



## Town of Fairfield

HARBOR MANAGEMENT COMMISSION  
Sullivan Independence Hall  
725 Old Post Road  
Fairfield, Connecticut 06824

WATER PROTECTION AND LAND REUSE  
REMEDIATION DIVISION

JAN 31 2013

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VIA EMAIL TRANSMISSION AND REGULAR MAIL

January 25, 2013

Ms. Carolyn Fusaro  
Connecticut Department of Environmental Protection  
Remediation Division  
79 Elm Street  
Hartford, CT 06106-5127

Mr. Donald Gonyea  
Connecticut Department of Energy and Environmental Protection  
Bureau of Materials Management and Compliance Assurance  
79 Elm Street  
Hartford, CT 06106-5127

Ms. Tonia Selmeski  
Connecticut Department of Energy and Environmental Protection  
Office of Long Island Sound Programs  
79 Elm Street  
Hartford, CT 06106-5127

**Subject: Proposal by Exide Group, Inc. to dredge lead-contaminated sediment from the Mill River and Southport Harbor.**

Dear Ms. Fusaro, Mr. Gonyea, and Ms. Selmeski:

The Harbor Management Commission (HMC) is reviewing a proposal by Exide Group, Inc. (the Applicant) to dredge lead-contaminated sediment from the Mill River and Southport Harbor. That sediment would be pumped via a pipeline to a temporary processing facility on the site of the former Exide Battery plant adjoining the Mill River. It would there be dewatered; the dewatered sediment would be trucked to out-of-state landfills for disposal; and the filtrate water discharged back into the River. The Applicant's proposal is described in three separate documents submitted to the Connecticut Department of Energy and Environmental Protection (DEEP) for approval. These are: 1) a "Re-

medial Action Plan (RAP) for Lead Impacted River Sediments,” October 2011, revised April 2012; 2) an “Office of Long Island Sound General Permit Registration Form,” signed by the applicant on June 22, 2012; and 3) a “Permit Application for Wastewater Discharges,” signed by the applicant on June 22, 2012.

On January 19, 2012, the HMC attended a public informational meeting concerning the Applicant’s proposal, and then provided comments on the proposal in a letter of January 30, 2012 to Patrick Bowe and Brian Thompson, directors of the DEEP’s Remediation Division and Office of Long Island Sound Programs, respectively. In that letter, the HMC informed the DEEP that the Applicant’s proposal is subject to the municipal authority of the HMC to review the proposal for consistency with the Harbor Management Plan.

Pursuant to the Fairfield Code and Connecticut General Statutes, it is the authority and responsibility of the HMC to review all proposals affecting the real property on, in, or contiguous to Southport Harbor. Review by the HMC of any proposal is for the purpose of determining the proposal’s consistency with *The Management Plan for Southport Harbor* (Harbor Management Plan) which has been duly approved by the State of Connecticut and adopted by the Fairfield Representative Town Meeting. Although much of the Applicant’s proposed project would take place in the Mill River upstream of the Tide Mill Dam (which marks the northern limit of Southport Harbor), the entire proposal could affect the Harbor and therefore is being reviewed by the HMC.

The HMC considered the Applicant’s proposal, including the General Permit Registration Form, during the HMC’s meeting on July 17, 2012. In a letter of July 27, 2012 to Ms. Selmeski, the HMC expressed its opinion that it may be premature for the DEEP to approve the Applicant’s General Permit Registration Form prior to public review and DEEP approval of the RAP. The HMC also reserved its right to: a) continue to review the Applicant’s proposed remediation plans, including the RAP and permit application for wastewater discharge; and b) transmit findings and recommendations concerning those plans to the DEEP at a later date, during a public comment period established by the DEEP or any public hearing that may be held on the Applicant’s proposal.

More recently, representatives of the HMC participated in a meeting on January 7, 2013 with representatives of the Fairfield Conservation and Shellfish commissions to discuss the Applicant’s proposal, and then prepared the January 9, 2013 summary document “Issues and Comments Concerning a Proposal by Exide Group, Inc. to Dredge Lead-Contaminated Sediment from the Mill River and Southport Harbor.” That document was provided to the DEEP and Applicant prior to a public informational meeting convened by the DEEP concerning the Applicant’s proposal on January 10, 2013. Members of the HMC attended that meeting.

