

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 66-00212

LIS No. 17-033

EXIDE TECHNOLOGIES  
d/b/a GNB INDUSTRIAL POWER  
4115 SOUTH ZERO  
FORT SMITH, AR 72903

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Exide Technologies d/b/a GNB Industrial Power (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates a lead-acid battery manufacturing facility located at 4115 South Zero in Fort Smith, Sebastian County, Arkansas.
2. ADEQ issued Air Permit 0228-AR-14 (the Permit) to Respondent on December 15, 2008.

ORIGINAL

3. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

4. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

6. Respondent is required to conduct compliance testing on all of its baghouses every five calendar years to demonstrate compliance with the grain per dry standard cubic foot (gr/dscf) and pound per hour (lb/hr) pollutant emission limits found in Specific Condition 1 of the Permit. Compliance testing of the baghouses was conducted during August 23-25, 2016.

7. A written report of the test results was received by ADEQ on October 11, 2016. The report stated the pollutant emission limit for particulate matter (PM<sub>10</sub>) equal to or less than ten (10) microns in diameter was exceeded at baghouses SN-01, SN-51, SN-53, and SN-57 (Table 1). Such acts violate Specific Condition 1 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

ORIGINAL

TABLE 1 Compliance Testing Results on Baghouses, August 23-25, 2016					
Source Number	Pollutant	Permit Limit		Test Result	
		lb/hr	gr/dscf	lb/hr	gr/dscf
SN-01	PM <sub>10</sub>	1.0	0.0044	0.826	<b>0.00615</b>
SN-51	PM <sub>10</sub>	2.2	0.0044	<b>3.05</b>	<b>0.00581</b>
SN-53	PM <sub>10</sub>	2.1	0.0044	1.59	<b>0.00724</b>
SN-57	PM <sub>10</sub>	1.4	0.0044	0.603	<b>0.00493</b>
• Test results in bold indicate a Permit limit exceedance					

8. ADEQ informed Respondent of the compliance issues identified in the compliance test report in correspondence dated November 28, 2016. This letter was intended to provide the facility with an opportunity to review violations and submit information Respondent deemed appropriate regarding the compliance issues.

9. On December 5, 2016, Respondent informed ADEQ that it intends to submit a permit modification application requesting that the PM<sub>10</sub> limit be raised for the baghouses.

10. On March 9, 2017, ADEQ received Respondent's permit modification application requesting an increased PM/PM<sub>10</sub> emission rate for sources, including but not limited to, SN-01, SN-51, SN-53, and SN-57 based on the August 23-25, 2016, emissions testing results. The requested rate is 0.0075 gr/dscf.

11. ADEQ sent a letter dated March 27, 2017, to Respondent stating that Respondent's permit application was deemed administratively complete on March 27, 2017.

### ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. Effective immediately, Respondent shall comply with the limitations of the permit modification application referenced in Paragraph 10 of the FINDINGS OF FACT of this CAO and/or any limitations imposed by ADEQ stemming therefrom until such time as a final permit is

*ORIGINAL*

issued.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **THREE THOUSAND TWO HUNDRED DOLLARS (\$3,200.00)**, or one-half of the penalty, **ONE THOUSAND SIX HUNDRED DOLLARS (\$1,600.00)** if this CAO is signed and returned to Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **May 13, 2017**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

ORIGINAL

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify ADEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

6. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify ADEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

ORIGINAL

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

ORIGINAL

SO ORDERED THIS 9th DAY OF May, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

EXIDE TECHNOLOGIES  
d/b/a GNB INDUSTRIAL POWER

BY: [Signature] (Signature)

Kevin Settle (Typed or printed name)

TITLE: Plant Manager

DATE: 4/21/17