

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

AB 861 (Santiago) – As Amended March 23, 2023

SUBJECT: Hazardous waste: Exide Technologies facility

SUMMARY: Requires the Board of Environmental Safety (Board) to contract with an entity (contractor) that has expertise in remediating contaminated sites for the purpose of reviewing the Department of Toxic Substances Control's (DTSC's) residential cleanup near the former Exide Technologies (Exide) lead-acid battery recycling facility in the City of Vernon. Specifically, **this bill:**

- 1) Requires the Board to contract with a contractor that has expertise in remediating contaminated sites for the purpose of reviewing DTSC's residential cleanup near Exide.
- 2) Requires the contractor to, but not be limited to, meet with members of the community near Exide to hear comments or concerns about the residential cleanup.
- 3) Requires the contractor to, no later than January 1, 2027, provide its findings to the Board and requires the Board to post these findings on its internet website.

EXISTING LAW:

- 1) Creates the Hazardous Waste Control Law (HWCL), which authorizes DTSC to regulate the management of hazardous waste in California. (Health and Safety Code (HSC) § 25100 et seq.)
- 2) Establishes the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites, that pose a threat to public health or to the environment. (HSC § 25300 et seq.)
- 3) Establishes the Board within DTSC with five voting members as follows: three members appointed by the Governor; one member appointed by the Senate Committee on Rules; and, one member appointed by the Speaker of the Assembly. (HSC § 25125).
- 4) Requires the Board, beginning January 1, 2022, to conduct no fewer than six public meetings per year, at least three of which shall be held outside the greater Sacramento area. (HSC §
- 5) Requires the Board to do all of the following:
 - a) Set fees pursuant to requirements in existing law for hazardous waste fees and the environmental fee;
 - b) Hear and decide appeals of hazardous waste facility permit decisions;
 - c) Provide opportunities for public hearings on individual permitted or remediation sites;

- d) Review and consider for approval the director of DTSC's (director) annual priorities for each program under DTSC and, after consulting with the director, adopt clear performance metrics for DTSC and each of DTSC's programs;
- e) Conduct an analysis of the fee structure supporting the department's activities funded by the Hazardous Waste Control Account, the Hazardous Waste Facilities Account, and the Toxic Substances Control Account and, to the extent necessary, develop recommendations for funding the department's activities;
- f) Conduct an analysis of the department's programs, the relationship between those programs and related programs in other regulatory agencies, and, to the extent necessary, develop recommendations to improve coordination between programs, and to reduce or eliminate duplication or overlap; and,
- g) Develop, in consultation with the director and with consideration of available resources, a multiyear schedule for the discussion of long-term goals for the following departmental activities:
 - (i) DTSC's processing of hazardous waste facility permits and proposals to improve the efficiency of the permitting process;
 - (ii) DTSC's duties and responsibilities in law and proposals to improve DTSC's ability to meet those duties and responsibilities;
 - (iii) The site mitigation program and proposals for the prioritization of the cleanup of contaminated properties; and,
 - (iv) DTSC's implementation of its enforcement activities. (HSC § 25125.2)
- 6) Requires the director, or a designee to present and respond to the Board, if requested by the Board, on any issue or item brought forward by a member of the public, the Board ombudsperson, or a Board member. (HSC § 25125.6)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Our goal for nearly a decade has been to get pollution out of our communities by cleaning up Exide's lead contamination. Over the years, the clean-up has been wrought with many problems and frustrations, to say the least. Most recently, the LA Times highlighted findings from a USC study that has caused even more distrust among the community with strained relationships between contractors and many community members. While we learn more about the study, we must improve the relations between the community members and contract workers. AB 861 aims to create trust, accountability and transparency between contractors and community members. My community has suffered enough and we must restore trust."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste

must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point that hazardous waste is generated to management, transportation, and ultimately disposal of waste into a state or federally- authorized facility.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law, the HSAA, provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment. The HSAA provides DTSC with the authority, to investigate, remove, and remediate contamination at sites.

Board of Environmental Safety: Senate Bill 158 (Budget, Chapter 73, Statutes of 2021) created the Board to improve DTSC's transparency, accountability, and fiscal stability. The Board is comprised of 4 part-time members and one full-time member. Three of the Board members are appointed by the Governor, including the full-time Board Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member.

