

October 30, 2006

Liang Chiang, Project Manager
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

Re: **Draft Environmental Impact Report and Draft Hazardous Waste Management Facility Permit for Exide Technologies: 2700 South Indiana Street, Vernon, California**

Dear Mr. Chiang:

We, the undersigned organizations, submit the following comments to the Department of Toxic Substances Control (“Department” or “DTSC”) in response to the draft Environmental Impact Report (“EIR” or “DEIR”) and draft Hazardous Waste Management Facility Permit (“permit”) for Exide Technologies (“Exide”) in Vernon, California. Our organizations work to reduce human exposures to harmful chemicals and compounds, educate and organize adversely affected communities, and ensure that industrial facilities are held to the strictest standards for their conducting their activities. Such activities are, of course, consistent with the Department’s charge to protect public health and the environment. We offer these comments in the spirit of contributing to that effort in general and with regard to the Exide facility specifically. With that in mind, we open with some general observations, and then provide more specific comments.

I. GENERAL OBSERVATIONS:

Sad to say, the permitting process as conducted to date and the documents submitted in pursuit of the permit are insufficient to protect public health and the environment. We are extremely concerned about the continued operation of the Exide facility in a manner which continues past practices. Given that a lead smelting operation has been in existence on the Exide property since 1922, it is astonishing that the amount and toxicity of the facility’s lead emissions are still not adequately quantified. Preparers of the EIR note that the primary community concern is human health. While there are many potential health issues generated by operation of the Exide facility, the primary concern must be lead, both on- and off-site. The documents submitted provide neither an adequate characterization of lead issues nor either means or adequate assurances that existing contamination will be cleaned up and further emissions reduced. Both the Exide property and adjacent properties are highly contaminated with lead, as well as many other hazardous heavy metals, volatile organic compounds and semi-volatile organic compounds from over 80 years of industrial processing operations and associated contaminant emissions at the site.

Lead is a known carcinogen and neurotoxin, which even at low exposure levels has been linked to developmental and behavioral problems in children. Adult exposure can result in increased blood levels, fertility problems, nerve disorders and other health problems. While we understand

the benefit of recycling hazardous materials such as lead, rather than disposing of them, for a recycling operation to truly be beneficial it must be operated so that it does not pose risks to public health and the environment. At a minimum, recycling facilities must operate cleanly and responsibly, and follow all applicable laws. It is the duty of the Department, as well as other agencies, to provide comprehensive information about the facility's activities and hazards to the surrounding residents who are impacted.

In summary, we have reviewed the relevant documents, obtained from the Department, concerning Exide. The Health Risk Assessment ("HRA") and DEIR prepared to support the draft permit are flawed. The HRA utilizes proprietary analysis software, forcing reviewers to rely on faith that the "black box" used for the assumptions and calculations are adequate to the task. This fundamentally eliminates the ability of reviewers to assess whether the HRA meets its obligations in protection of public health and the environment.

The reports collectively do not evaluate all of the risks posed by Exide's operations, and then do not properly or adequately analyze all the risks they do evaluate. The draft permit does not contain all of the necessary requirements to ensure the safe operation of the facility, and this coupled with the fact that Exide has been a significant violator of the hazardous waste regulations, makes us question whether Exide is able to comply with *any* permit it is granted. Corrective action for investigation and cleanup of the extensive facility contamination seems to be only in its early stages, and the process which has been described in the relevant documents is sketchy at best and does not provide for any real cleanup to begin for many years, allowing the existing contamination more time to migrate and pose risks to the surrounding community.

II. SPECIFIC CONCERNS:

A. Public Participation Opportunities Were Inadequate

Some comments about the role of the public in reviewing this permit are in order since public participation is an essential part of the CEQA process. We urge the Department to improve its process for allowing the public to review documents for draft permit actions and other decisions where public involvement is requested.

First, all documents related to the facility should be made readily available for public review. Currently, the only documents available on the Department's webpage are a fact sheet, public notices, a limited selection of enforcement orders, the draft permit, and the executive summary of the DEIR. Core documents such as the permit application (which is incorporated by reference into the permit), Health Risk Assessment, the remainder of the DEIR, the facility's complete enforcement history, and its previous permit applications are not available electronically.

The Department places only limited documents directly related to the draft permit and environmental and human health impact analyses in the public repositories. Thus, many documents, including most or all of those mentioned above, are available only at the Department's regional office in Glendale. To obtain the documents on file at Glendale, an

interested person must fax a request for the specific document, then appear in person during business hours and either spend hundreds of dollars to photocopy the documents or bring a scanner to copy hundreds of pages. Core facility-related documents in the Department's files should be placed in the public repositories for public review in addition to those already available, including but not limited to corrective action, remediation, enforcement, and correspondence documents.

Second, the Department must take steps for future permit actions to place all facility-related documents on the Department's website, or in another electronic repository, where they can be viewed by members of the public at no cost. See CAL. CODE REGS. tit. 14, § 15201 (stating that CEQA should make environmental information available in electronic format on public agency's website). In most cases, the population most affected by a hazardous waste facility has neither the time nor the money required to review and copy facility-related documents during the business hours provided. The resulting inaccessibility denies those most affected an equal opportunity to voice an opinion regarding a facility that may have adverse health and welfare impacts on the community. Important documents must be available to satisfy CEQA's purpose to guarantee an informed public.

Third, the Department should not include misleading or contradictory information on its webpage. The fact sheet states that the "complete administrative record" is available for review at the public repositories, but the public notices state that the draft permit, DEIR and "other documents" are available at these public repositories, without ever defining "other documents." The facts sheet also states that the "full administrative record" is available for review at the Department's regional office in Glendale. Although it would appear that these locations contain the same documents, there are in fact significantly fewer documents available for review at the public repositories as compared to the regional office.

In a recent communication, DTSC's Public Participation Specialist defined the full administrative record as every document relating to permitting the facility since the process began. However, she acknowledged that the public repositories contain considerably fewer documents than this. Thus, those locations do not contain the "complete administrative record." In future permit actions, the Department should provide consistent information on its webpage to avoid causing confusion.

Fourth, the Department should provide the public with an index or catalog of items available for review at each location. The Public Participation Specialist was unable to provide a list of documents available at the public repositories, let alone of documents available at the regional office. Without an index, public commentators may not be aware of how to ask for more documents, or even know whether they possess the entire administrative record. Providing a catalog of items, in addition to the suggestions above, will assure the public that the full record is available and relatively easy to access.

B. The Department should ensure that it is complying with the Tanner Act

1. The Tanner Act – What It Is, What It Does, and Why We Have It:

The California legislature passed the Tanner Act (“Tanner”) in 1986 with the express purpose of giving local communities a voice in land use decisions involving hazardous waste projects. The legislature felt that the then-existing procedures for approving hazardous waste facilities “did not provide meaningful opportunities for public involvement and [were] not suitably structured to allow the public to make its concerns known and to cause these concerns to be taken into consideration.” Cal. Health & Safety Code § 25199 (a)(3). Tanner thus created a formal process to ensure local communities could give significant input into such local decisions.

The Tanner process requires that the local authority responsible for making a land use decision regarding a hazardous waste facility form a local assessment committee (“LAC”) prior to making its decision. The LAC must be comprised of seven community members, chosen by the local authority, including three members from the community at large, two members from environmental or public interest groups, and two members from affected businesses and industries. The purpose of the LAC is to offer a forum for the interests of local residents, as well as to review the costs and benefits of the hazardous waste project. The LAC also negotiates with project proponent on behalf of the local community.

Once review and negotiations by the LAC are complete, the LAC must advise the local decision making authority of the terms and conditions under which the proposed hazardous waste facility project may be acceptable to the community. The LAC must also provide additional information which the LAC deems appropriate. The local decision making authority is not required to abide by the LAC’s recommendations. However, Tanner provides a formal process by which the concerns of the local community can become adequately voiced and considered.

2. The DEIR Fails to Address Adequately the Tanner Act

Despite evidence that Tanner should be invoked, the DEIR fails to explain whether or not Tanner applies to the Exide permit. The DEIR merely lists Tanner among the many statutes which must be followed throughout the Part B permitting process. Beyond that listing, the DEIR never again mentions Tanner, despite the fact that Exide may in fact trigger Tanner as a hazardous waste facility. In reviewing the DEIR, however, the public does not know whether the Tanner requirements have actually been met, and if they have not been met, then why they do not. The DEIR must explain its position with regard to Tanner. It should not be the public’s responsibility to determine whether DTSC and Vernon have properly followed Tanner requirements or whether Tanner should apply to facilities like Exide on interim status.

3. DTSC Likely Should Have Required Vernon to Form a Tanner LAC

It is likely that the Exide permit process should have triggered Tanner. Tanner applies to all hazardous waste facility projects, defined as either the building of a new facility or a “significantly expanded or modified” hazardous waste facility. *Id.* at § 25199.1(b). In order to trigger Tanner, the expansion must result in (1) an EIR and (2) a land use decision. *Id.* at § 25199.1(l). A “land use decision” occurs when a local agency makes a discretionary decision concerning a hazardous waste facility project. *Id.* at § 25199.1(e).

Exide appears to have satisfied both the EIR and land use requirements necessary to trigger Tanner. First, the DEIR at issue here certainly satisfies the first requirement. Second, after investigating the Vernon files, we found that the City of Vernon made several discretionary land use decisions since Exide first applied for a Part B Permit in 1988. Such decisions involved variances, conditional use permits and health permits. These land use decisions indicate that the Exide permit indeed may have triggered the Tanner process.

DTSC may have failed to invoke Tanner based on incomplete and outdated information DTSC received from the City of Vernon. In reviewing the Exide files at the Vernon City Hall, we encountered correspondence between DTSC and the City of Vernon suggesting that a conditional use permit decision was not required for the Part B permitting process. In a letter dated June 16, 1992, Exide's predecessor GNB asked the City if a conditional use permit was required with the filing of a Part B application. The City issued a three sentence response letter in early 1993, stating that "no conditional use permit is required at this time." However, the letter from the City gives an inadequate explanation as to why a conditional use permit is not required. The letter fails to cite any provision of the Vernon City Code and does not explain when a conditional use permit will be required in the future.

On April 26, 1993, DTSC also sent a Notice of Preparation of a Draft Environmental Impact Report to the City, requesting the City's views on "the scope or content of the environmental information which is germane to [DTSC's] responsibilities in connection with" the Part B permit application. The City responded again only that "a conditional use permit is not required at this time." Rather than following up with the City and requiring more solid information that no conditional land use permit was necessary and that the EIR raised no other City-related issues, DTSC apparently relied on this correspondence (although we can only speculate due to the complete lack of discussion in the DEIR of Tanner). If this was the case, DTSC should not have relied upon this letter from the City of Vernon without further inquiry. In any event, DTSC appears not to have considered other land use-related permits granted by the City within that time.

Moreover, the 13 years that have elapsed, and the significant facility modifications that have been installed since that time, make the information outdated in any event. Our research indicates that Exide may in fact have been required to obtain a conditional use permit from the City. Exide submitted two interim permit modification requests to DTSC in 1999 and 2000. DTSC issued a negative declaration for both projects and approved the permit modification requests. In response to the first negative declaration, the City of Vernon notified DTSC that Exide may have to obtain a conditional use permit to implement the proposed improvements. There is no subsequent information in the City of Vernon's Exide files concerning the City's decision regarding this possible conditional use permit. Without such information, the public lacks crucial information. DTSC must obtain and review the relevant documentation from the City, explain its position with respect to Tanner compliance, and provide the public with evidence to support its conclusions. We believe that it is very likely that the City must comply with the Tanner Act's requirement to form an LAC; if DTSC determines that this is not the case, the public is entitled to understand why it has reached that conclusion.

