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February 28, 2018

VIA EMAIL

Barbara A. Lee, Director
Department of Toxic Substances Control
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Re: California Metal Shredder Coalition – Comments on *Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes* (Department of Toxic Substances Control, January 2018) and “Path Forward”

Dear Ms. Lee:

This letter and the attached document are submitted on behalf of Schnitzer Steel Industries, Inc. (“Schnitzer Steel”), Sims Group USA Corporation (“Sims”), SA Recycling, LLC (“SA Recycling”), and Ecology Auto Parts, Inc. (“Ecology”) (collectively, the “California Metal Shredder Coalition” or “Coalition”) and provides the Coalition’s comments on the draft *Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes, January 2018* (the “Draft Report”) and accompanying “Path Forward” posted on the Department’s website on January 25, 2018. The Draft Report was prepared by the Department of Toxic Substances Control (“DTSC” or the “Department”) pursuant to the requirements of Senate Bill 1249. Health & Saf. Code, § 25150.82, *et seq.*, referred to in the Draft Report as the “Metal Shredder Facilities Law.”

The California Metal Shredder Coalition appreciates the opportunity to submit these comments and concurs with a number of the Draft Report’s key findings and conclusions. Most notably, we support the Department’s intention to adopt regulations that will allow the continued management of treated metal shredder residue¹ as nonhazardous waste. We also agree with the Department’s conclusion

¹ Referred to historically by DTSC and the industry as “treated auto shredder residue.”

that treatment beyond the levels currently achieved is neither cost-effective nor necessary from an environmental standpoint.

However, as discussed at length below and in the accompanying document, many aspects of the Draft Report are inaccurate, incomplete or internally inconsistent. Other findings are highly conclusory and not supported by substantial evidence. While we appreciate the difficulty of the task assigned to the Department by the Legislature and the Department's interest in completing this phase of the project as soon as possible, we urge the Department to take the time necessary to modify the Draft Report to address the many significant issues and concerns raised in this letter. In this way, the final Report may provide a secure foundation for future regulatory actions for this important sector of the metal recycling industry, which provides significant environmental and societal benefits to the residents of the state.

Our key comments are summarized as follows:

- Metal shredding facilities operated by Coalition members do not pose a threat to public health or the environment.
- The materials exiting the shredder hammermill (shredder ferrous output and nonferrous aggregate) are intermediate manufacturing process streams (in-process materials); they are not wastes and thus cannot be hazardous wastes.
- Separation and removal of metals from in-process materials is not "treatment" of hazardous waste.
- Under existing law, DTSC does not have authority to require metal shredding facilities *per se* to obtain hazardous waste facility permits.
- Any regulatory paradigm that seeks to require metal shredding facilities to obtain hazardous waste facility permits is subject to legal challenge.
- Regulations establishing enforceable Best Management Practices for operation of metal shredding facilities may be adopted pursuant to the Department's authority to implement the definition of "intermediate manufacturing process streams," as set forth in Health and Safety Code section 25116.5.
- The Department must conduct an economic impact analysis as part of any rulemaking to adopt Best Management Practices or any other administrative *de facto* rulemaking process that seeks to alter the *status quo*.

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- Metal shredder residue that does not undergo final separation after treatment is a hazardous waste, and the Department has authority to require a hazardous waste permit or other form of authorization for the treatment system.
- The treatment system should be authorized by Permit-by-Rule in order to avoid conflict with existing land use designations for metal shredding facilities.
- Treated metal shredder residue should be permanently classified as a nonhazardous waste upon completion of the treatment process in a manner that will not affect Coalition members' ability to beneficially use the material as alternative daily cover, in accordance with applicable regulations.
- The existing "f" letters may not be rescinded until a comparable and final declassification determination has been formally adopted.
- Management of treated metal shredder residue as a hazardous waste prior to use or disposal in a landfill is inconsistent with the decision to declassify treated residue.

We look forward to discussing our concerns with you and to working with DTSC staff and other interested stakeholders in an open, transparent process. The Coalition's goal is to develop a reasonable, appropriate and cost-effective regulatory structure for the metal shredding industry. We had hoped that the alternative management standards authorized by SB 1249 would provide that structure, but we remain committed to finding a different, workable solution.

Thank you for your consideration of these comments.

Very truly yours,



Margaret Rosegay

Enc.

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cc: Members of the California Metal Shredder Coalition
Rizgar Ghazi, Acting Deputy Director, DTSC
David Johnson, Legislative Director
Winston Hickox, California Strategies
Robert Hoffman



Comments on
Department of Toxic Substances Control
Draft Report

Evaluation and Analysis of Metal Shredding Facilities and
Metal Shredder Wastes

January 2018

Submitted on behalf of
Schnitzer Steel Industries, Inc.
Sims Group USA Corporation
SA Recycling, LLC
Ecology Auto Parts, Inc.

Submitted by
Pillsbury Winthrop Shaw Pittman LLP
February 28, 2018



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SECTION I EXECUTIVE SUMMARY

Schnitzer Steel Industries, Inc. (“Schnitzer Steel”), Sims Group USA Corporation (“Sims”), SA Recycling, LLC (“SA Recycling”) and Ecology Auto Parts, Inc. (“Ecology”) (collectively, the “California Metal Shredder Coalition”) each own and operate metal shredding and processing facilities in the state of California. These facilities are essential to the safe and environmentally responsible recycling of the vast quantities of end-of-life vehicles, household appliances, metal products and other metal-containing items generated by California residents and businesses on a daily basis. In the absence of a viable metal shredding industry in the state, these materials would rapidly overwhelm available landfill capacity, be dumped in back alleys, empty lots and along roadsides, and be left to accumulate in huge quantities, creating urban and rural blight and potential threats to human health, safety and the environment. Local governments would face enormously increased costs in order to address these risks. By beneficially recycling these materials, the metal shredding industry keeps our neighborhoods free of end-of-life materials, conserves limited landfill capacity, produces significant energy savings, reduces greenhouse gas emissions, enhances sustainability, and avoids significant environmental impacts associated with mining virgin ores.

