

## Soil Scientist Says Lead From Battery Site Didn't Travel Far

By **Gina Kim**

Law360 (May 13, 2022, 9:00 PM EDT) -- A soil scientist hired by defendant metal companies and battery manufacturers to testify in a \$136 million Superfund cleanup trial said Friday he believed not all the lead that was released from the now-defunct Vernon Plant battery recycling facility traveled beyond the industrial zone and onto residential properties.

But under cross-examination from the California Department of Toxic Substances Control's counsel Thomas M. Sims of Nidel & Nace, defense expert witness Walter J. Shields acknowledged he doesn't know exactly how much of that lead traveled beyond the industrial zone. Shields also conceded that, based on physics, it is possible very fine particles from the Vernon Plant could have traveled far from the plant.

"Isn't it true that you're not able to say that the amount of lead released from the Vernon Plant actually traveled beyond the industrial zone was 50%, 17% or 1% of the amount released, right?" Sims asked.

"Well, I haven't done that analysis related to the mass of lead released versus how much was deposited," Shields said. "Based on my experience, though, most of the lead released would have been deposited very close to the plant."

Friday marked the final day of a bench trial before U.S. District Judge Stephen V. Wilson in a case filed by the California Department of Toxic Substances Control in December 2020 against several companies that the agency said are liable as former owners and operators of the site for transporting hazardous substances to the site for treatment or disposal.

The defendant companies are NL Industries, Gould Electronics, Kinsbursky Bros. Supply Inc., Trojan Battery Co., Ramcar Batteries, Clarios LLC, Quemetco Inc., International Metals Ekco and Oregon Tools Inc.

In 2015, battery manufacturer Exide Technologies, the last company to operate the Vernon Plant, agreed to cease operations after nearly a century. Exide **filed for Chapter 11** in May 2020.

The bench trial focused on the geographic extent of lead contamination from the plant. All week, the department sparred with the companies over whether the Vernon Plant is the most significant source of lead pollution. The agency contended lead from the plant traveled as far as two miles away, while the companies countered the lead was likely contained within half a mile from the site.

On Friday, Sims questioned Shields about his reliance on a 2019 report called the Waterstone study as a background reference to conclude that the residential areas near the Vernon Plant had lead levels consistent with the background levels found in similar urban neighborhoods, which indicates the lead could have come from gas or house paint. Shields compared Waterstone data to data from soil samples gathered from yards of residential areas near the plant.

The problem with that analysis, Sims said, is that Waterstone looked only at samples from driplines — the immediate vicinity of a home's exterior walls where paint dust might land — which showed higher concentrations of lead, whereas the Vernon residential area samples were collected away from the dripline.

"If the plaintiffs calculated the average value for those areas near the preliminary investigation area from dripline, and then they attempted to compare it to another study that calculated the average values from the entire soil area, that's not an apples-to-apples comparison, is it?" Sims asked.

Shields conceded the Waterstone data isn't representative of the Vernon area, but said it's possible auto exhaust emissions, gasoline and paint could have contributed to contamination.

The court also heard from Philip Chandler, a retired DTSC engineer and geologist who helped take corrective measures for the Vernon Plant.

When questioned by Quemetco's counsel Alexander P. Swanson, Chandler testified he told the department in April 2015 that he "couldn't help but note that the DTSC, together with the public, seemed to have thoroughly demonized Exide" for all the lead found within miles of the facility.

Chandler testified he was "bothered" because "there was a great deal of focus only on Exide," and that an exclusive focus on the Vernon Plant could mask historical emissions from other facilities, including former paint and battery manufacturers, other smelters, and metal scrap operations in Los Angeles.

"If you focus on Exide, you're forgetting other stuff," Chandler said. "I was worried we weren't looking at all of them."

One particular facility Chandler said he was concerned about was the former Continental Can plant, which he believed was a source of lead emissions in the air. Continental Can could have been a source for pollution since it was "next door" to the Exide facility, he said. Continental Can was located about 4,000 feet to the north of the Vernon smelter, and as close as 300 feet from residential areas, Chandler said.

After testimony wrapped up Friday afternoon, Judge Wilson asked both sides to submit post-trial briefs summing up their cases.

"Thank you for your efforts," Judge Wilson said. "I mean, I have a lot to digest, and I hope I can do it."

The California Department of Toxic Substances Control is represented by Sarah E. Morrison, Timothy E. Sullivan, Aarti S. Kewalramani, Elizabeth B. Rumsey, and Kate Hammond of the California Department of Justice, Matthew K. Edling, Adam M. Shapiro, and Yumehiko Hoshijima of Sher Edling LLP, Christopher T. Nidel and Thomas M. Sims of Nidel & Nace PLLC.

Gould Electronics is represented by Krista M. Enns, Lily A. North and Nicholas J. Secco of Benesch Friedlander Coplan & Aronoff.

Clarios LLC is represented by Eric L. Klein, Gary J. Smith and Bina R. Reddy of Beveridge & Diamond PC.

Quemetco Inc. is represented by Alexander P. Swanson, Thomas F. Cochrane and Patrick W. Dennis of Gibson Dunn & Crutcher LLP.

NL Industries is represented by Joel L. Herz of the Law Offices Of Joel L. Herz, and Kenneth A. Ehrlich of Elkins Kalt Weintraub Reuben Gartside LLP.

The case is California Department of Toxic Substances Control v. NL Industries Inc. et al., case number 2:20-cv-11293, in the U.S. District Court for the Central District of California.

--Editing by Marygrace Murphy.

*Correction: An earlier version of this story misquoted Dr. Shields' response to a question about the amount of lead released from the Vernon Plant. The error has been corrected.*

