



Town of Fairfield

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

WATER PROTECTION AND LAND REUSE
REMEDIATION DIVISION

FEB 28 2013

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VIA EMAIL TRANSMISSION AND REGULAR MAIL

February 22, 2013

Ms. Carolyn Fusaro
Connecticut Department of Energy and 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) has continued to review the proposal by Exide Group, Inc. (the Applicant) to dredge lead-contaminated sediment from the Mill River and Southport Harbor. That proposal is described in three separate documents submitted by the Applicant to the Connecticut Department of Energy and Environmental Protection (DEEP) for approval. These are: 1) a "Remedial 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.

My previous letter to you, dated January 25, 2013, provided a summary of the HMC's ongoing review of the Applicant's proposal, including references to the HMC's prior correspondence to the DEEP. The letter also requested that the DEEP respond in writing to a number of specific issues identified by the HMC concerning the proposal. A written response to the identified issues was deemed necessary by the HMC in order that we may properly complete our review of the proposal and determine its consistency with *The Management Plan for Southport Harbor* (Harbor Management Plan).

In the absence of any response to my letter, the HMC considered the Applicant's proposal during a Special Meeting on February 21, 2013 and approved a motion to transmit the following comments and recommendation to the DEEP and Applicant.

1. *The HMC hereby asserts its authority and responsibility, pursuant to the Connecticut General Statutes and Fairfield Town Code, to review all proposals affecting Southport Harbor to determine the consistency of those proposals with the Harbor Management Plan which is duly approved by the State of Connecticut and adopted by the Fairfield Representative Town Meeting.*
2. *The proposed remediation project, which affects real property on, in, or contiguous to Southport Harbor and therefore is subject to the municipal jurisdiction of the HMC, requires careful review with full consideration of the needs and interests of the Town of Fairfield.*
3. *Pursuant to Section 22a-113n of the Connecticut General Statutes, a recommendation of the HMC pursuant to the Harbor Management Plan shall be binding on any official of the State of Connecticut when making a regulatory decision affecting Southport Harbor.*
4. *There is currently insufficient information to enable the HMC to make a final determination regarding the consistency of the Applicant's proposal with the Harbor Management Plan. As a result, the HMC recommends that the DEEP should make no decision regarding the proposal until such time as: a) the specific issues identified by the HMC in the enclosed Statement of Harbor Management Issues are addressed in writing by the DEEP; and b) a reasonable and sufficient period of time is provided to enable the HMC to review the DEEP's written response and make a final determination with appropriate recommendations.*

I look forward to discussing this matter with you in more detail during the February 28 meeting with other representatives of the Town of Fairfield in the Legislative Office Building. If you have any questions or require additional information prior to that meeting, I can be reached at (203) 259-9588 or mvonconta@optonline.net.

Sincerely,



Mary von Conta, Chairman

MVC/gs

Enclosure

cc:

Mr. Michael Tetreau, First Selectman

Representative Kim Fawcett, 133rd District

Representative Tony Hwang, 134th District

Representative Brenda Kupchick, 132nd District

Senator John McKinney, 28th District

Mr. Daniel Esty, Commissioner of Energy and Environmental Protection

Mr. John Fallon, Attorney for applicant

Mr. Kevin Gumper, 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

February 22, 2013

**Statement of Harbor Management Issues
Regarding a Proposal by the Exide Group, Inc.
to Dredge Lead-Contaminated Sediment
from the Mill River and Southport Harbor¹**

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. As proposed, 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 "Remedial 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.

It is the authority and responsibility of the HMC, set forth in the Connecticut General Statutes and Chapter 24 of the Fairfield Town Code, to review all proposals affecting Southport Harbor to determine the consistency of those proposals with *The Management Plan for Southport Harbor* (Harbor Management Plan) which is duly approved by the State of Connecticut and adopted by the Fairfield Representative Town Meeting.

The Applicant's proposed remediation project, which affects real property on, in, or contiguous to Southport Harbor and therefore is subject to the municipal jurisdiction of the HMC, requires careful review with full consideration of the needs and interests of the Town of Fairfield.

