

**CONFIRMED COPY
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Los Angeles Superior Court**

AUG 30 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

1 Michael Freund SBN 99687
2 Law Offices of Michael Freund
3 1915 Addison Street
4 Berkeley, CA 94704
5 Phone: (510) 540-1992
6 Facsimile: (510) 540-5543
7 E-Mail freund1@aol.com
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

CENTER FOR ENVIRONMENTAL HEALTH,
a California non-profit corporation

CASE NO. **BC 444682**

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES**

**[Miscellaneous Civil Complaint (42)]
(Proposition 65, Health & Safety Code
Sections 25249.5 et seq.)**

**EXIDE TECHNOLOGIES
and DOES I-X,**

Defendants.

Plaintiff, Center for Environmental Health ("CEH") hereby alleges:

I

INTRODUCTION

1. CEH brings this action on behalf of itself and in the public interest pursuant to Health and Safety Code section 25249.7 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code section 25249.5 et seq) also known as "Proposition 65," this complaint seeks injunctive and declaratory relief and civil penalties based on Exide Technologies'

1 failure to warn all affected residents and workers in and around the Exide Technologies plant in the
2 City of Vernon that they have been and continue to be exposed to chemicals known to the State of
3 California to cause cancer and reproductive toxicity. Pursuant to Proposition 65, businesses with
4 ten or more employees must provide persons with a "clear and reasonable warning" prior to
5 exposing them to chemicals listed by the State at or above threshold levels for that chemical.
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7 II

8 PARTIES

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10 2. Plaintiff CEH is a non-profit California corporation dedicated to environmental
11 protection and enhancement. One of CEH's objectives is to prevent and reduce toxic hazards to
12 human health and the environment, specifically from pollution of air, water and land throughout
13 California. Through CEH's activities, numerous carcinogenic and reproductive chemicals listed
14 pursuant to Proposition 65 that have been present in consumer products and emitted into the air,
15 have been eliminated.
16

17 3. Exide Technologies is a corporation licensed to do business in the State of California.
18 Exide Technologies is one of the world's largest producers and recyclers of lead-acid batteries with
19 operations in more than 80 countries. Exide Technologies operates a battery recycling plant at 2700
20 S. Indiana Street, Los Angeles, California 90023 that is the subject of this legal action.
21

22 4. Defendants DOES I-X, are named herein under fictitious names, as their true names and
23 capacities are unknown to Plaintiff. CEH is informed and believes, and thereon alleges, that each of
24 said DOES is responsible, in some actionable manner, for the events and happenings hereinafter
25 referred to, either through said Exide Technologies' conduct, or through the conduct of its agents,
26 servants or employees, or in some other manner, causing the harms alleged by Plaintiff in this
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1 complaint. When said true names and capacities of DOES are ascertained, CEH will seek leave to
2 amend this complaint to set forth the same.

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III

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10.

6. CEH has performed any and all conditions precedent to the filing of a legal action

pursuant to Proposition 65 by mailing a Notice of Violation, dated September 8, 2008, to the

Attorney General of the State of California, the Los Angeles County District Attorney, the Los

Angeles City Attorney and Exide Technologies. A true and correct copy of this Notice is

attached herein as Exhibit A. More than 60 days have passed since CEH mailed its Notice and no

public enforcement entity has filed a complaint in this case.

7. This Court is the proper venue for the action because the causes of action have arisen in

Los Angeles County. Furthermore, this Court is the proper venue under Code of Civil Procedure

section 395 and Health and Safety Code section 25249.7.

IV

STATUTORY BACKGROUND

A. PROPOSITION 65

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute

passed as "Proposition 65" by a vote of the people of California in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health and Safety Code

section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

10. Implementing regulations for Proposition 65 provide that warnings are required for environmental exposures. Environmental exposures are those which may foreseeably occur as a result of contact with an environmental medium, including ambient air, "through inhalation, ingestion, skin contact or otherwise." 27 CCR section 25601 (d).

11. Warnings for environmental exposures must be "provided in a conspicuous manner and under such conditions as to make it likely to be read, seen, or heard and understood by an ordinary individual in the course of normal daily activity." 27 CCR section 25601 (d) (2). The warnings must also be "reasonably associated with the location and source of the exposure." *Id.*

12. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Health and Safety Code section 25249.8. The requirement to provide a warning shall be provided 12-months after the chemical was published on the state list. *Id.*, section 25249.10(b). Lead and lead compounds were listed as chemicals known to cause cancer on October 1, 1992 and lead was listed as a chemical known to cause reproductive toxicity (developmental, female and male) on February 27, 1987.

13. Proposition 65 may be enforced by any person in the public interest who provides notice sixty days before filing suit to both the violator and designated law enforcement officials. The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed pursuant to Health and Safety Code section 25249.7 (c).

14. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. Health and Safety Code section 25249.7. To "threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur. *Id.*, section 25249.11(e). Furthermore, Proposition provides that persons in violation of the statute are liable for civil penalties up to \$2,500 per day for each

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1 violation. Health and Safety Code section 25249.7(a) (b). Each individual exposure without
2 warning is a separate violation.

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V

STATEMENT OF FACTS

15. During the course of operations at its Los Angeles, facility, Exide Technologies emits
lead into the air and surrounding areas beyond the facility's boundaries.

16. Exide Technologies reports its toxic air emissions under penalty of perjury to the South
Coast Air Quality Management District annually. Exide Technologies reported the following lead

emissions to the Air District For the 2002-03 period, 1,197 pounds; for the 2003-04 period, 1,260

pounds; for the 2004-05 period, 2,289 pounds; for the 2005-06 period, 2,307 pounds; and for the

2006-07 period, 3,996 pounds. Exide Technologies contends that its most recent lead emissions are

1,900.93 pounds per year.

