

Director Barbara Lee
Department of Toxic Substances Control
Comments Delivered to the
Assembly Committee on Environmental Safety and Toxic Materials
January 26, 2016

Opening Statement:

Good afternoon Mr. Chairman and Members & Guests of the Committee. I am Barbara Lee, the Director of the Department of Toxic Substances Control. Thank you very much for having me here today to speak with you.

As the Secretary mentioned, since my decision to deny the permit for the Exide facility many things have happened.

The Department accelerated payments into Exide's Closure Trust Fund and structured a closure process for the facility. These terms were embodied in an enforcement Order that you will hear more about later, and were accepted by Exide's Board of Directors on March 11th, when the Board also accepted the terms of a Non-prosecution Agreement with the U.S. Attorney. The Enforcement Order and the Non-prosecution Agreement were approved by the Bankruptcy Court at the end of March, and in April the company filed a formal notice of closure with the Department.

Later in April, I met with about 200 residents of communities around Exide at Resurrection Church in Boyle Heights. That was the first of six community meetings around Exide that I have personally participated in over the last nine months, including meetings in Maywood, Commerce and Huntington Park.

To create greater regulatory coordination as well as public engagement, and with the support of Assembly Member Santiago, I reached out to the South Coast AQMD and we have jointly convened an Advisory Group for the Exide Closure and cleanup that includes the County of Los Angeles, the City of Vernon, elected officials at the federal, state and local level, academics, advocates, community leaders, and local residents. There are forty members of the Advisory Group, and a community member co-chair. We also jointly funded a technical advisor for the community members on the Advisory Group, to support their full and effective contribution to our closure and cleanup decisions.

Since I joined the Department, we have overseen the testing of 478 residential properties and 191 properties have been cleaned up.

Even with this, tests and analysis completed in July showed lead emissions from the facility could be contaminating properties as far as 1.7 miles away. As mentioned by the Secretary, only a few weeks after this information came to light, we worked with the Legislature to augment DTSC's budget with \$7 million to test up to 1,500 additional properties and continue cleanup of the most contaminated properties, as well as conducting the necessary environmental review to design a plan that addresses the risks posed by Exide's contamination.

This action means residential properties are being cleaned up years earlier than is otherwise required – as you will hear when we discuss the schedule for actions and payments approved by the Bankruptcy Court. Under those terms, Exide has until 2019 to complete its study and plan for cleaning up residential properties, and begins setting aside funds for that work in 2018.

With the \$7 million, DTSC is carrying out the residential cleanup under a different regulatory authority and program, and will seek to recover the cost of the cleanup from Exide and any other responsible party we identify. We have the Administration's full support for this approach and we are working closely with the Attorney General's Office to ensure we take all the necessary steps to have the strongest possible cost-recovery case.

In 2015, DTSC alone dedicated 22,000 hours of staff time to this project.

I would now like to introduce my Deputy Director for our Hazardous Waste Management Program Elise Rothschild, who will discuss the closure process.

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Statement for Panel A Discussion of Exide Closure Plan:

Thank you, Mr. Chairman and Members & Guests of the Committee. Supervisor Solis raises some very important issues. If, after we have finished our presentations to you on Exide's Closure Plan and the cleanup we are undertaking in the residential areas around Exide, there are points you would like me to respond to, please let me know.

I realize the material we're covering is highly complex and technical, so please feel free to stop us if you have questions.

We've covered how Closure Plans are normally developed and approved through the permit process. Because we were moving to deny Exide's permit, the facility is closing without completing the permit process. I want to point out that federal law requires that closure be completed. It also requires that Exide fund that closure. So the process is going forward because it is required by federal law and it's being paid for by Exide not DTSC. DTSC is enforcing that law because it is required. At the same time we are using other authorities to move ahead now with the residential cleanup on a parallel track.

Instead, the submittal, review and approval process for Exide's Closure Plan, and the associated Financial Assurance, is structured through the Enforcement Order we issued last March that was approved by the Bankruptcy Court. That makes this closure process somewhat unique.

It's also unique for several other reasons.

- Air monitoring done by the South Coast AQMD shows a very high likelihood of lead dust emissions during closure activities without very careful containment and control.
- Close coordination is therefore needed with the Air District, as well as with other regulatory partners to ensure the Closure does not impact public health or the environment.
- And the communities around the facility are understandably upset, and concerned about potential impacts of the closure on their lives. They also have a wealth of local knowledge and practical suggestions to improve the Closure. So we're taking a number of steps to engage and involve these communities in the decision-making process.

Ann Carrol, Senior Staff Counsel at DTSC, will explain how the Enforcement Orders from 2014 and 2015 structure the Closure and Financial Assurance. She'll also give you an overview of the proposed Closure Plan itself, and the process for its approval.

Then there are a few points I want to make about some of the extra steps we're taking to promote the best outcome we can for communities affected by Exide's operations.

(Presentation by Ann Carrol, Senior Staff Counsel)

Closing Statement by Director Lee for Panel A:

DTSC is absolutely committed to safeguarding communities and protecting the environment throughout the closure process. We're also working hard to engage community members in the Closure and the cleanup in the communities.

To ensure that air emissions are fully curtailed, we have partnered closely with the South Coast Air District throughout the development and review of the draft Closure Plan. As a result,

- Buildings at the facility will be tented and kept under negative pressure during the deconstruction process;

- Air pollution control equipment will be maintained operational throughout deconstruction;
- Air monitoring equipment will be stationed around the facility to alert us of emissions escaping, and operations will be stopped immediately if this occurs, until adjustments can be made to prevent further releases.

