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Department of Toxic Substances Control

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 CENTRAL DISTRICT

11
12
13 **EXIDE TECHNOLOGIES, INC. a**
Delaware corporation,

14 Plaintiff,

15 v.

16
17 **DEPARTMENT OF TOXIC**
SUBSTANCES CONTROL, a public agency
of the State of California,

18 Defendant and Respondent.

Case No. BS143369

DEFENDANT AND RESPONDENT
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL'S
OBJECTIONS TO DECLARATIONS IN
SUPPORT OF EXIDE TECHNOLOGIES,
INC'S ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION

Date: July 2, 2013

Time: 9:30 a.m.

Dept: 82

Judge: The Honorable Luis A. Lavin

Trial Date: Not set

Action Filed: June 13, 2013

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 Defendant and Respondent, Department of Toxic Substances Control, a public agency of
23 the State of California, objects to the admission into evidence portions of the following
24 declarations filed in support of Petitioner and Plaintiff Exide Technologies, Inc.'s *Ex Parte*
25 Application for Order to Show Cause re: Preliminary Injunction.
26
27
28

1 **OBJECTIONS TO KEMP DECLARATION**

2 **Objection No. 1**

3 “It is clear that the reduction in arsenic emissions brings the Exide Facility within acceptable risk
4 levels for residents and workers, as determined by SCAQMD rules.” (Kemp Decl., p. 10:25-27.)

5 **Grounds for Objection No. 1**

6 Improper Legal Opinion (Evid. Code, § 310), Lack of Proper Foundation (Evid. Code, § 403),
7 Improper Expert Opinion Testimony based on preliminary testing (Evid. Code. § 801(b))

8
9 **Objection No. 2**

10 “Based on preliminary testing since installation of the isolation door, all of the calculated health
11 risks meet the risk reduction Action Levels specified in AQMD Rule 1402 of 25 in a million
12 increased cancer risk, a hazardous index of 3.0, and a cancer burden of 0.5 by a wide margin. In
13 my opinion, no further risk reduction measures will be necessary to satisfy SCAQMD Rule 1402.
14 We believe that the findings based on these preliminary tests will be confirmed by the pending
15 permit-required stack testing at full operational rates.” (Kemp Decl., p. 11:26-12:4.)

16 **Grounds for Objection No. 2**

17 Improper Expert Opinion Testimony based on preliminary testing (Evid. Code. § 801(b)),
18 Improper Legal Opinion (Evid. Code, § 310), Lack of Proper Foundation (Evid. Code, § 403)

19
20 **Objection No. 3**

21 “Until the DTSC issued its shutdown order on April 24, 2013, the DTSC had never suggested that
22 the Exide Facility posed an imminent risk to human health or the environment. The DTSC
23 provided no warning to Exide, and to my knowledge, the DTSC did not consult with the
24 SCAQMD before issuing the shutdown order. To my knowledge, when the DTSC issued its
25 Order suspending Exide’s operations, the DTSC was not even aware of the test data set forth in
26 Exhibit H, which proved the effectiveness of the isolation door as the solution to the arsenic
27 emission issue.” (Kemp Decl., p. 12:12-18.)

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1 **Grounds for Objection No. 3**

2 Vague (Evid. Code, § 352), Lack of Proper Foundation (Evid. Code, § 403), Lack of Personal
3 Knowledge (Evid. Code, § 702), Improper Expert Opinion Testimony based on preliminary
4 testing (Evid. Code. § 801(b))

5
6 **Objection No. 4**

7 “Since that time, due to the engineering changes implemented by Exide, the arsenic emissions
8 from the Hard Lead Stack at the Excide Facility have been reduced by more than 98 percent.
9 Since the arsenic levels were the ‘driver’ for over 90 percent of the increased cancer risk
10 identified in the January 2013 HRA, the health risk levels associated with their emissions at the
11 Exide Facility have been reduced to levels what will likely require no further risk reduction under
12 the SCAQMD’s rules.” (Kemp Decl. p. 12:23 through p. 13:2.)

13 **Grounds for Objection No. 4**

14 Improper Expert Opinion Testimony based on preliminary testing (Evid. Code. § 801(b)),
15 Speculation (Evid. Code, § 702), Improper Legal Opinion (Evid. Code, § 310), Lack of Proper
16 Foundation (Evid. Code, § 403)

17
18 **Objection No. 5**

19 “In my opinion, the air emissions from the Exide Facility do not pose an imminent risk or a
20 substantial risk to human health or the environment.” (Kemp. Decl. p. 13:3-4.)

21 **Grounds for Objection No. 5**

22 Improper Expert Opinion Testimony based on preliminary testing (Evid. Code. § 801(b))

23
24 **Objection No. 6**

25 “However, the DTSC as a matter of course has accepted cumulative cancer risks that are much
26 higher than one in a million (written as 1×10^{-6} in HRAs and reporting of results).” (Kemp Decl.,
27 p. 13:18-20.)

28 ///

1 **Grounds for Objection No. 6**

2 Lack of Proper Foundation (Evid. Code, § 403), Lack of Personal Knowledge (Evid. Code, §
3 702), Argumentative (Evid Code, § 765).

4
5 **Objection No. 7**

6 “The precedent that DTSC established with Exide’s direct competitor, Quemetco, was that 20 in a
7 million was acceptable in order to issue a full and complete RCRA permit.” (Kemp Decl., p.
8 14:5-7.)

