



OFFICE OF ADJUDICATIONS

IN THE MATTER OF :

APP# 201205444

EXIDE GROUP, INC. :

March 13, 2013

REVISED STATUS CONFERENCE SUMMARY

A status conference was held on this matter on March 12, 2013. Those present are listed on the attached attendance list.

The purpose of this conference was to outline the issues presented and establish prehearing procedures. The following is a summary of key issues addressed.

1. *Ex parte* communications are prohibited; therefore, no party may speak to me on issues of fact or law without the presence or prior permission of the other party. The parties agreed that e-mail correspondence and the electronic filling of motions is acceptable, and signed waivers in accordance with this office's "E-mail Filing and Service of Documents Policy."
2. Two additional entities, Fairfielders Protecting Land and Neighborhoods (FairPLAN), represented by Attorney Kathryn L. Braun, and the Town of Fairfield, represented by Attorney Stanton Lesser, indicated their intent to seek party status in this matter. Attorney Braun hand filed a Notice of Appearance/Representation, a "Verified Petition to Intervene Pursuant to C.G.S. 22a-19" and a signed copy of the "[E-mail Filing and Service of Documents Policy](#)." A copy of Ms. Braun's filing is attached hereto. Parties have seven days from today in which to object. Attorney Lesser indicated that he will also be seeking party status on behalf of the Town of Fairfield. That pleading, along with a [Notice of Appearance/Representation](#) and signed "E-mail Filing and Service of Documents Policy" should be sent electronically to me and all parties, see service list attached. Parties also have seven days to object to the Town of Fairfield's filing. I will rule on these requests following the objection periods.

3. I granted the parties request to hold this contested case proceeding in abeyance so they can proceed with settlement discussions. The parties will file a report on the status of those discussions with me on May 21, 2013. This report may be a joint report, however if separate statements are necessary, they will be considered. This report may be filed by e-mail. I informed the parties that this office will provide the services of a mediator, if requested. No date for a Pre-hearing Exchange, Pre-hearing Conference or Hearing have been scheduled at this time.

/s/Brendan Schain
Brendan Schain
Hearing Officer

cc: John E. Wertam, Esq., Exide Group, Inc.
Donald Gonyea, DEEP
Kathryn L. Braun, Esq., FairPLAN (Petitioner/Proposed Intervenor)
Stanton H. Lesser, Town of Fairfield (Petitioner)

enc: Attendance Sheet
Service List
Petition to Intervene, FairPLAN

APPENDIX A

P A R T Y L I S T

Proposed Final Decision concerning Exide Group, Inc., Application No. 201107611

PARTY

REPRESENTED BY

The Applicant

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Wilmington, NC 28405

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Department of Environmental Protection

Bureau of Materials Management
and Compliance Assurance
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Donald Gonyea
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Petitioners/Proposed Intervenors

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**DEPARTMENT OF ENERGY
AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS
ATTENDANCE LIST**

Case: Exide Group Inc. (NPDES) Date: 3/12/13
 APP/ORDER # 201205444
 Hearing Officer: Brendan Schin

STATUS CONFERENCE/PREHEARING CONFERENCE/HEARING
PLEASE PRINT LEGIBLY

<u>Name/Address</u>		<u>Representing</u>
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	Phone Cell Phone Fax E-Mail	

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

In The Matter Of	:	Application Number
	:	CT0030651/ NPDES
	:	
Exide Group, Inc./Mill River.	:	March 12, 2013

VERIFIED PETITION TO INTERVENE PURSUANT TO C.G.S. §22a-19

Pursuant to Conn. Gen. Stat §22a-19, the undersigned Intervening Parties ("Intervening Parties") hereby petition the Department of Energy and Environmental Protection ("DEEP") for intervening party status in the application noted above and provide as follows:

1. The subject administrative proceeding involves an Application for a discharge ("NPDES") permit ("Application") to discharge into the waters of Mill River as part of a remediation plan to remove lead sediments from Mill River; the remediation plan is known as the "SED/RAP".
2. This administrative proceeding involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the water, wetlands, wildlife or other natural resources of the State in the manner described herein.
3. Mill River is the largest river in the Town of Fairfield and is a significant community asset and natural resource; it has been unable to be used for recreation or fishing for over 50 years.
4. Exide Group, Inc. f/k/a INCO ("Respondent") has almost simultaneously submitted to DEEP a remediation plan ("SED/RAP"), along with applications for a General Permit under the Office of Long Island Sound Programs ("OLISP") and the instant Application for discharge into Mill River ("NPDES"). Both the OLISP and NPDES permit applications are required in order to conduct the activities described in the proposed SED/RAP. Respondent has not applied for any municipal permits such as an Inland Wetlands permit.
5. The undersigned have concerns over both the substance and the procedure being followed relative to the overall remediation project which includes the NPDES; in fact aspects of the NPDES may change depending on what the final SED/RAP looks like.