During a Special Meeting on February 21, 2013, the HMC determined there is currently insufficient information to enable the HMC to make a final determination regarding the consistency of the Applicant's proposal with the Harbor Management Plan. As a result, the HMC has recommended that the DEEP should make no decision regarding the proposal until such time as: a) the specific issues identified by the HMC as items 1 through 15 in this Statement of Harbor Management Issues are addressed in writing by the DEEP; and b) a reasonable and sufficient period of time is provided to enable the HMC to review the DEEP's written response and make a final determination with appropriate recommendations.

1 This statement prepared by the Fairfield Harbor Management Commission includes comments and concerns from the January 9, 2013 document endorsed by the HMC and titled "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." Also included in this statement are additional issues and concerns raised during the January 10, 2013 public informational meeting concerning the proposal and during meetings of the HMC on January 15 and February 21, 2013.

Harbor Management Issues

1. Implementation Details: According to the proposed RAP prepared by the Applicant, some details of the remediation project's implementation methods will be left up to the selected contractor. In addition, the Applicant's Permit Application for Wastewater Discharges states that specific methodologies, equipment, and operating procedures described in the application are subject to change by the selected contractor. The HMC is concerned that the Applicant's proposal may not contain sufficient detail concerning project implementation, and that a significant part of the project design may occur after project approvals are issued by the DEEP.

Since detailed implementation plans are not included in the Applicant's proposal, it is unclear to the HMC what, if any, additional approvals, including local approvals, may be required for project implementation. It is also unclear if there will be an opportunity for the HMC and other agencies to review the Applicant's detailed implementation plans at such time as those plans may be prepared. In the absence of detailed implementation plans, the HMC is concerned that project implementation, including placement and operation of dredging and hydraulic pipeline equipment, could adversely affect Southport Harbor and shoreline areas along the Harbor and the Mill River. (See no. 9 below.)

2. Re-suspension of Sediment: In the RAP, the Applicant expresses awareness 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 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. The HMC is concerned that dredging during the migration and spawning periods may cause significant adverse impacts on anadromous fish and shellfish, especially if dredging occurs over more than one migration or spawning season.

Described in the RAP, the proposed turbidity curtains would be installed so as not to come in contact with the River and Harbor bottom and thereby minimize bottom disturbance. However, during the January 10, 2013 public informational meeting concerning the Applicant's proposal, the Applicant indicated that the curtains would come in contact with the bottom. The HMC is concerned about the extent of the modifications to the Applicant's remediation plans that may have been made since the plans were submitted to and reviewed by the HMC. (See no. 13 below.)

3. Project Monitoring: The HMC is concerned about the effectiveness and appropriateness of the Applicant's proposed approach for monitoring the project's impacts in the River and Harbor, including the optical monitoring approach that is proposed to identify issues concerning re-suspension of sediment during dredging operations. The HMC has asked for additional information to help judge the effectiveness and appropriateness of this approach, with

more consideration given to 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.

In addition, the HMC is concerned that the Applicant has not proposed a plan 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 HMC that such monitoring, of a range of water quality parameters, including chemical, bacterial, and turbidity 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.

