

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF DELAWARE**

**IN RE:**

**EXIDE TECHNOLOGIES, et al.,**  
**Debtors.**

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**CHAPTER 11**

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**Case No. 02-11125 (KJC)**  
**(Jointly Administered)**

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**Objections Deadline: September 15, 2003**  
**Hearing Date: September 23, 2003**

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**HONORABLE KEVIN J. CAREY**

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**MOTION FOR COMPLIANCE**  
**WITH 29 U.S.C. SECTION 959(b)**

**NOW INTO COURT**, through undersigned counsel, comes the Louisiana Department of Environmental Quality (LDEQ), interested party in the bankruptcy proceeding of Exide Technologies, et al. (Debtor), and who respectfully requests this Court issue an order requiring the Debtor in the above captioned matter to comply with all applicable environmental regulations and statutes concerning the estate property as in accordance with 28 U.S.C. § 959(b). 28 U.S.C. 959(b) requires that the debtors-in-possession and trustee comply with the state laws pertaining to property in the estate's possession. Louisiana, in La. R.S. 30:2203, requires that owners, operators, or other responsible person that finds hazardous constituents at a site notify the LDEQ and provide as assessment and remediation of the site and asks that this court order the debtor-in-possession to comply with state law. LDEQ respectfully represents the following in support of the relief requested:

The Debtor, Exide Technologies, et al (Debtor or Exide), filed this voluntary Chapter 11 proceeding on or about April 15, 2002 in the United States Bankruptcy Court for the District of Delaware. The Debtor has facilities in the State of Louisiana that constitute property of this bankruptcy estate which are regulated by LDEQ. The Debtor has a facility located at La. Highway 531 east of the city limits of Heflin in Webster Parish, Louisiana, wherein hazardous constituents have been found to be leaching, spilling, discharging, or otherwise moving into the groundwater. The environmental non-compliance that this motion is asking this court to address is the debtor's failure to submit an acceptable and updated Remedial Action Plan that meets the RECAP standards set forth in LAC 33:I.Chapter 13 Risk Evaluation/Corrective Action Program (RECAP), which would cleanup groundwater contamination at the site as required under La. R.S. 30:Chapter 9. § 2204.

2.

The Dixie Metals Site was determined to contain lead concentrations in the soil that were higher than allowable. The U.S. Environmental Protection Agency (EPA) was in the process of preparing a Resource Conservation and Recovery Act (RCRA) §3008(h) Order in 1996 when the Debtor submitted an October 24, 1996, letter asking to conduct voluntary corrective action at the Dixie Metals Site. By letter of February 12, 1997, EPA approved the voluntary cleanup to be conducted under the jurisdiction of LDEQ's oversight. EPA reserved the right to exercise its RCRA authority should the cleanup not meet their expectations.

3.

On May 5, 1997, the Debtor and the LDEQ entered into the "Cooperative Agreement for the Dixie Metals Site Between the State of Louisiana and Exide Corporation".

4.

On August 1, 1997, the Sampling and Analysis Work Plan required by the Cooperative Agreement was submitted to the LDEQ. On May 14, 1998, the LDEQ approved the revised plan. The Sampling and Analysis Report containing analytical results was submitted to LDEQ on May 11, 2000.

5.

Analytical results in the May 11, 2000, submission to the LDEQ documented that lead, a hazardous waste constituent, spilled to surface soils during the operation of the Dixie Metals Site and has migrated and continues to migrate and leach into surface water via contaminated ditch sediments. Documentation also shows contamination has reached the groundwater.

6.

In November 2000, the Debtor submitted the first deficient Remedial Action Plan to the LDEQ.

7.

Pursuant to a May 2002 administrative order, the Debtor submitted a second deficient Remedial Action Plan to the LDEQ.

8.

The Remedial Action Plan submitted to the LDEQ by the Debtor is deficient for the following reasons:

**a. Section 4.3 Off-Site Delineation Sampling**

Barium and Cadmium should be sampled for in off-site soils. A figure of the off-site sampling grid should also be included in the figures section.

**b. Section 4.4 Arsenic and Cadmium Characterization Sampling**

The plan should specify where and at what depths the 20 samples will be taken. A portion of the samples should be taken in highly contaminated lead areas. The text should state, if necessary, arsenic and cadmium soil cleanup goals will be calculated according to RECAP.