Following the public informational meeting, the HMC considered the Applicant’s proposal during the HMC’s meeting on January 15, 2013 and approved a motion to:

- a) Endorse, and submit to the DEEP, the January 9, 2013 summary document “Issues and Comments Concerning a Proposal by Exide Group, Inc. to Dredge Lead-Contaminated Sediment from the Mill River and Southport Harbor” (a copy is enclosed);

- b) Submit to the DEEP additional issues and questions (see below) as discussed by the HMC during its January 15, 2013 meeting;
- c) Request that the DEEP and/or Applicant respond in writing by January 28, 2013 to address the issues and comments described in the summary document and the additional issues and questions discussed by the HMC during its January 15, 2013 meeting; and
- d) Request that the period for submitting comments concerning the Applicant's proposal be extended by the DEEP to February 22, 2013 in order that the HMC may continue to review this matter during the HMC's next regularly scheduled meeting which will take place on February 19, 2013.

The following additional issues and questions concerning the Applicant's proposal were discussed by the HMC during its January 15, 2013 meeting.

1. Modifications to the Applicant's proposal: The HMC is concerned that some aspects of the Applicant's proposal as described in the documents and applications reviewed by the HMC have been modified. For example, the RAP describes the use of turbidity curtains to minimize sediment re-suspension but says those curtains will not come in contact with the River and Harbor bottom. During the January 10 public informational meeting, the Applicant said the curtains will touch the bottom. Also, the RAP describes the proposed project being conducted during periods of anadromous fish migration and shellfish spawning. During the January 10 informational meeting, a DEEP representative indicated that work restrictions will be imposed during those periods. The HMC recommends that all stakeholders should be informed of any significant modifications to the Applicant's proposed project since release of the documents and applications reviewed by the HMC.
2. Effects of chromium disturbance: During the public informational meeting there was discussion of the extent to which chromium is co-mingled with lead in the Mill River and Southport Harbor. The HMC is concerned about the potential adverse impacts that may be caused by the re-suspension of chromium-contaminated sediments during the course of the Applicant's proposed project, and recommends that additional information concerning those potential impacts should be provided.
3. Condition of Tide Mill tide gates: Also during the public informational meeting, there was discussion concerning the current condition of the tide gates at the Tide Mill Dam and the effect that their failure or diminished function may have on the proposed project, including the ability to float dredging equipment as currently planned by the Applicant. The HMC recommends that this matter should be addressed by the Applicant.
4. Water quality monitoring in Southport Harbor: The summary document expresses the HMC's concerns about the potential adverse impacts that the Applicant's proposed project may have on water quality in the Harbor. As a result of those concerns, the HMC recommends that priority attention be given to monitoring a range of water quality parameters downstream of the proposed project, prior to, during, and after the project.

On January 15, 2013, the DEEP provided notice that the public comment period concerning the RAP has been extended until February 28. On January 20, 2013, a web site established by the DEEP concerning the Applicant's proposal reported that the public comment period concerning the Applicant's General Permit Registration Form also has been extended to February 28, and the comment period for the wastewater discharge application has been extended to February 20.

As a result of these extensions, the HMC recognizes that it will not be necessary for the DEEP and/or Applicant to respond in writing to the identified issues, comments, and questions by January 28, 2013, as requested by the HMC, and that the HMC's requested extension of the comment period to February 22 is no longer necessary. Instead, I wish to request on behalf of the HMC that a written response be provided by February 15, 2013 in order that the HMC may continue to review the Applicant's proposal during the HMC's February 19, 2012 meeting. At that time, the HMC intends to prepare final recommendations for transmittal to the DEEP.

If you have any questions, I can be reached at (203) 259-9588 or [mvonconta@optonline.net](mailto:mvonconta@optonline.net).

Sincerely,



Mary von Conta, Chairman  
MVC/gs

Enclosure

cc:

Mr. John Fallon, Attorney for applicant  
Mr. Kevin Gumpper, Chairman, Fairfield Conservation Commission  
Ms. Diane Ray, U.S. Army Corps of Engineers  
Mr. Thomas Steinke, Town of Fairfield Conservation Director  
Mr. Sandy Wakeman, Chairman, Fairfield Shellfish Commission  
Mr. James Wendt, Town Plan and Zoning Department

January 9, 2013

## **Issues and Comments Concerning a Proposal by Exide Group, Inc. to Dredge Lead-Contaminated Sediment from the Mill River and Southport Harbor**