The Board's duties and authorities include developing a multi-year schedule to develop long-term goals for DTSC's programs; reviewing and approving the Director's priorities and adopting performance metrics; adjusting fee rates based upon changes made in the annual Budget Act; hearing and deciding hazardous waste facility permit appeals; providing opportunities for public hearings on permitted and remediation sites; conducting an analysis of DTSC's fee structure; conducting an analysis of DTSC's programs and their relationship with related programs in other agencies; and, forming advisory subcommittees on any topic, including fees and environmental justice. SB 158 also established an Office of the Ombudsperson within the Board and requires the DTSC Director and the Board Chair to appear annually before Legislative policy committees.

Exide facility: In 2000, Exide Technologies, headquartered in Georgia, purchased a facility—first opened in 1922—in the City of Vernon, a few miles southeast of downtown Los Angeles. The facility occupied 15 acres in a heavily industrial region with surrounding residential areas. Facility operations included recycling lead-bearing scrap materials obtained from spent lead-acid batteries. The facility processed about 25,000 batteries a day, providing a source of lead for new batteries. The Department of Health Services (DHS) Toxic Substances Control Division issued an interim status authorization in 1981 to the operator of the facility at the time, Gould, Inc. While seeking a hazardous waste facility permit, the facility operated under that interim authorization until it closed in 2015.

Activities conducted at the former Exide facility that may have contributed to contamination of offsite properties include battery breaking, smelting, refining lead, and storage, handling, and transportation of batteries, finished lead product, and other materials associated with lead recycling operations. Many of these activities occurred for decades before environmental statutes or regulations existed and without proper environmental control measures, and may have contributed to releases of lead in the residential area near the facility. In March 2015, DTSC informed Exide that its hazardous waste permit application would be denied, and Exide permanently closed the facility.

Residential cleanup near Exide: The Exide residential cleanup project constitutes the largest cleanup effort undertaken by California. DTSC is the lead agency overseeing the investigation and cleanup of residential properties, schools, parks, daycare, and childcare centers within the approximately 1.7-mile radius of the former Exide facility.

In July 2017, DTSC released the Final Removal Action Plan (Cleanup Plan), and a Final Environmental Impact Report (EIR) related to the cleanup of properties in the preliminary investigation area (PIA). The Cleanup Plan focused on cleaning up approximately 2,500 residential properties, schools, parks, daycare centers, and childcare facilities within the PIA. The PIA includes sections of the cities of Vernon, Bell, Huntington Park, Commerce, Maywood, Los Angeles (Boyle Heights neighborhood), and an area of unincorporated Los Angeles County (East Los Angeles neighborhoods). The Cleanup Plan held the goal of cleaning up all properties with lead sampling results that exceed the representative soil lead concentration of 80 ppm. Additionally, the EIR analyzed a larger cleanup project, up to approximately 10,000 properties in the PIA, allowing DTSC to continue the cleanup of properties beyond the 2,500 initially selected properties, as funds allow.

Funding provided for the Exide cleanup:

- In the 2015 budget, \$1.7 million was allocated to DTSC to implement the Exide Enforcement Order and \$7 million was allocated to DTSC for sampling up to 1,500 properties near Exide and to develop a cleanup plan;
- In 2016 a \$176.6 million General Fund loan was allocated to DTSC for the cleanup of residential properties near Exide;
- In 2018 \$6.5 million was allocated to DTSC to sample and cleanup parkways in the communities near Exide;
- In 2019 a \$74.4 million dollar loan from the General Fund was allocated to DTSC for clean-up activities relating to Exide. This funding was needed to cover increased costs relating to the current cleanup of residential properties as well as accelerate the cleanup of additional properties within the PIA; and,
- In 2021, SB 158 (Budget, Chapter 73, Statutes of 2021) provided \$322 million to DTSC for activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding the former Exide Technologies facility in the City of Vernon and for job training activities related to the cleanup and investigation of the properties contaminated with lead in the communities surrounding the former Exide facility.

Recent concerns over residential cleanup: Some concerns over the quality of the cleanup were raised in the February 10, 2023, *Los Angeles Times* article, "California's biggest environmental cleanup leaves lead contamination and frustration." According to the article, here are some of the issues raised:

"California's largest and most expensive environmental cleanup has failed to properly remove lead pollution from some homes and neighborhoods near a notorious battery recycler in southeast Los Angeles County, leaving residents at continued risk, a Times investigation shows. Six years after DTSC embarked on a massive remediation effort around the shuttered Exide plant, numerous homes targeted for cleanup have been left with concentrations in excess of state health standards.

In findings shared exclusively with The Times, researchers at the University of Southern California (USC) and Occidental College reported that they had tested surface soil from the yards of 93 remediated homes and found 73 had a least one sample with lead concentrations

over the California health threshold of 80 parts per million. They also found that 22 of the homes had a least one sample that tested over 400 parts per million, the federal limit.