17. Workers and residents surrounding the Exide Technologies' plant in Los Angeles County
have been and continue to be exposed to lead emissions from Exide Technologies' battery recycling

plant.

18. Air dispersion modeling using the lower annual lead emission rate of 1,900.93 pounds,
demonstrates that numerous residents and workers have been exposed to levels of lead above

Proposition 65 warning threshold of .5 micrograms per day.

19. Exide Technologies has not provided clear and reasonable warnings to those residents
and workers in the areas beyond the plant boundaries who are exposed to lead from its facility as

required by Proposition 65.

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FIRST CAUSE OF ACTION

Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65

20. CEH refers to paragraphs 1-19, inclusive, and incorporates them herein by this reference.
21. Exide Technologies operates a business, which employs ten or more persons in the State of California.

22. By committing the acts alleged above, Exide Technologies has, in the course of doing business, knowingly and intentionally exposed individuals to chemicals known to the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

23. Said violations render Exide Technologies liable for civil fines up to \$2,500 (two thousand, five hundred dollars) per day, for each such violation.

24. Exide Technologies' continued violation of the law will irreparably harm CEH and the public interest on whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION

(Declaratory Relief)

25. CEH refers to paragraphs 1-24, inclusive, and incorporates them herein by this reference.

26. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of Code of Civil Procedure section 1060, between CEH and Exide Technologies concerning:

a) whether Exide Technologies has exposed individuals to chemicals known to the State of California to cause cancer and reproductive toxicity without providing clear and reasonable warning.

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WHEREFORE, CEH prays for relief against Exide Technologies as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;

2. On the First Cause of Action, and pursuant to Health and Safety Code section 25249.7 (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting Exide Technologies from exposing persons to lead without providing clear and reasonable warnings;

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring:

a. that Exide Technologies has exposed individuals to chemicals known to the State of California to cause cancer and reproductive toxicity without providing clear and reasonable warning; and

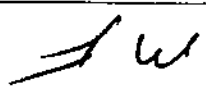
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;

5. For costs of suit herein; and

6. For such other relief as the Court may deem just and proper.

Dated: August 26, 2010

By



Michael Freund

Attorney for Center for Environmental Health

PRAYER

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADLISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1892
FAX 510/540-8543
EMAIL FREUND1@AOL.COM

September 8, 2008

Jerry Brown, Attorney General
Edward Well, Supervising Deputy Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612-1413

Steve Cooley, District Attorney
Los Angeles District Attorney's Office
210 W. Temple Street
Room 345
Los Angeles, CA 90012

Rockard J. Delgado, City Attorney
Los Angeles City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Re: Notice of Violation

Dear Prosecutors:

I represent the Center for Environmental Health ("CEH"), a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. This letter constitutes notification that Exide Technologies, located at 2700 South Indiana Street, Los Angeles, California 90023, has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has exposed and continues to expose numerous individuals within the surrounding area to the following reproductive toxicant to Proposition 65: lead, listed as a male and female developmental toxicant on February 27, 1987 and lead and lead compounds listed as carcinogens on October 1, 1992. The route of exposure has been primarily through inhalation, however additional exposures may arise through dermal contact with, or ingestion of, these chemicals. The general geographic location of the unlawful exposure to the residential community and occupational area lies within a radius of approximately .75 miles from the facility.

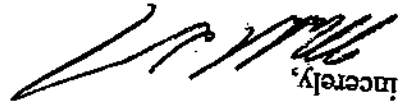
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. This company is in violation of Proposition 65 because it failed

to provide a warning to persons residing and working in the area surrounding the facility that they have been and continue to be exposed to these listed chemicals. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) Moreover, based on the exposure involved, we believe the method of warning should be "... a notice mailed or otherwise delivered to each occupant in the affected area. Such notice shall be provided at least once in any three-month period." (22 C.C.R. section 12601 (d) (1) (B)).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CEH gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CEH from information now available to us. CEH is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: Michael Green & Caroline Cox, CEH

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party Center for Environmental Health ("CEH")

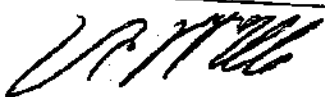
3. CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment.

4. The Notice of Violation alleges that the party identified has exposed persons in and around Los Angeles, California to lead and lead compounds. Please refer to the Notice of Violation for additional details regarding the alleged violations.

5. I have consulted with a scientist with more than 23 years of experience in chemical exposure issues. The consultant has the appropriate experience and expertise regarding the exposure issues in this case. The consultant has reviewed facts, studies or other data regarding the emissions of lead and lead compounds and the location of receptors to the party identified in the Notice exposes nearby residents and workers to the above chemicals.

6. Based on my consultation with an experienced consultant in this field, it is clear that there is sufficient evidence that human exposures exist from exposure to these chemicals from the noticed party. Furthermore, as a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that "reasonable

Michael Freund
Attorney for Center for Environmental
Health



Dated: September 8, 2008

and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

7. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (b) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On September 11, 2008 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Attorney General's Office
Attn: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612

Steve Cooley, District Attorney
Los Angeles District Attorney's Office
210 West Temple Street
Room 18-709
Los Angeles, CA 90012

Rockard J. Delgado, City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Thomas Wideman
Exide Technologies
2700 S. Indiana Ave.
Los Angeles, CA 90023

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on September 11, 2008 at Berkeley, California.



Michael Freund