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Assembly California Legislature



WENDY CARRILLO
ASSEMBLYMEMBER, FIFTY-FIRST DISTRICT

COMMITTEES
APPROPRIATIONS
HEALTH
PUBLIC SAFETY
RULES
WATER, PARKS, AND WILDLIFE

May 10, 2018

Barbara A. Lee
Director
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814

Dear Director Lee:

In my brief time in the Legislature, it is clear that one of the most critical issues to my constituents is the remediation of lead contamination, especially that contamination that is a result of decades of emissions from the Exide battery recycling plant. And it seems fair to say that the cleanup is not going as quickly as anyone, including the Department of Toxic Substances Control (DTSC), has expected or desired.

As a result of the delays, the remainder of the \$176.6 M that was appropriated for the cleanup in 2016 will need to be reauthorized. However, before the Legislature reauthorizes these funds, several questions need to be answered to ensure that the Legislature is funding a cleanup program that is protective of public health and will be executed in a timely manner.

First, in regards to ensuring that the cleanup program is protective of public health, the community has raised questions on several of DTSC's decisions in how it is approaching the lead remediation in and around homes with high levels of lead contamination.

1. DTSC has chosen to not include the parkways in the residential clean-up partly because of the understanding that residents generally spend little time in those spaces. However, my community remains concerned because, should the parkways have high levels of lead, merely passing through the parkway before entering the house could reintroduce soil-bound lead into a home. Can DTSC please provide cost estimates for testing the parkways that are in front of the priority cleanup properties? What would be the additional cost to clean the parkways assuming that the parkways need the same level of cleanup as the adjacent residential property?
2. Cleaning of the interior of the homes is important so that lead-contaminated dirt brought into the home prior to or during the remediation activities do not continue to expose residents to lead emitted from Exide. How will homeowners receive the interior cleanup actions and when is the first time they are provided with this information? Is interior cleanup presented as an option or a recommendation? What is DTSC's goal for the

participation rate in the interior cleanup amongst the priority homes? If less than 100%, please explain why. Does DTSC's cleanup budget account for this participation rate goal? What is DTSC doing to reach this participation rate goal and how is this outreach culturally-and linguistically-competent?

Second, the Legislature would like to understand if and how DTSC is trying to minimize potential further delays. Last fall, DTSC solicited bids for the cleanup of approximately 2,500 priority properties in the 1.7 mile radius around the Exide facility that have high levels of lead. Unfortunately a contract with the winning bidder, EQM, was never signed largely because of disputes regarding the financial surety bond requirements and per property cost caps. As DTSC is preparing to solicit bids for contracts again, it is important that DTSC is making changes so that the next contract negotiation does not end due to similar pitfalls.

1. In the first solicitation for bids to clean-up the residential areas, DTSC established a firm maximum cost that it would reimburse per property. A maximum per property cost is fiscally responsible and necessary to ensure that the contractor remediates the number of homes that is anticipated. However, it is conceivable that a contractor encounters legitimate unforeseen situations that might drive actual remediation costs higher than the maximum per property cost. How will such variabilities in cleanup costs be handled so that the contractor is motivated to complete the project as designed without cutting corners that endanger public health? What mechanisms does DTSC have in place so that it can properly oversee the contractor's handling of unforeseen situations in real-time? How can the Legislature be assured that it will be kept apprised of any potential issues that might impact the clean-up budget?
2. The future contractor is required under existing laws to secure a surety bond for the project to safeguard the state, and in turn the residents, against any work that may be improperly done by the contractor. However, given the large size of this project, EQM had expressed issues with securing a large enough bond for the project. Will the next contract solicitation be changed to allow for some bonding flexibility without impacting the safeguards that the bond is meant to provide?

Are there any other modifications being made to the bid solicitation to ensure that that the next contract negotiation will be successful and lead to effective cleanup? Answers to these questions will be a step in improving the Legislature's confidence that the residential cleanup of the area around Exide will go more smoothly and quickly than we have seen to date. So that we may evaluate these answers on a timeframe that is consistent with the budget, I ask that written responses to these answers be provided by Thursday, May 17, 2018.

Sincerely,



Wendy Carrillo
Assemblymember, 51st District

Cc: The Honorable Anthony Rendon, Speaker, California State Assembly
The Honorable Toni Atkins, President Pro Tempore, California State Senate
Kim Craig, Deputy Cabinet Secretary, Office of Governor Edmund G. Brown Jr.
Graciela Castillo-Krings, Deputy Legislative Secretary, Office of Governor Edmund G. Brown Jr.
The Honorable Philip Y. Ting, Chair, Assembly Budget Committee
The Honorable Holly J. Mitchell, Chair, Senate Budget & Fiscal Review Committee
The Honorable Richard Bloom, Chair, Assembly Budget Sub. 3 Committee
The Honorable Bob Wieckowski, Chair, Senate Environmental Quality & Budget Sub 2 Committee
The Honorable Bill Quirk, Chair, Assembly Environmental Safety & Toxic Materials Committee
The Honorable Miguel Santiago, Assemblymember, 53rd District
The Honorable Kevin de Leon, Senator, 24th District
The Honorable Ricardo Lara, Senator, 33rd District