

cc 10/1/13

RECEIVED

SEP 25 2013

CITY ADMINISTRATION

RECEIVED

SEP 26 2013

CITY CLERK'S OFFICE

STAFF REPORT

HEALTH & ENVIRONMENTAL CONTROL DEPARTMENT



DATE: October 1, 2013

TO: Honorable Mayor and City Council

FROM: Leonard Grossberg, Director / Health Officer *(DG) for LG*

RE: A Resolution of the City Council of the City of Vernon requesting the South Coast Air Quality Management District issue a Health Advisory to the Southeast Los Angeles County Air Quality Management District regions and any other areas that may be affected by harmful air emissions from Exide Technologies to educate and inform residents, workers and businesses in Vernon and surrounding communities on immediate steps they should take to protect themselves and their families given the AQMD findings on exposure to lead and arsenic air emissions.

RECOMMENDATION:

It is recommended that the City Council:

1. Find that approval for the request documented in for this staff report is exempt under the California Environmental Quality Act (CEQA) in accordance with section 15061 (b)(3), the general rule that CEQA only applies to projects that may have any effect on the environment.
2. Approve the attached resolution requesting the South Coast Air Quality Management District (SCAQMD) issue an Exide Technologies health advisory to the Southeast Los Angeles County and any other areas that may be affected by harmful air emissions from Exide Technologies to educate and inform residents, workers and businesses in Vernon and surrounding communities on immediate steps they should take to protect themselves and their families given the SCAQMD findings on exposure to lead and arsenic air emissions.

Background:

The South Coast Air Quality Management District (SCAQMD) is the agency responsible for regulating air quality issues for Los Angeles County. Earlier this year, the SCAQMD conducted an air emissions monitoring study that measured high levels of arsenic being emitted from Exide Technologies (Exide), a secondary lead smelting plant that recovers lead from recycled automotive batteries that is located at 2700 S. Indiana St. in Vernon.

As a result of SCAQMD's study findings and published news reports on the study regarding potential harmful affects of air emissions from the Exide Technologies facility, on April 8, 2013, a formal request was transmitted by the City Administrator of the City of Vernon to SCAQMD's Executive Officer, Barry R. Wallerstein, requesting that SCAQMD issue a health advisory for the SCAQMD's Eastern and Western Regions, including the City of Vernon and any surrounding Southeast Los Angeles County neighborhoods and communities that may be affected by the release of potentially toxic or harmful ambient air pollutants from the Exide facility. Despite that request, however, the SCAQMD did not issue a health advisory nor officially respond to the city's request for a health advisory.

Subsequently, SCAQMD reported that on September 9, 2013 monitor readings at Exide exceeded permissible ambient air lead concentrations averaged over a 30-day period. The SCAQMD stated they will be issuing a Notice of Violation to Exide and that production must be curtailed by 15%. Exide will also be required to monitor lead on a daily basis for a 60-day period. Published news reports have indicated that the SCAQMD study projected the potential for neurological damage in children due to long term exposure to lead air emissions.

These ongoing air quality environmental issues have elevated the fear and concerns of Vernon residents and the 55,000 workers at Vernon's 1,800-businesses. The environmental concerns have risen dramatically in the neighborhoods, communities and cities that are in close proximity to the City of Vernon. The growing air emissions fears and concerns held by residents and workers within the Southeast L.A. County area must be adequately addressed with a greater sense of urgency by the SCAQMD. Immediate health advisory information regarding exposure to lead and arsenic air emissions is warranted.

The City of Vernon Health & Environmental Control Department continues to validate our commitment to strong environmental controls and continued protection of public health issues. The Vernon City Council expressed great concern over potential health effects from lead and arsenic emissions from Exide at the September 17, 2013 council meeting as summarized in the September 19, 2013 Vernon Sun article (see attachment). Although the SCAQMD has said they are issuing a Notice of Violation to Exide, we feel more steps can be taken to protect the health and lives of residents and workers in the City of Vernon as well as other potentially affected communities. However, the City of Vernon lacks the statutory authority to act independently in this matter of air quality control and regulation and must rely upon the SCAQMD to respond to the grave concerns of a worried public. Consequently, I am recommending that the City Council approve a resolution requesting the SCAQMD issue an Exide Technologies health advisory to South East Los Angeles County and any other areas that may be affected. By issuing a health advisory, potentially affected residents and workers can be informed of the risks of lead emissions from Exide and the precautions people can take to protect themselves.

