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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

**EXIDE TECHNOLOGIES, INC. a
Delaware corporation,**

Plaintiff,

v.

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

Defendant and Respondent.

Case No. BS143369

**[PROPOSED] ORDER ON 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 Hon. Luis A. Lavin
Trial Date: Not set
Action Filed: June 13, 2013

OBJECTIONS TO KEMP DECLARATION

Objection No. 1

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

1 **Grounds for Objection No. 1**

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

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5 **Court’s Ruling on Objection No. 1**

Sustained: _____

Overruled: _____

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8 **Objection No. 2**

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

15 **Grounds for Objection No. 2**

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

18

19 **Court’s Ruling on Objection No. 2**

Sustained: _____

Overruled: _____

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22 **Objection No. 3**

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

1 emission issue.” (Kemp Decl., p. 12:12-18.)

2 **Grounds for Objection No. 3**

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

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7 **Court’s Ruling on Objection No. 3**

Sustained: _____

Overruled: _____

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10 **Objection No. 4**

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

17 **Grounds for Objection No. 4**

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

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22 **Court’s Ruling on Objection No. 4**

Sustained: _____

Overruled: _____

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25 **Objection No. 5**

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

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1 **Grounds for Objection No. 5**

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

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4 **Court’s Ruling on Objection No. 5**

Sustained: _____

Overruled: _____

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7 **Objection No. 6**

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

11 **Grounds for Objection No. 6**

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

14

15 **Court’s Ruling on Objection No. 6**

Sustained: _____

Overruled: _____

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17 **Objection No. 7**

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

21 **Grounds for Objection No. 7**

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

23

24 **Court’s Ruling on Objection No. 7**

Sustained: _____

Overruled: _____

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1 **Objection No. 8**

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

4 **Grounds for Objection No. 8**

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

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7 **Court’s Ruling on Objection No. 8**

Sustained: _____

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Overruled: _____

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10 **OBJECTIONS TO STRATMAN DECLARATION**

11 **Objection No. 9**

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

15 **Grounds for Objection No. 9**

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

17

18 **Court’s Ruling on Objection No. 9**

Sustained: _____

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Overruled: _____

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21 **Objection No. 10**

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

23 **Grounds for Objection No. 10**

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

25

26 **Court’s Ruling on Objection No. 10**

Sustained: _____

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Overruled: _____

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1 **Objection No. 11**

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

5 **Grounds for Objection No. 11**

6 Speculation (Evid. Code, § 702)

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8 **Court’s Ruling on Objection No. 11**

Sustained: _____

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Overruled: _____

10 **Objection No. 12**

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

14 **Grounds for Objection No. 12**

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

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18 **Court’s Ruling on Objection No. 12**

Sustained: _____

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Overruled: _____

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21 **Objection No. 13**

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

25 **Grounds for Objection No. 13**

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

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Court’s Ruling on Objection No. 13

Sustained: _____

Overruled: _____

Objection No. 14

“The DTSC is overstating the urgency and significance of the damage identified to the stormwater system relative to the historic facility impacts that are the focus of the RFI.”
(Stratman Decl., p. 15:7-9.)

Grounds for Objection No. 14

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

Court’s Ruling on Objection No. 14

Sustained: _____

Overruled: _____

Objection No. 15

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

Grounds for Objection No. 15

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

Court’s Ruling on Objection No. 15

Sustained: _____

Overruled: _____

OBJECTIONS TO PREUTH DECLARATION

Objection No. 16

“Second, since issuing the Order – and notwithstanding that DTSC knows that Exide is complying with the Order, that Exide met with DTSC to describe in detail its compliance, and

1 that Exide disputes the accusations –DTSC has taken affirmative steps to contact Exide’s
2 suppliers to intentionally interfere with Exide’s relationships with those suppliers and tarnish
3 Exide’s reputation by affirmatively stating its accusations, without qualification, as if they were
4 undisputed facts (filed herewith as Exhibit P is a true and correct copy of an April 25, 2013 letter
5 written by DTSC). This egregious act by DTSC is causing and will continue to cause irreparable
6 damage to Exide.” (Preuth Decl., ¶ 15, lines 20-29, continuing to the following page, lines 1-2.)

7 **Grounds for Objection No. 16**

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

11 **Court’s Ruling on Objection No. 16**

Sustained: _____

12 **Overruled:** _____

14 **Objection No. 17**

15 “The large drop in capacity for lead-acid battery recycling as a result of the shutdown of Exide’s
16 Vernon Facility could disrupt the balance of the battery market and cause an excess of hazardous
17 waste (i.e. batteries) in need of recycling. Faced with the excess waste – which cannot be stored
18 for an extended period of time – people with spent batteries could be forced possibly to ship
19 them to recyclers in the Midwest, to small unregulated smelters in Mexico, or to facilities
20 overseas, all of which will cause significant unnecessary expenses or detrimental environmental
21 consequences. In addition, it is possible that some will violate the law and send batteries to
22 landfills, which will cause even more dire environmental consequences.” (Preuth Decl., ¶ 17,
23 lines 11-18.)

24 **Grounds for Objection No. 17**

25 Lack of Personal Knowledge (Evid. Code, § 702), Argumentative (Evid. Code, § 765), Lack of
26 Foundation (Evid. Code, § 403), Improper Opinion (Evid. Code, § 803), Speculation (Evid. Code,
27 § 702).

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Court's Ruling on Objection No. 17

Sustained: _____

Overruled: _____

DATED: _____

Judge Luis Lavin