4. DTSC's Lack of Information in the DEIR Unnecessarily Forces the Public to Investigate Whether Tanner Applies

DTSC's lack of discussion on Tanner forces concerned members of the public to investigate the history of the facility and the City of Vernon's municipal code. As a result, we had to locate a copy of the Vernon City Code in order to see if local land use decisions were statutorily required. The Vernon City Code is not available online, and we had to travel to the Los Angeles County Law Library in order to obtain a copy. After analyzing the Vernon Code without much clarification on the issue, we traveled to Vernon City Hall, sifting through loose files on Exide in order to determine whether or not the city made a local land use decision. DTSC's failure to adequately address Tanner in the DEIR therefore creates a significant legal research burden for the public.

5. The Policies Behind Tanner Indicate that Tanner should Apply to Exide

The policy behind Tanner indicates that DTSC should take the lead to begin Tanner proceedings. The express intent behind Tanner was to give local communities a voice in land use decisions involving hazardous waste projects. The construction of the Exide facility pre-dated the Tanner Act, so local members of the public were never afforded a formal and meaningful opportunity to voice their opinions. Yet the issuance of a Part B Permit will have significant effects on the local communities, as the permit will affect the air emissions, water quality impacts, enforcement techniques, compliance schedules, and many other related issues that will directly impact the local communities. Such impacts will be borne by the local communities for years to come. Therefore, this permit process represents the only opportunity for the public to be involved in the process as Tanner envisioned.

With the facility operating under interim status, it is possible that Exide may be able to evade a local land use decision because there may be no significant physical change at the plant. However, interim status facilities should not be exempt from Tanner even if they do not trigger a land use decision at the same moment that the permit process begins. In the case of Exide, numerous land use decisions have been made since Exide first applied for a Part B permit. Exide should therefore not be able to fall through a legal loophole and evade Tanner simply because its interim status position has complicated the Tanner requirements. In order to comply with the language and the goals of Tanner, DTSC should require that the City of Vernon follow the Tanner process.

C. The Health Risk Assessment Is Inadequate

Review of the HRA reveals numerous flaws. One overarching flaw that will have an impact on HRAs conducted for proposed facility permits other than Exide, is that proprietary software was used to conduct the analysis. The HRA uses the IRAP-h View Model, developed by Lakes Environmental. This software is not available for general use. It is unacceptable for the

Department to allow the use of proprietary software in the preparation of risk assessment which will be reviewed by the public, as it does not provide the public with the ability to properly review the underlying calculations and assumptions used in the risk assessment. If the Department is to have a truly transparent permitting and public comment process, as Director Gorsen has stated she wishes to have, then the public must have unrestricted access to any software.

1. The HRA is Outdated

Although the cover sheet for the HRA is dated June 2006, the EIR explains that the HRA was actually prepared in 2001. An HRA which is 5 years old is unacceptable for a facility whose operations pose risks as serious as Exide. Conditions in the surrounding community may have changed significantly over the past 5 years, and a more current HRA must be used in preparation of the EIR. In addition to the fact that the HRA itself is 5 years old, it also relies on outdated data. The Office of Environmental Health Hazard Assessment's ("OEHHA") chronic and acute Reference Exposure Levels ("RELs") from five and six years ago were used, even though OEHHA recently update the RELs in 2005. All of the chemicals evaluated in the HRA must be reviewed (including those not selected as chemicals of concern) in comparison to the 2005 RELs, to ensure that all current RELs were evaluated in the HRA. Information on the toxicity of lead has changed dramatically just in the last few years indicating that any additional lead in blood has a dramatic impact in IQ in children. The HRA indicates that rises in blood lead in children living near the facility can be as high as 1.6 ug/deciliter, this would translate into measurable reductions in IQ in these children. This is why the mandate of CEQA to assess all feasible measure to mitigate identified impacts is so important. The Department must ensure that supporting risk assessment documents themselves are current, and base their analyses on the most current data available.

2. The HRA Inappropriately Models Air Quality and Uses 22 Year Old Data

The model relies on surface air meteorological data from the LAX Airport. Also, since no comparable "upper air" data was available for the same years chosen (1984), the "upper air" data from Oakland Airport was used. This is unacceptable. The Los Angeles and Oakland/Bay Area air basins are significantly different. Therefore, the HRA model must be run again using both comparable and current data.

3. The HRA Does not Analyze Facility Upset Scenarios

Acute effects from direct inhalation of vapors and particle phases from various chemical of concern are evaluated based on maximum 1-hour emission rates. However, the HRA doesn't consider the possibility of equipment failure for a 1-hour duration. It is not an unreasonable scenario for any one piece of abatement equipment to fail for a period of one hour. Therefore, at a very minimum, the HRA should include an analysis of acute effects for lead of a 1-hour failure of each of the lead emissions baghouses, as this failure could expose the surrounding community to significant levels of lead.

4. The HRA Inadequately Evaluates the Risk of Lead Poisoning in Children

The HRA calculates that 99% of the child population will have a blood lead level of up to 1.6 ug/l as a result of only the operations at Exide, and that this level is acceptable because it is below the Significance Criteria of 10 ug/l. This analysis is incomplete for several reasons. First, the HRA does not follow the most current methodology for performing risk assessments on child lead levels due to hazardous waste facilities. This because the HRA does not use the U.S. Environmental Protection Agency's ("EPA") Integrated Exposure Uptake Biokinetic (IEUBK) Model, which has been available since 1994, and is considered to be the best model for evaluating the impact of multimedia sources of lead on children's blood lead levels. The HRA must be revised to incorporate this analysis. Second, the assumptions used to calculate risk to children posed by lead are inadequate. A recent EPA report shows that children are strongly influenced by interior dust lead loading, and exterior soil is a major contributor to interior dust lead levels. The impact of Exide's emissions on interior dust lead levels in homes near the facility was not addressed in the HRA, and it must be addressed. Third, children living near Exide are exposed to many more sources of lead than only lead from Exide. The EPA states that "for every 1,000 ppm increase in soil-Pb concentration, pediatric blood-Pb levels generally increase by ~3 to 5 ug/l in exposed infants and children < 6 years old." Children living near Exide are surrounded by industrial facilities, any number of which also produce lead emissions. These lead sources are not speculative and an analysis of all of the sources of lead must be included in the HRA. Fourth, the HRA's fundamental assumptions about risks to children are wrong. EPA has stated that "[a] decline of 6.2 points in full scale IQ for an increase in concurrent blood Pb levels from 1 to 10 ug/dl has been estimated." Exide is not using the most current scientific information known about the impacts on health and welfare posed by lead.

5. The HRA Calculates Risk to Workers at an Off-Site Location

The Exide DEIR selected a receptor point 0.66 miles east-northeast of the facility for calculation of RMEW values. (DEIR at 3-38.) As noted, however, "air lead concentrations decrease sharply with distance from the source." (Id. At 3-19.) Moreover, "approximately 66 percent of the cancer risk to the RMEW is attributed to lead emissions." (Id. At 3-38.) Exide fails to explain this choice, asserting only that the "RMEW is adjusted to account for reductions in exposure duration, exposure frequency, and soil ingestion rate." (Id.) The same questions raised in the criticism of Exide's emissions scaling (see discussion below, at p. @) apply here: the DEIR provides no explanation of how adjustments were made and fails to clarify (with the exception of lead) how toxic contaminant concentrations vary with distance from the source. Workers near the Exide facility complain of being exposed to dust from the facility. These workers should be tested for their blood lead levels, as should the workers at the Exide facility in order to better ascertain if their lead levels and health are being affected by the emissions from the facility. Given that lead emissions comprise the bulk of the cancer risk at the RMEW site, and that emissions decline sharply with distance from Exide, this analysis appears flawed and – at a minimum – requires further explanation.

D. The Draft Environmental Impact Report Is Flawed

We have also identified many flaws in the DEIR.

An environmental impact report is intended to be “an informational document which will inform public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.” 14 Cal. Code Regs. § 15121(a). For the current DEIR, the proposed project is the issuance of a Part B Permit, which is necessary for the continued operation of the Exide facility. If the permit is issued, the facility will continue to operate. Therefore, the environmental effects of the permit’s issuance are those effects that will exist if the facility continues to operate.

- a. The DEIR uses a deficient and unstable definition of baseline conditions

Under 14 Cal. Code Regs. §15125(a), an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation (“NOP”) is published. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. Exide published its NOP in 1993. Thus, any changes to the surrounding conditions since 1993 cannot be included within baseline environmental conditions unless the entire EIR is re-scoped and a new NOP is prepared.

Although the DEIR acknowledges the general rule that baseline environmental conditions will normally be the conditions that exist at the time the NOP is published, the DEIR explains that its baseline analysis is different because the facility has been and is presently operating in much the same manner as it will be permitted. DEIR, 3-1. As a result, the DEIR states that Chapter 3 limits its description of the facility and affected environmental resources to how they currently exist. DEIR, 3-1. However, the DEIR then proceeds to contradict this statement and describe 16 environmental resources from a range of different time frames. For example, the environmental setting for agricultural and biological resources are based on 1992 data (DEIR, 3-8, 3-44), the setting for local air quality uses data from 2000 to 2004 (DEIR, 3-14), and the setting for geology and soils references Appendix E, which is dated 2002 and cites a 1988 report (DEIR, 3-47; Appendix E).

Both the stated and actual baseline strategies used in the DEIR are incorrect given the legal precedent and underlying purposes of CEQA. First, cases upholding an EIR’s use of post-NOP environmental conditions as the baseline have mainly concerned projects that are a modification or renewal of an existing project that has already undergone final CEQA review. See Benton v. Board of Supervisors, 226 Cal. App. 3d 1467, 1476 (1991); Fairview Neighbors v. County of Ventura, 70 Cal. App. 4th 238, 243 (1999); Remy et al., Guide to the California Environmental Quality Act (10th ed. 1999) p. 168. Because the Exide facility has not undergone CEQA review until now, the DEIR cannot fold 13 years of operations into the baseline without first re-scoping the EIR and preparing an updated NOP.

Second, the central function of an EIR is to inform the public and decision makers about the impacts of the proposed project on the environment. County of Inyo v. City of Los Angeles, 124 Cal. App. 3d 1, 9 (1981) (“County of Inyo II”). The use of a deficient or inconsistent baseline undermines this function. In particular, when an EIR uses a flawed baseline, its analysis of significant environmental effects and mitigation measures in turn become flawed. As a result, informed decision making and public participation are precluded. See County of Inyo v. Los Angeles, 71 Cal. App. 3d 185, 193 (1977) (holding that a curtailed, enigmatic or unstable project description draws a red herring across the path of public input). The DEIR’s use of various baselines other than 1993 is confusing and misleading. It is impossible to get an accurate and comprehensive picture of the conditions surrounding Exide since almost every environmental resource is described from a different point in time. DTSC, as the lead agency, properly bears the burden to accurately and consistently describe the environmental conditions surrounding Exide as they exist at the time the NOP is published. Thus, DTSC should either revise the environmental setting for all 16 environmental resources to reflect 1993 conditions or re-scope the entire DEIR, file an updated NOP, and then consistently describe the 16 environmental resources based on current conditions.