### **As Discussed by Representatives of the Fairfield Harbor Management, Conservation, and Shellfish Commissions**

Prepared by Geoffrey Steadman, Mary von Conta, and James Harman<sup>1</sup>

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On January 7, 2013, a committee consisting of representatives of the Fairfield Harbor Management, Conservation, and Shellfish Commissions met in John J. Sullivan Independence Hall to discuss the pending proposal by Exide Group, Inc. (the Applicant) to dredge lead-contaminated sediment from the Mill River and Southport Harbor. That sediment would be pumped via a pipeline to a temporary processing facility on the site of the former Exide Battery plant adjoining the Mill River. The sediment would then be de-watered and trucked to out-of-state landfills for disposal. The drained water would be treated and discharged back to the River. The Applicant's proposal requires receipt of several approvals from the Connecticut Department of Energy and Environmental Protection (DEEP) and will be the subject of a public informational meeting to be convened by the DEEP on January 10, 2013.

Each of the commissions represented on the committee have specific municipal authorities and interests relevant to review of the Applicant's proposal. During its January 7, 2013 meeting the committee discussed a number of issues concerning the Applicant's proposal. It was the sense of the committee that a summary should be prepared of the issues discussed and the committee's comments, and that the summary should be provided to the Applicant and DEEP. The Harbor Management Commission's representatives agreed to prepare the summary which is presented below.

#### **SUMMARY OF ISSUES AND COMMENTS**

1. The Applicant's proposal is described in three separate documents submitted for DEEP approval. These are: 1) a "Remedial Action Plan (RAP) for Lead Impacted River Sediments"; 2) an "Office of Long Island Sound General Permit Registration Form"; and 3) a "Permit Application for Wastewater Discharges." The Public Notice issued by the DEEP for the January 10, 2013 public information meeting concerning the Applicant's proposal states that the meeting is to be held regarding the RAP. In addition, the Notice mentions that the General Permit and Application for Wastewater Discharges will also be discussed. It is not entirely clear how the DEEP's regulatory process for reviewing and hearing public comments on the three separate documents will proceed following the informational meeting, although the committee understands that the DEEP intends to provide a 30-day public comment period following the meeting. It is unclear if there will be an opportunity for public review of any amendments to the

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<sup>1</sup> Geoffrey Steadman is the Fairfield Harbor Management Commission's planning consultant and serves as staff to the Commission; Mary von Conta is Chair of the Commission; and James Harman is a Commissioner.

Applicant's proposal that may be made in response to comments received during and following the public meeting.

2. According to the proposed RAP, some details of the project methodology will be left up to the selected contractor. According to the wastewater discharge permit application, specific methodologies, equipment, and operating procedures described in the application are subject to change by the selected contractor. This raises the issue of whether or not sufficient detail is now included in the Applicant's proposal, and if perhaps too much of the project design would occur after any project approvals are issued by the DEEP. Since detailed implementation plans are not included in the Applicant's proposal, it is unclear what, if any, additional approvals, including inland wetlands approvals, may be required for project implementation. It is also unclear if there will be an opportunity for Town review of the Applicant's detailed implementation plans.
3. The Applicant is aware that re-suspension of sediment during the proposed dredging operations may cause adverse impacts on environmental conditions in the River and Harbor. As a result, the Applicant proposes best management practices, including placement of turbidity curtains, to minimize sediment re-suspension. The Applicant believes that those curtains, which to minimize bottom disturbance will not come in contact with the River and Harbor bottom, will allow the dredging of all but one project area to be conducted during periods of anadromous fish migration and shellfish spawning. Dredging is normally prohibited by the DEEP during these periods. It is the sense of the committee that dredging during the migration and spawning periods may cause significant adverse impacts on shellfish and anadromous fish, especially if dredging occurs over more than one migration or spawning season. It is also the sense of the committee that additional consideration should be given to the use of cofferdam cells and alternative dredging methods in one or more of the project areas to minimize the adverse impacts caused by re-suspension of sediment.
4. An optical monitoring approach is proposed in the RAP to identify issues concerning the re-suspension of sediment in the water column during dredging operations. It is the sense of the committee that additional discussion of the effectiveness and appropriateness of this approach is needed, including consideration of the position of the monitor relative to the dredging cell, and the specific actions to be taken if the monitor detects any problems related to the re-suspension of sediment.
5. The RAP does not adequately describe plans by the Applicant to monitor water quality downstream of the remediation area in Southport Harbor prior to, during, and after the proposed project. It is the sense of the committee that such monitoring, of a range of water quality parameters, may be appropriate for the purpose of helping to ensure that the project does not result in any significant pollution entering the Harbor as a result of work in the upstream remediation areas.