Schnitzer Steel, Sims, SA Recycling and Ecology have each developed and rigorously enforce scrap metal intake procedures, known in the industry as scrap acceptance policies, to ensure that prohibited items are not accepted for recycling. Prohibited items include, among other things, hazardous waste, hazardous materials, contaminated soil, radioactive materials, explosive materials, and compressed gas cylinders (unless empty). All end-of-life vehicles and appliances are thoroughly “de-polluted” to remove fuel and other automotive fluids, batteries, mercury switches, refrigerants, compressors, capacitors, and other similar items before they are processed in the shredder. Typically, these de-pollution activities are conducted before the scrap metal is delivered to the shredder facility, but limited de-pollution operations may also be conducted on-site. Shredding and metal processing operations are entirely physical in nature and do not involve the use or addition of any chemicals or other hazardous materials.

Coalition members also implement comprehensive inspection and load-checking procedures to ensure that prohibited items do not inadvertently enter the facility. Any incoming load of scrap that is found to contain prohibited items is rejected and appropriate follow-up is conducted with the source of the material. These procedures serve as the first line of environmental defense at metal shredding facilities and help ensure that these facilities do not present a significant risk to human health or the environment. The Draft Report contains the following statement that is blatantly inaccurate:

Scrap metal often contains hazardous materials when received by metal shredding facilities. . . . Typical hazardous materials found in scrap metal include free-flowing hazardous liquids (e.g., gasoline, oil, antifreeze), flammable or combustible materials, corrosive materials (e.g., lead-acid batteries), radioactive materials, explosives in any form (e.g., vehicle air bag actuators, ammunition),



pressurized containers (e.g., propane tanks, compressed gas tanks, fire extinguishers), refrigerants, capacitors, ballasts, transformers or other materials containing PCBs, and items containing elemental mercury (e.g., switches or thermostats).

Draft Report, Sec. 2.4.1, at p. 45. In fact, these materials are expressly prohibited under each of the facilities' scrap acceptance policies. While a few of these items may inadvertently be contained in a load of incoming scrap metal, these are not frequent or typical occurrences.

The complex economics of the industry must also be taken into consideration in the development of any regulatory program. Schnitzer Steel, Sims, SA Recycling and Ecology must purchase the scrap metal that is processed by their facilities. The metal recycling industry is highly competitive and, as in the case of all commodities, the cost of different kinds and grades of scrap metal fluctuates depending on a variety of local, regional and global market factors. Similarly, the finished products produced by shredding facilities trade on the worldwide commodities market and are subject to similar fluctuations in price. In order for shredder operations to remain viable and provide this valuable service, a company's total expenses (e.g., the amount paid for incoming scrap plus processing costs, salaries, taxes, equipment, maintenance, utilities, regulatory compliance costs, etc.) must be less than the amount obtained through the sale of its final products. If this balance is disrupted—for example, through the imposition of costly and unnecessary regulations—the business can rapidly become unprofitable and will eventually fail.

Detailed economic studies, using independent experts, have been conducted which demonstrate that the metal shredding industry cannot absorb the costs associated with the unnecessary and unwarranted classification of metal shredder residue as a hazardous waste. These studies have been provided to the Department and should be included in the administrative record. If metal processing operations themselves were also subject to regulation as hazardous waste management activities, as suggested by the Draft Report and Path Forward, the financial consequences would be dire, and it is probable that a number of existing shredder facilities would be unable to remain in California.

Given these economic realities, and the vital importance of the industry to the state, the Coalition appreciates the Department's confirmation that one of its goals in conducting the analysis required by SB 1249 was to ensure that the industry is regulated in a way that "minimizes economic impacts to the industry." Draft Report, Sec. 1.1, at p. 3. Unfortunately, this goal was not accomplished, as the costs associated with regulation of metal shredding facilities as permitted hazardous waste management facilities would be prohibitive. The commitment to minimize economic impacts requires the Department to conduct a comprehensive economic impact analysis in conjunction with any upcoming regulatory development efforts, both to satisfy applicable legal requirements and to avoid unintended consequences.

Over the past ten years, Schnitzer Steel, Sims, SA Recycling, and Ecology have collectively invested millions of dollars to ensure that their operations do not pose a



significant threat to human health or the environment. The Draft Report mentions some of these improvements in passing, but fails to consider the extent to which they already address the types of risks that DTSC claims are associated with the industry. In many ways, the Draft Report is already outdated in that it depicts Coalition members' metal shredding facilities as they existed several years ago. For example, the photograph on the cover of the Draft Report portrays a hammermill at a metal shredding facility that has since been fully enclosed and abated by a state-of-the art air pollution control system. Conditions at that facility today bear no resemblance to the picture on the cover of the report. Similar enclosures have been installed at other facilities for hammermills and for "downstream" processing equipment. Showcasing this outdated photograph on the cover of the Draft Report unfairly paints a picture that is not representative of current operational standards, and illustrates DTSC's misunderstanding of the *current* level of effort and expenditure the industry has undertaken to protect public health and the environment.

The Draft Report also fails to adequately address the many different regulatory programs that currently apply to metal shredding facilities and that are implemented in a diligent manner by other regulatory agencies, consistent with their respective statutory authorities. The report describes these other regulatory programs as too limited in scope, or too poorly enforced, to effectively serve in place of hazardous waste regulations, and downplays their importance in order to justify comprehensive regulation of the industry by DTSC. These descriptions and conclusions are not supported. The Coalition strongly disagrees with the Department's conclusions about the effectiveness of these other regulatory programs and believes these many state and local agencies provide very effective regulatory oversight over metal shredding facilities. Further, these agencies are far better suited to regulate in their respective areas of expertise (e.g., storm water management and air quality control) than is the Department.

The Draft Report concludes that the metal shredding facilities operated by Schnitzer, Sims, SA Recycling and Ecology currently pose a significant risk to human health and the environment that can only be addressed through the hazardous waste permitting process. This conclusion is not supported by substantial evidence and cannot withstand even moderate scrutiny. The Coalition members are not opposed to reasonable statewide regulation of hazardous waste management activities at metal shredding facilities, but there is no justification—or legal basis—for seeking to regulate this industry through the hazardous waste permitting process.

