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Attorney for Plaintiff
Center for Environmental Health

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTER FOR ENVIRONMENTAL HEALTH,
a California non-profit corporation

CASE NO. BC 444682

CONSENT JUDGMENT

Plaintiff

vs.

EXIDE TECHNOLOGIES
and DOES I-X,

Defendants.

I. INTRODUCTION

1.1 On 8/30/10, Plaintiff Center for Environmental Health ("CEH"), acting as a private attorney general and in the public interest, filed a Complaint for Injunctive and Declaratory Relief, and for Civil Penalties, in the Los Angeles County Superior Court against Defendant Exide Technologies ("Exide"). CEH and Exide shall be referred to collectively as the

“Parties.” CEH’s legal action alleges that Exide violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq. (“Proposition 65”).

1.2 CEH’s Complaint repeats allegations contained in its September 8, 2008 Notice of Violation relating to Exide’s Los Angeles, California facility which provided Exide, the California Attorney General, the Los Angeles County District Attorney and the Los Angeles City Attorney with Notice that the facility was allegedly in violation of Health and Safety Code section 25249.6 by knowingly and intentionally exposing persons to lead, a chemical known to the State of California to cause reproductive toxicity and cancer, without first providing a clear and reasonable warning to such individuals. A true and correct copy of this Notice Letter is attached hereto as Exhibit A.

1.3 CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. Through CEH’s activities, numerous carcinogenic chemicals and reproductive toxicants listed pursuant to Proposition 65 contained in consumer products and emitted into the air from industries have been eliminated. CEH is, and at all times set forth herein has been, acting in the public interest under provisions of Proposition 65, as fully set forth at Health and Safety Code section 25249.7 (d).

1.4 Exide is a corporation licensed to do business in the State of California. Exide operates a battery recycling plant at 2700 S. Indiana Street, Los Angeles, California 90023 that is the subject of CEH’s allegations in this lawsuit. In the complaint, CEH alleges that the operations at Exide cause emissions of lead into the air and exposures to persons in the surrounding area in violation of the warning requirements of proposition 65. Exide denies all allegations in CEH’s complaint and in the Notice Letter.

1.7 Nothing in this Consent Judgment shall be construed as an admission by Exide of any fact, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Exide of any fact, issue of law or violation of law, at any time or for any purpose. Nothing in this Consent Judgment entered by the Court shall prejudice, waive or impair any right, remedy or defense that Exide may have in any other or further legal proceedings. Nothing in this Consent Judgment entered by the Court, or any document referred

allegations contained in CEH's Notice of Violation and CEH's Complaint.

collateral estoppel protection for Exide against all other claims based on the same or similar for this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and effect a complete settlement of the claims and matters settled herein. CEH and Exide also intend California Attorney General, and allocation of the payments being made under this settlement to requirements included, but are not limited to, providing a copy of this Consent Judgment to the a requirement for submission of this Consent Judgment for entry by the Court. Those Toxic Enforcement Act of 1986, and all related regulations governing this Consent Judgment, as the public interest. CEH has complied with the requirements of the Safe Drinking Water and Proposition 65 are satisfied. CEH has diligently prosecuted this matter and is settling this case in prolonged claims and litigation between the Parties and to insure that the objectives of claims between the Parties as alleged in the Complaint and Notice for the purpose of avoiding

1.6 The Parties enter into this Consent Judgment in full settlement of disputed

February 27, 1987.

1.5 Lead was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on October 1, 1992, and as a chemical known to the State of California to cause reproductive toxicity (developmental, female and male) on

to herein, nor any action taken to carry out the Consent Judgment entered by the Court, shall be construed as giving rise to any presumption or inference of admission or concession by Exide as to any fault, wrongdoing or liability whatsoever. Exide specifically denies any such fault, wrongdoing or liability. Nothing in this Consent Judgment entered by the Court, or any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Consent Judgment entered by the Court, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Consent Judgment entered by the Court, to defend against the assertion of the released claims, or as otherwise required by law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Exide under the Consent Judgment entered by the Court.