**c. Section 4.8 Community Notification**

Notice of the public comment period for the final approved remedial action work plan shall be placed in the newspaper of general circulation in the parish where the site is located. Its contents and format shall follow guidelines established by the LDEQ. If there are comments they will have to be addressed before any work activities can commence on-site.

**d. Section 5.6 Placement and Handling and Section 5.7 Containment Cell**

**Construction**

One section mentions a final slope of a minimum 5% and maximum 20% while the other section mentions a slope of a minimum 3% and maximum 20%. This should be clarified.

**e. Section 5.7 Containment Cell Construction**

On-site soils can be used for the containment cell protective cover, if they are classified as chiefly clays and achieve the required Synthetic Precipitate Leaching Procedure (SPLP) result. On-site soils are contaminated with lead. In order to demonstrate that these soils will not create a potential to leach lead through the cap drainage system, SPLP sampling must be done. The SPLP result will be calculated per the appropriate method given in the RECAP website Frequently Asked Question (FAQ) file – Section L. 5. Most of the site consists of sandy soils, which are not suitable and cannot be used for the

protective cover. Off-site clays used as cap material will have to be sampled for RCRA metals before being used on-site.

**f. Section 5.8 Dust Control Procedures**

All decon water used during building demolition will have to be contained and sent to the water treatment system.

**g. Section 5.11 Contaminated Liquid**

Once the contaminated liquids are processed through the geotextile fabric it will have to be pumped to some sort of secondary containment structure (tank, impoundment) and sampled for the following parameter before being discharged as a batch discharge.

- COD.....100mg/l
- TOC.....50mg/l
- BOD.....30mg/l
- TSS.....30mg/l
- Oil and Grease.....15mg/l
- PH (S.U.).....range 6 to 9
- Total Lead.....275ug/l
- Total Arsenic.....137ug/l
- Total Cadmium.....275ug/l

**h. Section 6.0 Reporting**

Monthly reports shall be provided to LDEQ. At a minimum, these progress reports shall: (1) describe all data gathering and planning; (2) contain a status report on all field activities; and (3) include all other data received by Exide pertinent to any work performed at the site.

**i. Section 7.0 Groundwater Monitoring**

An initial sampling of all monitor wells will have to be done. The parameters to be sampled in groundwater are Total and Dissolved Lead, Arsenic, Cadmium, TDS, and maximum sustainable yield.

**j. Section 7.0 Groundwater Monitoring**

Monitor wells will be placed at all four sides of the containment cell. They will be screened at the first water bearing zone and the wells should be installed in accordance with the Construction of Geotechnical Boreholes and Groundwater Monitoring Systems Handbook, prepared by LDEQ and LDOTD December 2000.

**k. Exide shall submit an Operation and Maintenance (O&M) Plan for the containment cell cap.** This plan can be incorporated into the remedial action plan. Cap material placed above the containment cell anchor trench must be well-compacted clay-like material to reduce infiltration.

9.

By motion, the LDEQ asks that the court order the debtor to complete and submit an updated Remedial Action Plan that meets the RECAP standards pursuant to Louisiana Law.

10.

Debtors in possession must comply with the state and local laws protecting the environment and, therefore, must perform and continue the work as described above. Midlantic Nat'l Bank v. New Jersey Dept. of Env'tl. Protection, 474 U.S. 494, 505, 106 S.Ct. 755, 761-62, 88 L.Ed.2d 859 (1986).

11.

The U.S. Fifth Circuit Court of Appeals in the Matter of Commonwealth Oil Refining Co., 805 F.2d 1175 (5<sup>th</sup> Cir., 1986) held that EPA actions require the debtor's regulated facility

comply with federal and state environmental permit laws, regulations, and procedures were necessary as vital components of the environmental protection system and to maintain the safety of the public were not subject to the automatic stay.

**WHEREFORE**, The Louisiana Department of Environmental Quality requests the Court require the debtor to bring its properties into compliance with state law, to require them to submit an acceptable Remedial Action Plan and cleanup groundwater, and grant the LDEQ such other relief as is just and equitable.

Respectfully submitted,

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
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