Significantly, the Draft Report accurately defines "metal shredder aggregate" as an "intermediate manufacturing process stream." See Draft Report, Sec. 1.2, at p. 4. As discussed below, "intermediate manufacturing process streams" are not wastes. See Health & Saf. Code, § 25116.5. Nevertheless, the report—incongruously and incorrectly—proceeds to refer repeatedly to aggregate as a "hazardous waste." This error is compounded by repeated references to the separation and removal of ferrous and nonferrous metals from these in-process streams as "treatment" of hazardous waste.

The Coalition members strongly disagree with the Department's view that the scrap metal processing operations conducted by these facilities constitute hazardous waste



management activity that is subject to regulation through the hazardous waste permitting program. SB 1249 did not expand the Department’s jurisdiction under the Hazardous Waste Control Law (“HWCL”) or modify the statutory or regulatory definitions of “waste” or “hazardous waste.” The statute authorized the Department to adopt alternative management standards for “hazardous waste management activities” conducted at metal shredding facilities—it did not authorize DTSC to adopt requirements applicable to the processing and handling of materials that are not wastes or to impose hazardous waste facility permit requirements on metal shredding facilities generally. SB 1249 clearly distinguishes between “production processes” conducted at metal shredding facilities and “hazardous waste management activities” conducted at such facilities. See Health & Saf. Code, § 25150.82(d)(3)(C). Indeed, SB 1249 defines “metal shredding facility” as “an operation that uses a shredding technique to process end-of-life vehicles, appliances and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles, appliances and other forms of scrap metal.” Health & Saf. Code, § 25150.82(b) (emphasis added). There is no suggestion in this statutory language that the Legislature considered these production processes to constitute hazardous waste management activity.

Neither do any other provisions of the HWCL support this outcome. The Department may not sidestep the limitations on its jurisdiction by simply claiming that certain materials exhibit the characteristics of hazardous waste and therefore are hazardous wastes. These characteristics have no relevance to materials that are not wastes in the first instance.

The Coalition acknowledges the Department’s authority over metal shredder residue (*i.e.*, the byproduct that remains after all recoverable ferrous and non-ferrous metal has been removed) and does not dispute the Department’s prerogative to require some form of DTSC authorization for the waste treatment process, at least in circumstances where no further metals separation occurs after treatment. However, the Coalition strongly disputes the notion that the Department may exercise jurisdiction over ferrous and nonferrous metal separation and removal operations conducted at metal shredding facilities or over the stockpiling and handling of in-process, non-waste materials, whether indoors or outdoors. The Coalition members are adamantly opposed to, and would legally challenge, any attempt by the Department to issue any form of hazardous waste permit that would purport to apply to the ferrous and nonferrous metal separation and removal operations, or to the related storage and handling of in-process materials.

Our comments below offer an alternative regulatory approach that is consistent with the law, establishes enforceable requirements that will ensure that shredder facilities will continue to be operated in a manner that is protective of human health and the environment, and that respects Coalition members’ rights to due process of law. We urge the Department to give serious consideration to this alternative approach which will effectively achieve the goals of SB 1249.

In addition to the narrative comments in this document, we have prepared a table that includes specific comments on the text of the Draft Report. This table is provided in



Appendix C. We have also prepared separate tables that include comments specific to the individual shredding facilities. See Appendices D through I. Appendix A contains a schematic of a metal shredding facility that is currently posted on DTSC’s website and that expressly refers to “metal shredder waste” as the material that remains after ferrous and nonferrous metal separation operations have been completed.

SECTION II

DESCRIPTION OF SHREDDER OPERATIONS AND INDUSTRY TERMINOLOGY

This section describes in detail the operations of a metal shredding facility and identifies those operations that constitute scrap metal processing and those that may involve hazardous waste management activity.

Metal shredders are large electric hammermills that reduce scrap metal to fist-sized and smaller pieces that can be processed by “downstream” separation equipment. The shredding process is strictly physical in nature and does not involve the use or addition of any hazardous materials. Incoming scrap metal (shredder feedstock) is staged in piles near the shredder and is placed onto an infeed conveyor by a large grapple. The material enters the shredder where it is continually wetted and pulverized into a highly heterogeneous mixture of ferrous metal, nonferrous metals, and nonmetallic materials that are inherent in the scrap (e.g., shredded upholstery, cloth, carpet, rubber, glass, vinyl, plastic, and incidental road dirt that adheres to the undercarriage of vehicles). This mixture exits the shredder and is conveyed to a large rotating drum magnet that removes a majority of the ferrous metal. The separated ferrous metal (known in the industry as “shred”) is moved by stacking conveyor into large stockpiles, where it is stored pending sale and shipment off-site. Because the ferrous metal separation technology is not 100% efficient, industry specifications allow a small percentage of non-metallic material in the shred.

The Draft Report imprecisely describes “aggregate” as the material that exits the shredder hammermill, prior to ferrous metal separation by the drum magnet. See Draft Report, Sec. 1.2, at p.4; Figure 1, at p. 5. This is not entirely correct. Aggregate, which is sometimes known as “nonferrous raw,” is the nonferrous metal-containing mixture that remains after a majority of the ferrous metal has been removed by the drum magnet. The material that exits the hammermill and that is processed by the drum magnet to remove ferrous metal is referred to as “shredder output.” For consistency with industry terminology, the report should be revised to correct the definition of “Metal Shredder Aggregate” and to include a new definition for “Shredder Output.” Similarly, Figure 1 in the report should be revised so that the material exiting the hammermill is described as “Shredder Output.”

Following the removal of most ferrous metal, aggregate is typically moved by conveyor, or series of conveyors, to a downstream nonferrous metal separation plant, where it is processed by a variety of sophisticated, proprietary technologies that separate the nonferrous metals into a range of different metal commodities, depending on the type, grade and size of the metal. Most nonferrous metal separation plants and shredders are co-located at metal shredding facilities. Where the shredding and nonferrous metal separation operations are conducted in different locations, the aggregate is transported by truck to the nonferrous plant.