6. The RAP describes a proposed project that would dredge 21,400 cubic yards of lead-impacted sediment. However, the General Permit Registration Form and Permit Application for Wastewater Discharges call for the dredging of 27,600 cubic yards, a 29% increase in the anticipated volume. There is no explanation for the increased volume and how this may affect the RAP.
7. The RAP describes the Applicant's project to remove lead-contaminated sediments from the River in 1983 and states that the River was subsequently re-contaminated with lead. It is the understanding of the committee that the re-contamination was caused by additional discharges from subsurface drainage pipes on and near the Applicant's property. It is unclear if all sources of potential re-contamination, including subsurface drainage pipes, have been properly investigated by the Applicant to ensure that no future re-contamination will occur. In addition, it is unclear who will be responsible for any future contamination that may be detected following completion of the Applicant's proposed remediation project.
8. As currently described in the RAP, the proposed remediation project would begin in April 2012 and be completed by December 2013. A revised schedule has not been provided.
9. Built in the early 1700s, the Tide Mill Dam at Harbor Road marks the upstream boundary of Southport Harbor. The structure of the dam and its concrete spillway have been damaged and repaired several times. The RAP includes no assessment of the existing structural integrity of the dam; of how any diminishment of that integrity may affect the RAP; and of how implementation of the RAP may affect the integrity of the dam.
10. The Applicant states that the benthic resources of the River and Harbor will be unavoidably affected by the proposed remediation project but will recover within one to three years. The RAP, however, does not include any detailed information concerning the existing living aquatic resources and habitat. It is unclear how the recovery of affected resources can be determined without baseline data concerning existing conditions in the areas to be affected. In addition, the applicant apparently does not intend to conduct any restoration of the benthic habitat affected by the proposed dredging operations. The committee recognizes that chromium contamination in Mill River sediments may be subject to future remediation actions by other parties, although the timing of such actions is currently not known. As a result, it may not be effective or appropriate to require the Applicant to immediately restore the benthic habitat affected by the proposed dredging project. It is the sense of the committee that in lieu of such restoration, consideration should be given to other types of mitigation, including but not limited to, establishment of a mitigation fund for future restoration projects. In addition, it is the sense of the committee that the effectiveness and appropriateness of immediate restoration and mitigation projects should continue to be evaluated.
11. Details of the dredging operation, including how dredging equipment would access the project areas bounded by the Tide Mill Dam, Post Road, railroad, and I-95, and how the hydraulic pipeline would be employed to pump dredged material to the processing site are not included in

the RAP. As a result, it is not possible at this time to completely assess the potential impacts of the proposed project on the nearby neighborhoods, including nuisance impacts and property impacts.

12. It is understood that the Mill River is identified by the State of Connecticut as an impaired water body, but it is unclear to what extent the proposed project will contribute to removal of the River from the State's list of impaired water bodies. Also, the River is currently deemed unsafe for fishing and swimming and it is unclear how it will be determined when the area will be safe for those activities.
13. It is reported in the RAP that the applicant owns underwater lands in the Mill River adjoining the proposed processing site. This raises the question of whether or not there are other private owners of underwater lands that would be affected by the proposed project, and if permission or special notification of those owners is required or appropriate in order to conduct the proposed remediation work.
14. The proposed sequence of work in the RAP shows that the most upstream project area, identified as Area V, will be the last area to be dredged. It is not clear why this area, upstream of I-95, would not be dredged earlier in the process, to avoid any potential downstream impacts to project areas where remediation has already been completed.
15. It is the sense of the committee that a period of time greater than 30 days may be needed in order for each of the interested Town commissions to: a) review information presented during the public meeting concerning the Applicant's proposal; b) review any necessary amendments to the Applicant's proposal following the meeting; and c) formulate each commission's findings and recommendations concerning the proposal. As a result, it is the sense of the committee that a comment period of 90 days following the public meeting is an appropriate period of time prior to any final decision by the DEEP regarding the Applicant's proposal.

End of Summary  
01-09-13