Moreover, because the DEIR uses a flawed baseline for environmental setting, its analysis of significant environmental effects and mitigation measures is also flawed. Under CEQA Guidelines § 15126.2, an EIR must describe the significant environmental effects of the project. 14 Cal. Code Regs. § 15126.2. In doing so, the lead agency should normally focus on changes in the existing physical conditions in the affected area as they *exist at the time the NOP is published* (emphasis added). The DEIR violates this guideline and uses multiple baselines other than 1993 to analyze significant environmental effects and mitigation measures. For example, the DEIR focuses on Exide’s current emissions when analyzing significant effects and mitigation measures for air quality (DEIR, 3-31), but then switches to data from 1988, 1990, and 2002 when analyzing the same for soils and geology (DEIR, 3-47; Appendix E). The use of unstable baselines is not only confusing, but also causes the DEIR to overlook many of Exide’s probable impacts on the environment since 1993.

For example, since 2000 alone, a new drop out system, corridor project, wastewater treatment plant system replacement, secondary containment project, and acid filter press have all been installed at the facility. DEIR, 2-4, 2-4. Even if these major additions have made Exide more environmentally sound, the DEIR should at the very least explain why these changes have had no significant impact on the environment. Thus, the DEIR should either have to consistently take the past 13 years into account when assessing Exide’s effects on the environment, or re-scope the entire EIR, file a new NOP, and then consistently analyze significant environmental impacts and mitigation measures using a 2006 baseline.

b. The DEIR’s project description should include compliance history

The project description should include a substantial discussion of DTSC’s compliance history because such a discussion will provide a clearer picture of the facility’s current conditions. See County of Inyo, at 192-193 (“an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR”). To the extent that the limited and outdated

information related to enforcement history exists in the appendixes, DTSC does not properly reference this information in the project description.

For example, section 2.6.2. of the DEIR states that “[i]ncoming batteries are either charged directly to the battery breaker or temporarily stored for a short period of time in the battery storage areas, which are covered run-off receiving areas.” The DEIR makes no discussion as to the manner in which these batteries are stored. The project description fails to point out that DTSC cited Exide for storing batteries in the West Yard of its facility against a stipulation agreement, and that batteries were leaking acid from Battery Storage Area 107 into a nearby manhole. (DTSC August 2005 Inspection Report Page 6). The project description is misleading to the extent that DTSC fails to disclose compliance history information.

By including the compliance history in its project description, the EIR would better inform the public regarding the facility’s ability to meet future DTSC requirements under the permit once this project is approved. By providing a substantial discussion of past DTSC citations and corrective actions, the public, DTSC and the facility will be in a better position to identify problems and solutions so that future environmental impacts can be minimized or avoided. See 14 Cal. Code Regs. § 15121(a); No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d 68, 86 (1974) (“the fundamental purpose of an EIR is to inform public agency decision makers and the public of the potentially significant environmental effects of a project and to identify ways to minimize or avoid those effects).

- c. The DEIR does not describe with any detail how it plans to achieve its second project objective

The second objective of the project is to achieve the “phased implementation of remedial measures consistent with maintenance of health and safety of workers and the general public.” Under the mandate of Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California, 47 Cal. 3d 376, 393-399 (1988), any reasonably foreseeable future phases or consequences of the proposed project must be included in the EIR.

The DEIR, however, provides no substantial discussions of any planned remedial measures. Lacking this information, the public and government agencies will not be able to evaluate Exide’s ability to meet the project objective and purpose. For example, Page 6 of a recent DTSC Inspection Report states: “DTSC and U.S. EPA were concerned that Exide may not meet the 2005 goal to control the Current Human Exposures in the RCRA Corrective Action Environmental Indicator (EI) Program pursuant to the Government Performance Result Act (GPRA).” Based on this concern, one can reasonably assume that Exide will have to adopt corrective measures to address this issue. Yet the DEIR fails to provide a discussion as to how the permit will address this issue. The DEIR therefore is legally insufficient.

Moreover, an EIR may not define objectives for achieving the purpose of the project and then be excused for not discussing potential remedial measures and other substantive steps that will likely be taken in order to achieve those objectives. In so doing, the DEIR removes from

consideration those matters necessary to the assessment of whether the purpose can be achieved. County of Inyo II, 124 Cal. App. 3d at 7-9.

- d. The DEIR does not contain any information about Exide's economic characteristics pursuant to CEQA Guidelines §15124

The facility has been in existence for over 80 years and has had numerous Health and Safety Code violations. (DTSC Inspection Report, August 2005.) The facility will have to undergo substantial expenditures and capital improvements in order to comply with existing and future permit requirements. However, in violation of the CEQA guidelines, the DEIR does not describe the facility's current economic standing. 14 Cal. Code Regs. § 15124. As a result, the public cannot evaluate Exide's ability to meet future permit obligations. In addition, without this information, DTSC cannot determine whether the facility can afford future "phased implementation of remedial measures" before it approves the project. Unless DTSC can find some reason to justify the exclusion of this information from the DEIR, DTSC must include an economic analysis in the final EIR.

2. The DEIR's Alternatives Analysis Is Flawed

The project alternatives discussion is legally inadequate because it does not propose a reasonable range of alternatives or provide a thorough analysis of proposed alternatives. The EIR proposes five alternatives: no project, alternative sites, reduced throughput, limiting the facility's waste streams, and use of alternative lead recycling equipment. The EIR discusses the first three alternatives in some detail before rejecting them, and addresses the latter two alternatives briefly and rejects them as infeasible.

Pursuant to CEQA, EIRs must identify and analyze alternatives to proposed actions affecting the environment. The CEQA Guidelines provide that an EIR must describe a range of reasonable alternatives to the project or to its location that would feasibly attain most of the project's basic objectives and would avoid or substantially lessen the project's significant effects. 14 Cal. Code Regs. § 15126.6(c). It must also include the no project alternative and alternatives rejected during the scoping process. 14 Cal. Code Regs. § 15126.6(c), (e). With regard to analysis of alternatives, the EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. 14 Cal. Code Regs. § 15126.6(d). Where alternatives are rejected as infeasible, the EIR must briefly explain why the alternatives are infeasible. 14 Cal. Code Regs. § 15126.6(c).

3. The DEIR Does Not Present a Reasonable Range of Alternatives

The alternatives presented in the EIR do not constitute a reasonable range because there is no discussion of two potentially feasible alternatives. They include use of alternative lead recycling equipment and use of more efficient control technology. The failure to discuss these alternatives renders the EIR legally inadequate for two reasons. First, the alternatives meet the threshold test for selection of alternatives because they could feasibly attain most of the project's basic objectives and would avoid or substantially lessen the project's significant effects. Second,

assuming the alternatives are infeasible, the EIR must explain reasons for rejection in sufficient detail to provide meaningful evaluation by the public.

The EIR briefly mentions the lead recycling equipment alternative and rejects it as infeasible. The sole explanation for infeasibility is that the equipment is “not available.” However, the EIR provides no evidence that use of the equipment is infeasible. It is not clear whether the reason for infeasibility is excessive cost, short supply, lack of existence of the necessary equipment, or another unspecified reason. Without further explanation, it is unclear why, or whether, this alternative could not feasibly attain most of the project’s basic objectives and avoid or substantially lessen the project’s significant effects. Accordingly, the EIR should discuss the alternative with the same level of detail as the no project, alternative sites, and reduced throughput alternatives.

The control technology alternative should be discussed in detail for similar reasons. It is unclear why the EIR did not propose this alternative, as it is more practical than closure, relocation, or reduction of lead materials recycled at Exide. It would attain the project’s basic objectives and substantially reduce the project’s significant effects. The EIR’s failure to examine either this alternative or the lead recycling equipment alternative violates CEQA, which imposes a duty on public agencies to avoid or minimize environmental damage where feasible and to make a good-faith effort at full disclosure. *See* Pub. Res. Code § 21002; 14 Cal. Code Regs. § 15003(i).

In order to conclude that either of these alternatives is infeasible, the EIR must discuss reasons for rejection in sufficient detail to enable meaningful evaluation by the public. Courts do not require blind trust by the public, and will not accept bare conclusions without an explanation for factual or analytical basis. *See Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 404 (Cal. 1988); *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27 Cal. App. 4th 713, 736 (Cal. Ct. App. 1994).

The project alternatives discussion is also legally inadequate because it does not provide a thorough analysis of the no project, alternative sites, and reduced throughput alternatives.

Pursuant to CEQA, the no project analysis should compare existing conditions at Exide with conditions that would exist if the facility were not granted a RCRA Part B Permit and ceased recycling of batteries and other lead products. However, the no project alternative does not sufficiently discuss existing or future conditions. The EIR includes brief statements related to existing conditions and periodically refers to tables, but does not discuss existing conditions. Such a discussion would be helpful to the public, which is not required to painstakingly ferret out information from reports. *See Planning and Conservation League v. Dept. of Water Res.*, 83 Cal. App. 4th 892, 911 (Cal. Ct. App. 2000).

The no project analysis also fails to thoroughly discuss future conditions. The discussion is limited to analysis of transportation-related emissions associated with transporting batteries from California to Texas, and the negative environmental impact of locating another project at the Exide site. However, it does not provide a forecast of the positive effects that would result from closure of the site, such as improved water, air, and soil quality. Failure to discuss the potential

positive effects of the no project alternative prohibits meaningful comparison between the proposed project and the no project alternative.

In addition, the no project analysis should provide a basis for its assumption that the Quemetco facility in the City of Industry is operating at capacity and could not take additional batteries for processing. This assumption is significant, as the EIR frequently mentions transportation-related emissions associated with transporting batteries from California to Texas, and does not analyze the environmental impacts that would result from transporting batteries from the City of Vernon to the City of Industry.

The alternative sites analysis is deficient despite providing a general discussion of the infeasibility of alternative sites and the environmental impacts of relocating to another site. An alternative sites analysis should identify particular sites, discuss their attributes, and indicate whether the sites identified would be feasible. See San Bernardino Valley Audubon Soc’y, Inc. v. County of San Bernardino, 155 Cal. App. 3d 738, 751 (Cal. Ct. App. 1984); San Joaquin Raptor, 27 Cal. App. 4th 713 at 736. Though Exide’s EIR provides a list of potentially suitable sites, it does not discuss their attributes and whether they would be feasible. The analysis also relies on a number of unsubstantiated assumptions and statements, such as the assumption that implementation of the alternative could generate greater emissions due to greater truck transportation. This conclusion assumes that an alternative site cannot be found within Los Angeles County and that existing lead-recycling sites will not be expanded or remodeled with less significant environmental impacts. When analyzing alternative sites, the Department should analyze the feasibility of specific sites and refrain from basing its conclusions on unsubstantiated assumptions.

Finally, the reduced throughput alternative would benefit from an expanded discussion of economic infeasibility. Under this alternative, lead-bearing materials would be reduced at Exide by nearly 50 percent. The EIR briefly states that this alternative “would not be economically feasible.” However, it does not offer evidence of economic infeasibility, such as economic analysis. Such analysis would permit a more meaningful evaluation of the extent of economic infeasibility.

It is also not clear to the public and decision makers what types of non-battery materials are being accepted at the facility. Basic questions such as (1) What are the non-battery materials being accepted at the Exide facility? (2) What are the amounts of these materials being accepted? (3) What are the emissions from these materials? And (4) Could emissions from the facility be reduced by restricting the materials to the facility?