As a result of this action, Exide has agreed to install backup generators with exhaust gases vented through the existing nearby pollution controls in use at the plant. The generators will be used in case of a utility outage to ensure that the principal pollution controls served by the generators continue to operate normally so as to prevent the escape of lead and other chemicals into the air in the surrounding area. The backup generators to be installed are described in Exhibit B together with the areas served. In addition, Exide has consented that CEH be allowed to enforce lead reduction measures agreed to between Exide and the South Coast Air Quality Management District if they are not completed as provided in the agreement. A copy of these measures is set forth in Exhibit C.

II. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue is proper in the Superior Court of the State of California for the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full and final judgment in accordance with the terms set forth herein.

III. INJUNCTIVE RELIEF

3.1 Lead Emissions Control

As consideration for this settlement, Exide shall install a backup generator at its Los Angeles facility as described in Exhibit B. The generator will be used in case of a utility outage to help ensure that the principal pollution control systems at the facility smelter furnaces continue to operate normally so as to minimize the escape of lead or other pollutants from the furnaces into the air and surrounding area. Exhaust from the generator shall be ducted to existing particulate control devices nearby. Exide shall install the backup generator not later than July 1, 2011, or six (6) months after receipt of all required government approvals and delivery of the equipment, whichever is later. Exide agrees to submit its application for those approvals not later than 1

month after entry of an order approving this Consent Judgment. The installation of the backup generator constitutes substantial, good and adequate consideration for this settlement in that the cost of the generator and installation is several hundred thousand dollars. In the event that a permit to duct generator exhaust to the existing controls cannot be obtained from the South Coast Air Quality Management District, Exide will be excused from that obligation.

3.2 AQMD Lead Reduction Measures

As further consideration for this settlement, Exide also consents to CEH being allowed to bring

an action, if necessary, to enforce the completion of lead reduction measures as set forth in Exhibit C, provided that (1) any change in schedules or requirements approved by the District or the Hearing Board shall amend automatically and without further proceedings the obligations enforceable by this provision, and (2) Plaintiff shall be given notice of any change that requires approval of the Hearing Board. The cost of these measures and the generator installation exceeds five hundred thousand dollars (\$500,000).

3.3 Clear and Reasonable Warnings

Within sixty (60) days following receipt of notice of entry of this Consent Judgment, Exide shall provide the following warnings pursuant to Proposition 65:

(a) Exide shall provide a one-time mailed or delivered warning in English and Spanish via postcard or letter to those residents and businesses in the exposed area identified in the updated isopleth map depicting the area of exposure identified by the Aernod model, as depicted in Exhibit D. The content of the mailed warning shall be in substantially the same form and content as set forth in Exhibit E.

(b) Subsequent to the one-time mailed or delivered warnings, Exide shall provide quarterly warnings by publication. The initial notices shall be placed in the Eastside Sun, LA Opinion, Watts Times and Southwest Wave. Subsequent notices shall be placed in newspapers identified by the Government Advertising Department of the Daily Journal Corporation of the California Newspaper Service Bureau. The size of notices shall be determined by the California Newspaper Service Bureau's Government Advertising Department, and in no case less than 2 columns wide and seven and one-half inches long. The warnings shall use the language or substantially the same language as set forth in Exhibit F and be accompanied by an isopleth map based on Exhibit D depicting the area of exposure identified by the Aernod model. The warnings shall be in

(a) \$4,500.00 as civil penalties pursuant to Health & Safety Code Section 25249.7 (b) (1) of

own costs and attorney fees. Said payments shall be for the following:

Consent Judgment. Unless otherwise specifically provided, each party shall be responsible for its \$90,000.00, payable within fifteen (15) business days of Exide's receipt of Court approval of this

other recoverable expenses, and any penalty liability, Exide shall make a total payment of

Proposition 65, including but not limited to CEH's costs of litigation, attorney's fees and all

In full and final satisfaction of all claims alleged and matters released herein under

IV. SETTLEMENT PAYMENTS

reproductivo.

conoce en el Estado de California como causante de cancer, defectos congenitos y otros danos al sistema

defects or other reproductive harm. ADVERTENCIA. Esta área contiene materiales quimicos que se

WARNING. This area contains chemicals known to the State of California to cause cancer, and birth

equivalent language compliant with the statute):

workers and other persons entering the facility. The signs shall state the following (or

that are prominent and conspicuous such that the signs are likely to be read and seen by Exide's

(d) Exide shall post at its facility Proposition 65 warnings in English and Spanish in locations

ninety (90) days of making a change in the warning area.

warranted, Exide shall provide all information necessary for such modification to CEH within

appropriate data becomes available in Exide's judgment. If a change in the warning area is

Judgment. Meteorological data from the Central Los Angeles station shall be used unless more

modify the size of the isopleth area to be warned three (3) years after entry of this Consent

(c) Exide shall be responsible under this Consent Judgment to review and, if appropriate,

English and Spanish. The warnings shall be located in the Metro section or local news section.

