

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re: : Chapter 11
: :
EXIDE TECHNOLOGIES, : Case No. 13-11482 (KJC)
: :
Reorganized Debtor :

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
RESPONSE TO REORGANIZED DEBTOR'S OBJECTION
TO ALLOWANCE OF CLAIM
(CLAIM No. 3444(b))**

The Commonwealth of Pennsylvania, Department of Environmental Protection ("PADEP"), files this response ("Response") to Reorganized Debtor's Objection to Allowance of Claim No. 3444(b) ("Objection") contained in Reorganized Debtor's (Substantive) Eighteenth Omnibus Objection Pursuant to Bankruptcy Code Section 502(b), Bankruptcy Rule 3007, and Local Rule 3007-1 to Certain (A) No Liability Employee or Retiree Claims, (B) Misclassified Claims, (C) Previously Discharged Claims, and (D) No Liability Claims. In support of its Response, PADEP alleges as follows:

Background

1. PADEP is the agency with the duty and authority to administer and to enforce the Clean Streams Law, Act 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1 *et seq.*; the Land Recycling and Environmental Remediation Standards Act, Act of 1995, P.L. 4, No. 2, 35 P.S. §§ 6026.101–6026.908; the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101–6018.1003; the Hazardous Sites

Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, *as amended*, 35 P.S. §§ 6020.101-6020.1305 ("HSCA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder.

2. PADEP timely filed a proof of claim No. 3444 (b) ("Proof of Claim," which is incorporated herein by reference) for \$1,738,985, which Reorganized Debtor Exide Technologies ("Reorganized Debtor") owes to PADEP.

3. PADEP's Proof of Claim relates to the Five Locks Access Area Site ("Five Locks Site"), located in Perry Township, Berks County, Pennsylvania.

Five Locks Site

4. The northern portion of the Five Locks Site, owned and maintained by the Pennsylvania Fish and Boat Commission, includes a boat launch access to the Schuylkill River. The southern portion of the Five Locks Site consists of a small parcel of privately-owned property and a larger parcel of property owned by the Schuylkill River Greenway Association. Affidavit of John F. Krueger ("Krueger Affidavit"), attached as Exhibit 1, paragraph 3.

5. Soil at the Five Locks Site was contaminated with lead as a result of releases from used lead contaminated battery casings located at the Site. Lead is a "hazardous substance," as that term is defined by section 103 of HSCA, 35 P.S. § 6020.103 and section 101 of the Comprehensive Environmental Response,

Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601. Krueger Affidavit, paragraph 4.

6. PADEP first became aware that the soil at the Five Locks Site was contaminated with lead in July 2006, when it conducted soil sampling in the boat launch area, where pieces of battery casings had been reported. The sampling revealed elevated levels of lead in the soil. Krueger Affidavit, paragraph 5.

7. Pursuant to section 506 of HSCA, 35 P.S. § 6020.506, on March 30, 2012, PADEP issued a Statement of Decision (“SOD”) for the Five Locks Site. The SOD documented PADEP’s selected remedy for the Five Locks Site, which included the excavation and off-site disposal of lead contaminated battery waste and soils. Krueger Affidavit, paragraph 6.

8. PADEP has incurred \$1,738,985 in response costs for the Five Locks Site. All of PADEP’s response costs for the Five Locks Site were incurred after 2006, with the bulk of the response costs incurred in 2012. Krueger Affidavit, paragraph 7.

9. Reorganized Debtor cites two grounds for its objections to PADEP’s Proof of Claim. First, it asserts that the Proof of Claim was previously discharged in the 2002 bankruptcy case. Second, Reorganized Debtor asserts generally that it has no liability for the Proof of Claim. Both assertions lack a factual basis and are legally incorrect.

PADEP’s Proof of Claim Was Not Discharged by the 2002 Bankruptcy

10. PADEP’s Proof of Claim related to the Five Locks Site did not accrue until after the close of the 2002 bankruptcy case. In order for a claim to accrue, all

elements of the claim must exist prior to a reorganization. *Matter of Reading Co.*, 115 F.3d 1111, 1122-23, (3rd Cir. 1997), citing *In re Penn Central Transp. Co.* (“*Paoli Yard*”), 771 F.2d 762 (3rd Cir. 1985).

11. HSCA sets forth three prerequisites for liability and cost recovery:
 - a. the defendant falls within one of three categories of responsible persons, 35 P.S. § 6020.701;
 - b. there has been a release or threatened release of a hazardous substance from a site, 35 P.S. § 6020.701;
 - c. the release causes the incurrence of “response costs,” 35 P.S. § 6020.702.

12. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), establishes a similar framework for liability.

13. PADEP had not incurred any response costs related the Five Locks Site until after the close of the 2002 bankruptcy matter. Therefore, PADEP’s claim for this site did not accrue until after the close of the 2002 bankruptcy matter.

