

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Exide Technologies, Inc.
1300 Deerfield Parkway, Suite 200
Milton, Georgia 30004

In the Matter of:

Exide Technologies, Inc.
2700 South Indiana Avenue
Vernon, California 90058

ID No. CAD097854541

Respondent.

HWCA: P3-12/13-010

- (1) NOTICE OF DEFENSE OF RESPONDENT EXIDE TECHNOLOGIES, INC.
- (2) REQUEST FOR (1) AN EMERGENCY HEARING ON A MOTION FOR A TEMPORARY STAY OF THE SUSPENSION ORDER; AND (2) A HEARING ON THE MERITS WITHIN 30 DAYS IN CONFORMANCE WITH HEALTH AND SAFETY CODE SECTIONS 25186.1 AND 25186.2
- (3) OBJECTIONS TO ACCUSATION; AND
- (4) AFFIRMATIVE DEFENSES

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Respondent Exide Technologies, Inc. ("Exide") files this Notice of Defense in response to the Order for Temporary Suspension served upon Exide on April 24, 2013. Exide generally and specifically denies each and every allegation set forth in the Order for Temporary Suspension (the "Order") and in the Accusation for Suspension of Interim Status (the "Accusation"). Exide

has executed a Notice of Defense in the form provided by the Department of Toxic Substances Control ("DTSC"), and that fully executed Notice of Defense is attached hereto as Exhibit A.

The entirety of the executed form Notice of Defense attached as Exhibit A is incorporated herein by reference as if fully set forth in this written response.

Exide requests: (1) an emergency hearing for a temporary stay of the Suspension Order; and (2) a hearing on the merits within 30 days in conformance with Health & Safety Code Sections 25186.1 and 25186.2.

Exide objects to the Accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

Exide objects to the form of the Accusation on the ground that portions of it are so indefinite or uncertain that the Respondent Exide cannot identify the conduct alleged to support the Order or prepare a complete defense.

Exide also objects to the Accusation on the ground that, under the circumstances, compliance with the requirements of a regulation, the Order, or the Accusation would result in the material violation of another regulation enacted by another department affecting Exide's substantive rights.

In addition to the Notice of Defense, the objections set forth herein, and the request for a hearing, Exide asserts the following affirmative defenses on information and belief:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Primary Jurisdiction)

The Order and Accusation are barred on the grounds that the South Coast Air Quality Management District ("AQMD"), the State Water Resources Control Board, the Los Angeles Regional Water Quality Control Board, and/or other agencies have primary jurisdiction over the matters set forth in the Order.

SECOND AFFIRMATIVE DEFENSE

(Permit Compliance)

The DTSC's Order is barred on the grounds that Exide has been acting in compliance with the terms of its Title V/RECLAIM Permit, its interim status authorization under the Resource Conservation and Recovery Act of 1976, and any other permit issued by an appropriate agency with jurisdiction over the permitted activity.

THIRD AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The Order and Accusation and each charge or cause of action alleged therein fail to state facts sufficient to constitute a cause of action or support the Order against Exide.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

The Order and Accusation and each charge or cause of action alleged therein are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

The Order and Accusation and each charge or cause of action alleged therein are barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands)

The DTSC is not entitled to the relief it seeks because it has acted improperly and comes before this tribunal with unclean hands.

SEVENTH AFFIRMATIVE DEFENSE
(Waiver)

The Order and Accusation and each charge or cause of action alleged therein are barred by the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE
(Federal Preemption)

The Order and Accusation and each charge or cause of action alleged therein are barred under the doctrine of federal preemption.

NINTH AFFIRMATIVE DEFENSE
(Standing or Jurisdiction)

The DTSC lacks standing or jurisdiction to assert the charges or causes of action against Exide in the Order and Accusation.

TENTH AFFIRMATIVE DEFENSE
(Intervening/Superseding Cause)

The injuries and damages of which the DTSC complains in the Order and Accusation are proximately caused by or contributed to by the acts of other third parties, and that said acts constitute intervening and superseding causes of the injuries and damage, if any, of which the DTSC complains, thus barring the DTSC from acting against Exide.

ELEVENTH AFFIRMATIVE DEFENSE
(Denial of Equal Protection)

The Order and Accusation and each charge or cause of action alleged therein are barred under the equal protection clauses of the United States Constitution and the California Constitution.

TWELFTH AFFIRMATIVE DEFENSE
(Lack of Due Process)

The Order and Accusation and each charge or cause of action alleged therein are barred because Exide was denied due process under the United States Constitution and the California Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE
(Ex Post Facto Clause)

The Order and Accusation and each charge or cause of action alleged therein are barred under the ex post facto clause of the United States Constitution and the California Constitution to the extent the DTSC seeks to impose liability retroactively for conduct that was not actionable when it occurred.

FOURTEENTH AFFIRMATIVE DEFENSE
(Void for Vagueness)

The charges brought by the DTSC in its Order and Accusation are vague and ambiguous, and therefore are unconstitutional.

FIFTEENTH AFFIRMATIVE DEFENSE
(Separation of Powers)

The Order and Accusation and each charge or cause of action alleged therein are barred because the DTSC is seeking to act as a legislative body through the establishment of vague and unwritten standards that it seeks to enforce against Exide.