4. The EIR’s Air Quality Analysis Is Flawed

The Exide facility is located within the Southern Coast Air Quality Management District’s (SCAQMD) Central Los Angeles Monitoring Area, an area designated as non-attainment for carbon monoxide, 10 micrometer particulate matter (PM 10), and ozone for state and federal air quality standards. Moreover, as the Exide Health Risk Assessment notes, the baseline cancer risk for the Central Los Angeles area is quite high. Accordingly, public concern regarding

Exide's RCRA Part B permit application is substantial. It is therefore critical that the Exide DEIR accurately gauge the impacts that its operations will have, mitigate these impacts to the extent feasible, and communicate its results and conclusions fully to the public. The Exide DEIR, however, fails on each of these counts. Specifically, the DEIR: (1) fails to adequately explain why Exide's significant air quality impacts cannot be feasibly mitigated, as required under CEQA (Pub. Res. Code, §21002); (2) fails to address problems associated with continued high NOx emissions under the RECLAIM program; (3) fails to explain its calculation of RECLAIM significance; (4) fails to explain how its emissions estimates were "scaled" (DEIR, 3-29); and (5) fails to address the periodic releases of "dust" that have plagued the surrounding community.

a. No Feasible Mitigation?

The Exide DEIR demonstrates that Exide's emissions of PM 10 and oxides of nitrogen (NOx) will be significant by a disturbing margin. On and off-site emissions of PM 10 will exceed the threshold for significance by 193.2 tons (162% higher than the threshold value), while off-site emissions of NOx will exceed the significance threshold by 167.7 tons (314% higher than threshold value). Nonetheless, Exide's DEIR concludes that the mitigation of these emissions would be infeasible. This is simply not true, add on pollution control equipment, process changes, and throughput restrictions can all be used to reduce pollution from this facility.

Startup, shutdown, and malfunctions (SSMs) have not been analyzed in this DEIR even though their contribution to emissions to the air can be significant. Estimates of the contribution of SSM events to the total emissions of air pollution vary from 30-60% depending on the facility type. Therefore, these emissions are a significant portion of the air emissions from the facility and they should be characterized. Feasible mitigation measures to reduce their incidence and the accompanying emissions should also be included. Permit conditions limiting the number, type, and duration of SSM events can be included in the permit as well as automatic waste feed cutoffs during SSM events (a common permit condition in RCRA facilities).

With respect to PM 10 emissions, the DEIR asserts that compliance with SCAQMD Best Available Control Technology Guidelines satisfies CEQA's feasible mitigation requirement, explaining that BACT "by definition, is control equipment with the lowest achievable emissions rate" which will "contro[l] emissions to the greatest extent feasible for all sources." DEIR, 3-41. Exide's DEIR does not differentiate, however, between SCAQMD's "major source BACT" and "minor source BACT" standards, failing to disclose which standard Exide is governed by and why. As the SCAQMD BACT Guidelines (Revised 7/14/06, available online at <http://www.aqmd.gov/bact/bact-guidelines-7-14-2006-update.pdf>) explain, these standards are quite different. BACT for major-source facilities subject to New Source Review (NSR) is equivalent to federal LAER standards, which "do not allow for routine consideration of the cost of control." (BACT Guidelines at 17.) Regarding minor source BACT, however, "[t]he control technology or emission rate must be cost-effective"

The Guidelines actually define BACT in the major and minor source sections identically, then explain that major source BACT is akin to federal LAER while MSBACT incorporates cost-effectiveness. On the face of the definitions, however, both actually seem to incorporate cost-effectiveness. Plainly, whether Exide is bound by major or minor-source BACT has significant implications for determining whether Exide has satisfied CEQA's "feasible mitigation" requirement. Within the context of CEQA mitigation, cost-effectiveness is simply one of several factors an agency *may* consider. The CEQA Guidelines explain feasibility as follows: "[i]n deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors." 14 Cal. Code Regs. § 1521 (emphasis added). Therefore, the use of minor source BACT technology by Exide would not, as a threshold matter, satisfy the legal mandate of CEQA.

All feasible measures to reduce pollution to the air need to be examined in this document if it is to fulfill the promise to decision makers to inform them with information that will help protect public health and the environment.

The Exide DEIR's treatment of NO_x emissions is also deficient. First, the DEIR states that mitigation measures requiring the "use of lower sulfur diesel fuels and NO_x catalysts are not feasible to implement on trucks that visit the Exide facility because: (1) Exide does not . . . [own] the trucks that visit their facility; and (2) requiring these mitigation measures on trucks would be expected to result in trucks traveling to another secondary lead smelter, rather than installing additional control equipment." DEIR, 3-43. Again, however, Exide's DEIR fails to explain the assertion that mitigation measures would be infeasible. California courts have repeatedly required that EIRs must contain "facts and analysis, not just an agency's bare conclusions." Citizens of Goleta Valley v. Bd. of Supervisors, 52 Cal.3d 553 (Cal., 1990). As a minimum, Exide can offer low sulphur diesel for sale at its facility, so trucks can refuel at its facility and pollute less as they leave the facility than when they came. Moreover, the Exide alternatives analysis assumes that, under the no project alternative, batteries normally sent to Exide would be shipped out of state for processing. DEIR, 4-4. The alternatives analysis assumes that trucks will travel either 115 miles (one way for the Eastern Basin) or 160 miles (one way from the Western Basin) from the South Coast to the Arizona border, a considerable distance. The DEIR does not explain whether this location was chosen arbitrarily, or whether there is a secondary lead smelter on the Arizona border. Thus, the distance necessary to reach another secondary smelter may actually be much greater than suggested.

If the closest alternate secondary smelter is out of state, it is plausible that increased travel costs might outweigh those associated with mitigation. Regardless, Exide fails to consider the possibility that it could mitigate off-site NO_x emissions by reducing emissions *on-site*. Indeed, nothing in the RECLAIM program would prevent Exide from purchasing and retiring extra emissions credits to mitigate off-site emissions. Moreover, Exide could simply reduce on-site NO_x emissions, thereby mitigating off-site emissions and reducing community impacts.

b. NO_x Emissions Remain Problematic under the RECLAIM Program

The Exide facility is governed by the SCAQMD Regional Clean Air Incentives Market (RECLAIM) program for NOx and SOx emissions. DEIR, 3-25. RECLAIM is a market-driven program allowing firms to buy and sell individually allocated emissions credits. Such programs, however, may lead to disproportionate local impacts. Exide's NOx emissions embody this concern. In the ambient air, NOx "consists primarily of nitric oxide (NO) and nitrogen dioxide (NO2). . . . Nitric oxide is readily converted to the much more harmful nitrogen dioxide by chemical reaction with ozone present in the atmosphere." The Worldbank: Pollution Prevention and Abatement Handbook, Nitrous Oxides section (1998), available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ppah_pguiNitrogenOxides/\\$FILE/HandbookNitrogenOxides.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ppah_pguiNitrogenOxides/$FILE/HandbookNitrogenOxides.pdf).

As noted in the Exide DEIR, nitrogen dioxide (NO₂) can produce irritation of the eyes and mucous membranes. Moreover, there is "some indication of a relationship between NO₂ and chronic pulmonary fibrosis" as well as an "increased incidence of bronchitis in children" at strikingly low doses. *Id.* Accordingly, the fact that Exide continues to purchase emissions credits under the RECLAIM program, instead of reducing its own emissions on-site, generates a "significant" impact on the health of area residents – regardless of Exide's compliance status. Considering that the overall cap for emissions under the RECLAIM program is fixed at the current level, and that Exide may continue to emit NOx at the level of its initial credit allocation (with the purchase of additional credits), there is little reason to believe that Exide will reduce on-site NOx emissions at any point in the foreseeable future.

c. The DEIR Fails to Explain the RECLAIM Significance Calculations

According to the DEIR, impact significance for RECLAIM facilities is represented by the following equation (DEIR, 3-28):

$$(A1/365) + I < (P + A2)/365$$

Where (already adjusted for daily emissions):

P = 299.7 lb/day ; the annual emissions increase associated with the proposed project

A1 = 330 lb/day; the 1994 initial annual allocation of emissions credits (including non-tradeable)

A2 = 180 lb/day; the annual allocation in the year the proposed project will commence operations (2006-7)

I = 55 lb/day; the incremental emissions established as significant in the SCAQMD Air Quality Handbook.

The DEIR then presents results for the facility's impacts that "do not represent emissions increases but are a summary of the current emissions at the site." DEIR, 3-30. The DEIR uses these emissions numbers to calculate the significance of impacts (essentially, substituting the "summary of emissions" number for the entire right side of the equation above), without explaining how these numbers can be substituted for the "P" and "A2" values in the equation. It is not clear whether this substitution is appropriate, and if so, why. The DEIR needs, at a minimum, to explain this, and to provide a clear explanation of its conclusions about the significance of air quality impacts.

The DEIR also does not identify all feasible measures for mitigation of the emissions at Exide. This facility emits almost a ton of lead per year, and thousands of pounds of criteria pollutants and air toxics. There exist a number of other mitigation measures, including installation of more advanced air pollution equipment, pollution prevention measures, and through put restrictions that would significantly reduce air pollution from this facility. These measures are not mentioned in the DEIR nor analyzed and they need to be for the document to provide the kinds of information that decision makers and the local community needs.

d. The DEIR Fails to Explain How (and Which) Emissions Estimates Were Scaled

In calculating emissions rates for the purpose of analyzing the significance of criteria pollutant emissions, rates were reportedly “based on source testing while the facility [wa]s operating at maximum capacity or the emissions estimates [were] scaled to the maximum capacity.” DEIR, 3-29. First, the EIR fails to explain which pollutants were scaled and which pollutants were tested at maximum capacity. Moreover, the DEIR fails to explain how emissions data collected while the facility was operating below maximum capacity were “scaled” to represent maximum capacity emissions. Thus, absent further explanation, these values are not trustworthy. (Note that relationships between operating capacity and emissions may not necessarily be linear, and the DEIR should explain these relationships and how emissions were scaled to account for this.)

e. The DEIR Fails to Address Reported Releases of Dust into the Surrounding Community

Finally, in failing to discuss the chronic, uncharacterized dust emissions that have plagued the surrounding neighborhood, the DEIR fails to address one of the community’s primary concerns. Community residents have observed, and we have seen photographs of, a thick dust, entering windows, covering cars, and creating concern amongst residents. Reportedly, Exide has sent employees to wash affected vehicles in the past, though this action has been discontinued. An inquiry to DTSC regarding this dust was answered promptly, and the DTSC has come out and taken samples of this dust. The information gleaned by the DTSC from this sampling should be reported back to the community and analyzed in the CEQA documents. At a minimum, the DEIR should describe these releases, identify the contaminant(s) involved, and explain to the public any danger and all feasible mitigations associated with these releases.

5. The DEIR Fails to Adequately Incorporate the High Background Cancer Risk

The HRA identifies very high total cancer risks for the area surrounding Exide; however, this baseline cancer risk from the HRA is not used as the starting point for the analysis of impacts from facility emissions in the EIR. Also, the land use and planning section of the EIR should acknowledge the unacceptably high cancer burden for community residents. Regardless of whether the project is consistent with land use planning and zoning, the EIR should discuss whether the land use zoning results in unacceptable cancer risks for the surrounding community. Further, the project alternatives section of the EIR should discuss the impact of alternatives on

the community cancer burden. Currently, this section of the EIR does not include an analysis of how each alternative would impact the unacceptably high cancer burden of community residents.

6. There is no discussion in the EIR of the impact of facility emissions on the nearby Los Angeles River.

The Los Angeles River is located approximately 1,000 feet from Exide, and the discussion of surface water impacts does not address airborne deposition of hazardous constituents onto the river. The water quality discussion should be revised to discuss potential impacts of lead and other emissions on the Los Angeles River.