This Consent Judgment entered by the Court is a final and binding resolution between, CEH acting on behalf of itself and the general public, and Exide of any and all claims, known or unknown, that have been or could have been asserted by CEH against Exide in the Notice Letters or Complaint, up to and including the date of entry of this Consent Judgment, including but not limited to, any claim for failure to warn or deficient warnings for environmental and

V. RELEASE AND CLAIMS COVERED

Exide's payments shall be mailed to the Law Office of Michael Freund.
 (c) \$50,346 payable to Michael Freund as reimbursement of CEH's attorney's fees and costs.
 CEH's Tax Identification No. is 94-3169008.

such groups can be found at the CEH web site at www.ceh.org/justicfund.
 educate and protect people from exposures to toxic chemicals. The method of selection of funds to award grants to grassroots California-based environmental justice groups working to of its Community Environmental Action and Justice Fund, CEH will use fifty percent of such intends to regularly review future lead emissions from the Exide facility. In addition, as part its work protecting people from exposures to toxic chemicals. As part of this work, CEH expenses. The payment in lieu of additional civil penalties shall be used by CEH to continue in lieu of additional civil penalties and \$10,180.00 as reimbursement of CEH's out of pocket (b) \$35,154.00 payable to the Center for Environmental Health for the following: \$24,974.00

transmittal letter to Exide.
 sent to CEH who shall immediately forward the check to OEHHA along with a copy of the Environmental Health in the amount of \$1,125.00. Exide's payment to OEHHA shall be ("OEHHA") in the amount of \$3,375.00 and 25% shall be payable to the Center for which 75% shall be payable to the Office of Environmental Health Hazard Assessment

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR

follows:

CEH acknowledges that it is familiar with California Civil Code section 1542, which provides as

and satisfaction and release of each and every released claim. In furtherance of this intention, itself, that this Consent Judgment entered by the Court shall be effective as a full and final accord any litigation relating to (i) this Consent Judgment entered by the Court and (ii) the CEH lawsuit It is the intention of the Parties to this release that, upon entry of judgment and conclusion of

Judgment becomes final, related to alleged violations of Proposition 65 by Exide.

indirectly out of any fact or circumstance occurring prior to the date upon which the Consent

“in the public interest” has or may have against the said Released Parties, arising directly or

unsuspected, of every nature whatsoever which CEH on its own behalf and bringing an action

damages, accountings, costs and expenses, whether known or unknown, suspected or

all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities,

employees, agents, successors and assigns (“Released Parties”) of and from any and

parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders,

hereby fully, completely, finally and forever release, relinquish and discharge Exide and its

and Safety Code Section 25249.7(d) with respect to the matters alleged in this lawsuit, does

on its own behalf and bringing an action “in the public interest” pursuant to California Health

and obligations as have been created under this Consent Judgment entered by the Court, CEH,

including the date upon which this Consent Judgment becomes final. Except for such rights

occupational exposures to lead, wherever occurring and to whomsoever occurring, through and

HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH

THE DEBTOR.

CEH, on its own behalf and bringing an action "in the public interest", hereby waives and relinquishes all of the rights and benefits that CEH has, or may have, authority to waive or

relinquish under California Civil Code section 1542. CEH hereby acknowledges that it may

hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing, it is CEH's intention hereby to fully,

finally, completely and forever settle and release each, every and all released claims, and that in

furtherance of such intention, the release herein given shall be and remain in effect as a full and

complete general release, notwithstanding the discovery or existence of any such additional or

different facts. CEH hereby warrants and represents to Exide that (a) CEH has not previously

assigned any released claim, and (b) CEH has the right, ability and power to release each

released claim.

VI. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing any continuing obligations Exide may have to comply with Proposition 65 now and in the future.