Aggregate is considered a commodity in the industry and contains large quantities of valuable nonferrous metals that account for a significant percentage of the total revenue generated by the metal shredding facilities. All recovered metals (ferrous and nonferrous) are products sold on the worldwide commodities market and are used in the manufacture of steel and various metal alloys. As in the case of shred, nonferrous product specifications allow for a small percentage of non-metallic material in the final products, which are sold under trade names such as Zorba and Zurik.

Hazardous waste management activities do not occur until all metal processing operations have been completed. At that point, the remaining, largely non-metallic, material is chemically treated to reduce the concentration of soluble trace metals remaining in the material. This residue, known as metal shredder residue or (historically) as auto shredder waste, is a byproduct of the shredding and metal separation and removal operations, and is potentially subject to regulation as a nonRCRA hazardous waste due to exceedances of Total Threshold Limit Concentrations (TTLCs) and Soluble Threshold Limit Concentrations (STLCs) for certain metals.¹ However, as discussed in the Draft Report, treated metal shredder residue is classified by DTSC as a nonhazardous waste, pursuant to section 66260.200(f) of the Title 22 regulations, because it possesses mitigating physical and chemical characteristics which render it insignificant as a hazard to human health, safety and the environment.

Historically, the treatment process has been exempt from hazardous waste permit requirements based on the in-line nature of the treatment process. Treated metal shredder residue is not considered a “waste” until after it had undergone a final metal separation step. At the point of generation, treated metal shredder residue is a nonhazardous waste.

¹ TTLCs are typically exceeded for copper, lead and zinc. STLC exceedances are typically exceeded only for lead and zinc.

SECTION III

METHODOLOGY USED TO CONDUCT INDUSTRY EVALUATION

The Coalition has several concerns over the methodology used by DTSC in preparing its evaluation and analysis. These concerns are based in part on the fact that the Coalition members are subject to payment of metal shredder facility fees under Health and Safety Code section 25150.84. At least four other shredder facilities known to be operating in the state were excluded from the Department's analysis and, to date, have not been assessed fees. This is unfair and inconsistent with SB 1249.

- 3.1 The process used by DTSC to identify metal shredding facilities in the state was highly inefficient and failed to identify all shredding facilities that are currently operating in the state.

SB 1249 required the Department to conduct an evaluation of all metal shredding facilities in the state. Health & Saf. Code, § 25150.82. According to the Draft Report, DTSC went through a lengthy process to identify the facilities subject to the statute. This process included a search of numerous databases, resulting in identification of approximately 2,000 businesses that managed scrap metal. This search was then narrowed down to 400 facilities in the Department's Hazardous Waste Tracking System that were identified as having "shipped contaminated soil or other hazardous waste solids off-site for disposal." Google Earth images were then examined for each of these 400 locations, resulting in identification of 101 locations where metal processing equipment and piles of material indicating that metal shredding operations were visible. DTSC then sought the assistance of local jurisdictions (the CUPAs) in evaluating each of these 101 sites. Of these, eventually only nine locations were identified as "potential metal shredding facilities." The DTSC Office of Criminal Investigation then conducted follow-up inspections at each of the nine locations "to determine if they met the statutory definition of metal shredding facility." These inspections apparently occurred over the course of a full year, ending in December 2015.

It is difficult to imagine how many hundreds of hours, or more, were spent on this process. Ultimately, six of the nine facilities "identified" through this process are those which are owned and operated by Coalition members and which have been known to the Department for decades. The database searches, examination of Google Earth images, and OCI inspections were all unnecessary to identify these facilities and, in some cases, seemingly unrelated to shredding operations altogether. In fact, this process resulted in elimination, rather than inclusion, of certain metal shredding facilities. The names and addresses of four additional facilities, including two that are mentioned in, but excluded from, the Draft Report, were provided to the Department by the Coalition at the outset of the SB 1249 process, for the express purpose of ensuring that all metal shredding facilities were included in the evaluation. The remaining two facilities are not even mentioned in the Draft Report. In short, a total of 10 metal shredding facilities were specifically known to DTSC by early 2015, before the costly and time-consuming process pursued by the Department was even initiated.

3.2 The exclusion of two known metal shredding facilities from the scope of the SB 1249 evaluation, because they are the subject of enforcement proceedings, is contrary to the requirements of SB 1249.

Of equal concern is the Department's acknowledgment in the Draft Report that two of the nine facilities (Universal Recycling Services in Stockton and Kramar's Iron and Metal in Sun Valley) were excluded from the evaluation "due to pending enforcement activities by DTSC." Draft Report, Sec. 2.1, at p. 22. SB 1249 does not allow the Department to exclude facilities from the evaluation on the grounds that they are the subject of pending enforcement activity, and we can think of no legitimate reason for doing so. If that were the standard, then a number of other facilities should also have been excluded, as they are (or were at the time) also the subject of pending enforcement activities. Again, it is noted that neither Universal nor Kramar, nor the two other metal shredding facilities that were previously identified to the Department, were assessed fees under SB 1249.

It is also unclear whether the Department intends to regulate metal shredding facilities that were excluded from, or not mentioned in, the Draft Report. The Coalition has long advocated that all metal shredding facilities operating in the state, whether or not they process end-of-life vehicles, must be subject to the same regulatory requirements. This is necessary to level the playing field and to ensure that all facilities are held to the same performance standards. Giving a "free pass" to any metal shredding facilities will result in a significant competitive disadvantage to those facilities that are subject to the new regulatory regime, create disruptions in the marketplace, and violate Coalition members' rights to equal protection.