7. There are numerous deficiencies in the cumulative impacts analysis.
 - a. The DEIR misconstrues the legal standard for cumulative impacts

The EIR does not use the correct legal standard for analyzing whether a project's impacts are cumulatively significant. Section 15130(a) of Title 14 of the California Code of Regulations requires that an EIR discuss whether a cumulative impact of the project's incremental effect, combined with other projects, is cumulatively significant. Since a cumulative impact is, by definition, caused by the intermingling of impacts, it follows that, "An EIR might conclude that the cumulative impact is significant even though the project-specific impact is not." Sierra Club v. Mission Springs Water District, 2006 WL 2692697 *6. California courts have held that "assessment of project's cumulative impact on environment is a critical aspect of the EIR." Los Angeles Unified School District v. City of Los Angeles, 58 Cal.App.4th 1019, 1025 (1997). Furthermore, "a prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making...thereby thwarting the statutory goals of the EIR process." Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, 18 Cal. App. 4th 729, 748. An inadequate cumulative impacts analysis alone may force decertification of an entire EIR.

The Exide facility is also near the proposed 934 megawatt powerplant in Vernon, so in addition to not taking into account the current cumulative emissions surrounding the facility, the current levels of lead in children in the nearby community it does also not take into account the emissions from the new proposed power plant.

Throughout the cumulative impacts analysis, Exide assumes that there is no cumulative impact if the EIR has determined that a particular impact is not significant. (In its discussion of toxic air contaminants, the DEIR states, "the project's contribution to cumulative TAC is not cumulatively considerable because the project impacts are less than significant." DEIR, 5-8. Another example occurs in the discussion of water demand: "Exide's contribution to the water demand is not cumulatively considerable as it is less than significant." DEIR, 5-16. Because the wrong legal standard is used, there is no meaningful cumulative impacts analysis in the EIR.

The EIR must analyze whether the incremental effect of the project will result in cumulative impacts. For example, for air quality, the EIR must analyze each of the chemicals of concern to determine whether emissions for each chemical are cumulatively considerable when compared to

similar emissions from other projects. In rejecting a definition of cumulative impacts similar to that used by Exide, the court declared, “The relevant issue...is not the relative amount of traffic noise resulting from the project...but whether any *additional* amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools” (emphasis added), Los Angeles Unified School District, at 1025.

Use of the wrong standard for cumulative impacts with regard to cumulative impacts on chronic health risks is particularly disconcerting. The DEIR claims that since the MATES II study concludes that total Basin carcinogenic risks already exceed the thresholds of significance, further assessment is unnecessary. This is not true. It is precisely because some regions already experience unhealthy impacts that additional projects there require scrutiny. Foresight of this situation is demonstrated in the guidelines, which declare, “The significance of an activity may vary with the setting.” 14 Cal. Code Regs. § 15064(b). In assuming otherwise, the DEIR declares that healthy air in the Los Angeles Basin is a lost cause. No support appears for the proposition that “since the project-specific toxic air contaminant impacts would not be significant for carcinogenic, acute or chronic health impacts, they are not considered to be cumulatively considerable.” DEIR, 5-8. The cancer risks due to TAC in this area are among the highest in the state, exceeding 1400 per million. Surely, such weighty conclusions must be reevaluated under the correct legal standard.

- b. The discussion of related projects neglects to mention past projects and potential cumulative impacts

Because it is limited to a discussion of proposed projects, the cumulative impacts analysis contains an inadequate baseline. Exide has chosen to provide a list of potentially cumulative past, present, and future projects to satisfy CEQA. 14 Cal. Code Regs. § 15130(b)(1). However, despite Exide’s location in south Los Angeles’ heavily industrial corridor, it neglects discussion of the existing impacts of surrounding industrial facilities. The SCAQCB online database includes 32 Title V-regulated industrial facilities that are located within Vernon’s zip codes, yet none appear in the DEIR. (SCAQMD, available at <http://www.aqmd.gov/webappl/fim/prog/search.aspx>.) Similarly, the Air Resources Board web site shows 23 polluting facilities within the project area. (California Air Resources Board, available at <http://www.arb.ca.gov/ei/pimyneigh.htm>.) Again, all are excluded from the DEIR without explanation. Further research into the cumulative impacts with respect to existing facilities must occur before the final EIR is circulated and certified.

The CEQA-mandated list also fails to mention specific cumulative impacts for each project, even when some are obvious. For example, in describing the 710 Interchange construction project, the DEIR states, “environmental impacts for the I-710/Atlantic/Bandini Interchange...are unknown and speculative at this time” since the EIR is incomplete. Even though impacts on noise and traffic will undoubtedly occur, the DEIR does not mention them. The public also needs explanations for the discussion of the Quemetco secondary lead smelting facility. Without noting any potential for cumulative impacts on toxic lead emissions, the DEIR declares, “The [Quemetco] facility is located about 14 miles east of the Exide facility so that cumulative

impacts between Quemetco and the Exide facility are not expected.” The DEIR should clearly state that potential cumulative impacts relating to lead are a reason that Quemetco is included.

The DEIR must also state the support for its conclusion, in order to comply with CEQA. 14 Cal. Code Regs. § 15130 (a)(2) provides, “when the combined cumulative impacts associated with the project’s incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed further in the EIR. A lead agency shall identify facts and analysis supporting the lead agency’s conclusion that the cumulative impact is less than significant.” The DEIR, however, implies that lead emissions of facilities located 14 miles apart cannot be cumulatively considerable but does not say why. A conclusion that airborne lead cannot migrate seems unlikely, but requires support if intended.

The cumulative impacts analysis also must include a meaningful analysis of future aspects of the project that are reasonable foreseeable. Specifically, the analysis does not address the impacts of corrective action cleanup of the facility in any meaningful way. The EIR states that “[t]he overall impact of the related projects on soil contamination would be considered beneficial since remediation would remove or reduce soil contamination in the area.” However, during the remediation process, impacts on the community may be quite significant as contaminants are emitted into the air while contaminated soil is being moved and/or excavated. Impacts from these remedial activities must be addressed in the EIR.

- c. The geographic scope used to evaluate cumulative impacts is neither defined nor justified in the DEIR

The analysis also fails to define a geographic scope for determining cumulative impacts, or to justify this region, as required by 15130(b)(3) of the CEQA guidelines. Lead agencies must “define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” 14 Cal. Code Regs. § 15130(b)(3). “This area cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting.” Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal.App.4th 1184, 1216 (2004).

The DEIR refers to the geographic scope of the cumulative impacts analysis in several inconsistent ways. Figure 5-1 depicts the relevant region as that bordered by Alameda, the 60 Freeway, the 710 Freeway, and Slauson Avenue. This description is then confused by the inclusion of the Quemetco facility, located 14 miles east any site on the map. Other sections of the DEIR define the geographic scope as “within about one mile of the proposed project, i.e., the Vernon area.” DEIR, 5-6. No justification appears for any of these regions, leaving open whether they are even appropriate. While a reasonable cumulative impacts analysis on “aesthetics” might require only a small area, a reasonable analysis for air pollution cannot, due to the migratory nature of the contaminants. Even if DTSC agrees that this ill-defined region is sufficient, the support for its decision must be provided in the EIR.

- d. Conclusions drawn about cumulative impacts from TAC lack support

Several of the EIR's conclusions about cumulative impacts relating to toxic air contaminants (TAC) lack support and violate CEQA. 14 Cal. Code Regs. § 15130 (a)(2). First, the DEIR states, "the location of the Exide facility in relation to other related industrial projects is a sufficient distance such that cumulative TAC impacts are not expected." No reason is given to explain why cumulative impacts will not occur at the distances between Exide and neighboring industrial facilities, especially given that the facilities contained within the study area were included based upon their close proximity.

Next, the DEIR states that the TAC emissions from the Malburg Generating Plant were deemed less than significant, seemingly as support that Exide's emissions should also be considered less than significant. The analysis should more properly explain why the TAC emissions from Exide and Malburg are not significant when analyzed *together*, according to the correct legal standard. This demonstration might be well-supported by a table, similar in nature to Table 5-3.

The TAC analysis may also draw erroneous conclusions about diesel exhaust. If PM10 as shown in Table 5-3 is used as a proxy for diesel exhaust, cumulative impacts on TAC occur. Taken together, the Exide and Malburg facilities emit three times the legal amount of PM10, an amount that certainly qualifies as "cumulatively significant." DTSC should explore this further.

DTSC's use of the MATES II Study to evaluate cumulative impacts on chronic health risks is also questionable. Exide states that the Los Angeles site evaluated in the study is the closest of the ten study sites to Exide, but does not explain why or if that site accurately reflects conditions found near Exide. Since DTSC could better evaluate the probative value of these assumptions if the DEIR included a description of the site and its distance from Exide, these should be included.

8. Compliance history needs to be included in the DEIR.

In order for the DEIR to be satisfactory under the CEQA Guidelines, significant portions of the DEIR must be revised to include the Exide facility's compliance history. The DEIR should address the Exide facility's long history of inadequate environmental compliance because the inclusion of this history will affect the overall analysis of this project, its environmental setting, its environmental impacts, and the mitigation measures necessary to address those impacts.

The documentation we have reviewed in compiling the Exide facility's history of past enforcement action has been limited. The record dates back only to 1994, and we are not certain that we have had the opportunity to review all the relevant documents. In addition, some agreements and orders are unsigned and undated while others reference earlier agreements and orders of which we do not have a copy. Nonetheless, this record evidences a long history of hazardous waste law violations.

The facility's environmental compliance history is necessary to understand its future environmental impact for two reasons. First, past environmental impacts of a facility are likely to be similar to its future impacts. Second, past unsafe practices at a facility are likely to be similar to future unsafe practices, and future unsafe practices, in turn, are likely to lead to future significant environmental impacts. Enforcement history can reveal both the past environmental

impacts of a facility and its past unsafe practices. The DEIR should disclose any information that might have any bearing on the project's environmental effects. The facility's environmental compliance history is relevant to many aspects of the EIR's analysis, and should be disclosed.

a. The Project Description Should Include Information on the Facility's Compliance History

CEQA Guidelines Section 15124(c) states that a project description shall contain, "A general description of the project's...environmental characteristics..." 14 Cal. Code Regs. § 15124(c). For the issuance of a permit to continue facility operations, the facility's environmental compliance history, which will be indicative of the project's environmental impact, should be considered part of the project's general environmental characteristics. Thus, the Draft EIR should contain a description of past enforcement.

Section 2.2 of the DEIR, entitled "Facility History," should include an overview of the Exide facility's environmental compliance history. For example, it should mention that the Exide facility has had multiple, recurring violations relating to inadequate secondary containment of hazardous waste, inappropriate hazardous waste discharge off-site, inadequate storage and labeling of hazardous waste on-site, inadequate recordkeeping, and inadequate facility maintenance.

This section should also note that the EPA's Enforcement and Compliance History Online database has categorized Exide as a "high priority violator" from at least mid-2003 through the present. Finally, the facility history should mention that Exide has been cited for at least 87 violations regarding the management of hazardous waste since 1994. See Appendix A.

b. The DEIR Should Discuss Compliance History in its Discussions of Environmental Setting, Impacts, and Mitigation Measures

The facility's compliance history needs to be included in Chapter 3 of the DEIR. Whether this history will be included in the discussion of environmental setting or environmental impacts depends on what baseline date is used for the project.

If a baseline year of 1993 is used for the environmental setting, as the DEIR asserts, compliance history must be included in the discussion of the project's environmental impacts. Guidelines Section 15126 states, "All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation." 14 Cal. Code Regs. § 15126. In addition, "[a]n EIR shall identify and focus on the significant environmental effects of the proposed project." 14 Cal. Code Regs. § 15127. If the baseline year for the project is 1993, then the facility's record of environmental law violations would have to be considered a significant environmental impact resulting from the operation of the project.