Attachment

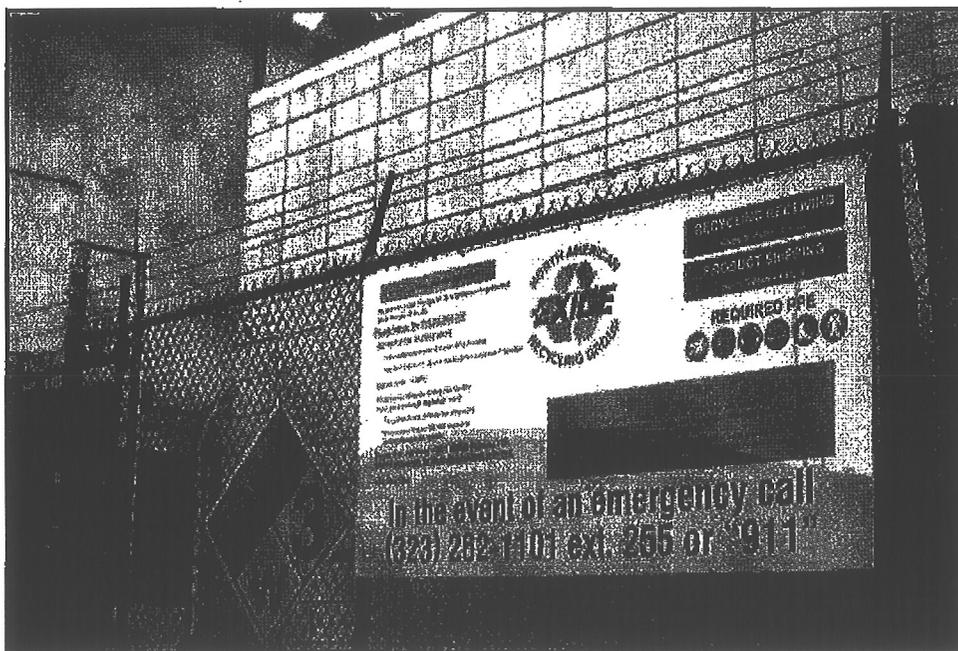
Exide Ordered to Cut Production, Again

Vernon officials question whether the city has any options.

By Gloria Angelina Castillo & Nancy Martinez, EGP Staff Writers

Vernon battery recycler Exide Technologies has been ordered to cut production by air quality officials because air monitors near the facility recorded lead emissions that exceed health standards, the L.A. Times reported Wednesday.

The higher than safe levels were recorded over a 30-day period, and come on the heels of calls for the company's permanent shut down, and an announcement that the embattled company will pay for county residents worried they may have been harmed by lead emissions to get free blood tests at the company's expense. The free blood tests will be available to thousands of people living in an area that includes Boyle Heights and the nearby cities of Maywood and Huntington Park, as well Vernon.



A sign outside Exide Technologies, located on 2700 S. Indiana St. in Vernon. (EGP photo by Gloria Angelina Castillo)

As EGP reported last week, local residents are organizing with other stakeholders in the region to collectively pressure for the permanent closure of the Exide plant amid concerns that the battery recycler has created a health crisis for hundreds of thousands of people living and working in the region, raising the cancer risk and the possibility of increased neurological deficits in children.

The California Air Quality Management District had been monitoring Exide emissions to see if the company has really reduced harmful emissions as it had claimed to regulatory agencies and to a judge who overturned an shut down order by the California Department of Toxic Substances Control, following excessively high readings of lead and arsenic were found in the spring.

More costly and complicated testing for arsenic, however, will not be part of the free testing protocol, according to health officials.

While many are welcoming the opportunity to be tested, some community and environmental activists are questioning the reliability and value of lead testing several months after the heightened exposure. They worry that the tests are being conducted to placate concerned residents, but will do little to pinpoint the source of any high levels of lead found, since data from the tests are not going to be analyzed or compiled into a study or report, but are for individual consideration only, leaving Exide off the hook.