3.3 The Draft Report fails to address mobile shredding facilities operating in the state.

Finally, the Department made no effort to identify and include mobile metal shredding facilities in its evaluation. Coalition members, particularly those located in the southern part of the state, have raised concern over these mobile shredders for years. These facilities operate under the radar, they do not comply with environmental regulations, they create conditions of nuisance and pollution, they commingle debris with processed scrap and export it in shipping containers, and as a result they are able to pay higher prices for scrap metal (thereby unfairly affecting the market for these raw materials) because their operating expenses are a fraction of those incurred by Coalition members. Yet the Department has done nothing about these mobile facilities, instead focusing exclusively on Coalition members' facilities that have spent millions of dollars on environmental improvements and regulatory compliance.

3.4 The Department misconstrued the scope of its authority under SB 1249, inappropriately abandoning the option to adopt alternative management standards for metal shredding facilities and proposing to regulate them as permitted hazardous waste management facilities.

According to the Department,

[SB 1249] requires DTSC to evaluate the risks posed by metal shredding facilities and the management of metal shredder aggregate. Based on the findings of its evaluation, SB 1249 authorizes DTSC to either develop alternative management standards for metal shredding facilities or to rescind any prior decisions and require the facilities and their hazardous wastes to be subject to full hazardous waste management requirements.

Draft Report, Sec. 1.5, at p. 17 (emphasis added). As discussed below, this description of the law is mistaken in several important respects.

The Coalition members recognize that SB 1249 did not mandate the adoption of alternative management standards for hazardous waste management activities at metal shredding facilities, leaving this decision within the reasonable discretion of the Department. Nevertheless, based on consideration of the statutory criteria that allowed for the adoption of alternative management standards, the precedents for adoption of alternative standards for other industrial sectors, and on numerous meetings and discussions with Department staff regarding SB 1249 implementation, it was industry's clear understanding and expectation that the Department intended to pursue that option. In fact, the metal shredder industry has advocated for years that the Department needs to adopt uniform, statewide regulations applicable to hazardous waste management activities at shredder facilities in order to level the playing field and ensure that *all* facilities operating in the state, not just those operated by Coalition members, are appropriately regulated.

This expectation—that alternative management standards would be proposed—was bolstered by the fee provisions of the statute, which directed the Department to obtain reimbursement of its reasonable and necessary costs to implement the statute. Coalition members did not object to the fee provisions, as they expected the Department to conclude, as a result of its evaluation and analysis of the industry, that application of existing hazardous waste management requirements to hazardous waste management activities at metal shredding facilities is not necessary and that such activities could appropriately be regulated through the adoption of alternative management standards. Needless to say, this expectation was not fulfilled, and the Department's authority to adopt alternative management standards has now expired.

Based on our reading of the Draft Report, however, we are concerned that the process contemplated by the statute may have been derailed by the Department's misapprehension of the scope of its authority under SB 1249. First, as indicated by the underscored language quoted above, DTSC believes that SB 1249 gave the agency a broad mandate to regulate a wide range of processing activities conducted at metal shredding facilities, not just those activities involving hazardous waste management. This is not correct—the statute only authorized the Department to “adopt regulations establishing management standards for metal shredding facilities for hazardous waste management activities within the department's jurisdiction as an alternative to the requirements specified in this chapter and the regulations adopted pursuant to this chapter. . .” Health & Saf. Code, § 25150.82(c) (emphasis added).

Despite the clear language of the statute, the Department concluded that alternative management standards would not be adequate to protect human health and the environment from the risks posed by metal shredding facilities generally, and that a hazardous waste permit containing enforceable conditions (BMPs) is necessary for “the [metal shredding] facilities and their hazardous wastes.” Draft Report, Sec. 1.5, at p. 17 (emphasis added). This conclusion is further evidence of the Department’s mistaken view of SB 1249.

While it may be of little practical relevance at this point, we believe the Legislature directed that a comprehensive evaluation and analysis of the metal shredder industry be conducted so that the Department could then decide, in an informed manner, whether (among other things) the hazards (if any) associated with hazardous waste management activities at metal shredder facilities were materially different than the hazards (if any) associated with the production processes being carried out at the facilities. See Health & Saf. Code, § 25150.82(d)(3)(C).² The breadth of the evaluation was not intended to mirror the scope of the alternative management standards, but rather to provide a benchmark against which the hazards associated with management of metal shredder residue at these facilities could be compared. Given that SB 1249 did not alter the definitions of “waste” or “hazardous waste” in the HWCL, the phrase “hazardous waste management activities at metal shredder facilities” in SB 1249 was necessarily a reference to hazardous wastes as defined by existing law, i.e., to the management of metal shredder residue and other hazardous wastes generated through de-pollution operations and routine facility maintenance activities.

In reviewing the Department’s lengthy justification of its decision to forego the adoption of alternative management standards (see Draft Report, Sec. 4, at pp. 88-100), we cannot help but remark that the decision seems to have been made at the outset, before the evaluation and analysis were conducted. Rather than embracing the opportunity created by SB 1249 to work with industry to develop a new regulatory program tailored to the many unique aspects of the shredder industry, the Department focused its efforts exclusively on coming up with reasons why alternative management standards were a no-go. We see no evidence in the Draft Report that the Department ever gave any serious consideration to adoption of alternative management standards.

3.5 The Department may not ignore the legal determinations and policy decisions that are contained in Official Policy and Procedure #88-6.

The Department openly confesses that the Draft Report was prepared without consideration of Official Policy and Procedure #88-6. Draft Report, Sec. 2.4, at p. 40

² The Department entirely missed the point of this comparison, summarily stating that “metal shredder aggregate and metal shredder residue are produced at the same location where their treatment and storage take place. They are not being produced at a different location, and are not transported to the metal shredding facilities to be treated.” See Draft Report, Sec. 3.3, at p. 79.



(“For purposes of this Analysis, DTSC assessed the generation and management of hazardous wastes by metal shredding facilities based on existing law and regulation, without consideration of the “f letters or OPP 88-6.”). This sentence is a legal *non sequitur*.