On the other hand, in the event that DTSC chooses to begin a new scoping process and a baseline year of 2006 is used for a new DEIR (see discussion above), compliance history must be included as part of the project's environmental setting. "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the

notice of preparation is published.” Cal. Code Regs. § 15125(a). If the facility is considered to have a baseline year of 2006, then the facility’s history of contaminating surrounding soil and groundwater would seem to be a critical part of the project’s environmental baseline.

Chapter 3 of the DEIR, which describes the project’s environmental setting, its environmental impacts, and the mitigation measures necessary to limit those impacts, needs to be revised significantly to account for the facility’s long history of inadequate environmental compliance. Specifically, the sections on geology and soils (§ 3.7), hazards and hazardous materials (§ 3.8), and hydrology and water quality (§ 3.9) should all include the relevant portions of the Exide facility’s environmental compliance history.

(1) Geology and Soils (§ 3.7)

Section 3.7 considers a variety of impacts that the Exide facility could have on geology and soils. This section should be revised to address the frequency of earlier soil contamination and the past occurrence of pond leakage.

Section 3.7.1.1 establishes the general setting of the project with regard to soil contamination. While this subsection identifies several sources of contamination, it does not identify when and how frequently those sources were cited by inspectors for releasing hazardous material into the soil.

Environmental violations relating to leaks occurred at the facility in 1994, 1996, 1997, 2002, 2004, 2005, and 2006. In 2004, emergency measures had to be instituted to remove lead-contaminated sediment in the flood control channel adjacent to the facility. In 2002, a consent order between the Department and Exide required Exide to institute corrective measures and pay the Department costs estimated at \$167,938 because of multiple violations related to the discharge of hazardous waste. This history should be addressed in § 3.7.1.1.

Section 3.7.1.5 addresses the possibility of contamination from the storm water retention pond. Although this section discusses the possibility of seiching, it does not discuss the actual pond leakage that has occurred in the past.

In 2002, a consent order was issued against Exide, in part, because soluble lead had been released under the pond liner from the storm water retention pond. In addition, the storm water retention pond exceeded capacity in 1996. The inspector in this earlier instance noted that the facility’s design calculations did not reflect the actual capacity of the pond, as observed during the inspection.

Because the pond has flooded in the past due to faulty calculations, Exide should (1) include the current pond capacity calculations in the DEIR and (2) certify that those calculations are accurate. In addition, the DEIR should discuss the past pond leakage.

Section 3.7.3 identifies the thresholds of significance for project-related impacts on geology and soils. The thresholds listed deal primarily with the stability of soil relating to earthquakes and

erosion. Notably, there is no threshold of significance related to soil contamination, a glaring omission for a section on soil impacts. Such a threshold should be added to this section. In light of the enforcement history related to soil contamination, mitigation measures may be required to prevent the future occurrence of soil contamination.

(2) Hazards and Hazardous Material (§ 3.8)

A large portion of § 3.8 discusses potential impact of an accidental release caused by a failure in secondary containment. In order to determine the potential environmental impact of an accidental release caused by a failure in secondary containment, one must consider (1) the likelihood of an on-site spill and (2) the likelihood that secondary containment will fail to block the spill from spreading off-site. In evaluating the likelihood of a spill, the DEIR should consider the facility's past record of compliance with safety procedures. Likewise, in assessing the likelihood of a failure in secondary containment, the DEIR should consider the facility's history of inadequate secondary containment.

In evaluating the likelihood of an on-site spill, the DEIR should evaluate the procedures Exide employs to prevent an initial spill from occurring on-site and also consider Exide's historical compliance with safety procedures and regulations. Exide has a long history of violating required safety procedures pertaining to the storage and labeling of hazardous material; facility recordkeeping, and facility maintenance. Such carelessness in following safety procedures no doubt increases the likelihood of an on-site spill. As a result, Exide's enforcement history regarding the storage and labeling of hazardous material; facility recordkeeping, and facility maintenance should be included in the DEIR.

Department inspectors from 1996 to the present have repeatedly observed violations in the labeling and storage of hazardous materials at Exide's facility. These problems have included such improper storage techniques such as storing waste sludge in the storm water retention pond in 1996 and storing used batteries in the West Yard in clear violation of a consent decree in 2005. Likewise, the facility has repeatedly failed to keep adequate inspection schedules, employee training records, and operating logs.

Finally, Exide has been cited by the Department for multiple violations relating to facility maintenance. Notably, in 1996, 1997, and 2002, Exide failed to clean-up hazardous debris and hazardous spills in a timely fashion, if at all. In 2005, the Department found that Exide failed to maintain and operate its facility to minimize the possibility of a hazardous waste release.

In sections 3.8.1.5 and 3.8.5.4, the DEIR indicates that there is a low probability of a failure in secondary containment and that the facility has complied with all cleanup and preventative requirements issued in the wake of a 1994 release of hazardous materials. However, the DEIR fails to document the releases of hazardous materials that have occurred since 1994. The nature and frequency of these occurrences is relevant in determining the likelihood of an accidental future release.

In May and June of 2005, a large crack visible to the naked eye was found in the secondary containment system underneath a leaking clarifier in the wastewater treatment plant. In 2000 and again in 2001, inspectors noted that treatment and storage tanks did not have secondary containment. In 1997, there were significant cracks in the external lining of the secondary containment system. Finally, in 1996, secondary containment did not prevent the migration of hazardous material off-site during a storm. This history needs to be added to § 3.8.1.5.

In light of the enforcement history related to soil contamination, mitigation measures may be required to prevent an accidental hazardous materials release in the future.

(3) Hydrology and Water Quality (§ 3.9)

Additional compliance history needs to be added § 3.9, which addresses the project's impact on the quality of storm water run-off, ground water, and facility waste water, so that the impacts of the project on water quality can be fully evaluated.

Due to the potential for on-site storm water contamination, storm water is collected in a retention pond and treated prior to its discharge off-site. Regarding the retention pond, § 3.9.1.3 notes, "If any deficiencies are noted during [routine] inspections, the deficiencies are immediately addressed." This statement may be inaccurate based on Exide's past violations relating to the pond, including a failure to conduct certain pond inspections.

Because Exide's enforcement history with regard to the storm water retention pond may indicate how "immediately" Exide responds to problems with the pond, that history should be added to this section. Thus, the enforcement history related to the storm water retention pond should be added to § 3.9.1.3 just as we have suggestion it be added to § 3.7.1.5.

Although Section 3.9.4.1 significant ground water quality impacts, it does not detail the possible causes of those impacts. Information about the cause of the groundwater contamination is relevant because it will shed light on the likelihood of future groundwater contamination. Therefore, the enforcement history that details the sources of hazardous materials released into the groundwater should be included in this section.

Section 3.9.4.4 states that because a new wastewater treatment plant has been in operation since January 2002, No significant adverse impacts associated with wastewater discharges are expected. However, the DEIR reaches this conclusion without considering recent leakage from the new plant. Any leakage could lead to groundwater and soil contamination and, therefore, is relevant to the evaluation of future environmental impacts from the facility's wastewater. As such, the DEIR should disclose that a 2006 Department inspection found two separate leaks in the waste water treatment plant.

In light of the enforcement history related to water quality, mitigation measures may be required to prevent the future negative impacts on storm water run-off, ground water, and wastewater.

9. Corrective Action in the EIR

The DEIR is also inadequate with respect to its treatment of corrective action. The EIR contains little information about the extent of contamination at the site, the environmental risks created by this contamination, and the likely impacts of future corrective action measures. The EIR's Appendix E, dated March 2002, describes many (though not all) of the SWMUs and Areas of Concern (AOCs) at the site, but the information in the appendix is limited and vague.

A discussion of the impacts attributable to both the remedial measures and the unabated soil and groundwater contamination should be addressed in every applicable section of the EIR, as well as in the Executive Summary. Vague descriptions of unplanned future corrective action are inadequate. Reasonably foreseeable aspects of the project must be analyzed in meaningful detail for this EIR to be acceptable. Appendix E should be updated to include all available information for each SWMU and AOC. The EIR should be revised to address clearly the impacts of both the remedial measures and the unabated soil and groundwater contamination. The EIR will remain unacceptable unless such reasonably foreseeable aspects of the project are analyzed in meaningful detail.

10. Closure and Post-Closure in the EIR

Exide's discussion of closure and post-closure under the EIR is also insufficient. The EIR merely notes that a closure plan is included as part of the Part B permit application, and that it includes the Title 22 requirements of closure plans. However, CEQA guidelines require an EIR to discuss all environmental impacts of the project. As discussed in subsequent paragraphs of this comment letter, we are fairly certain that contaminated soil will be left at the facility at time of closure (due to the highly contaminated nature of the property). Moreover, the permit application's closure and post-closure plans are inadequate in that they do not account for potential contamination under secondary containment areas and other existing structures. This inadequacy creates environmental impacts which should be discussed in the EIR. A reviewer of the EIR will not be able to gain an understanding of these environmental issues by a simple referral to the permit application. Therefore, we ask that the EIR be revised to include a discussion of the environmental impacts relating to closure as required by the CEQA guidelines.

E. The Draft Permit is Flawed

We are pleased that Exide is in the process of obtaining a Part B Hazardous Waste Facilities Permit for its hazardous waste recycling operations, after having lingered in interim status authorization for over 25 years. However, this permit contains deficiencies, described in the paragraphs below, which must be addressed before any final permit can be issued to Exide. DTSC must also pay special attention to the hazardous waste regulatory requirements which Exide has previously violated and ensure that any permit issued to Exide contains the requirements and properly-detailed discussions of authorized activities in order to ensure compliance.

1. Air and Wastewater Discharges

Current and historic air and wastewater discharges are not described or evaluated in the permit application. Fugitive lead and other associated metals (antimony, tin, arsenic) emissions in air

are not described or evaluated. It is unclear if the facility routinely collects and analyzes emissions from smelter stacks, or completes perimeter (or neighborhood) deposition monitoring. It is therefore unclear if, and what, Exide is discharging into the air. In addition, the permit application does not describe or evaluate current sulfur dioxide air emissions or other possible trace metals emissions such as copper, zinc, or aluminum. This general comment also applies to current and historic wastewater treatment and the facility's ability to achieve discharge limits. The permit application does not present or evaluate the facility's actual discharge limit data nor make a definitive statement that the data have been evaluated and the wastewater treatment unit achieves all discharge limits before wastewater is discharged. Thus, based on the permit application, there is no way to tell whether Exide achieves or exceeds its discharge limits. Further, in Appendix O, "Permit Evaluation Summary" (Sanitation District) a note in Section 5 states that the facility is "Under enforcement for Pb." This appears to indicate that Exide may be discharging unacceptable levels of lead in its wastewater. The Department must investigate and disclose the details of any unacceptable levels of hazardous constituents being discharged with facility wastewater.

2. Airborne Lead

Section 6 of the permit application discusses how facility personnel are required to wear personnel protective equipment, such as respirators fitted with lead-eliminating cartridges. If personnel are required to wear respirators to eliminate breathing airborne lead, then where does the airborne lead discharge to? The atmosphere? The baghouse? The neighborhood? Is perimeter monitoring being conducted? The Department must insist that Exide identify all sources of airborne lead to determine if it is being discharged outside of the facility. It is also unclear from the permit application if the dumping of the baghouse is a completely enclosed system. This must be clarified so that it can be known whether the baghouse is contributing to airborne lead discharges.