6. **Timing and Sequencing of Permits:** The NPDES permit application which is the subject of the public hearing, has been filed out of sequence and prematurely in contravention of Consent Order SRD-193 signed by DEEP and Respondent on or about 10/20/08. The Consent order provides in relevant part that *“on or before . . .90 days after the [DEEP] has approved. . a remedial action plan . . Respondent shall apply for all permits that are necessary to carry out the remedial action approved by [DEEP].”* SRD-193 §B.2.f. Accordingly, the NPDES application and the General Permit application for OLISP should be withdrawn until the SED/RAP has been approved.
7. **General OLISP Permit:** the Respondent has filed an application for approval of significant and substantial, complex activities along five (5) sections totaling about 4,000 linear feet of a major river, which will necessarily destroy all life forms now existing in the river sediment, over a multi-year period. Mill River itself is under a DEEP protocol to reduce biological water quality impairments (“TMDL”). This is not the type of project that should be approved under a General Permit which precludes meaningful public or municipal participation. Consequently, the project’s long and short term ecological impacts have not been adequately reviewed, reducing the likelihood that this important resource will be restored to full ecological viability. The DEEP should require an individual permit be filed under OLISP.
8. **Lack of Information:** It is imperative that state and municipal agencies have sufficient information to make fully informed decisions on each permit. However, the SED/RAP is not yet approved, and as it stands provides inadequate, incomplete and too conceptual a level of detail for adequate review of permits required to perform the project’s work. The Respondent left many details to the successful bidding contractor to fill in after permits are approved. There is inadequate detail from which to determine if an Inland Wetlands permit will be required. Finally, the public has not been provided with sufficient information to be able to provide meaningful public comment. The nature of the missing information includes pre-project testing and description of existing site conditions in and around the river; details of the proposed work; and impacts on river conditions during and after the project. Several of these deficiencies are listed below:
 - a. The so-called “Railroad Drain” running along the railroad tracks has not been fully tested for the existence of Lead;

- b. There is a 30% discrepancy in plan materials regarding the cubic yards of sediments to be dredged from Mill River: the SED/RAP estimates 21,440 cubic yards while the NPDES Application estimates 27,600 cubic yards;
 - c. The SED/RAP and hence the permit applications that have been filed to carry out the activities contained in the SED/RAP, is too conceptual, with insufficient detail provided for the municipal wetland agency to determine whether an Inland Wetlands Permit will be required;
 - d. The SED/RAP and hence the permit applications that have been filed to carry out the activities contained in the SED/RAP, defer delineation of project details that should be made public now, until the successful project bidder designs them;
 - e. Inadequate inventory, assessment and reporting on existing site conditions including wildlife now residing in and utilizing the river, subsurface habitat and other conditions, and existing ambient river characteristics to ensure discharge will match the same.
9. The Application proposes activity that will have a significant and long term impact on Mill River, including: the environmental health of Mill River, tidal wetlands and possibly inland wetlands; the use of and access to, Mill River by residents for fishing and recreation during and after the project; public health and safety in and around Mill River; adjacent owners' rights; wildlife using and residing within and around Mill River; wetlands and vegetation in and around Mill River; and fisheries and marine resources in Mill River and the Mill River estuary
10. Re-Contamination: The proposed method involves the excavation of a significant quantity of contaminated sediments beneath the river using a cutterhead dredge. The proposed protection for unexcavated areas is by the use of silt curtains to surround areas (cells) of the river in which proposed dredging will be conducted. However, the use of this method rather than a dewatering system using cofferdams, increases the likelihood of re-suspending contaminated sediments and contamination of non-contaminated areas both inside and outside the cells. This type of recontamination was well documented when this type of system was used to dredge Mill River in 1983. The DEEP should require a separate discharge permit for the potential re-contamination from within and without each cell.
11. Spawning Season: The proposed method is set to take place during spawning season for fragile, anadromous species that depend on Mill River, including alewives and blueback herring. These species are close to being listed as endangered species.