The high lead concentrations have raised serious questions about DTSC's oversight of the \$750 million project – as well as its commitment to making these predominantly Latino and historically underserved neighborhoods safe from a brain-damaging metal.

Officials with DTSC have acknowledged missteps, but say many of those issues have been addressed. They say the agency is forging ahead with work to remove lead from another 1,500 properties by 2025. "We don't claim to have gotten everything right on this critical project," said Meredith Williams, DTSC's director since 2019. "There was no blueprint based on similar projects that could inform our work. I'm not sure any state department or agency anywhere in the country would have gotten there."

Los Angeles County Supervisors Hilda Solis and Janice Hahn, who represent the affected communities, are now calling for an audit to explain why residents are still living with lead. "These people thought they had a clean bill of health and, in fact, they don't," Hahn said. "We will not be happy until we know that these homes have been cleaned up --- for good."

As the cleanup progressed, Jill Johnston, an associate professor of environmental health at USC, noticed that many residents were wary of enjoying their yards even after contaminated soil was replaced. To alleviate concerns, Johnston and other researchers offered free testing to people whose homes had been cleaned. What they found was not reassuring. "It raises a lot of questions about how systematic the cleanup is in these homes," Johnston said.

Asked for comment on the USC testing results, DTSC said it needed more information. "While DTSC has been made aware of USC's sampling, we have not been given access to the full study and do not know which properties were sampled, where on the property the samples were taken, or how the samples were analyzed," the agency said in a statement. "Those details will be critical to confirming a scientific apples-to-apples comparison and informing our ongoing work at the site."

This bill: AB 861 requires the Board to hire a contractor to review DTSC's oversight of the residential cleanup near Exide and report back to the Board. Given the importance of cleaning up lead in communities and ensuring that the cleanup actually removed the lead-contaminated soil, it is very reasonable to seek a review of DTSC's work to get this right. It is important to note that at the writing of this analysis, the Committee has not seen or received the USC study. Also, it is also important to remember that DTSC's cleanup plan for the residential area near Exide did state that in some instances lead soil would remain on certain properties under certain conditions: near utility lines; near the base of trees, fences, or structures; and, under hardscape, decks, or areas not readily accessible to residents. AB 861 will help the Legislature and communities near Exide have a better understanding of the efficacy of the cleanup near Exide.

Arguments in support:

None on file.

Arguments in opposition:

None on file.

Related legislation:

- 1) SB 158 (Budget, Chapter 73, Statutes of 2021). Establishes a 5-member Board of Environmental Safety; revises, recasts and increases hazardous waste fees; makes changes to DTSC financial assurance requirements for hazardous waste facilities and cleanup sites; and, makes improvements to the permitting of hazardous waste facilities.
- 2) AB 1 (C. Garcia, 2021). Would have created the Board of Environmental Safety within the California Environmental Protection Agency (CalEPA) to provide policy direction to and oversight of DTSC. Would have raised and recast existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately \$18 million. The contents of the bill were later deleted and was no longer pursued due to the compromise legislation in SB 158. The bill was amended to contain provisions in a different subject area.
- 3) AB 1024 (Santiago, Chapter 474, Statutes of 2021). Requires DTSC to post on its internet website easily accessible information for each contaminated site cleanup project, as specified. Additionally, requires that moneys recovered by the State from responsible parties relating to the Exide cleanup site be used to repay the General Fund, the Lead Acid Battery Cleanup Fund, and any other fund sources for costs incurred during the cleanup of contaminated sites near Exide.
- 4) AB 995 (C. Garcia, 2020). Would have created the Board of Environmental Safety within CalEPA to provide policy direction to and oversight of DTSC. Raises and recasts existing fees within the HWCA to fill a projected deficit of approximately \$18 million. This bill was vetoed by the Governor.
- 5) AB 2677 (Santiago, 2020). Would have created, within the CalEPA, the position of community liaison, which would be responsible for community outreach and dissemination of information relating to the cleanup of lead contamination in the areas surrounding the Exide facility. Additionally, would have required the community liaison to work with DTSC to address issues raised by residents affected by the lead contamination near Exide. This bill was not heard in the Assembly Environmental Safety and Toxic Materials Committee and subsequently died on file.
- 6) AB 118 (Santiago, Chapter 10, Statutes of 2016). Appropriated \$176.6 million to DTSC to use for activities related to the cleanup and investigation of properties contaminated with lead in the communities surrounding Exide.

REGISTERED SUPPORT / OPPOSITION:**Support**

None on file.

Opposition

None on file.

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