penalties, criminal penalties, or injunctive

1 relief, or to seek further orders for abatement, or other administrative or legal relief.

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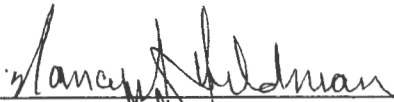
9. Respondent shall notify the Clerk of the Board in writing when final compliance is achieved.

**FOR THE BOARD:** \_\_\_\_\_

**DATED:** \_\_\_\_\_

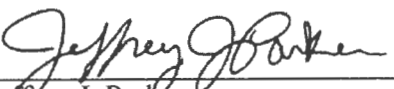
**SO STIPULATED:**

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

  
\_\_\_\_\_  
Nancy S. Feldman  
Principal Deputy District Counsel

Dated: November 18, 2016

EXIDE TECHNOLOGIES

  
\_\_\_\_\_  
Jeffrey J. Parker  
Sheppard, Mullin, Richter & Hampton LLP  
Attorneys for Exide Technologies

Dated: November 18, 2016