

Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests a three-year limited-term augmentation and loan of \$1.4 million annually from the Lead-Acid Battery Cleanup Fund (LABC) to the Hazardous Waste Control Account (HWCA) to ensure payment for work performed by a third-party quality assurance contractor who will provide oversight of the activities conducted under the Closure Plan for the Exide Technologies, Inc. (Exide) facility in Vernon.

B. Background/History

The Exide facility is located in the City of Vernon, about five miles southeast of downtown Los Angeles. The facility occupies 15 acres in a heavily industrial region with surrounding residential areas. The facility began operations as a lead smelter in 1922. Exide purchased the facility in 2000 and Exide's operations included treatment and recycling of spent lead-acid batteries. The Exide facility suspended its operations in 2013 in response to enforcement actions and permanently closed the facility in 2015 after DTSC notified Exide that its application for a permit would be denied.

In November 2014, DTSC ordered Exide to maintain a surety bond of approximately \$11 million and to establish a closure/post closure trust fund to ensure adequate funding for closure. (2014 Stipulation and Order, Docket No. HWCA No. 2014-6489). DTSC estimates that closing the Exide facility will require Exide to spend \$38.6 million. Exide subsequently withdrew its permit application and notified DTSC of its intent to close the facility permanently by implementing a DTSC-approved Closure Plan.

In March 2015, DTSC, via an amendment to the 2014 Stipulation and Order, required Exide to submit an updated Closure Plan to close the facility in accordance with applicable laws and regulations. Exide also signed a Non-Prosecution Agreement with the United States Department of Justice that requires Exide to comply with certain orders issued to Exide by DTSC. As stated in Section 41 of the 2014 Stipulation and Order, "All plans, schedules, and reports that require DTSC approval and are submitted by Exide pursuant to this Stipulation and Order are incorporated in this Stipulation and Order upon approval by the DTSC".

On December 8, 2016, DTSC approved the Closure Plan for the Exide facility. The Closure Plan addresses the regulated Interim Status hazardous waste units at the Exide facility and was developed to meet the closure requirements of the Title 22 California Code of Regulations. As required in the Closure Plan, oversight of the work by regulatory agencies will be provided by a third-party Quality Assurance (QA) contractor hired by the regulatory agencies and funded by Exide. The third-party QA contractor will provide oversight for implementation of the Closure Plan to ensure that the closure activities do not add additional environmental impacts that are not already identified in the Environmental Impact Report (EIR) to the surrounding neighborhoods. This provision was included in the Closure Plan by DTSC in response to requests and concerns raised by the communities near the Exide facility.

Section 61 of the 2014 Stipulation and Order states "Exide is liable for all costs associated with the matters covered by this Stipulation and Order, including, but not limited to, all costs incurred by the Department in reviewing work plans and overseeing the work required by this Order." Although Exide is required to maintain an approximately \$11 million surety bond and deposit a total of \$14.75 million into the closure/post closure trust fund by March 2018, Exide is prohibited from using any of those funds to pay for costs incurred to close the facility.

C. State Level Considerations

The California Hazardous Waste Control Law (Ch. 6.5 of Division 20 of the Health and Safety Code) authorizes DTSC to implement both federal and state hazardous waste management requirements. DTSC's 2014-2018 Strategic Plan recognizes the importance of focusing on communities experiencing multiple environmental burdens and protecting them from the threats posed by contaminated sites in or near their neighborhoods.

The Strategic Plan includes the following Goals and Objectives:

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Goal 1: Holding responsible parties accountable for the work and costs necessary to clean up their contaminated properties.

Objective 1.6: Take effective and legally enforceable actions to compel fulfillment of DTSC-ordered or approved cleanup plans when responsible parties fail to perform as required.

Goal 2: Holding businesses accountable for paying the costs associated with the regulatory oversight of their hazardous waste management activities and the costs necessary to cleanup any hazardous chemical releases to the environment.

DTSC is authorized by Health and Safety Code section 25187 to recover costs from responsible parties. Exide's specific obligation to reimbursement DTSC's oversight costs are reiterated in the 2014 Stipulation and Order, Section 61, and the 2002 Consent Order, Section 23.

D. Justification

DTSC is exercising its authority under Health and Safety Code Section 25200 et seq. to close the Exide facility in Vernon in a manner that is protective of public health and the environment. DTSC consulted with other agencies throughout the development of the EIR and approval of the Closure Plan. In addition, the EIR was prepared by expert CEQA practitioners and resource-area specialists.

A draft Closure Plan and draft EIR were released for wide-scale public review and were reviewed by numerous public agencies and organizations to solicit expert-level feedback on the proposed plan and environmental analysis. All feedback was considered and made public as part of the EIR. In addition, DTSC and the South Coast Air Quality Management District (SCAQMD) have jointly formed an advisory group to create a forum for the diverse interests of the community to discuss their needs and concerns related to the oversight of closure and cleanup work in the communities near the Exide facility. The advisory group has selected an external technical advisor to aid in interpreting data, reports, and recommended actions arising from the closure activities associated with the facility.

As stated in the Closure Plan, DTSC is required to hire a third-party QA oversight contractor to be funded by Exide. DTSC will select a contractor for third-party QA oversight to supplement DTSC's oversight. The selected contractor will conduct real-time air monitoring; confirm compliance with truck-loading procedures, truck-decontamination procedures, and transportation routes; and ensure that the closure activities do not add additional environmental impacts that are not already identified in the EIR.