4. Sediment Volume: The RAP describes a proposed remediation 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 RAP volume. In the project documents reviewed by the HMC, there is no explanation for the increased volume and how this may affect the RAP. Based on verbal comments provided by representatives of the DEEP, the HMC understands that the added volume represents an “over-dredge” amount considered necessary to ensure that all of the contaminated sediment, which is measured at 21,400 cubic yards, is removed. The HMC is concerned that this explanation is not included in the documents reviewed by the HMC.
5. Potential Sources of Re-contamination: The RAP describes the Applicant’s project to remove lead-contaminated sediment from the River in 1983 and states that the River was subsequently re-contaminated with lead. It is the understanding of the HMC that the re-contamination was caused by additional discharges from subsurface stormwater drainage pipes and from stormwater running off the roofs of buildings on the site of the former battery manufacturing facility. The HMC is aware that an October 10, 2008 Consent Order agreed to by the Applicant and DEEP includes an agreement that “a small area in the uplands portion of the site involving a drainage system in the Connecticut Department of Transportation’s Right of Way may contain lead and must be investigated and, if necessary, remediated prior to initiating remediation of lead in sediments in the Mill River Study Area.” Based on verbal comments provided by representatives of the DEEP, the HMC understands that the DEEP believes this required investigation has been completed. The HMC is concerned that completion of this investigation is not addressed in the documents reviewed by the HMC, and as a result it is unclear if all sources of potential re-contamination have been properly investigated by the Applicant. In addition, it is unclear who will be responsible for any future contamination that may be detected in the River and Harbor following completion of the Applicant’s proposed remediation project.
6. Work Schedule: As currently described in the RAP, the proposed remediation project would begin in April 2012 and be completed by December 2013. The HMC is concerned that a revised schedule, based on currently anticipated dates of project approval, has not been provided for review.

7. Tide Mill Dam: Built in the early 1700s, the Tide Mill Dam at Harbor Road marks the upstream boundary of Southport Harbor. It is recognized by the HMC that the structure of the dam and its concrete spillway has 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. In addition, 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 is concerned that this matter is not addressed in the application documents.
8. Benthic Assessment: In the RAP, 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 habitat and living aquatic resources in the River and Harbor. 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 does not intend to conduct any restoration of the benthic habitat affected by the proposed dredging operations. The HMC 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, the HMC understands that it may not be effective or appropriate to require the Applicant to immediately restore the benthic habitat affected by the proposed dredging project. The HMC is concerned that it does not appear that consideration is being given to other types of mitigation, including but not limited to, establishment of a mitigation fund for future restoration projects. In addition, the HMC has requested that additional consideration be given to evaluating the effectiveness and appropriateness of immediate restoration and mitigation projects.
9. Neighborhood Impacts: 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. (See no. 1 above.) As a result, the HMC is concerned that it is not possible at this time to completely assess the potential impacts of the proposed project on the nearby neighborhoods, including nuisance, property, and public safety impacts. Also, the HMC is aware of public concerns that the deployed dredging and water discharge equipment may pose a safety hazard for small recreational vessels in the River and Harbor. The HMC is concerned that this matter is not addressed in the application documents.
10. Impairment Classification: It is understood by the HMC that the Mill River is identified by the State of Connecticut as an impaired water body, but it is unclear to what extent the Applicant's 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.

11. Underwater Land Ownership: 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 there are other private owners of underwater lands who would be affected by the proposed project, and if permission of, or special notification to, those owners is required or appropriate in order to conduct the proposed remediation work. This matter is not addressed in the application documents reviewed by the HMC.
12. Sequence of Dredging: 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.
13. Modifications to the Applicant's Proposal: The HMC is concerned that some aspects of the Applicant's proposal as described in the application documents 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. (See no. 2 above.) 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 the DEEP will impose work restrictions during those periods. The HMC is concerned that stakeholders have not been informed of all modifications to the Applicant's proposed project that have been put forth since release of the application documents reviewed by the HMC.
14. Effects of Chromium Disturbance: During the public informational meeting there was discussion of the extent to which chromium contamination is located in proximity to lead contamination in the Mill River and Southport Harbor. The HMC is concerned that the Applicant's RAP, Permit Application for Wastewater Discharges, and General Permit Registration do not address the potential adverse impacts that may be caused by the disturbance of chromium contamination during the course of the Applicant's proposed project.
15. Project Approvals: The HMC is aware that an October 10, 2008 Consent Order agreed to by the Applicant and DEEP includes a requirement for the Applicant to list all permits and approvals required for the proposed remediation project. In addition, the HMC is aware that the Applicant has stated that no local permits and approvals, including Town inland wetlands and planning and zoning approvals are required to implement the proposed remediation project. The HMC is concerned that the authority and responsibility of the HMC to review all proposals affecting Southport Harbor to determine the consistency of those proposals with the Harbor Management Plan is not listed in the RAP.

End