



**Matthew Rodriguez**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Barbara A. Lee, Director  
1001 "I" Street  
P.O. Box 806 Sacramento,  
California 95812-0806



**Edmund G. Brown Jr.**  
Governor

May 5, 2016

Mr. Gideon Kracov Chairman  
Independent Review Panel  
Department of Toxic Substances Control

### HAZARDOUS WASTE FACILITIES SUBJECT TO AB 1075

Dear Mr. Kracov:

On January 28, 2016, the Independent Review Panel (IRP) requested that the Department of Toxic Substances Control (DTSC) provide a list of hazardous waste facility permit holders that currently fall within the provisions of the recently enacted AB 1075's requirement that DTSC consider repeating violations or noncompliance, as defined, in making permit decisions. (Stats. 2015, ch. 460, §2.)

The attached response summarizes criteria for determining whether permitted hazardous waste facilities are subject to AB 1075 and outlines the procedures followed by DTSC staff during its review of the permitted facilities. After reviewing the relevant inspection reports and enforcement actions, DTSC staff could find no hazardous waste facility with an operating permit that met all of the criteria established by AB 1075.

In addition, DTSC staff evaluated whether AB 1075 would apply to Exide Technologies (Exide) if Exide still held a grant of authorization from DTSC to operate the Vernon facility. DTSC staff determined that Exide's admissions in the March 11, 2015 Non-Prosecution Agreement with the U.S. Attorney's Office would meet all of the criteria established by AB 1075 as a compelling cause, in addition to other statutory causes, to deny its permit application.

If you have any questions please contact Christopher Law at (916) 322-0513 or via [Christopher.Law@dtsc.ca.gov](mailto:Christopher.Law@dtsc.ca.gov).

Mr. Gideon Kracov  
May 5, 2016  
Page 2

Sincerely,



Elise Rothschild, REHS  
Deputy Director  
Hazardous Waste Management Program

Attachment: Hazardous Waste Facilities Subject to AB 1075

---

## **Attachment: Hazardous Waste Facilities Subject To AB 1075**

AB 1075 specifies that repeated serious hazardous waste violations are a compelling reason for the Department of Toxic Substances Control (DTSC) to deny, suspend, or revoke a hazardous waste facility permit, registration or certificate. Health and Safety Code Section 25186.05 sets out criteria for DTSC to identify whether permitted hazardous waste facilities are subject to AB 1075. A facility must have:

- A violation that creates a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents and the threat makes it reasonably necessary to take action to prevent, reduce or mitigate that exposure,
- A violation of any order issued by the department, or
- A federal or state felony conviction for a violation relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste.
- Additionally, a facility must have: Three or more incidents of violation for which a person or entity has been found liable or has been convicted, with respect to a single facility within a five-year period.

### Procedure followed:

Step 1: Pulled the inspection records from EnviroStor for hazardous waste facilities with an operating permit (90 facilities with permits authorizing treatment, storage or disposal activities) from January 1, 2011 to December 31, 2015.

Step 2: Identified inspection records with Class 1 and Class 2 violations cited. Minor violations were not considered.

Step 3: Included only facilities with inspections with Class 1 or Class 2 violations cited during three or more inspections.

This reduced the number of potential facilities to 15.

Next, DTSC staff reviewed the inspection reports, enforcement orders, and findings for the 15 facilities to determine whether the violations met these final criteria:

- Violations with a finding of liability.
- Violations of an order issued by the department.
- Violations creating a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents.

After reviewing the relevant inspection reports and enforcement actions, DTSC staff could find no hazardous waste facility with an operating permit that met all of the criteria listed in Health and Safety Code section 25186.05.

## Regarding the Applicability of AB 1075 to Exide Technologies

DTSC conducted an evaluation of whether AB 1075 would apply to Exide Technologies (Exide) if Exide still held a grant of authorization from DTSC to operate the Vernon facility.<sup>1</sup> The basis for this determination relies on the “Appendix 1 - Statement of Admissions and Fact” (Statement) from the Non-Prosecution Agreement that Exide entered into with the US Attorney’s Office on March 11, 2015. In the Statement, Exide admitted to the following felonies:

1. **Illegal Storage of Hazardous Waste:** Exide admitted that it illegally stored corrosive and lead-contaminated hazardous waste inside leaking van trailers at the facility in violation of the Resource Conservation and Recovery Act (RCRA) “for a significant number of times over the past two decades.”
2. **Illegal Disposal of Hazardous Waste:** Exide admitted that it knowingly caused the disposal of corrosive and lead-contaminated hazardous waste by allowing it to leak from van trailers at the Facility in violation of RCRA “for a significant number of times over the past two decades.”
3. **Illegal Shipment of Hazardous Waste in Leaking Trailers:** Exide admitted that it knowingly and willfully caused the shipment of hazardous waste contaminated with lead and corrosive acid in leaking van trailers from the facility to Bakersfield, California in violation of the Hazardous Materials Transportation Act “for a significant number of times over the past two decades.”
4. **Illegal Transportation of Hazardous Waste to an Unpermitted Facility:** Exide admitted that it knowingly caused the transportation of hazardous waste contaminated with corrosive acid to a facility in Bakersfield, California that was not permitted by DTSC to receive corrosive hazardous wastes in violation of RCRA “for a significant number of times over the past two decades.”

The first criteria in Health and Safety Code section 25186.05 requires that the violation creates a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents and the threat makes it reasonably necessary to take action to prevent, reduce or mitigate that exposure:

- The violations resulted in the release of lead containing waste offsite at the Vernon facility.
- Children under the age of six are vulnerable to exposure through ingestion because of hand-to-mouth behavior.
- Children ingest lead by placing objects that have lead contaminated soil or dust on them in their mouths.
- There is no known safe level of lead in human blood.

---

<sup>1</sup> Exide withdrew its Part B Permit Application for the Vernon facility and provided written notice to DTSC of its intent to permanently close that facility on April 7, 2015. DTSC in a letter dated May 7, 2015, stated that Exide’s interim status authorization to operate the Vernon facility terminated on April 7, 2015, the date of Exide’s withdrawal of the Part B permit application.

The second criterion in section 25186.05 requires three or more incidents of violation of, or noncompliance which a person or entity has been found liable or has been convicted with respect to a single facility within a five year period:

- Exide admitted committing four different violations a “significant number of times over the past two decades”
- All violations are associated with or initiated from the Vernon facility
- All violations were admitted by Exide on March 11, 2015.

DTSC staff determined that Exide’s admissions in the Non-Prosecution Agreement would meet all of the criteria listed in Health and Safety Code section 25186.05 as a compelling cause, in addition to other statutory causes, to deny its permit application.<sup>2</sup>

---

<sup>2</sup> In making this determination DTSC has taken the position that Exide’s admission of the violations is equivalent to being “found liable” as set forth in Health and Safety Code section 25186.05(d)(1). There is no court decision interpreting this statute.