VII. SEVERABILITY OF UNENFORCED PROVISIONS

In the event that any of the provisions hereof are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to this Consent Judgment as provided by law and upon entry of a modified Judgment by the Court.

X. MODIFICATION OF JUDGMENT

judgment.
together with advance notice of the parties' intent to present it to the Court for entry as a final by the Court. A copy of this Consent Judgment has been served on the Attorney General's office California Attorney General's office by the Plaintiff prior to the entry of this Consent Judgment requirements referenced in California Health & Safety Code § 25249.7(f) were submitted to the and upon Exide. The terms of this Consent Judgment pursuant to the reporting form public on whose behalf they are acting pursuant to Health and Safety Code section 25249.7(d)

9.2 This Consent Judgment shall apply to and be binding upon plaintiffs and the general

employees, agents, successors, attorneys and assigns.
upon and inure to the benefit of CBH, CEH's members, and CEH's directors, officers,
directors, shareholders, employees, agents, attorneys, successors and assigns, and be binding
inure to the benefit of Exide, its subsidiaries, affiliates, divisions, subdivisions, officers,
9.1 This Consent Judgment entered by the Court shall apply and be binding upon Exide, and

IX. APPLICATION OF JUDGMENT

entered by the Court.
Angeles County, enforce the terms and conditions contained in the this Consent Judgment
CEH or Exide may, by motion or order to show cause before the Superior Court of Los

VIII. ENFORCEMENT OF JUDGMENT

sent to the following agents:

All notices required to be given to either Party to this Consent Judgment by the other shall be

XVI. NOTICES

instrument.

by facsimile, each of which taken together shall be deemed to constitute one and the same

This Consent Judgment may be executed in counterparts and transmitted by electronic means or

XV. EXECUTION IN COUNTERPARTS

Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

This Consent Judgment shall be effective only after it has been executed by the Court.

XIV. COURT APPROVAL

confidential.

The terms and conditions of this Consent Judgment entered by the Court shall not be

XIII. NON CONFIDENTIALITY

party represented and legally to bind that party.

Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the

XII. AUTHORITY TO STIPULATE TO THIS JUDGMENT

Consent Judgment.

This Court shall retain jurisdiction of this matter to enforce, modify or terminate this

XI. RETENTION OF JURISDICTION

FOR CENTER FOR ENVIRONMENTAL HEALTH:

Michael Green, Executive Director
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612-3023

Michael Bruce Freund, Esq.
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR EXIDE TECHNOLOGIES:

Plant Manager
Exide Technologies
2700 S. Indiana Ave.
Los Angeles, CA 90023

With a copy to:

Head of Global Environment, Health and Safety
Exide Technologies
13000 Deerfield Parkway, Building 200
Milton, GA 30004

And

Robert L. Collings, Esq.
Schnader Harrison Seal & Lewis LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
Telephone: (215) 751-2000
Facsimile: (215) 751-2205

XVII. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

The entry of this Consent Judgment by the Court *inter alia*:

XXI. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

enforcement action.

during the parties' good faith attempt to resolve the dispute that is the subject of such obtaining relief more favorable to it than the relief that the other party was amenable to providing used in the preceding sentence, the term "prevailing party" means a party who is successful in filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As absence of such a good faith attempt to resolve the dispute beforehand. In the event an action is and endeavor to resolve the dispute in an amicable manner. No action may be filed in the Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone In the event a dispute arises with respect to either party's compliance with the terms of this

XX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

other proceeding.

purposes of determining the meaning or extent of any provisions herein in any litigation or any prior or contemporaneous communications or prior drafts shall be relevant or admissible for This Consent Judgment shall constitute the entire integrated agreement of the parties. No

XIX. ENTIRE AGREEMENT

construed against either Party.

construction of this Consent Judgment entered thereon, the terms and provisions shall not be discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and Parties to this settlement prior to its signing, and each Party has had an opportunity to fully The terms of this Consent Judgment have been reviewed by the respective counsel for the

XVIII. DRAFTING

(a) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of CEH's Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(b) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4) and approve the Consent Judgment.

are the subject of this action, to:

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which

XXII. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT

(a) Constitutes full and fair adjudication of all claims against Exide and the released parties, including, but not limited to, all claims set forth in the CEH lawsuit and notice letters, based upon alleged violations of Proposition 65, which arose from the alleged failure to provide warning of exposure to lead; and

(b) Bars any and all other persons, on the basis of res judicata and/or the doctrine of collateral estoppel from prosecuting against Exide or any of the released parties any claim alleged in the CEH lawsuit, based upon alleged violations of Proposition 65 which arose or arises from the alleged failure to provide warning of exposure to lead.

