

ASSEMBLY THIRD READING

AB 861 (Santiago)

As Amended May 18, 2023

Majority vote

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.

Major Provisions**COMMENTS**

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'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; providing opportunities for public hearings on permitted and remediation sites; and, forming advisory subcommittees on any topic, including fees and environmental justice.

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.

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.

In findings shared exclusively with The Times, researchers at the University of Southern California (USC) and Occidental College reported (USC study) 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."

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.

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."

Arguments in Support

None on file.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, enactment of this bill could result in contracting costs to DTSC of an unknown but potentially significant amount, likely in the low to mid-hundreds of thousands of dollars until fiscal year 2026-2027.

VOTES

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 9-0-0

YES: Lee, Hoover, Arambula, Bauer-Kahan, Connolly, McKinnor, Pacheco, Ta, Zbur

ASM APPROPRIATIONS: 11-0-5

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Ortega

ABS, ABST OR NV: Megan Dahle, Dixon, Mathis, Robert Rivas, Sanchez

UPDATED

VERSION: May 18, 2023

CONSULTANT: Josh Tooker / E.S. & T.M. /

FN: 0000620