



July 9, 2015

Via Fax: 916-651-4924

President pro Tem Kevin de León, Chair, Senate Rules  
Committee

Senator Jean Fuller, Vice Chair

Senator Anthony Cannella

Senator Connie Levya

Senator Holly Mitchell

Senate Rules Committee

Dear Chairman de León and Members of the Rules Committee,

Last night CBS News revealed that the contamination from Exide in East LA is much wider and more severe than previously known, and our top toxics regulator has minimized and ignored this shocking development. We write the Rules Committee to express our strong opposition to the confirmation of Barbara Lee as Director of the Department of Toxic Substances Control (DTSC).

KCBS reporter Randy Paige found that DTSC under Ms. Lee's leadership has not widely informed residents of Boyle Heights and East Los Angeles of dangerously high levels of lead in an expanded three-mile area of contamination, and has taken no steps to remediate the problem.

When asked about the crisis, Ms. Lee refused to answer questions from the reporter, but she issued a statement that blood tests did not reveal high enough levels of lead to declare a public emergency. That statement is tantamount to saying that until children chronically exposed to lead demonstrated signs of acute lead poisoning the state would take no immediate action. Such callous indifference and lack of concern is unacceptable from the state's toxic regulator.

According to the Centers for Disease Control and Prevention (CDC), there is no safe level of exposure to lead, especially for children. DTSC has had the test results showing wider-than-announced contamination since April. By her silence and inaction, Ms. Lee has permitted the poisoning of children in East LA.

In the final denouement of DTSC's decades long mishandling of the lead battery recycler, Ms. Lee has demonstrated that she has no new vision for the Department. Instead she appears to mask its transgressions. Until DTSC has a reformer at its head to house clean top managers who work more to protect polluters than the public, and to change its fundamental culture, no change will ensue and Californians will never be protected.

Ms. Lee is unfortunately not that reformer. Exhibit A is Exide. It took the action of the US Attorney's office to shut down Exide on March 12<sup>th</sup>. In fact the US Attorney announced that it was foregoing criminal prosecution in exchange for the company closing and cleaning up the facility—only because that was the only way to get the job done.

Only after the US Attorney took this action did Ms. Lee take any action against Exide, issuing an irrelevant order since the US Attorney had already done the job. However, Ms. Lee testified before a California Senate oversight committee on March 12 that she had communicated to Exide that it would be denied a permit

two weeks before, on February 26. This was news to everyone involved, and no doubt to Assistant US Attorney Joseph Johns, who specifically took the action he did because of DTSC's inaction.

It is the custom of US attorneys to check in with regulators before settling cases. If DTSC had been serious about closing down Exide, there's no question that the USAO would not have continued its prosecution.

It appears that Ms. Lee may have misinformed the Senate at that March 12 hearing about DTSC's role in Exide's closure. We urge the committee to probe Ms. Lee on this matter and call Mr. Johns to testify on it as it goes to question of Ms. Lee's integrity and honesty.

In addition, neither air regulators nor Exide appeared to know of Lee's action. At a March 6<sup>th</sup> hearing before the South Coast Air Quality Management District, Executive Officer Barry Wallerstein said that Exide planned to meet all regulatory requirements and be operational in May or June. Exide executive Tom Strang said the company was investing millions to meet DTSC and air regulator requirements at that same March 6<sup>th</sup> hearing.

Yet Ms. Lee insists that she informed Exide on February 26<sup>th</sup> that it would close. Her statements are irreconcilable with the action of the Assistant US Attorney Joseph Johns, the statements of air regulator Barry Wallerstein, and Exide's executive Tom Strang at the March 6<sup>th</sup> hearings. We urge that Mr. Wallerstein and Mr. Strang also be asked to testify as to the role that DTSC played in Exide's closure.

Ms. Lee has now been at DTSC for eight months. She could have at any time, with full justification, denied Exide a permit. She did not until USAO took action to suspend criminal prosecution in

exchange for shutdown and full cleanup. She could have revisited the inadequate terms of a November 2014 DTSC order to Exide concerning the financing of closure and cleanup. But she did not.