Nonetheless, Vernon Director of Health and Environmental Control Leonard Grossberg said Monday that news of the free lead testing is "a step in the right direction." He said, during his update to the city council on the Exide situation, the testing announcement shows "that they [Exide] are active in the community" and trying to educate the public about "the possibility for exposure."

Testing, however, is being conducted at the insistence of the California Department of Toxic Substances Control, Brian Johnson, Deputy Director for DTSC's Hazardous Waste Management Program, told EGP Tuesday in an email.

"Blood, dust and soil testing in the nearby communities are activities that DTSC has insisted that Exide implement and have been central to our discussions with them since we suspended their operation," Johnson said. "We have partnered with the LA County Health Department, who bring their substantial expertise to ensure that we have scientific and health data on which we can base future decisions regarding Exide's responsibilities."

Testing will be conducted under the direction of the County Board of Supervisors and partner agencies that include DTSC and the South Coast Air Quality Management District, according to the Los Angeles Dept. of Public Health.

Details as to when and where the free tests will be available are still being finalized, according to health officials.

Johnson told EGP that DTSC's goal for Exide is the same goal they have for all hazardous waste operations, to ensure that neither their current or past operations pose a risk to public health nor the environment.

Since 2007, Exide has violated both AQMD and state lead emission safety standards on three different occasions.

Earlier this year, the California Department of Toxic Substances Control (DTSC) shut the plant down because the agency found that the facility was releasing hazardous levels of lead and arsenic into the air, as well as "metal bearing" waste into the soil.

Under order from DTSC, Exide began taking soil and dust samples late last month at adjacent properties. The samples will be analyzed for lead, arsenic and other toxic chemicals known to increase the risk of cancer, neurological damage and other health issues.

Grossberg told Vernon council members this week that the regional water quality control board continues to monitor the storm water plan for offsite water discharges. He said Exide proposes to remove all the existing underground piping and test to see if there is any exposure to the soil or ground water.

Council members, not usually very vocal on the issues that come before them, questioned Grossberg regarding the city's response to the Exide situation.

Mayor Pro Tem William Davis wanted to know what happened to the city's request to the AQMD back in April for the agency to issue a health advisory in response to the findings of excessive harmful emissions by Exide.

"AQMD has not issued a health advisory because it lacks the scientific proof that anyone, not to mention 250, 000 people, are being harmed right now, to date, from any emissions from the Exide plant operations," Grossberg responded.

"Without that proof they could not issue the health risk advisory and I cannot issue a health risk advisory," he said, one day before AQMD officials ordered Exide to cut production.

Councilman Richard Masiano asked if the city is doing everything it can to ensure the safety of the workers at Exide and its surrounding residents? Grossberg said the city is doing everything within its power, and regularly communicates with AQMD, DTSC.

"Vernon's Department of Health and Environmental Control continues to share the public concern regarding important public health and safety issues and pledges to do anything within our city power to safeguard the lives of our residents, business employees and residents of our neighboring communities," Grossberg said.

Vernon is taking heat from surrounding communities that believe the city can shut Exide down by changing its zoning codes.

City Administrator Mark Whitworth asked whether there is a legal avenue the city can pursue to revoke Exide's permit to operate in the city.

It was Los Angeles County that approved using the property where Exide is now located for lead smelting back in 1922, before it was annexed into Vernon in 1959, according to Deputy City Attorney Scott Porter. He said the city cannot change its zoning codes to shut down Exide.

"The constitution and zoning don't work like that. No city may legally amend their zoning code to thereby illegally prohibit operation of a multi-million dollar facility, which has been recently upgraded to the tune of many thousand of dollars, simply to meet air quality standards," Porter told the council.

The equal protection clause in the constitution requires cities to treat all similarly situated business owners equally, he said.

"The city cannot legally say to Exide owners 'even though you've never violated our zoning codes, because we don't like you, you're hereby shutdown effective immediately,'" Porter said.

"The city cannot legally shut down Exide for violations of AQMD's or DTSC's pollution standards, only the AQMD and DTSC can legally enforce their own standards."

Meanwhile, plans to start the blood tests still have other obstacles to overcome. According to DTSC Spokeswoman Tamma Adamek, said while DTSC wants testing to begin and for Exide to pay for the tests, it "will require approval from the bankruptcy court" because Exide filed for bankruptcy in June, and as a result, a bankruptcy judge must approve all expenditures.

Information from City News Service was used in this report.