IT IS SO STIPULATED:

DATED: Aug. 3, 2010

EXIDE TECHNOLOGIES
By: Bruce Cole
Bruce Cole, President, Transportation Americas
Exide Technologies

DATED: 8/27, 2010

CENTER FOR ENVIRONMENTAL HEALTH
By: Michael Green
Michael Green, Executive Director
Center for Environmental Health

APPROVED AS TO FORM:

DATED: August 23, 2010

SCHNADER HARRISON SEGAL & LEWIS LLP
By: Robert L. Collings for
Robert L. Collings for
Schnader Harrison Segal & Lewis LLP
Attorneys for Exide Technologies

DATED: 9/2, 2010

LAW OFFICES OF MICHAEL FREUND
By: Michael Freund
Michael Freund
Attorney for Center for Environmental Health

MICHAEL FREUND

ATTORNEY AT LAW

1915 ADDISON STREET

BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1998

FAX 510/540-5543

EMAIL: MFREUND19@OL.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. Delgadillo, City Attorney
Los Angeles City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Re: Notice of Violation

Dear Prosecutors:

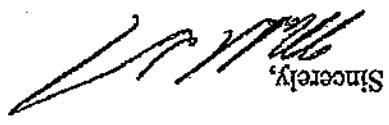
I represent the Center for Environmental Health ("CEH"), a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. This letter constitutes notification that Exide Technologies, located at 2700 South Indiana Street, Los Angeles, 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 chemicals subject to Proposition 65: lead, Hsted as a male and female developmental reproductive toxicant on February 27, 1987 and lead and lead compounds listed as carcinogens on October 1, 1992. The time period of this violation commenced one year after the listed dates. 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

cc: Michael Green & Caroline Cox, CBH

Michael Freund

Sincerely,


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

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CBH 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 CBH from information now available to us. CBH 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.

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)).

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

noticed party. These facts, studies or other data overwhelmingly demonstrate that 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

Health
Attorney for Center for Environmental
Michael Freund



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 (h) (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.

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixteenth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixteenth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Sections 25249.7, Health and Safety Code.

HISTORY
New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).

2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List" requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure is at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulators identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" (NOEL), divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable law, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above indicates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...
Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

LINE 12

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

Primary Components

New Caterpillar, Model C27 Diesel Standby Generator Set.
Rated 750kW, with fan, 60Hz, 3 phase, 4160 volt at 1800 RPM.
Generator includes standard equipment and accessories listed in the
attached bill of materials.

New Caterpillar, Model C15 Diesel Standby Generator Set.
Rated 500kW, with fan, 60Hz, 3 phase, 277/480 volt at 1800 RPM.
Generator includes standard equipment and accessories listed in the
attached bill of materials.

New CTG Caterpillar Automatic Transfer Switch, Open Transition.
1200 amp, 3-pole, 4160 volt, 60 Hz, 3-phase, 4-wire, housed in a NEMA
1 enclosure, with MX150 exerciser.

New CTG Caterpillar Automatic Transfer Switch, Open Transition.
800 amp, 4-pole, 277/480 volt, 60 Hz, 3-phase, 4-wire, housed in a
NEMA 1 enclosure, with MX150 exerciser.

Install includes:
Set 2 generators in place and bolt down, including crane charges.

Set 2 ATS's in place and bolt down.

500kw: Rework conduits feeding MCC-11.

Run 2-4" conduit with 3-500 mcm each from 500kw to new ATS.

750kw: Run one 2" conduit from 750kw unit to new ATS.

Move motor wiring in existing distribution panel to accommodate

separation of panel.

Separate two end motor control buckets to be fed by ATS switch.

Provide normal power to ATS from existing 4160 volt distribution panel.

To be performed by Exide:

All permits and fees, and construction of concrete pads for generators.