3. Chemical Compatibility

Much of the interconnected piping between certain units at the facility (battery dump bin, south acid storage tank), which will carry sulfuric acid at a 24% concentration, is constructed of stainless steel. According to published information, stainless steel is not compatible with sulfuric acid at these concentrations. Given the health and safety consequence of an acid release from the piping, Exide must describe their basis for using stainless steel, or modify the piping to be constructed of a material better suited for the chemicals they will contain. Moreover, the Department should ensure that all equipment and piping is compatible with the chemicals and wastes used in it.

4. Secondary Containment

Exide's strategy for secondary containment is not entirely clear from the documents provided in the Part B permit application. In one instance, it appears that Exide has proposed use of their storm water retention basin to provide both precipitation containment and possibly secondary containment of their processing/storage tanks. In another section of the permit application, dedicated secondary containment features are described for the processing/storage tanks. The

use of the storm water retention basin for secondary containment is highly questionable, and we hope that the discussion of this in the permit application is an error. Further, as discussed in more detail below, the certifying engineer who certified the secondary containment is not properly licensed in California. Exide should clear up any confusion in the permit application regarding secondary containment which will be used for facility tanks holding hazardous waste, and also have the containment certified by a properly licensed engineer.

5. Engineering Certifications

The engineer who most recently certified the existing tank system at Exide is registered with the State of California as a Structural Engineer. As described in DTSC documents, the California Board of Professional Engineers determined that only registered Civil or Mechanical Engineers were considered to be qualified to certify hazardous waste tank systems like those at Exide. Therefore, the certifications provided with the permit application are not in compliance with the Title 22 requirements for certification. Exide must contract with a properly qualified and registered engineer to reevaluate and certify Exide's hazardous waste tank systems. Further, the certifications on a number of Exide's tanks were conducted more than 5 years ago. It is our understanding that 5 years is usually the maximum time allowed by DTSC inspectors between certifications. Exide must provide updated tank certifications.

6. Closure Plan

Title 22 of the California Code of Regulations requires that a closure plan for a hazardous waste facility be designed to address closure under a worst case scenario, i.e., the facility is abandoned by the owner and DTSC is forced to step in to implement the closure plan and remove waste from the site for treatment and disposal.

Exide's closure plan does not appropriately account for closure by a third party under a worst case scenario where all hazardous wastes must be removed from the facility for off-site processing or disposal. The closure plan in the permit application discusses processing certain liquid wastes in tanks through the facility systems during closure, which is inappropriate. Title 22 requires that for closure it must be assumed that all facility tanks will have to be emptied of their contents and no on-site systems can be used. Yet, in discussing closure activities, Exide assumes that "[e]xisting piping and systems will be used to process stored liquids and residuals to the extent possible." The plan must instead require all waste to be processed and disposed off-site. Of course, we would rather see hazardous wastes at the facility be properly recycled on site or at an appropriately permitted off-site facility, rather than disposed, at time of closure. However, this is not what Title 22 requires for the content and detail of closure plans. Therefore Exide must revise the discussion of closure activities in their closure plan to ensure compliance with the relevant regulatory requirements.

Specifically, Exide must detail a closure plan that does not call for utilization of its on-site Storm Water Retention Pond and Wastewater Treatment Plant. The closure plan must also discuss off-site processing of liquid inventory and decontamination of liquids. In the draft permit, Exide incorrectly assumes this decontamination can be done by using its own Desulfurization system.

The current plan also calls for solids to be dewatered on-site, and for paste and slurry materials to be processed through the on-site RPMS filter press to remove excess liquids. These methods are unacceptable. In order to comply with Title 22 requirements, the revised plan should discuss off-site dewatering and liquid removal.

Even when Exide does assume reclamation and/or disposal will be conducted off-site, they do not adequately detail this process. As a result, the assumptions made in estimating the costs of such removal are likely too low. Pursuant to 22 Cal. Code Regs. § 66264.142, closure cost estimates must equal the cost of final closure at the point in the facility's life when closure would be most expensive.

Exide assumes that all reclaimable material will be transported to a secondary lead smelter in Tijuana, Mexico. The permit must discuss who this facility is and whether they are licensed to accept this material. The only place this facility is mentioned by name is in Appendix P, under "closure assumptions." Even in the appendix, however, there is no discussion of whether the Tijuana facility is licensed to accept all of Exide's material. Nor is there any discussion of whether the Tijuana facility has the capacity to accept such material. The closure plan must operate under the assumption that Exide is at full capacity at the time of closure. It follows that Exide should be required to show that this facility would be at all times able to take in Exide's maximum potential amount of reclaimable material.

In discussing inventory removal, Exide assumes that slag from the blast furnace will be disposed at an off-site facility. Again, Exide only provides the location of this facility (this time in La Paz County, Arizona). There is no discussion of either their license or capacity. Additionally, there is discussion throughout the closure plan of removal of inventory and material to unidentified "licensed non-hazardous disposal facilit[ies]" and "permitted secondary recyclers." Neither the appendix nor the permit itself account for these facilities.

Therefore, the revised plan should provide a detailed description of all off-site companies, including whether they are licensed and, at all times, able to accept all of the material at the facility. The precise location of these companies should also be provided so that transportation costs can properly be accounted for. This discussion must be in the permit itself, not buried deep inside an appendix.

7. Post Closure

The current permit application states that post-closure soil sampling is only anticipated to extend 3 feet below the land surface. This is very problematic if contamination currently exists under secondary containment areas and other existing structures. As discussed under the corrective action portion of this letter, recent groundwater samples indicate contamination of groundwater below the facility. Considering the current corrective action process is undefined and incomplete, we ask that the Department explain how they will ensure that Exide conducts and funds the necessary corrective action beneath existing structures so that these activities are not inappropriately deferred to post closure. The current plan does not address this contamination and instead proposes to conduct sampling during post-closure. Such sampling and, if warranted, decontamination and removal should be addressed during corrective action, not post-closure.

Further, due to the highly contaminated nature of the Exide facility property, we think it is very safe to assume that contaminated soil will be left at the facility at time of closure. Therefore we think it is appropriate for Exide to include costs for restoration of deep soil and groundwater impacts in the closure plan. Groundwater is found at approximately 100 feet below the ground surface at Exide, so there is a significant volume of soil above the groundwater that is likely impacted and must be addressed. At the very least, Exide's plan should include costs for sampling, decontamination and removal of soil down to the groundwater.

Additionally, the groundwater plume extends an unknown distance from the property line, potentially impacting several off-site properties. Cleanup costs for a large, deep, off-site and mixed contaminant plume can easily cost millions of dollars. Pursuant to 22 Code Cal. Regs. § 66264.101(c), the owner or operator of a hazardous waste facility shall implement corrective actions beyond the facility boundary, where necessary to protect human health or the environment, and assurance of financial responsibility for such corrective action shall be provided. Therefore, Exide should be compelled to initiate cleanup of the on and off-site plumes prior to issuing the permit, or provide adequate funding for future cleanup. The current plan must be revised to include this.

Finally, the permit calls for amendment to the closure and post-closure plans only when unexpected developments arise while conducting partial or final closure activities. Given the evolving nature of the corrective action process, we ask that the permit require Exide to amend these plans as new costs arise and new information becomes available in conjunction with corrective action discoveries.

8. Materials Accepted

It is unclear from the permit application if the facility accepts and recycles metallic materials from electric production industries, and therefore, unclear if there is potential to burn (incompletely) PCBs in either of the furnaces at Exide. The Department must clarify, and if necessary, eliminate any incoming waste material that could contain PCBs to avoid discharge due to incomplete destruction in either furnace.

9. Waste Analysis

The Waste Analysis section of the permit application does not contain what we think are proper procedures for the verification of certain hazardous waste streams being accepted into the facility. Specifically, the receipt procedures for conditionally acceptable materials only call for further analysis of the incoming hazardous waste if a visual inspection reveals a "suspect material." In the event one of these materials is further analyzed, it is only analyzed for lead, mercury and aluminum. We are aware of other permitted hazardous waste facilities which are required to test at least 5-10% of incoming hazardous waste streams, regardless of whether a visual inspection identifies that there may be something suspect with a particular waste shipment or container. These facilities also must test for the full suite of toxic metals in Title 22, and not just for a few metals. Exide must implement further waste analysis procedures like those of

other hazardous waste TSDFs to ensure that they accept only hazardous wastes which they are authorized to accept.

10. Storm Water Retention Pond

Characterization of the retention pond sediment should include all Title 22 metals, not just lead. In addition, and at a minimum, semi-volatile organic compounds should be included, and preferably volatile organic compounds should also be added to properly characterize the sediment waste. Further, it is unclear from the permit application how much sediment is routinely removed from the pond. Exide should be required to revise the permit application to identify the quantity of sediment removed from the pond. The Department should ensure that a proper number of grab samples are collected to sufficiently characterize the volume of waste generated from the pond. Given the nature of facility operations and the likelihood of at least a metals impact, the Department should require that at least one grab sample be collected for every 50 cubic yards of sediment.

11. Aisle Space

Exide's draft permit allows for 24 inches of aisle space in the permitted container storage areas. The Department's current policy for aisle space allowance is 30 – 36 inches, as they have determined that 24 inches is insufficient to allow for the unobstructed movement of emergency equipment and personnel between rows in the event of a spill, fire, etc.

12. Compliance and Enforcement History

We are concerned about Exide's history of violating the hazardous waste regulations and question its ability to comply with the current interim status standards or any future permit it is granted by the Department. A review of the EPA Enforcement and Compliance History Online database indicates that Exide has been considered a "high priority violator" from at least mid-2003 through the present. Thus, we are surprised that the Department is considering issuing a permit to Exide that does not explicitly address the facility's history of noncompliance with regulatory requirements.

We reviewed enforcement documents for Exide dating back to 1994 that reveal that Exide has been cited numerous times for violations, including, but not limited to: releases of hazardous constituents, cracked secondary containment areas, leaking containers, unauthorized storage of large quantities of spent batteries at an offsite location, unlabeled batteries and other waste, inadequate tank assessments, and inadequate recordkeeping practices. These are serious violations. For example, one of the most surprising and startling violations was the storage of sludge which contained between 72,000 and 408,000 parts per million of lead in the facility's storm water retention pond in 1997.

Many of these violations are not addressed at all by the current Draft Permit and other violations, while addressed, are not done so adequately in light of Exide's history of violating regulations, enforcement orders, and consent agreements. The RCRA permitting process is designed with the goal of ensuring that facilities handle waste properly in order to reduce hazards to human health

and the environment. Due to its flexibility, the Part B Permit is a particularly important tool to ensure that a facility's operations are narrowly tailored to reduce the risks and hazards posed by such a facility. Therefore, it is only sensible, that wherever possible, a permit should be designed to account for a facility's history of violating hazardous waste regulations and ensure that such violations do not recur.

a. Violations Not Addressed in the Draft Permit

The Draft Permit does not address Exide's history of violations regarding improper storage and labeling procedures. From 1994 to the present, DTSC inspectors have repeatedly observed violations due to improper labeling and storage at Exide's facility. During this time, Exide has been cited for at least twenty-seven labeling and storage-related violations.