9 **Grounds for Objection No. 7**

10 Vague (Evid. Code, § 352), Lack of Proper Foundation (Evid. Code, § 403)

11
12 **Objection No. 8**

13 “The Quemetco HRA was the basis of Quemetco’s Environmental Impact Report, and it resulted
14 in permit approval by the DTSC.” (Kemp Decl., p. 14:9-11.)

15 **Grounds for Objection No. 8**

16 Lack of Personal Knowledge (Evid. Code, § 702); Hearsay (Evid. Code, § 1200)

17
18 **OBJECTIONS TO STRATMAN DECLARATION**

19 **Objection No. 9**

20 “However, after December 2006 (when Exide submitted the Phase 3 RFI Work Plan and
21 SWMU-11 ICM Work Plan), DTSC reverted to its old approach of being unable to review and
22 respond to documents in a timely and concise manner.” (Stratman Decl. p. 7:18-20.)

23 **Grounds for Objection No. 9**

24 Irrelevant (Evid. Code, § 350), Argumentative (Evid Code, § 765)

25
26 **Objection No. 10**

27 “. . . nor is the water itself characteristically hazardous.” (Stratman Declaration, p. 8:10.)

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1 **Grounds for Objection No. 10**

2 Vague (Evid. Code, § 352), Improper Legal Opinion (Evid. Code, § 310)

4 **Objection No. 11**

5 “In fact, the presence of standing water is proof that the pipe is water-tight because if the pipe
6 were leaking at these locations the water would dissipate through the leaks and the pipe would be
7 dry.” (Stratman Decl., p. 11:19-21.)

8 **Grounds for Objection No. 11**

9 Speculation (Evid. Code, § 702)

11 **Objection No. 12**

12 “DTSCs statement that ‘The videos associated with the Report demonstrate all piping associated
13 with the storm sewer system to be substantially deficient’ is inflammatory and an exaggeration of
14 actual conditions.” (Stratman Decl. p. 11:23-25.)

15 **Grounds for Objection No. 12**

16 Argumentative (Evid. Code, § 765), Irrelevant (Evid. Code, § 350); Improper Expert Opinion
17 (Evid. Code, § 803)

19 **Objection No. 13**

20 “DTSC had not responded to Exide’s response prior to closing the facility, nor did DTSC tell
21 Exide that it perceived any imminent danger, substantial danger, or urgent problem that
22 immediately needed to be remedied.” (Stratman Decl., p. 14:6-8.)

23 **Grounds for Objection No. 13**

24 Irrelevant (Evid. Code, § 350), Argumentative (Evid Code, § 765)

26 **Objection No. 14**

27 “The DTSC is overstating the urgency and significance of the damage identified to the
28 stormwater system relative to the historic facility impacts that are the focus of the RFI.”

1 (Stratman Decl., p. 15:798.)

2 **Grounds for Objection No. 14**

3 Argumentative (Evid. Code, § 765), Lack of Foundation (Evid. Code, § 403)

4
5 **Objection No. 15**

6 “There is no data, of any kind, supporting the DTSC’s speculation that leakage from the storm
7 sewer system is degrading groundwater beneath the Facility and, based on results for groundwater
8 monitoring well MW-10, it is evident that groundwater quality has been stable for more than a
9 decade.” (Stratman Decl., p. 15:13-16.)

10 **Grounds for Objection No. 15**

11 Argumentative (Evid. Code, § 765), Lack of Foundation (Evid. Code, § 403)

12
13 **OBJECTIONS TO PREUTH DECLARATION**

14 **Objection No. 16**

15 “Second, since issuing the Order – and notwithstanding that DTSC knows that Exide is
16 complying with the Order, that Exide met with DTSC to describe in detail its compliance, and
17 that Exide disputes the accusations –DTSC has taken affirmative steps to contact Exide’s
18 suppliers to intentionally interfere with Exide’s relationships with those suppliers and tarnish
19 Exide’s reputation by affirmatively stating its accusations, without qualification, as if they were
20 undisputed facts (filed herewith as Exhibit P is a true and correct copy of an April 25, 2013 letter
21 written by DTSC). This egregious act by DTSC is causing and will continue to cause irreparable
22 damage to Exide.” (Preuth Decl., ¶ 15, lines 20-29, continuing to the following page, lines 1-2.)

23 **Grounds for Objection No. 16**

24 Argumentative (Evid. Code, § 765), Lack of Foundation (Evid. Code, § 403), Improper Opinion
25 (Evid. Code, § 803)

26
27 **Objection No. 17**

28 “The large drop in capacity for lead-acid battery recycling as a result of the shutdown of Exide’s

1 Vernon Facility could disrupt the balance of the battery market and cause an excess of hazardous
2 waste (i.e. batteries) in need of recycling. Faced with the excess waste – which cannot be stored
3 for an extended period of time – people with spent batteries could be forced possibly to ship
4 them to recyclers in the Midwest, to small unregulated smelters in Mexico, or to facilities
5 overseas, all of which will cause significant unnecessary expenses or detrimental environmental
6 consequences. In addition, it is possible that some will violate the law and send batteries to
7 landfills, which will cause even more dire environmental consequences.” (Preuth Decl., ¶ 17,
8 lines 11-18)

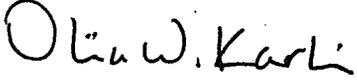
9 **Grounds for Objection No. 17**

10 Lack of Personal Knowledge (Evid. Code, § 702), Argumentative (Evid. Code, § 765), Lack of
11 Foundation (Evid. Code, § 403), Improper Opinion (Evid. Code, § 803), Speculation (Evid. Code,
12 § 702)

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14 Dated: June 25, 2013

Respectfully Submitted,

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