**REMAINING POLLUTION CONTROL EQUIPMENT REQUIREMENTS UNDER
SCAQMD HEARING BOARD ORDER IN CASE 3151-21**

Exide shall install Negative Pressure on the RMPS Building.

- a. As an interim measure, Exide shall use APC 13 (C156/C157) to achieve negative pressure on the RMPS Building while a permanent enclosure also with negative pressure is designed and constructed. Exide shall submit complete applications to the District for the alteration of APC 13 (C156/C157) and the exhaust system within five days of the date of this Agreement, and complete this interim project within 30 days of receiving all required permit approvals from the District. The building shall achieve a negative pressure of 0.02 mm of Hg.

- b. Exide shall increase ventilation at the Corridor Door of the RMPS building. Exide shall complete this project within 60 days of receiving all required permit approvals from the District.

- c. Exide shall construct a new building or modify the existing RMPS structures so that the RMPS and the material handling area which is adjacent to the RMPS meet the physical requirements for total enclosure. The construction of the new building or modification to the existing building shall be in accordance with the total enclosure standards of 40 CFR 63 Subpart X and all current building codes. In addition, the total enclosure shall be vented to an air pollution control system(s), shall be maintained under a negative pressure of at least 0.02 mm of Hg, and the draft velocity through all openings to the outside shall be at least 300 feet per minute, at all times. Upon completion of construction of the enclosure building, Exide shall install and maintain not less than three (3) separate pressure differential gauges inside the new RMPS Containment Building as follows:

- i. Leeward wall inside of the RMPS Building in accordance with 40 CFR 63 Subpart X.

- ii. The inside wall of the building opposite the leeward wall.
- iii. An inside wall location defined by the intersection of a line perpendicular to this wall and within plus or minus ten (± 10) meters of the midpoint of a straight line between the two other monitors described in Subparts (c)(i) and (c)(ii) of this condition. For the purpose of this condition, the midpoint monitor shall NOT be located on the same walls as any of the other two monitors described in this condition. The exact location of the

Exide shall install a spark arrestor between the rotary dryer cyclone separator (device C143) and the rotary dryer baghouse (device C144). All work shall be completed within 180 days of receiving all permit approvals from the District.

- c. All work shall be performed within 90 days of receiving permit approvals from the District.
 - a. Vehicles shall be cleaned by using a wet washing method. A system (with written documentation that is acceptable to the District shall be developed for quality control inspections of each vehicle leaving the wash station to assure that the vehicle has been thoroughly washed. Written reports of each inspection shall be prepared and maintained from each shift. No vehicle shall exit the facility without passing inspection.
 - b. This vehicle washing facility shall employ best practices for collecting and disposing of lead contaminated water accumulated during the washing process. Those practices shall include the minimization of the amount of water which is allowed to dry exposed to atmosphere prior to collection for treatment.
- d. All work shall be performed within 180 days of receiving all permit approvals from the District.
 - i. Exide shall totally enclose the rotary dryer furnace and each conveying system that transports lead bearing material between the RMPS building and the smelter building. The enclosures shall be constructed in accordance with the total enclosure standards of 40 CFR 63 Subpart X and all current building codes. All work shall be performed within 180 days of receiving all permit approvals from the District.
 - ii. Exide shall construct a vehicle washing facility on the south side of its premises for the purpose of washing all vehicles leaving the process plant areas. This shall not include vehicles entering by the north entrance and picking up finished lead without entering the process areas.
 - iii. The permit shall further provide that each building pressure differential monitoring system shall be equipped with a continuous chart recorder that is operating at all times.
 - iv. All work shall be performed within 180 days of receiving all permit approvals from the District. The permit shall provide that Exide may apply to reduce the frequency of monitoring by pressure gauges if it can demonstrate to the satisfaction of the District that the draft air velocity continuously meets or exceeds 300 feet per minute when the ventilation is operating under all operating conditions.