14. If a claim has not accrued, PADEP must have possessed an interest rising to the level of a contingent claim that would be discharged. *Matter of Reading Co.*, 115 F.3d at 1123.

15. PADEP had no knowledge of Reorganized Debtor’s connection to the Five Locks Site until after the close of the 2002 bankruptcy matter. Therefore, there was no legal relationship between PADEP and Reorganized Debtor until after the close of the

2002 bankruptcy matter. Accordingly, PADEP had no contingent claim that it could have raised in prior bankruptcy proceeding. *See Paoli Yard*, 944 F.2d at 167-68.

**Reorganized Debtor is a Responsible Person for PADEP's
Response Costs**

16. The Brown's Battery Breaking Site is located in Tilden Township, Berks County, Pennsylvania. From 1961 until 1971, Robert T. Brown owned the Brown's Battery Breaking Site and operated a battery breaking and reclamation business. Krueger Affidavit, paragraphs 8 and 9.

17. General Battery Corporation ("GBC") and its predecessor sent batteries to the Brown's Battery Breaking Site for breaking and returned the lead contents of the batteries to GBC. Krueger Affidavit, paragraph 10.

18. Reorganized Debtor is a successor in interest to GBC. In fact, Reorganized Debtor entered into a consent decree with the United States in June 2000 and undertook certain responses actions at the Brown's Battery Breaking Site. Krueger Affidavit, paragraph 11.

19. Lead contaminated battery casings resulting from the breaking of GBC's batteries were transported from the Brown's Battery Breaking Site to the Five Locks Site and used as fill. Krueger Affidavit, paragraph 12.

20. Pursuant to section 701 of HSCA, 35 P.S. § 6020.701, Reorganized Debtor is a responsible person for the release and threatened release of hazardous substances at the Five Locks Site. Among other bases for liability, Reorganized Debtor, as a successor in interest to GBC, generated, owned or possessed lead contaminated

battery casings and arranged by contract, agreement, or otherwise for the disposal of the battery casings at the Five Locks Site. As a responsible person at the Five Locks Site, pursuant to section 702(a) of HSCA, 35 P.S. § 6020.702(a), Reorganized Debtor is strictly liable for the Commonwealth's response costs at that site.

21. Similarly, pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Reorganized Debtor is a responsible person and is liable for all costs of removal or remedial actions incurred by PADEP at the Five Locks Site. Among other basis for liability, Reorganized Debtor, as a successor in interest to GBC, by contract, agreement, or otherwise, arranged for the disposal of lead contaminated battery casings at the Five Locks Site.

WHEREFORE, PADEP respectfully requests that this Court dismiss Reorganized Debtor's objections to its Proof of Claim No. 3444(b).

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Martin R. Siegel
Assistant Counsel
PA Attorney I.D. No. 35661
Phone: 717-787-8790
Fax: 717-772-2400
msiegel@pa.gov

Office of General Counsel
Southcentral Regional Office
Pa. Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

Dated: June 11, 2015

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re: : Chapter 11
: :
EXIDE TECHNOLOGIES, : Case No. 13-11482 (KJC)
: :
Reorganized Debtor :

AFFIDAVIT OF JOHN F. KRUEGER

I, John F. Krueger, do hereby swear and affirm the following:

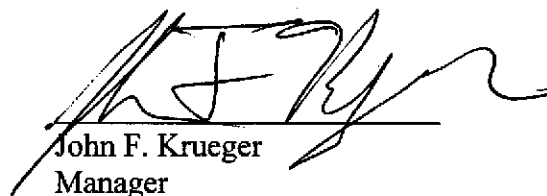
1. I am the Manager of the Environmental Cleanup and Brownfields Program in the Southcentral Regional Office, Pennsylvania Department of Environmental Protection ("PADEP"). I oversee the cleanup program under the Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101-6020.1305 ("HSCA") in PADEP's Southcentral Region.
2. As part of my official responsibilities, I have overseen PADEP's investigation and implementation of response actions at the Five Locks Access Area Site ("Five Locks Site") in Perry Township, Berks County, Pennsylvania
3. The northern portion of the Five Locks Site, owned and maintained by the Pennsylvania Fish and Boat Commission, includes a boat launch access to the Schuylkill River. The southern portion of the Five Locks Site consists of a small parcel of privately-owned property and a larger parcel of property owned by the Schuylkill River Greenway Association.
4. Soil at the Five Locks Site was contaminated with lead as a result of releases from used lead contaminated battery casings located at the Site. Lead is a "hazardous substance," as that term is defined by section 103 of HSCA, 35

P.S. § 6020.103 and section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601.