12. **Monitoring:** The details show inadequate monitoring in terms of substances, location and frequency. Monitoring should be at point of discharge and in the area near the silt curtains; should be continuous; and check for a variety of factors before any water is discharged into Mill River to ensure it matches all ambient characteristics existing in the river. Monitoring should be conducted by an independent third party, and should continue for an adequate time period after the project ends.
13. **Restoration of Benthic Material:** There is no proposal to fill in deep 'sumps' or pits with habitat or productive benthic material so as to restore any wildlife or wildlife habitat to Mill River. This is a serious omission that will delay and potentially preclude the restoration of a fully functioning ecology to Mill River.
14. The degrading or destroying of essential wildlife, finfish or shellfish habitat through significant alteration of the components of the habitat constitutes an adverse impact.
15. The proposal involves conduct that fails to avoid, reduce, minimize, or effectively mitigate adverse ecological impacts associated with the regulated activity in that it fails to address serious and significant concerns as set forth in numerous reports by the Town of Fairfield Shellfish Commission, Harbor Management Commission and Conservation Commission during the public comment periods for the NPDES and the SED/RAP.
16. Feasible, prudent alternatives exist to the proposal including comprehensive testing of existing site conditions, providing independent site monitors, the use of cofferdams, restoring habitat and benthic material, requiring separate discharge permits for each potential point of discharge of water to Mill River, adequate monitoring with consequences and follow up, and long term stewardship funding and planning.
17. These alternatives have not been satisfactorily explored, nor has the Respondent adequately investigated the existing site conditions in order to provide a satisfactory comparison of temporary and permanent environmental impacts of the proposed project versus the alternatives.
18. Therefore the applicant has not made informed, reasonable efforts to prevent adverse impact upon the water, wetlands, wildlife and other natural resources located within the site.
19. The Intervening Parties appear through the undersigned attorney and request that they be given written notice by mail of all hearings and meetings at the address below:

Kathryn L. Braun, Attorney at Law, 857 Post Road, Suite #357, Fairfield, CT 06824
E-Mail: KLBESQ@AOL.COM Office: 203-256-0334 Fax: 203-319-0430

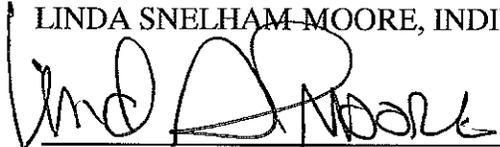
WHEREFORE, the undersigned party intervenes in this proceeding on the filing of this Verified Petition to Intervene and requests notice of all meetings.

Respectfully Submitted,

FAIRFIELDERS PROTECTING LAND AND NEIGHBORHOODS, INC., By:

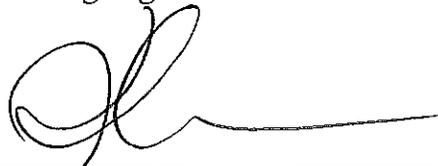

Linda Snelham-Moore

LINDA SNELHAM-MOORE, INDIVIDUALLY


Linda Snelham-Moore

STATE OF CONNECTICUT :
: ss: Fairfield
COUNTY OF FAIRFIELD :

On this 11th day of MARCH, 2013 personally appeared LINDA SNELHAM-MOORE, DULY AUTHORIZED ON BEHALF OF FAIRFIELDERS PROTECTING LAND AND NEIGHBORHOODS, INC. and LINDA SNELHAM-MOORE, INDIVIDUALLY and made oath to the truth of the matters contained in the foregoing Verified Petition to Intervene, before me.



Fatima L Brann
Commissioner of Superior Court
Notary Public. My Commission Expires:

WHEREFORE, the undersigned part(ies) intervene(s) in this proceeding on the filing of this Verified Petition to Intervene and requests notice of all meetings.

Respectfully Submitted,

JAN R. REBER
Mary L Hegue
Jocelyn T. Shaw

STATE OF CONNECTICUT :
: ss: Fairfield
COUNTY OF FAIRFIELD :

On this 11th day of MARCH, 2013 personally appeared

Jan R. Reber,
Mary L Hegue,
Jocelyn T. Shaw,

and made oath to the truth of the matters contained in the foregoing Verified Petition to Intervene, before me.


Kathryn L Braun
Commissioner of Superior Court
Notary Public. My Commission Expires: _____