The November 2014 order requires Exide to put up \$39 million for closure and cleanup, when the more realistic cost, based on internal ballpark DTSC estimates, could be \$200 million to safely close the facility, remediate contamination of water and soil, and clean up all homes affected by dangerous, hazardous waste levels of contamination. The order also does not provide for testing of all homes at risk. Ms. Lee took no action to correct the order.

It appears that only after the US Attorneys' office made her office look weak by taking strong action did Ms. Lee claim she was on the job.

Under Ms. Lee, DTSC should have been working on a new approach to regulate extensively polluted urban areas such as East LA, not burying the problem.

DTSC's habit of burying problems is reflected in a letter the Rules Committee has received from a coalition of dozens of groups representing communities under toxic assault. They have presented Ms. Lee with legitimate requests, but Ms. Lee has taken virtually no action.

All the requests speak to DTSC's obligation to uphold state and federal environmental laws, and to do what is necessary to put the protection of the public this Department works for before the interests of polluters. These requests should be honored. But Barbara Lee has taken virtually no action.

Steps that Barbara Lee should have taken to honor these requests, and to begin serious reform of DTSC, include:

- Revoking the permits of serial toxic polluters such as chemical waste recycler Phibro-Tech of Santa Fe Springs and Chemical Waste Management’s PCB landfill in Kettleman Hills based on their extensive record of serial pollution and, at Kettleman, violation of civil rights laws.

- Honoring previous state agreements to fully clean up the Santa Susana Field Lab in Simi Hills so that it does not threaten with cancer hundreds of thousands of people who live within a few miles of the site. Barring a deal just cut under the table with Boeing that allows only a tiny fraction of chemically and radioactively contaminated soil to ever be cleaned up. Upholding state law by disallowing the illegal disposal of radioactive debris from the lab site at unlicensed facilities.

- Heeding Health Risk Assessments whenever such assessments show there is risk to public health and having DTSC immediately respond to eliminate it. For example, several years ago, an HRA conducted by Exide showed cancer risk from its emissions of arsenic was more than 20 times the “acceptable risk” level, according to Communities for a Better Environment, yet nothing was done. Currently, Ms. Lee has revealed no plan to remediate within two weeks extremely high levels of lead contamination newly identified within a few miles of Exide.

- Requiring that DTSC oversight not end at a facility’s property line and that regulators recognize toxics emitted into air can fall outside the property line and accumulate to hazardous waste levels in neighborhoods—such as at Exide. As a former air regulator, Ms. Lee should have recognized this and begun to actively develop a new paradigm on how to regulate this type of pollution. Nothing indicates that she has.

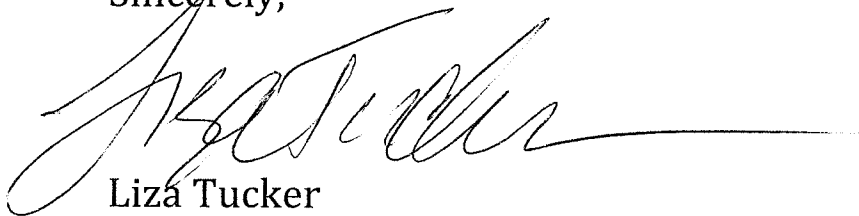
- Requiring a full review of an existing list of licensed hazardous waste companies and the amounts of money they have put up as a

condition of operating, and increasing those amounts so that sufficient monies exist for closure and cleanup, including of nearby residences, if necessary. And requiring that regulators follow the law by demanding money up front for ordered corrective action as state law also sanctions. Again, Exide is Exhibit A. DTSC required them to put only a fraction of what was really necessary as a condition of operation, and never demanded that they put money up front for corrective action.

As Communities for a Better Environment staff attorney Gladys Limon put it in a letter to the Senate on March 12 about Exide, “The Department’s primary duty is to protect the health and safety of people and the environment, and residents of California have no choice but to depend on it to provide such protection. Rather than do so, the Department has enforced its duties in a negligent and reckless manner, placing industry and the State’s own financial interests before the public’s health and safety.”

The same can be said in too many other instances. We urge you to deny Ms. Lee’s confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "Liza Tucker", with a long horizontal flourish extending to the right.

Liza Tucker  
Consumer Advocate  
Consumer Watchdog