



Downwinders
reducing toxic air pollution in north texas *at risk*

May 28th, 2013

Mayor Maso and Frisco City Council
6101 Frisco Square Blvd.
Frisco, TX 75034

Re: Exide Technologies, Inc. Former Lead Smelter Site
Texas Voluntary Cleanup Program No. 2541,
Undeveloped Buffer Zone Property ("J Parcel")

Dear Mayor and Council,

I'm writing on behalf of members of Frisco Unleaded and other concerned citizens about what we believe to be a contradiction in commitments by Exide and the City of Frisco regarding the cleanup standards being applied to the "J Parcel" of the Exide lead smelter site as it is referred to in the Master Settlement Agreement between Exide and the City of Frisco.

We're asking you to: 1) confirm the contradiction between the residential clean-up standard announced last year by the City of Frisco for the "J Parcel" and the current industrial clean-up standard testing protocol being used on that property by Exide to determine contamination problems, 2) re-confirm the City's promise to cleaning up this contaminated property to residential standards, without qualifications, and, 3) resolving this contradiction in favor of a unfettered residential clean-up for the property, which is directly upstream of the City's proposed Grand Park.

I. EXIDE'S COMMITMENTS TO RESIDENTIAL CLEANUP STANDARDS

A. City of Frisco/Exide June 6, 2012 Master Settlement Agreement

Section 5.1.2 of the Master Settlement Agreement states, in part: "Exide shall undertake and complete the Remediation of any contamination identified at the J Parcel required *to achieve a clean up level of 250 parts per million for lead in soils and otherwise meet risk-based residential cleanup standards established by the TCEQ ("Required Remediation").*" (italics added)

B. March 2013 Exide Community Relations Plan

On page 1 of the March 2013 Community Relations Plan for the Undeveloped Buffer Zone Property Exide states: "When remediation is completed, the Undeveloped Buffer Property *will meet or exceed residential clean-up standards and will belong to EDC/CDC.*" (italics added)

C. March 5, 2013 Voluntary Cleanup Program Agreement

In the “Submittals and Schedules” section (p. 5) of the March 5, 2013 VCP (Voluntary Cleanup Program)Agreement by and among Exide, the City of Frisco development corporations, and TCEQ, it states: “The Site will be remediated *to risk-based residential clean-up standards* (or below, in the case of lead), however, deed restrictions will be placed on the Site limiting future Site development to commercial/industrial use.” (italics added).

II. “THE SAMPLING PROTOCOL BEING USED BY EXIDE IN THE “J PARCEL” IS FOR INDUSTRIAL CLEAN-UPS, NOT RESIDENTIAL CLEAN-UP

Attached, please find a TCEQ interoffice e-mail dated March 8, 2013, wherein TCEQ personnel confirm that Exide will be *using a sampling methodology (2 samples per acre) that corresponds with commercial/industrial cleanup standards rather than a sampling methodology that corresponds with a residential cleanup standard (8 samples per acre)*. See Texas Risk Reduction Program Rules (TRRP), 30 TAC 350.511(3) and (4).

The effect of this difference in sampling methodology means that Exide will collect only one fourth of the samples that the Texas Risk Reduction Program (TRRP) regulations specify for a residential standard clean-up.

This is a classic bait and switch maneuver. While publicly maintaining a 250 ppm “residential” standard for lead-in-soil clean-up within the “J Parcel,” Exide is actually using a much less rigorous methodology designed for sites that will see continued industrial activity. This is not an accurate description of future land use in the “J Parcel,” and is at odds with a commitment to a full residential clean-up.

This weaker and less protective industrial protocol is also at odds with the findings of the February 26, 2013 Phase I Environmental Site Assessment for the J Parcel, which confirmed new and more widespread potential contamination with the J Parcel and the central smelter site itself. In addition, recently discovered lead waste contamination at the American Railroad Museum property adds weight to the need for the strictest testing methodology to be used throughout the property.

We fear this change in sampling protocol is an indication of the kind of “cut-rate clean-up” citizens have predicted Exide would chose because of its on-going financial difficulties. Last Friday, the company’s stock hit a nine year low of under 50 cents a share. We need the City of Frisco to live up to its promise to provide a bulwark of expertise and oversight to prevent Exide from taking shortcuts that will come back to haunt redevelopment efforts.

If Exide and the City of Frisco are committed to achieving a residential cleanup standard, we believe that Exide should comply with the sampling methodology explicitly specified for purposes of meeting residential standards under the Texas Risk Reduction Program.

We request that the City address and correct this contradiction and explain how the Voluntary Cleanup Program process will proceed in accordance with applicable rules.

Sincerely,

A handwritten signature in black ink that reads "Colette McCadden". The script is cursive and fluid, with the first name "Colette" and last name "McCadden" clearly legible.

Colette McCadden, Chair, Frisco Unleaded

cc:

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Merrie Smith

From: Danielle Lesikar
Sent: Friday, March 08, 2013 1:40 PM
To: Merrie Smith
Cc: Anna Brulloths
Subject: RE: Exide VCP Parcel investigation activities

So then it appears to be as I'd guessed...they will only have a sampling frequency of 2 samples per acre, or a ½ acre exposure area, which is C/I standard, but whatever they find they plan to clean up to residential, as per their agreement with the city. So long as they understand that still only meets C/I for us, should be fine.

Danielle

From: Merrie Smith
Sent: Friday, March 08, 2013 12:05 PM
To: Danielle Lesikar
Subject: FW: Exide VCP Parcel investigation activities

Sorry - forgot to cc you on this FY to Anna

From: Tim Nickels [<mailto:tim.nickels@pbwllc.com>]
Sent: Friday, March 08, 2013 11:42 AM
To: Gary Beyer; Merrie Smith
Cc: LOVE, Matt (Reading Equipment Center); COLEMAN, Vanessa (Frisco, TX); Eric Pastor; Wheatley, Wade; Rusty Simpson
Subject: Exide VCP Parcel investigation activities

Hello Gary and Merrie,

I wanted to let you know that PBW will be continuing investigation activities related to the VCP Parcel investigation at the Exide facility starting on March 18th. This portion of the investigation will consist of collection of surface soil samples across the VCP Parcel to fill in the data gaps needed to achieve a sample density of two samples per acre across the site. This phase of the investigation will also include advancing soil borings along former 5th Street/Eagan way to evaluate vertical and horizontal distribution of elevated lead concentrations previously observed at sample location O-15 and other locations in the ditch along the roadway. While we have the geoprobe rig there we'll also push some borings in the former 5th Street/Eagan Way roadway to verify battery chips weren't used in road construction (planned for Friday, March 22).

Please let me know if you have any questions.

Regards,
Tim Nickels

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