

SENATE CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

October 16, 2013

Honorable Kevin J. Carey
United States Bankruptcy Court, District of Delaware
824 Market Street N
Third Floor
Wilmington, DE 19801

RE: Exide Technologies CASE No. 13-11482 (KJC)

Dear Judge Carey:

We represent the communities surrounding the Exide Technologies lead battery recycling plant in Vernon which has been the subject of great concern regarding toxic pollution from its operations. Last week, our constituents received densely worded letters notifying them of the October 31, 2013 General Bar Date to submit proof if they wish to assert any claims against Exide that arose prior to the June 10, 2013 Petition Date. We are gravely concerned that attempting to broadly sweep complicated personal injury claims into a bankruptcy proceeding over three thousand miles away will rob our constituents of their right to a full and complete review of any claims they may have against Exide Technologies. Such a result would be a miscarriage of justice that would substantially undermine the public's confidence in its court system to protect them and their rights.

On behalf of the hundreds of thousands of constituents that may have been harmed by illegal toxic emissions by Exide Technologies, we respectfully request that the Court explicitly exempt personal injury claims from the General Bar Date in the Exide reorganization proceeding. A bankruptcy court, particularly one on the other side of the country, is not the appropriate forum for these claims. The communities that have suffered as a result of Exide's dangerous emissions are largely made up of Spanish speaking working poor families. The complicated nature of Exide's notification letter guaranteed that very few of our constituents would understand the substance of that letter. Even fewer of these residents have any sort of familiarity with our court system, let alone a federal bankruptcy proceeding, to understand how to act upon that notification. Unlike the vast majority of Exide's creditors, the residents in these communities do not have the resources to hire attorneys to help them navigate the legal system and your Delaware proceedings. Due to the unique nature of potential physical harm caused by Exide, our constituents should not be lumped into that same group of creditors.

Personal injury claims of this sort are not only complicated, but difficult to research, evaluate, and document. That work cannot be accomplished in a matter of a few weeks, or even months. Our constituents have been subject to Exide's pollution for decades, and because the nature of their potential claims doesn't involve immediately obvious physical or economic harm, they deserve more time to be evaluated for injury. Furthermore, the state of California, as part of the Stipulation and Order between Exide and the Department of Toxic Substances Control (DTSC) is currently in the midst of soil, dust and blood testing whose results may not be known until later this year.

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If an explicit exemption from this bankruptcy proceeding is not possible, the Court should, at a minimum, extend the General Bar Date to at least another six months to enable residents to determine whether or not they should file claims. Given that Exide has recently asked for an extension of the proceedings, it would seem appropriate to also extend the Bar Date another six months.


Hundreds of residents have vocalized deep concerns that their rights are being seized and that the claims process set out by your Court undermines any realistic attempt at discovering the possible negative impact the Exide plant has had on the communities' health and wellbeing. These broad-based concerns have led to several community meetings, including a town hall meeting on October 8, 2013. The town hall allowed residents to hear directly from state and local regulators charged with monitoring Exide's impact on the environment and residents. That town hall made clear to us that our constituents are only now beginning to comprehend the extent to which Exide's operations may have had harmful effects on their health and environment.

In order to execute your proceedings appropriately and fairly to all of Exide's creditors, including our constituents, potential personal injury claims resulting from Exide's pollution should be explicitly exempted. The bankruptcy process is designed to give debtors a second chance, not a pass for poisoning entire communities.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact us at 916-651-4022.

Sincerely,


KEVIN DE LEÓN
Twenty-Second Senate District


RICARDO LARA
Thirty-Third Senate District

cc: Honorable Jerry Brown, Governor of California
Secretary Matthew Rodriguez, California Environmental Protection Agency
Director Deborah Raphael, Department of Toxic Substances Control
Executive Officer Barry Wallerstein, South Coast Air Quality Management District