OPP # 88-6 expressly states that the material produced by the shredder (i.e., shredder output and aggregate) is in-process material, not waste. This OPP has been in effect for the last 30 years, and it remains in effect today. In fact, the Department’s webpage still contains a schematic of a metal shredding facility which reserves the “waste” moniker for the material (shredder waste) that remains after all ferrous and nonferrous metal separation and removal operations have been completed. A screenshot of this figure is included in Appendix A. Given its lengthy tenure and industry’s consistent reliance on it over a period of many years, OPP #88-6 is a *de facto* regulation and is “existing law.” As such, it cannot be ignored and it cannot be revised except through a formal rulemaking process conducted in accordance with the Administrative Procedure Act. The Department may not avoid these obligations by characterizing OPP #88-6 merely as an interpretation that can be disregarded or changed at will. See, Draft Report, Sec. 1.4, at p. 15 (stating that “[t]hrough OPP 88-6 DTSC interpreted that the metal shredder aggregate that was undergoing separation at the metal shredding facilities was not yet a waste,” and implying that this interpretation can be changed at any time) (emphasis added).

Nor can the Department find any authority for disregarding OPP #88-6 within the four corners of SB 1249. Contrary to what is suggested by the Department’s description of its authority under the statute, SB 1249 did not authorize the agency “to rescind *any* prior decisions” relating to the metal shredding industry. The statute refers only to possible rescission of “the conditional nonhazardous waste classifications issued pursuant to subdivision (f) of section 66260.200.” Health & Saf. Code 25150.82(k)(1). Subdivision (k) has nothing to do with OPP #88-6 or the regulatory status of in-process materials at metal shredding facilities.



SECTION IV

COMMENTS ON KEY CONCLUSIONS OF THE REPORT

This section addresses the Coalition's principle comments and concerns with the major conclusions of the Department's Draft Report.

4.1 Scrap metal that is recycled is exempt from regulation as a hazardous waste.

The Coalition appreciates the Department's express acknowledgement that scrap metal that is recycled or destined for recycling is exempt from regulation as a hazardous waste under the Title 22 regulations. See 22 CCR § 66260.10, § 66261.6(a)(3). The Draft Report accurately states that scrap metal that is accepted by metal shredder facilities and that is stockpiled prior to introduction to the shredder is not subject to DTSC's jurisdiction. The report also accurately states that operation of the shredder does not require a permit from the Department. See Draft Report, Sec. 2.4.2, at p. 49. The Coalition maintains that the metal-rich material that exits the hammermill and moves through the balance of the recycling process is also exempt scrap metal.

4.2 Ferrous and nonferrous metals that are produced by metal shredding facilities are commodities. The presence of minor amounts of non-metallic material in these products does not subject them to regulation as hazardous waste.

The Draft Report implies there may be circumstances under which the ferrous and nonferrous metals that are produced by metal shredding facilities contain, or are contaminated by, hazardous waste, i.e., residual amounts of the non-metallic matrix in which the metals originally resided. While the report describes the final products as reclaimed metals and thus not subject to the HWCL, the discussion in the report could adversely affect the industry's ability to move their final products into the marketplace, if they are perceived as "containing" or "contaminated by" hazardous waste. Draft Report, Sec. 2.4.2, at p. 51.

As discussed in Section II above, the final products produced by these facilities are subject to industry specifications that limit the percentage of non-metallic material in the products. Market factors compel metal shredding facilities to operate within industry specifications. Thus, there are well-established market-based standards in place that preclude the presence of more than *de minimis* quantities of non-metallic material in the final products. The presence of such *de minimis* amounts of non-metallic material in ferrous "shred" and in the various nonferrous products (e.g., Zorba and Zurik) produced by these facilities neither compromises the quality of the product nor poses a threat to human health or the environment.

Product-loading operations at Coalition members' facilities are conducted in a manner that minimizes potential releases to the environment, for example, via fully enclosed, telescoping shiploading conveyors or use of skip pans that are lowered directly into the



holds of ship. Numerous improvements have been made to these loading operations in the last several years, and further improvements are in progress. The Draft Report fails to mention these and many other improvements that have been implemented by Coalition members and paints an outdated picture of the industry.

4.3 The Draft Report accurately defines the mixture of shredded material produced by the hammermill as an “intermediate manufacturing process stream.”

The Draft Report accurately defines the mixture of shredded material produced by the metal shredding hammermill as an “intermediate manufacturing process stream.” See Draft Report, Sec. 1.2, at p. 4. This is a statutorily-defined term that refers to in-process materials that are *not* wastes:

“Intermediate manufacturing process stream” means a material, or combination of materials that meets all of the following conditions:

- (1) It is produced as part of the manufacturing process.
- (2) It is used on-site on a batch or continuous basis, in either the same or in a different manufacturing process to produce a commercial product.
- (3) It is not a recyclable material.
- (4) The person who produced the material or combination of materials is able to demonstrate all of the following:
 - A. The material, or combination of materials, is used, alone or in combination with other materials, in a manufacturing process that is designed for its use.
 - B. The material, or combination of materials, is not accumulated or stored in amounts greater than can be used in the manufacturing process.
 - C. The material, or combination of materials, is not handled, stored or processed in a manner that is inconsistent with its intended use or the operating requirements of the manufacturing process.
 - D. The material, or combination of materials, is not burned or incinerated for the purpose of abandoning or relinquishing the material, or combination of materials, except as may otherwise be allowed under both this chapter and the federal act.

Health & Saf. Code, § 25116.5(a). As Coalition members have long maintained, consistent with OPP #88-6, the material produced by the shredder hammermill meets



each of these conditions and is legally categorized under the Health and Safety Code as an intermediate manufacturing process stream.

By statute, intermediate manufacturing process streams are not “discarded materials” and thus are not “wastes.” Health & Saf. Code, § 25124(c)(1). As clearly stated in the Legislative Counsel’s Digest for AB 2088 (Stats. 1996, Chap 579): “This bill would revise the definition of the term “recycled material” to exclude an intermediate manufacturing process stream, as defined. The bill would exclude from the definition of “waste” a discarded material that is such an intermediate manufacturing process stream.” That was the Legislature’s intent and that is the law.