Among the most persistent of these violations are failures to maintain adequate aisle space between pallets of batteries and drums of used waste, failures to place leaking batteries in sealed containers, and failures to label batteries and other containers with accumulation start dates and other labels. These violations were observed by Department inspectors in May of 1996, April of 1997, February and March of 2001, April and May of 2003, May and June of 2005, and again in May and June of 2006. Thus, although Department inspections are infrequent and unlikely to catch all violations, violations of this type have been observed in at least six of the last ten years. Unfortunately, the Draft Permit does not contain specific provisions that address these issues. Although some of these violations may seem trivial, they demonstrate sloppy operating procedures and contribute to a lax atmosphere in which more serious violations may remain undetected or corrected. Additionally, many of these violations have the potential to cause serious risks to human health or environment in their own right. For example, in 2005, Department investigators observed acid from an unsealed leaking battery flowing towards a manhole. This type of improper storage poses a clear threat to the health of Exide employees and a clear risk of damaging the environment.

Due to the repetitive nature of these violations, and Exide's seeming willingness to correct them only after citation by Department investigators, the "Special Conditions" Section (Part V) of the Permit should be amended to include specific requirements pertaining to storage and labeling. For example, an additional condition might be added to the permit requiring that battery pallets only be placed within the outline of numbered or otherwise labeled spaces painted onto the floor of storage areas. Such a provision will provide clearer guidance to Exide employees and make enforcement easier for the Department.

b. Violations that are Inadequately Addressed by the Draft Permit

(1) Waste Water Treatment Conditions

The Draft Permit requires Exide to meet discharge criteria set by the Los Angeles County Sanitation Districts ("LACSD") in Industrial Wastewater Discharge Permit ("IWDP") No. 15725, and if these criteria cannot be met, Exide is required to manage the effluent as hazardous waste. However, this requirement does not add anything new; Exide has already been operating under IWDP 15725 and has violated this requirement several times by exceeding the effluent

discharge criteria. For example, Exide was in violation of its discharge criteria for lead, antimony, or both, in October of 2002, and again in January, March, and September of 2003.

Because Exide has previously violated discharge criteria on multiple occasions, simply restating the same requirements in an additional permit will be insufficient to ensure future compliance. Thus, the Part B Draft Permit should include additional requirements and penalties, such as a liquidated damages clause, to ensure that future violations are deterred.

(2) Secondary Containment

Exide has a long history of failures in required secondary containment. While the Draft Permit does impose some requirements addressing these violations, Exide's history of violations in these areas, often in spite of Enforcement Orders and Consent Agreements, raises serious doubts as to whether the permit provides an adequate safeguard against future violations of this sort. Section 3 of Part V of the permit requires that "[e]ach hazardous waste storage area containing wastes regulated under the permit shall have a base which is free of cracks or gaps and is sufficiently impervious to the waste stored and shall be designed and constructed so that any spills can be contained." However, Exide has previously allowed cracks and gaps to develop in storage and secondary containment areas resulting in discharges of hazardous waste. For example, in 1994 numerous gaps in the Oxide Warehouse's foundation and the lack of a seal allowed hazardous waste to flow out onto sidewalks and into gutters in the street adjacent to the facility. Seemingly unable to learn from past failures, Exide once again allowed lead oxide to be released from the Lead Oxide Warehouse in 2002, and was subject to a consent order at that time. Similarly, the facility was fined \$174,466 in 1997, due in part, to significant cracks in secondary containment that allowed hazardous waste to enter the ground soil. In addition, Department inspectors noted a large crack under a leaking clarifier in the secondary containment system of the waste water treatment plant as recently as June of 2005.

In light of Exide's history of egregious failures in secondary containment, it is critical that adequate safeguards are set forth in the permit. In order to accomplish this goal, at a minimum, either the general waste water treatment inspection requirements stated in Part V Section 5 of the Draft Permit, or Part V Section 3 which deals with containment, should be modified to specify (1) how often such inspections must be conducted and (2) what additional records must be kept regarding such inspections. In contrast, Section 6(b) of Part V requires Exide to inspect all aboveground piping systems that lack secondary containment on a daily basis. Therefore, in order to ensure both compliance and a greater degree of accountability in the event of a violation, the permit should impose secondary containment inspection requirements which state a specific inspection schedule akin to the requirement stated in Section 6(b).

Before the Department issues any permit to Exide, it must require some means of assuring that Exide will comply with its permit. We therefore urge the Department to require that Exide enroll in DTSC's California Compliance School and require favorable results in the next facility inspection before the Department grants their permit. The California Compliance School is operated by Bakersfield College's Environmental Technology Institute and is designed to teach generators and on-site treatment facilities how to comply with basic hazardous waste

management requirements. In addition to the aforementioned steps, the Department should also consider expanding the “Special Conditions” section of the permit to account for more of Exide’s repeat violations.

13. Corrective Action

Past operations have left the Exide facility heavily polluted with lead and various heavy metals, volatile organic compounds, and acids. Onsite contamination poses health risks for Exide workers and future users of the site, while the migration of contaminants through soil and groundwater creates health hazards for others nearby. Despite these dangers, Exide has exhibited a passive approach to the corrective action process and indifference to the importance of groundwater and offsite contamination. The Department should therefore revise the permit to incorporate effective mechanisms to ensure timely, effective investigation and remediation. It should also require immediate steps to move forward on corrective action, without waiting for the permit to be issued.

Despite operating under interim status since 1983, Exide apparently did nothing to address toxic contamination until it was required to take action under the 2002 Corrective Action Consent Order (CACO) with DTSC. The CACO is intended “to carry out promptly” the corrective action needed to remedy contamination of the Exide facility, but the results have been anything but prompt. More than four and a half years after the CACO went into effect, the corrective action process remains in its early stages. Investigation of contamination at the site remains far from complete; to date, only three of 38 solid waste management units (SWMUs) have been subjected to the RCRA Facility Investigation (RFI) process. At the present rate of progress, the RFI will not be complete for many years, during which time contamination may continue to spread through soil and groundwater. Once the RFI is finished, corrective measures still must be studied and selected before they are implemented.

DTSC has instituted a phased approach to the RFI which offers the Department flexibility and control in managing the investigation process. But this process has been slow to produce results. Phase 1, which occurred in 2004-05, required Exide to address contaminated sediments along the Open Drainage Channel. We are pleased to find that Phase 1 resulted in the successful removal of toxic materials lining the channel. But it is unclear why Exide could not have begun investigation of other areas at or around the same time.

Phase 2 of the RFI was conducted in 2005-06 and addressed SWMUs 1, 6, and 11. The information in the Phase 2 report concerning the extent of existing contamination is limited and the analysis is frequently inadequate. These deficiencies have caused unnecessary delays in the corrective action process.

For example, Exide claimed in its Phase 2 report that no investigation was necessary for offsite areas to the north and west, despite aerial photography indicating that the Old Slag Landfill pit (SWMU-1) extended to those areas. DTSC has therefore indicated that Phase 3 of the RFI will address offsite contamination associated with SWMU-1. This investigation should have

occurred in Phase 2; Exide's decision not to pursue evidence of offsite contamination at that time has thus further delayed the corrective action process.

Exide also chose not to investigate organic compound contamination in SWMU-1 based on the unsupported assertion that such occurrences were 'probably . . . localized.' Again, Exide should have pursued evidence of organic compound occurrences in SWMU-1 during Phase 2; the failure to do so will result in further delay of the corrective action process. Exide also failed to use the proper remediation goals at various points in the Phase 2 report. And Exide recommended against investigating dioxin and furan occurrences below the average worker depth of 10 feet, despite the possibility that dioxins and furans could migrate and contaminate groundwater when mobilized by solvents and hydrocarbons. These are just a few examples of the serious deficiencies in Exide's investigation and analysis; DTSC's responses to the Phase 2 report identified numerous other problems.

Perhaps the most significant deficiency in Exide's approach to corrective action has been the failure to adequately investigate groundwater contamination. Groundwater beneath and near the site is contaminated with heavy metals, volatile organic compounds, and low or acidic pH. DTSC has instructed Exide to submit a work plan for interim measures to address groundwater contamination. The Department should not approve the permit application until Exide has submitted a satisfactory work plan in accord with this instruction.

Section 5.0 of the CACO expressly requires Exide to implement Interim Measures "whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated." Yet Exide's bi-monthly progress reports have not identified any self-initiated Interim Measures. Exide's failure to initiate Interim Measures to control groundwater contamination is cause for concern; the apparent lesson is that, absent explicit direction from DTSC, Exide will not make a serious effort to remedy or mitigate existing contamination.

DTSC's Geological Services Unit (GSU) noted in response to Exide's RFI Phase 2 report that "very serious environmental and health and safety problems" remained to be addressed from GSU's comments on the Phase 1 report. This is extremely troubling. The Department should demand a diligent response to its articulated concerns before the permit application is approved.

The draft permit incorporates the CACO, but does not include any other substantive corrective action requirements. Given Exide's repeated failure to take initiative in this process, the permit should expressly authorize monetary sanctions or similar penalties to ensure Exide's prompt and effective compliance with its corrective action duties.

In addition, at a minimum, the Department should require that Exide complete a schedule (such as an RFI/Corrective Measures Study completion schedule) which documents all on and off-site investigations that are anticipated. The current draft Phase 2 RFI only focused on soil impacts associated with SWMU #1 (Old Slag Landfill), SWMU #6 (Earthen Acid Pit), and SWMU #11 (Old Metals Extrusion Building). This leaves 35 other SWMUs and all of the AOCs requiring

investigation. The Phase 2 RFI workplan is unclear regarding whether all SWMUs will be investigated. Groundwater investigations were not completed yet in the Phase 2 RFI and it is unclear when where, and how future groundwater investigations will be completed for both on and off-site impacts. Currently, there are no offsite groundwater monitoring wells. The existing groundwater monitoring network shows impacts of metals, organics and inorganics and that these constituents are likely originating from the facility and migrating offsite. Therefore, we urge the Department to consider ways to increase the pace of corrective action investigations at the facility, and also consider interim remedial measures where necessary, to prevent existing contamination from migrating further before all SWMU's and AOC's have been characterized at the facility. At a minimum, in addition to any necessary interim remedial measures, the Department should insist that Section 14 of the permit application (Solid Waste Management Units and Corrective Action Plan) be clarified to document fundamental guiding aspects of the corrective action process, and require that:

- The nature and extent of on site and off site groundwater will be defined to background quality.
- All SWMUs will be evaluated.
- The nature and extent of all on site soil impacts will be evaluated to background concentrations.
- Near-surface, off site soil impacts will be evaluated and factored into any risk assessment completed for this facility.
- Current and anticipated future completed exposure pathways.
- Acceptable target risk management levels for evaluating and quantifying human health risks associated with current and future completed exposure pathways.

III. CONCLUSION

We have clearly demonstrated that both the process and the submittals regarding the Exide permit are so seriously flawed that a permit granted under this process and these submittals must fail to achieve its primary objective: Protection of public health and the environment.

We appreciate the opportunity to submit these comments on the draft EIR and draft permit for Exide. As we have raised many important and serious issues regarding the risks posed by Exide's operations and the evaluation of those risks, we would appreciate a thoughtful response to our comments before the Department makes any further decisions concerning the certification of the draft EIR or the issuance of a permit to Exide.

We urge the Department to delay the final permit decision for Exide until (1) the supporting risk analysis documents have been corrected to adequately analyze the risks posed; (2) the deficiencies in the permit have been corrected; (3) the EIR has been revised and recirculated to comply with law; (4) the Department has ensured that the Tanner Act's requirements have been observed; (5) Exide has made a concerted effort to comply with the regulatory requirements; and (6) ways to increase the pace of corrective action without waiting for the permit to be approved have been evaluated. For purposes of these comments on Exide, you may consider Jane Williams of the California Communities Against Toxics to be the contact person for the group of

organizations who have signed this letter. She may be reached at 661-510-3412 or DcapJane@aol.com.

Sincerely,

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