5. PADEP first became aware that the soil at the Five Locks Site was contaminated with lead in July 2006, when it conducted soil sampling in the boat launch area, where pieces of battery casings had been reported. The sampling revealed elevated levels of lead in the soil.
6. Pursuant to section 506 of HSCA, 35 P.S. § 6020.506, on March 30, 2012, PADEP issued a Statement of Decision (“SOD”) for the Five Locks Site. The SOD documented PADEP’s selected remedy for the Five Locks Site, which included the excavation and off-site disposal of lead contaminated battery waste and soils.
7. PADEP has incurred \$1,738,985 in response costs for the Five Locks Site. All of PADEP’s response costs for the Five Locks Site were incurred after 2006, with the bulk of the response costs incurred in 2012.
8. As part of my job responsibilities with PADEP, I am also familiar with the Brown’s Battery Breaking Site is located in Tilden Township, Berks County, Pennsylvania.
9. From 1961 until 1971, Robert T. Brown owned the Brown’s Battery Breaking Site and operated a battery breaking and reclamation business.
10. General Battery Corporation (“GBC”) and its predecessor sent batteries to the Brown’s Battery Breaking Site for breaking and returned the lead contents of the batteries to GBC.

11. Reorganized Debtor is a successor in interest to GBC. In fact, Reorganized Debtor entered into a consent decree with the United States in June 2000 and undertook certain responses actions at the Brown's Battery Breaking Site.
12. PADEP's investigation of the Five Locks Site revealed that lead contaminated battery casings resulting from the breaking of GBC's batteries battery casings were transported from the Brown's Battery Breaking Site to the Five Locks Site and used as fill.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'John F. Krueger', written over a horizontal line.

John F. Krueger
Manager
Environmental Cleanup and
Brownfields Program

DATE: June 9, 2015

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FOR THE DISTRICT OF DELAWARE**

In Re:	:	Chapter 11
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EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
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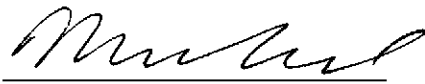
CERTIFICATION PURSUANT TO LOCAL RULE 9010-1(e)(i)

I, Martin R. Siegel, certify as follows:

1. I am an Assistant Counsel with the Office of General Counsel for the Commonwealth of Pennsylvania. My client is the Pennsylvania Department of Environmental Protection.
2. I am admitted to the Supreme Court of Pennsylvania (I.D. No. 35661), the U.S. District Court for the Middle District of Pennsylvania, and the U.S. District Court for the Eastern District of Pennsylvania.
3. I am in good standing in all of the courts to which I am admitted.
4. I will be bound by the Local Rules for the United States Bankruptcy Court for the District of Delaware and I submit to the jurisdiction of that Court for disciplinary purposes.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

Martin R. Siegel
Assistant Counsel
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Office of General Counsel
Southcentral Regional Office
Pa. Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110

Dated: June 11, 2015

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FOR THE DISTRICT OF DELAWARE**

In re: :
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EXIDE TECHNOLOGIES, : Chapter 11
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Reorganized Debtor : Case No. 13-11482 (KJC)
: :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Response to Reorganized Debtor's Objection to Allowance of Claim (Claim No. 3444(b)) and Certification Pursuant to Local Rule 9010-1(e)(i) in the above-referenced matter to the following persons by first class mail:

Office of the U.S. Trustee
ATTN: Mark Kenney
844 North King St, Room 2207, Lockbox 35
Wilmington, DE 19801

Reorganized Debtor
Exide Technologies
ATTN: B. Holland Pritchard
13000 Deerfield Parkway, Suite 100
Milton, GA 30004

Reorganized Debtor
SKADDEN ARPS SLATE MEAGHER
& FLOM LLP
ATTN: James J. Mazza, Jr. and
Louis S. Chiappetta
155 N. Wacker Drive
Chicago, IL 60606-1720

GUC Trust Trustee
Peter S. Kravitz of Province, Inc.
9209 Canwood Street, Suite 210
Agoura Hills, CA 91301

Respectfully submitted,

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Date: June 11, 2015



GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 11, 2015

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CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

Telephone: (717) 787-8790

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The Honorable Kevin J. Carey
United States Bankruptcy Court
for the District of Delaware
824 Market Street, 3rd Floor
Wilmington, Delaware 19801

Re: EXIDE TECHNOLOGIES, Reorganized Debtor
Chapter 11, Case No. 13-11482 (KJC)

Dear Judge Carey:

Enclosed please find the Pennsylvania Department of Environmental Protection's Response to Reorganized Debtor's Objection to Allowance of Claim (Claim No. 3444(b)), and a Certification Pursuant to Local Rule 9010-1(e)(i) in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

Martin R. Siegel
Assistant Counsel

MRS/lmt

Enclosures