SIXTEENTH AFFIRMATIVE DEFENSE
(Arbitrary and Capricious)

The actions of the DTSC are arbitrary and capricious in that the DTSC has applied different standards to Exide than those applied to other businesses in the Southern California area.

SEVENTEENTH AFFIRMATIVE DEFENSE
(No Imminent and Substantial Danger or Identifiable Harm)

The Order and Accusation fail to state facts sufficient to allege an imminent and substantial danger to health or the environment at Exide's facility.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Uncertainty)

The Accusation and the Order are vague, ambiguous, uncertain, and unintelligible.

NINETEENTH AFFIRMATIVE DEFENSE

(Consent)

The DTSC has known of the issues raised in the Order and Accusation for an extended period of time, and has consented to Exide's continued operation.

TWENTIETH AFFIRMATIVE DEFENSE

(Abstention)

The DTSC's Order and Accusation, and the entire proceeding against Exide, should be stayed until the agencies with primary jurisdiction have concluded their actions.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Void For Vagueness)

Health and Safety Code Section 25186.2 is void for vagueness, because the term imminent and substantial danger, whether on its face or as applied, is too ambiguous to be enforced.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Void For Vagueness)

California Code of Regulations Sections 66264 and 66265 are, on their face and as applied, void for vagueness and cannot be used as enforceable standards.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Void For Vagueness)

The use of a hazard index, a maximum individual cancer risk, and a "cumulative risk" as enforceable standards are, on their face and as applied, void for vagueness.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Waiver)

The DTSC has unreasonably delayed approval of Exide's RCRA permit, and that delay has resulted in a waiver of any claim by the DTSC that Exide only has interim permit status.

PRAYER FOR RELIEF

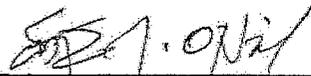
Exide hereby requests an immediate Stay of the Order and Accusation until such time as a decision is reached on the merits. Exide asserts that there is no imminent and substantial danger to the public health, safety or the environment. Further, the DTSC has failed to allege facts that support or substantiate its claims. The Order and Accusation have effectively shut down Exide's business operations in Vernon, resulting in substantial loss of employment and financial harm. Exide requests that the Court dismiss the Order and Accusation filed by the DTSC, and enter an order permitting Exide to resume operations at its Vernon plant.

Exide reserves its right to amend or supplement this Notice of Defense.

Dated: May 6, 2013

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
RANDOLPH VISSER
STEPHEN J. O'NEIL
JEFFREY J. PARKER
OLIVIER THEARD

By



STEPHEN J. O'NEIL

Attorneys for Respondent Exide Technologies, Inc.

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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Los Angeles, CA 90071
(213) 620-1780 (main)
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www.sheppardmullin.com

EXHIBIT A

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Exide Technologies, Inc.
13000 Deerfield Parkway, Suite 200
Milton, Georgia 30004

In the Matter of:

Exide Technologies, Inc.
2700 South Indiana Avenue
Vernon, California 90058

ID No. CAD 097854541
Respondent.

HWCA: P3-12/13-010

NOTICE OF DEFENSE

Health and Safety Code
Section 25186.1 & 25186.2

I, the undersigned Respondent, acknowledge receipt of a copy of the Order for Temporary Suspension, Accusation for Temporary Suspension, Statement to Respondent, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Order for Temporary Suspension.

Dated: May 6, 2013



(Signature of Respondent)

Please Type or Print the Name and Mailing Address of Respondent

Ed Mapas - Exide Technologies
(Name)

2700 S. Indiana St
(Street Address)

Vernon CA 90058
(City) (State) (Zip)

323-202-1101x259
(Telephone Number)

Ruth Williams-Murhead
(Inspector)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On **May 6, 2013**, I served true copies of the following document(s) described as (1) **NOTICE OF DEFENSE OF RESPONDENT EXIDE TECHNOLOGIES, INC.**; (2) **REQUEST FOR (1) AN EMERGENCY HEARING ON A MOTION FOR A TEMPORARY STAY OF THE SUSPENSION ORDER; AND (2) A HEARING ON THE MERITS WITHIN 30 DAYS IN CONFORMANCE WITH HEALTH AND SAFETY CODE SECTIONS 25186.1 AND 25186.2; (3) OBJECTIONS TO ACCUSATION; AND (4) AFFIRMATIVE DEFENSES** on the interested parties in this action as follows:

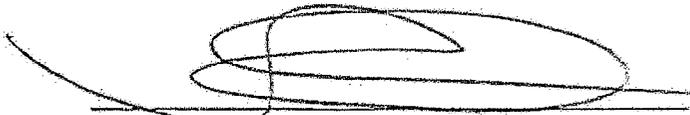
Chief Counsel
Office of Legal Counsel
Department of Toxic Substance Control
1001 I Street, 23rd Floor
P.O. Box 806
Sacramento. CA 95812-0806

BY EXPRESS MAIL: I enclosed said document(s) in an envelope or package provided by the United States Postal Service and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the United States Postal Service.

BY MESSENGER SERVICE: I provided such document(s) to a professional messenger service for service. *(A declaration by the messenger shall accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **May 6, 2013**, at Los Angeles, California.



Valerie Arriola

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DECLARATION OF MESSENGER

I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in the service list. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date): _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)