

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee: Environmental Safety and Toxic Materials      Vote: 9 - 0

Urgency: No      State Mandated Local Program: No      Reimbursable: No

**SUMMARY:**

This bill requires the Board of Environmental Safety (Board) to contract with an entity (contractor) with expertise in remediating contaminated sites to review 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. This bill further requires the contractor to meet with and hear comments and concerns from members of the community near Exide and provide its findings to the Board by January 1, 2027. Finally, this bill requires the Board to post the contractor's findings on the Board's website.

**FISCAL EFFECT:**

DTSC describes the term "reviewing," as used in the bill, as vague. For this reason, DTSC estimates costs to implement this bill to range from \$440,000 to \$50.2 million for contract funds and one position in the first year and annual costs of \$240,000 until fiscal year 2026-27 (General Fund or special fund), with actual costs depending on how DTSC chooses to interpret "reviewing" and its implications. Were DTSC to interpret the bill more narrowly, it might require a contractor do nothing more than review for completeness a randomly selected, representative sample of properties' closure reports, and costs to the department would be relatively modest. At the other extreme, were DTSC to interpret "reviewing" more expansively, it might require a contractor to review invoices and closure reports for over 5,000 properties as well as resample properties, and DTSC's costs would be in the tens of millions of dollars. Given the high-profile and sensitive nature of this cleanup project, it is reasonable to assume the review required by this bill could be comprehensive. DTSC's difficulty in interpreting the meaning of "reviewing" and the implications of that meaning is understandable. The author may wish to clarify their intent and the meaning of the term in a way that provides more discrete direction to DTSC, which would allow a more precise estimate of the bill's costs.

**COMMENTS:**

1) **Purpose.** 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.

- 2) **Background. Exide.** In 2000, Exide Technologies purchased a facility, which first opened in 1922, in the City of Vernon, a few miles southeast of downtown Los Angeles and in a heavily industrial region with surrounding residential areas. Facility operations included recycling lead-bearing scrap materials obtained from spent lead-acid batteries. DTSC's predecessor agency issued an interim status authorization in 1981 to the operator of the facility at the time. While seeking a hazardous waste facility permit, the facility operated under the interim authorization until it closed in 2015. Activities conducted at Exide occurred for decades before environmental statutes or regulations existed and without proper control measures, and they 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.** 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 a 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 Cleanup Plan included the goal of cleaning up all properties with lead sampling results that exceed the representative soil lead concentration of 80 parts per million. 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.

Since 2015, the state has allocated nearly \$750 million from various sources to DTSC for the Exide residential cleanup project.

**Recent Concerns.** A February 2023 Los Angeles Times investigation found DTSC's cleanup of the Exide facility has "failed to properly remove lead pollution from some homes and neighborhoods...leaving residents at continued risk."

According to the article, when asked for comment on the USC testing results, DTSC said it needs more information and that it has not been given access to the full study or which properties were sampled, where on the property the samples were taken, or how the samples were analyzed. According to the Environmental Safety and Toxic Materials Committee analysis of this bill, DTSC's Cleanup Plan for the residential area near Exide stated that, in some instances, soil with lead would remain on certain properties under certain conditions, such as near utility lines, near the base of trees, fences, or structures, and under hardscape, decks, or areas not readily accessible to residents. The author introduced this bill in response to the Los Angeles Times investigation.

**Analysis Prepared by:** Nikita Koraddi / APPR. / (916) 319-2081