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2020-107

January 13, 2020

Assembly Member Rudy Salas, Chair
Joint Legislative Audit Committee
Legislative Office Building, Room 104
Sacramento, California 95814

Dear Chairman Salas:

This letter is to request that the Joint Legislative Audit Committee (JLAC) authorize an audit of the California Department of Toxic Substances Control (DTSC) to review its cleanup efforts of lead contamination from Exide Technologies. To date, these efforts have advanced at an unacceptable pace and my constituents remain at risk of severe lead exposure.

Despite a number of internal and external efforts to improve DTSC's ability to meet its core mission and statutory mandates, the Department has not met public expectations, especially in regards to the cleanup of hazardous waste. One notable example is DTSC's cleanup efforts of lead contamination from Exide Technologies, which was a manufacturer of lead acid batteries and owned a battery recycling facility in Vernon, California. Lead smeltering started at the site operations in the 1920s. Exide acquired the property in the 1980s to recycle lead from used automotive batteries and other sources. The facility processed about 25,000 batteries a day, providing a source of lead for new batteries. Exide was allowed to operate for at least 25 years on an interim status permit.

Over the course of its operation, the facility polluted the soil beneath it with high levels of lead, arsenic, cadmium and other toxic metals. It also contaminated groundwater, released battery acid onto roads and contaminated homes and yards in surrounding communities with lead emissions. Properties at least 1.7 miles away from the facility have been affected by Exide's lead contamination, which amounts to roughly 10,000 properties.

In March 2013, the South Coast Air Quality Management District (SCAQMD) released a human health risk assessment that showed that arsenic emissions from the Exide facility created an elevated risk of cancer for as many as 110,000 people in an area, stretching from Boyle Heights to Huntington Park in my Assembly district.

Two years later, in March, 2015, Exide was finally ordered to cease operations and permanently

close its Vernon facility pursuant to an enforcement order it agreed to with DTSC and a non-prosecution agreement it reached with the United States Department of Justice, that allowed the company to avoid federal criminal prosecution for violations of hazardous waste laws.

In 2016, AB 118 (Santiago) provided a $176.6 million General Fund loan to DTSC to begin Exide-related cleanup of residential properties while the state awaited Exide to submit and gain approval for its residential clean-up plan. The residential cleanup has taken place in two main phases – the initial phase under an emergency exemption under the California Environmental Quality Act. The current phase, which is being done in accordance with DTSC's Environmental Impact Report, has been underway since the Summer of 2018 after one year of contract issues. Costs per property for the cleanup were originally estimated to be approximately $50,000, but according to budget documents, DTSC has noted that costs have increased up to $60,000 to $80,000 per property, depending on property type. The cost estimates of treating each property have also varied considerably between DTSC's contractors.

As of July 2019, DTSC has overseen the cleanup of roughly 1000 parcels. DTSC is still in the process of sampling some of the parcels in the preliminary investigation area for lead contamination, and obtaining permission from property owners to sample other parcels. Therefore, it is uncertain how many parcels will ultimately need to be cleaned up and what the total cost will be, especially if project costs continue to rise. In short, the Exide cleanup effort has been slow to advance and growing costs remain a serious concern.

In December 2019, the Department of Finance released an internal audit of DTSC that showed that DTSC had not been following the state's accounting principles, practices, laws, and regulations for as far back as 2015.

In light of these facts, I respectfully request that the State Auditor conduct a review of DTSC's Exide cleanup efforts to determine the following:

1) What factors have contributed to the prolonged time frame of Exide cleanup efforts?

2) When will Exide cleanup efforts be completed on commercial properties and authorized personal residences? What is the total cost of these efforts?

3) Are DTSC's estimated costs of up to $80,000 per property cleanup cost expected to increase, and if so what factors continue driving cost increases? Are these factors consistent with the reasons that DTSC has stated in its budget documents?

4) Why has the cost per property varied considerably between DTSC contractors? What interventions should DTSC have utilized to prevent these cost differences?

5) Did DTSC follow all state contracting rules in awarding clean-up contracts?

6) What are the major factors, besides parcel size, that drives variance in the per property cleanup costs?

7) Was the magnitude of the contract given the limited availability of eligible contractors, a factor in increasing per parcel cleanup costs?

8) How has DTSC avoided cost-over runs by the contractors?

9) Are DTSC's administrative costs associated with overseeing and administering the cleanup contracts consistent with their actual costs?

10) Are there any additional steps that should be taken to improve the efficiency of cleanup efforts?

Due to public health risks from lead contamination, the state has a clear and immediate responsibility to clean up the residential parcels contaminated with lead by the Exide facility. The Legislature would benefit from this additional information to assess anticipated timelines and costs for cleanup activities.

As the representative of the people most severely impacted by this environmental crisis, I will continue my efforts to demand accountability and ensure all affected residences are cleaned as soon as possible.

I respectfully ask that the Joint Legislative Audit Committee approve this audit of DTSC's Exide cleanup efforts.

Sincerely,

MIGUEL SANTIAGO
Assembly Member, 53rd District

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