DTSC is requiring special handling and transport procedures to prevent contamination from being carried offsite on vehicles, equipment, parts or debris.

- We're requiring thorough decontamination of equipment and parts being removed from the site, with confirmation testing;
- Truck loading will occur in a containment structure with negative pressure, and the vehicles are washed before leaving;
- All water used is treated onsite and the treatment system will be the last part of the facility to be removed;
- Hazardous wastes will be contained during transport by wrapping the material;
- Trucks carrying hazardous wastes from the site will carry identification so community members can observe their transit and report any trucks that don't follow approved routes.

We are requiring oversight of all closure activities by a 3rd Party independent monitor.

DTSC has taken a number of steps to better engage the affected communities.

- The Advisory Group formed by DTSC and the South Coast AQMD has held five public meetings and three technical study sessions on the Closure Plan;
- Staff has regular contact with the Technical Advisor we co-funded for the community members of the Advisory Group to answer his questions and make sure he has all the information he needs;
- We have consulted outside experts recommended by the Advisory Group;
- In addition, the Department has briefed the Commerce City Council; we held a scoping meeting for the EIR, and held more than a dozen separate meetings to explain the soil testing process, test results, and cleanup;
- We have identified mechanisms to train and involve community members in soil sampling in residential areas and are exploring opportunities to do something like that with aspects of the closure process.

We expect the Closure process to take 34 months once the Plan is approved. We will continue to work with the Advisory Group throughout the process to make sure communities are fully informed about the Closure, and that we engage them to identify issues as they arise and develop appropriate solutions.

We will also provide status updates on our website, and will brief your Committee on the Closure progress in the future if you would like.

Thank you for your attention; we would be happy to answer questions.

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Statement for Discussion of Residential Clean-up:

Thank you, Mr. Chairman and Members & Guests of the Committee. I'm just going to give you a little bit of framework on what's going to be done for the cleanup.

I have Ray LeClerc, a Division Chief in our Cleanup Program who will give you details of the cleanup, and Ana Mascarenas, who is my Assistant Director for Environmental Justice, who will discuss some of the things we're doing with the community to better serve them, and the way we are working with them through this process.

DTSC ordered Exide to begin testing residential properties in 2013, in response to air emissions analyses done by the South Coast AQMD. The testing focused on two areas, one to North in Boyle Heights, and one to the South in Maywood, based on the air emissions analyses.

From that testing, we identified 219 properties to further investigate in what we refer to as the Initial Assessment Areas, again in Boyle Heights and Maywood.

- In November of 2014, DTSC issued an Enforcement Order to Exide that was accepted by the Bankruptcy Court to test and clean up those properties.
- Of those 219 properties:
 - 195 provided access for sampling
 - 186 have been cleaned up
 - 6 declined cleanup
 - 3 did not require cleanup
- DTSC has escalated pressure on property owners to provide access for testing and cleanup, and our legal team is evaluating next steps in this area.

Based on the results of the initial testing, in 2014 DTSC ordered Exide to determine the extent of its contamination by testing soils in an Expanded Area, stepping out in a grid from the Initial Assessment Areas.

- Testing began in September of 2014 and the analysis was completed in late April of 2015
- A total of 146 residential properties were tested
- Results were shared with the public in early May

To fill out the assessment of extent of Exide's contamination, DTSC:

- Ordered Exide to conduct further testing along dominant wind directions in medians and public rights of way to a distance of 4.5 miles from the facility
- Evaluated data from sampling in the Industrial Area immediately around the facility
- Conducted additional sampling and analysis for other marker metals that are typical of secondary lead smelters.

These analyses were completed in July of 2015 and suggest that Exide's contamination may extend as far as 1.7 miles from the facility.

- A total of 19,894 samples were analyzed from 4,144 locations
- The distribution of the lead is not a circle because it is influenced by the dominant wind patterns
- If a circle is drawn around the facility at a distance of 1.7 miles, it encompasses about 10,000 residential properties
- We do not yet know how many of these properties will require cleanup; we will test them to determine whether cleanup is required and to prioritize cleanup where it is needed

As I mentioned earlier, in August, just weeks after receiving the results showing the extent of the contamination, the Administration provided DTSC \$7 million to sample up to 1,500 additional properties and to clean up the most contaminated properties that were tested in the Expanded Area analysis. I shared this information with the Advisory Group in late August.

In November, the Department shared with the Advisory Group a draft method for prioritizing properties, and draft plans to clean up the highest priority properties in the Expanded Area of testing. We addressed comments and concerns from the Advisory Group and finalized the method and the plan in December.

This cleanup phase will only cover 50 properties under a supplemental negative declaration under CEQA. Further cleanup will be done under a comprehensive cleanup plan with a full EIR.

In November, we also shared with the Advisory Group draft plans for the next phase of testing in what we are referring to as the Preliminary Area of Investigation. That includes all the homes that are within that 1.7 mile radius. We finalized the sampling plan in November and began testing soil.

Although the contractor for both sampling and cleanup was in place in November, residents were understandably reluctant to have construction occur during the holiday season. We received the same feedback last December in the Initial Assessment Areas. Cleanup began this month:

- We now have 411 access agreements in place and have completed cleanup at 5 additional properties
- We're working with two community based organizations to encourage access agreements
- We expect to complete cleanup at all 50 properties by the end of June

You will now hear details about how the properties are being tested and cleaned up, as well as highlights of our enhanced efforts to engage the communities around the Exide facility.

I want to underscore, however, that we are actively developing the comprehensive cleanup plan and the associated EIR. We are also pursuing rigorous analyses to hold Exide accountable for its contamination.