Exide is obligated to fund the third-party QA oversight contractor as stated in the Closure Plan and the 2014 Stipulation and Order. DTSC intends to award a contract through a competitive bid process. The contractor will be responsible for submitting invoices every month directly to DTSC for payment, which will then be processed by the State Controller's Office. DTSC will then submit an invoice to Exide for reimbursement for the services it authorized the contractor to perform. This structure will help to ensure the independence of the contractor even though Exide is ultimately reimbursing DTSC for the work it authorizes.

DTSC would utilize the spending authority contained in this proposal to ensure payment to the contractor in the event that Exide disputes or rejects any invoice submitted by DTSC for reimbursement. DTSC would repay the loan as it receives payment from Exide for any late or disputed invoice. This proposal will ensure that DTSC has the spending authority necessary to pay the contractor to continue the work it was authorized to perform. Nonpayment by DTSC to the contractor may cause a suspension of oversight work. The absence of the third-party QA contractor would adversely impact DTSC's ability to oversee closure of the Exide facility. The third-party QA contractor is essential to ensuring DTSC's ability to oversee closure of the Exide facility and to be compliant with the provisions of the Closure Plan.

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E. Outcomes and Accountability

The third-party QA contractor oversight tasks are to be performed under DTSC's direction during implementation of Phase I of the Closure Plan. The primary tasks that will be overseen by the third-party QA contractor include:

- Ensure onsite closure activities are compliant with the DTSC approved Closure Plan
- Confirm adherence to a DTSC-approved Health and Safety Plan
- Quality Assurance/Quality Control of the California Environmental Quality Act (CEQA) monitoring and mitigation plan
- Oversight of dust mitigation
- Collect confirmation samples (wipes, air, soil, and soil gas)
- Provide weekly update reports (1-2 pages) and quarterly summary reports
- Coordinate closely with DTSC project management staff to ensure:
 - Maintaining the facility closure schedule
 - Compliance with administrative record requirements (confirmation sampling for equipment, sampling of hazardous waste with shipping logs, manifests, etc.)

The third-party QA contractor will act as the primary on-site presence to observe closure activities on a day-to-day basis. DTSC will be ultimately responsible for all decision-making and approval of work activities and will maintain overall oversight responsibilities to ensure that all work is meeting the highest standards of performance related to environmental compliance.

F. Analysis of All Feasible Alternatives

Alternative 1: Approve a three-year limited term augmentation of \$1.4 million annually from the LABC as a loan to the HWCA for expenditure authority to ensure completion of the work of a third-party QA contractor.

Pros:

- Ensures compliance with the DTSC-approved Closure Plan and the stipulation and order.
- Provides funding to ensure that the requirements of Closure Plan, including the hiring of a third-party QA contractor, are met.
- Ensures the hiring of a third-party QA contractor as required in the Closure Plan and specifically requested by the public during the public comment period.
- Provides day-to-day oversight to ensure Exide contractor's facility closure activities are performed in a manner that protects human health and the environment.
- Demonstrates DTSC's commitment to the community.

Con:

- Requires a loan from the LABC to HWCA.

Alternative 2: Exide could hire and oversee the third-party QA contractor.

Pro:

- Does not require a three-year limited term augmentation of \$1.4 million annually from the LABC as a loan to the HWCA for expenditure authority.

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Cons:

- Non-compliance with the DTSC-approved Closure Plan and the 2014 Stipulation and Order.
- Does not allow DTSC to meet its statutory obligation to ensure the health and safety of the surrounding communities and safeguard the environment.
- Creates a conflict of interest by having Exide hire and oversee the third-party QA contractor.
- Contradicts assertions made by DTSC in the EIR and to the public.
- Is inconsistent with DTSC's commitments to surrounding communities and their elected officials.

Alternative 3: Do not approve the proposal

Pro:

- Does not require a three-year limited term augmentation of \$1.4 million annually from the LABC as a loan to the HWCA for expenditure authority.

Cons:

- Non-compliance with the DTSC-approved Closure Plan and the 2014 Stipulation and Order.
- Does not allow DTSC to meet its statutory obligation to ensure the health and safety of the surrounding communities and safeguard the environment.
- Contradicts assertions made by DTSC in the EIR and to the public.
- Is inconsistent with DTSC's commitments to surrounding communities and their elected officials.

G. Implementation Plan

February 2017 to June 2017

- Request Statement of Qualifications from contractors.
- Interview qualified contractors and select most qualified contractor.
- Request bids for oversight activities.
- Review bids and award contract.

July 2017 to June 2020

- Contractor begins oversight of closure activities in accordance with approved Scope of Work and Contract.

H. Supplemental Information

Not applicable.

I. Recommendation

Approve Alternative 1 – Approve a three-year limited term augmentation of \$1.4 million annually from the LABC as a loan to the HWCA for expenditure authority to ensure completion of independent oversight work.

BCP Fiscal Detail Sheet

CP Title: Exide Closure Implementation

BR Name: 3960-086-BCP-2017-MR

Budget Request Summary

	FY17					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Operating Expenses and Equipment						
5340 - Consulting and Professional Services - External	0	1,400	1,400	1,400	0	0
Total Operating Expenses and Equipment	\$0	\$1,400	\$1,400	\$1,400	\$0	\$0
Total Budget Request	\$0	\$1,400	\$1,400	\$1,400	\$0	\$0
Fund Summary						
Fund Source - State Operations						
0014 - Hazardous Waste Control Account	0	1,400	1,400	1,400	0	0
Total State Operations Expenditures	\$0	\$1,400	\$1,400	\$1,400	\$0	\$0
Total All Funds	\$0	\$1,400	\$1,400	\$1,400	\$0	\$0
Program Summary						
Program Funding						
3645 - Exide Technologies Facility Contamination Cleanup	0	1,400	1,400	1,400	0	0
Total All Programs	\$0	\$1,400	\$1,400	\$1,400	\$0	\$0