As astutely and presciently stated in the bill analysis cited in Footnote 4:

Amendments to Health and Safety Code (HSC) Sections 25121 and 25124 are proposed to clarify the state's hazardous waste requirements. These amendments are proffered because the distinction between waste management practices and manufacturing processes in California have been blurred, resulting in confusion over regulation of facilities, both among the regulated community and the regulating agencies. The DTSC has used a very broad interpretation of HSC Sections 25121 and 25124 in an attempt to classify an increasing number of traditional plant operations and/or facilities as "waste handling operations" thereby subjecting these manufacturing process units to the tiered permitting regime.

This situation results in application of onerous requirements (designed for hazardous waste management facilities) or practices being applied, arguably inappropriately, to manufacturing activities thereby adding significant cost and creating significant regulatory overlap. Manufacturing facilities have had varying degrees of success in fending off DTSCs expansion of authority over these in-stream manufacturing processes.

In conducting its analysis under SB 1249, DTSC has once again crossed the line identified by the Legislature in AB 2088. This despite stating unambiguously that the mixture of shredded material produced by the metal shredding hammermill is an “intermediate manufacturing process stream.” See Draft Report, Sec. 1.2, at p. 4. DTSC has no authority to redefine this statutory term in a manner that is directly contrary to the Legislature’s intent.

Importantly, shredder output and aggregate are being used in a manufacturing process to produce a variety of ferrous and nonferrous products. These materials serve as feedstock in the same way that native geologic materials serve as feedstock to processes that extract metal ores from the mined materials. One would not call metal ores “wastes” just because they contain soil and other native geologic materials, nor would one call the native geologic materials “wastes” because they contain material that does not end up in the processed ore.

Materials that are being used for their original purpose are not wastes, and the continued use of these materials until they are exhausted is not regulated “recycling” as that term is used in the definition of “waste. Only after the original purpose has been accomplished does the material become a secondary material, destined either for disposal or recycling. Secondary materials that are capable of being recycled are defined as “recyclable materials” under Health and Safety Code section 25120.5. Significantly, “recycled material” means “a recyclable material which has been used or reused, or reclaimed” and “does not include an intermediate manufacturing process stream.” Health & Saf. Code, § 25121 (emphasis added). The distinction between continued use of original materials and recycling of secondary materials is recognized by the U.S. Environmental Protection Agency and is a basic tenet of this area of law.

Significantly, the classification of in-process material as an intermediate manufacturing process stream is not affected if some of the material escapes the process, so long as it is released into an appropriate containment area or structure and is promptly recovered and returned to the manufacturing process, without prior treatment, for use in the originally intended manufacturing process. Health & Saf. Code, § 25116.5(b). This very issue was discussed during a June 3, 2015 meeting with senior DTSC management in Sacramento concerning “operational expectations” at metal shredding facilities. At that meeting, the status of in-process material that falls off conveyors was discussed, and it was agreed that the material does not become a waste so long as it remains within the vicinity of the process equipment (e.g., beneath or around conveyors) and is routinely picked up and returned to the process. The fact that appropriate controls on the metals recovery process are necessary to prevent the release of non-metallic components in the intermediate manufacturing process stream (that would become subject to regulation if discarded) does not mean that the shredder output or aggregate streams as a whole are hazardous wastes because they “contain” such components. In the simplest terms, these in-process materials are not “wastes” because they have not been discarded. See HSC § 25124.³

4.4 Although aggregate (including shredder output) is defined as an intermediate manufacturing process stream, the Draft Report incorrectly refers to aggregate as a “hazardous waste” throughout the remainder of the report.

Despite accurately defining the mixture of shredded materials that is produced by the hammermill as an intermediate manufacturing process stream, the remainder of the Draft Report repeatedly refers to these in-process materials as hazardous waste, presumably as a necessary predicate for the regulatory path forward proposed by the Department. The

³ “Discarded material” includes any material that is (1) relinquished by being disposed of, burned or incinerated, or accumulated, stored or treated before or in lieu of being disposed of, burned or incinerated; or (2) recycled, or accumulated, stored, or treated before recycling, except as provided in HSC § 25143.2.



report does not seek to explain or resolve this fundamental inconsistency, and simply states that aggregate is a hazardous waste because it exhibits hazardous waste characteristics. This conclusion ignores the threshold requirement that a material must be a “waste” before it can be a “hazardous waste” and ignores the Legislature’s intent in distinguishing the intermediate manufacturing process stream designation.⁴

Furthermore, the Department has no evidence to support its assertion that the material exiting the hammermill, prior to the removal of ferrous metal, would even exhibit hazardous waste characteristics. Hazardous waste characteristics are determined in accordance with strict analytical protocols. At this stage of the process, given the large volume of elemental metal in the material, the bulk of the metal exists in an excluded, non-digestible form that will not be included in a total or soluble concentration. The Draft Report specifically acknowledges that,

Due to challenges in sampling methodology, there is limited empirical data available demonstrating the toxicity of metal shredder aggregate at the precise point of shredding in the hammer mill. Sampling data from later stages of processing demonstrates the toxicity of the metal shredder wastes, and therefore provides the basis for a reasonable assumption that metal shredder aggregate is generally hazardous.

Draft Report, Sec. 2.4.1, at p. 42. Even if aggregate were a waste, which it is not, the Department cannot establish an entire regulatory program on the basis of an unsupported “reasonable assumption” that it is “generally hazardous.” The only comprehensive sampling programs that have been conducted were limited to metal shredder residue (before and after treatment) and light fibrous material (“LFM,” the lightest non-metallic fraction of aggregate). As a purely technical matter, we disagree that analytical data from those sampling programs can be used to conclude with any reasonable degree of certainty that aggregate (as that term is used in the report) would exhibit the characteristic of toxicity. It is arbitrary and capricious to assert otherwise.

