To: Kohler, Amanda[Kohler.Amanda@epa.gov]; Sasseville, Sonya[Sasseville.Sonya@epa.gov]
From: Huetteman, Tom
Sent: Wed 6/15/2016 5:36:34 PM
Subject: FW: EPA Responses to Follow Up Questions Regarding Exide Permit Issue
ORCR and Region 9 Responses to Rep Becerra 6 13 16 16.pdf
Status of Facilities Operating Under Interim Status.2015.pdf
ASegal exide ltr 060616.pdf

FYI – Thanks for your help on this. Tom

From: Maier, Brent
Sent: Tuesday, June 14, 2016 1:26 PM
To: Montiel, Johanna <Johanna.Montiel@mail.house.gov>
Cc: Jimenez, Gemma <Gemma.Jimenez@mail.house.gov>; De La O, Irvin <Irvin.DeLaO@mail.house.gov>; Huetteman, Tom <Huetteman.Tom@epa.gov>; Higuchi, Dean <Higuchi.Dean@epa.gov>; Keener, Bill <Keener.Bill@epa.gov>; Levine, Carolyn <Levine.Carolyn@epa.gov>; Janifer, Pamela <Janifer.Pamela@epa.gov>; Kao, Jessica <Kao.Jessica@epa.gov>; Deitz, Randy <Deitz.Randy@epa.gov>; Manzanilla, Enrique <Manzanilla.Enrique@epa.gov>; Scott, Jeff <Scott.Jeff@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Gross, Barbara <Gross.Barbara@epa.gov>; Zito, Kelly <ZITO.KELLY@EPA.GOV>; LEONIDO-JOHN, STEVEN <Leonido-John.Steven@epa.gov>
Subject: RE: EPA Responses to Follow Up Questions Regarding Exide Permit Issue

Johanna Montiel

Office of Congressman Xavier Becerra

Johanna –

Thank you for your patience in our responding to the questions posed in your June 6, 2016 e-mail regarding Exide (included below). Please note that EPA Region IX is providing the response for the following two bulleted questions and my HQ Congressional colleague, Pamela Janifer, has provided me with responses in an attachment to two additional bulleted questions that EPA's Office of Land and Emergency Management (OLEM) took the lead on drafting. In addition, I have attached a document prepared by EPA HQ that provides information on the status of facilities operating under interim status as of 2015 that addresses your fourth bulleted question.

•□□□□□□ Can you provide us some of the history when DTSC tried to deny Exide its permit and then DTSC was sued and lost?

•□□□□□□ EPA held discussions with DTSC about denying Exide a RCRA permit—can you tell us what conclusions or recommendations EPA gave DTSC?

DTSC, the delegated lead for the RCRA program in California, dealt with Exide's Vernon facility both in permitting, a lengthy regulatory process as explained in our response to your previous general RCRA permitting questions, and in administrative enforcement, a much more streamlined and flexible process.

In April 2013, DTSC ordered the facility to suspend its operation and Exide appealed in Los Angeles County Superior Court. The following summary, excerpted from DTSC Envirostor's Exide website, explains what happened next:
http://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report.asp?global_id=CAD097854541

On April 24, 2013, DTSC ordered Exide to suspend operations. DTSC issued the order after receiving reports regarding airborne emissions from Exide's operations and ongoing subsurface releases from degraded underground pipes. However, a Los Angeles Superior Court judge overruled DTSC in June 2013 and ordered the facility reopened until an administrative hearing could be completed. A Stipulation and Order (Order) was signed by Exide and DTSC. The Order resolved the administrative suspension order that DTSC issued against Exide in April 2013 and resolved a legal action that Exide filed against DTSC in June 2013. The Order set out conditions that Exide had to meet and timelines for completion. It required Exide to set aside $7.7 million in a special fund for upgrading the storm water system, reducing arsenic emissions in the air, blood lead testing in the community and sampling dust and soil around the facility.

Later in 2014, Exide suspended operations for facility upgrades to meet the South Coast Air Quality Management District's new air emission control requirements.

In the meantime, DTSC continued its review of Exide's permit application. As it explored the denial option under general criteria set forth in applicable RCRA regulations, DTSC approached EPA about EPA's overall experience with RCRA permit denials and associated challenges. As we informed DTSC then, EPA has not issued specific guidance on how to apply the general criteria for denying a permit, and our national experience is limited due to the rarity of permit denial actions. EPA did not make specific permitting recommendations at the time. DTSC, the permitting authority, was still in the midst of conducting internal deliberations and developing support documentation in preparation for a draft permit decision for public review and

comment.

In March 2015, Exide agreed to permanently close the Vernon facility as a condition of its Non-Prosecution Agreement with the U.S. Attorney's Office, and DTSC amended its enforcement order to require Exide to withdraw its RCRA permit application.

In addition, I am attaching a copy of a recent letter that EPA sent to Alexis Segal in Senator Dianne Feinstein's office in response to an inquiry on Exide and EPA's role that we wanted to share with your office.

Please let me know if you have any questions or would like to set up a follow up call to discuss.

Regards,

Brent Maier

Congressional Liaison

U.S. Environmental Protection Agency, Region IX

75 Hawthorne St. (OPA-3)

San Francisco, CA 94105

Ph: 415.947.4256

From: Montiel, Johanna [mailto:Johanna.Montiel@mail.house.gov]
Sent: Monday, June 06, 2016 8:22 AM
To: Maier, Brent <Maier.Brent@epa.gov>; De La O, Irvin <Irvin.DeLaO@mail.house.gov>; Huetteman, Tom <Huetteman.Tom@epa.gov>
Cc: Higuchi, Dean <Higuchi.Dean@epa.gov>; Keener, Bill <Keener.Bill@epa.gov>; Levine, Carolyn <Levine.Carolyn@epa.gov>; Janifer, Pamela <Janifer.Pamela@epa.gov>; Jimenez, Gemma <Gemma.Jimenez@mail.house.gov>
Subject: RE: Availability for Call with EPA to Discuss Exide Permit Issue
Importance: High

Hi Everyone,

I want to go ahead and follow up regarding the questions EPA said they would get back to me about since our call in early May. We are nearing almost 4 weeks since we had the call and I would like to be able to give my boss an update regarding the issue. As a reminder, below are the questions:

•□□□□□□□ Current RCRA law does not have a timeframe as to how long a hazardous facility can operate under interim status. Does EPA think it would benefit from having this additional authority?

•□□□□□□□ Under RCRA, what authorities does the EPA have to deny hazardous waste facilities a RCRA permit?

•□□□□□□□ **I know it was mentioned in previous conversations that EPA held discussions with DTSC about denying Exide a RCRA permit—can you tell us what conclusions or recommendations EPA gave DTSC?**

•□□□□□□□ **How many facilities in the U.S. are currently operating under interim status (Can you please provide a list with the facilities and their location and how long they've operated under interim status)?**

•□□□□□□□ **Additionally, can you guys provide us some of the history you mentioned of when DTSC tried to deny Exide it's permit and then DTSC was sued and lost?**

Thank you for all your help with this matter. I know there are a lot of questions, but this is a very important issue for my boss. I'm looking forward to hearing from you soon.

Best,

Johanna