REVISED ISOPLETH MAP USING THE AERMOD MODEL

EXHIBIT D

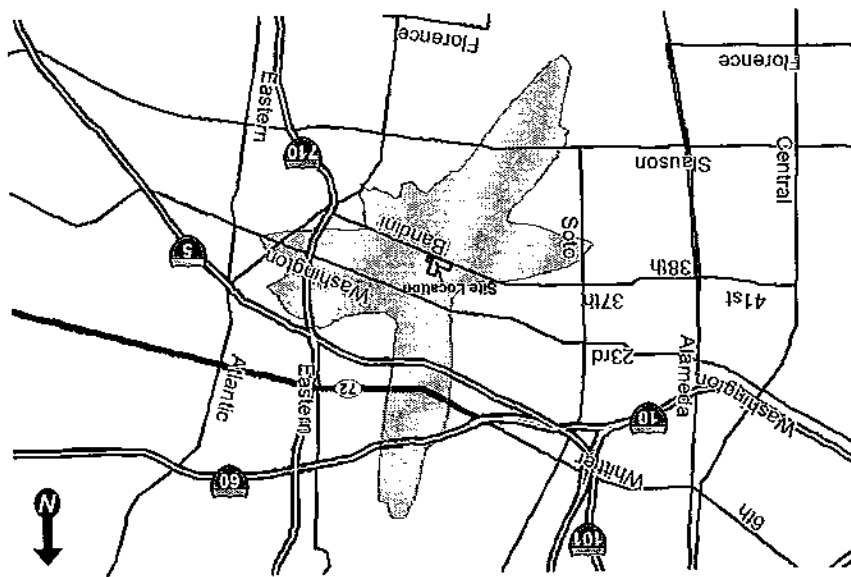


EXHIBIT E

PROPOSITION 65 MAILED OR DELIVERED WARNING

EXIDE TECHNOLOGIES EMITS LEAD INTO THE AIR FROM ITS BATTERY RECYCLING FACILITY LOCATED AT 2700 INDIANA STREET, LOS ANGELES, CALIFORNIA 90023. YOU ARE BEING EXPOSED TO LEAD AT A LEVEL DETERMINED BY THE STATE OF CALIFORNIA TO REQUIRE A WARNING. LEAD IS A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM. FOR MORE INFORMATION YOU MAY CONTACT (323) 262-1101 EXT. 259.

Exide Technologies emite plomo al aire desde su planta ubicada en el 2700 Indiana St., Vernon, CA 90058. Usted esta expuesto a niveles de plomo que el estado de California requiere que se de una advertencia. El plomo es un quimico que el estado de California reconoce como causante de cáncer, defectos congénitos y otros daños al sistema reproductivo. Puede llamar al (323) 262-1101 259, para recibir más información.

EXIDE TECHNOLOGIES OPERA UNA PLANTA DE RECICLAMIENTO DE BATERIAS EN 2700 S. INDIANA STREET, VERNON, CALIFORNIA, LA CUAL EMITE PLOMO A LA ATMOSFERA. LAS PERSONAS QUE RESIDEN DENTRO DEL AREA APROXIMADA QUE SE MUESTRA EN LA MAPA DE ARRIBA ESTAN EXPUESTAS AL PLOMO Y AL CADMIO EN TAL NIVEL QUE EL ESTADO HA DETERMINADO QUE ES NECESARIO HACERLES UNA ADVERTENCIA. EL PLOMO ES UN PRODUCTO DE ORIGEN, QUIMICO QUE EL ESTADO DE CALIFORNIA RECONOCE COMO CAUSANTE DE DEFECTOS DE NACIMIENTO Y OTROS DANOS REPRODUCTIVOS, Y DE CANCER, Y EL CADMIO ES RECONOCIDO POR EL ESTADO DE CALIFORNIA COMO CAUSANTE DE CANCER. PARA MAS INFORMACION LLAME A EXIDE AL (323) 262-1101 EXT. 259.

EXIDE TECHNOLOGIES OPERATES A BATTERY RECYCLING PLANT AT 2700 INDIANA STREET, LOS ANGELES, CALIFORNIA 90023 WHICH EMITS LEAD INTO THE ATMOSPHERE. PERSONS WITHIN THE APPROXIMATE AREA SHOWN ABOVE ARE EXPOSED TO LEAD AND CADMIUM AT A LEVEL DETERMINED BY THE STATE OF CALIFORNIA TO REQUIRE A WARNING. LEAD IS A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM AND CANCER, AND CADMIUM IS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER. FOR MORE INFORMATION YOU MAY CONTACT EXIDE AT (323) 262-1101 EXT. 259.

PROPOSITION 65 PUBLICATION WARNING