The Coalition also maintains that the material produced by the hammermill remains within the scope of the scrap metal exemption in sections 66260.10 and 66261.6(a)(3) of the Title 22 regulations. The material that exits the shredder consists of exactly the same material that was introduced into the shredder, albeit now in a form that can be processed to separate and remove the ferrous and nonferrous metal from the non-metallic components of the incoming exempt scrap metal. The Department recognizes the scrap metal exemption for shredder feedstock, but takes the position that the exemption has no application to the material that exits the shredder. This makes no logical sense and effectively nullifies the exemption. Under the Department’s skewed analysis, the

⁴ See Legislative bill analysis attached as Appendix B.



hammermill ceases to function as the first and most important step in the metal recycling process and, instead, is merely a generator of hazardous waste.

The fact that shredder output contains non-metallic components and bits of metal that are too small to be removed by the process (and that ultimately come to be located in the metal shredder residue) does not mean that shredder output or aggregate is a “waste.” The so-called “mixture” or “contained in” rules have no application in this circumstance. Importantly, under RCRA, “processed scrap metal” that is being recycled is excluded from the federal definition of solid waste. See 40 CFR § 261.4(a)(13). “Processed scrap metal” is defined as “scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of the materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted) . . .” 40 CFR §261.1(c)(10). DTSC’s position that processed scrap metal is waste is at odds with the federal regulatory system, and indeed the international system and markets.

4.5 Even if shredder output and aggregate were considered “secondary materials,” they would be “excluded recyclable materials” that are not subject to regulation under the HWCL.

Even if DTSC were correct that shredder output and aggregate are wastes (secondary materials), these materials would still be excluded from regulation under Chapter 6.5 as “excluded recyclable materials.” Health and Safety Code section 25143.2 establishes a number of conditional exclusions for certain recycled hazardous secondary materials that would otherwise be subject to regulation as hazardous wastes. Materials that are eligible for exclusion under Section 25143.2 are known as “excluded recyclable materials” (“ERM”).

Under Health and Safety Code section 25143.2(d)(1), nonRCRA hazardous materials that are “recycled and used at the site where the material was generated” are considered ERM.⁵ If shredder output and aggregate were secondary materials, Section 25413.2(d)(1) would apply to the ferrous and nonferrous metal separation and removal processes, and related storage, conducted by Schnitzer, Sims and SA Recycling, and to the ferrous metal separation and removal process, and related material storage, conducted by Ecology.⁶

⁵ There are overarching conditions set forth in Section 25143.2(e), as follows: the material (1) cannot be used or reused in a manner constituting disposal or used to produce a product that is applied to the land; (2) cannot be burned for energy recovery or used to produce a fuel; (3) cannot be accumulated speculatively; and (4) cannot be “inherently wastelike,” a term that applies to certain dioxin-containing wastes. None of those prohibitions is applicable here.

⁶ As noted in the Draft Report, Ecology’s nonferrous metal separation and removal operations are conducted at its facility in Vicksburg, Arizona. The aggregate that is transported to Vicksburg for this
(... continued)

4.6 The Department has no authority under existing law to require hazardous waste facility permits for metal separation and removal operations, and related material storage, at metal shredding facilities.

Based on its flawed legal premise, the Draft Report concludes that the removal of ferrous and nonferrous metals from the output of a shredder constitutes “treatment” of a hazardous waste which requires a permit from the Department. Draft Report, Sec. 2.4.2, at p. 49. Similarly, the report concludes that all aggregate stockpiles are “waste piles” that must be permitted by the Department and meet highly prescriptive standards applicable to such units, including an impermeable liner beneath the pile, a leachate collection system, a leak detection system, and an ongoing monitoring program to detect the migration of contaminants from the waste pile. *Id.*, at pp. 50-51; Sec. 3.1, at p. 76-77.⁷ According to DTSC, absent a hazardous waste permit, aggregate may only be stored on-site for up to 90 days in tanks or containers or, in some cases, in containment buildings. Draft Report, Sec. 3.1, at p. 75.

For all of the reasons discussed above, the Coalition members strongly disagree with this paradigm and maintain it has no basis in the law. The discussion of so-called “Hazardous Waste Management Activities” in Section 2.4 of the Draft Report goes far beyond what is authorized by existing law and depicts almost all aspects of shredder facility operation as involving management of hazardous waste. The Department’s description of “treatment,” “storage” and “disposal” processes are all self-fulfilling characterizations of non-waste management operations designed to provide an unasserted basis for the Department’s unprecedented exercise of jurisdiction over these activities.

But saying it is so does not make it so. As confirmed by OPP #88-6, DTSC’s authority under the HWCL, including those provisions enacted by SB 1249, does not extend to in-process materials, to metal separation and removal operations, or related storage and handling of in-process materials at metal shredder facilities.

(... continued)

purpose is excluded under a different ERM exclusion, specifically, Section 25143.2(d)(3), which applies to any nonRCRA material that is transported between locations operated by the same person who generated the material for purposes of recycling, subject to the conditions specified in Section 25143.2(d)(4)(A)(i) through (vi). Ecology has demonstrated that it meets each of the conditions applicable to this particular exclusion. Ecology maintains that its aggregate is not a waste, and that its reliance on the ERM provisions of the Health and Safety Code is legally unnecessary. By participating in these comments, neither Ecology nor any other Coalition members waive any rights or defenses they may have in connection with any ongoing or future enforcement actions brought by the Department.

⁷ Aside from the fact that aggregate is not a waste and does not “contain hazardous waste,” this litany of regulatory requirements ignores the fact the metals in aggregate and treated or untreated metal shredder residue are not soluble except under the highly acidic conditions created under the WET test. Exposure of these materials to precipitation does not mobilize metal in the material, and storage of aggregate on the ground does not pose a threat to groundwater quality.

Apart from the jurisdictional issues, the operating scenario envisioned by the Draft Report is completely impracticable and/or cost-prohibitive. Aggregate is far too voluminous to be stored in tanks or containers, and containerization of the material would be extremely expensive and highly disruptive of operations. Similarly, enclosures that have been, or that are in the process of being, installed at nonferrous metals separation plants, with the full knowledge of the Department, do not meet the regulatory criteria applicable to containment buildings. Retrofitting these enclosures would also be cost-prohibitive and would prevent loaders, trucks, and other heavy equipment from freely moving in and out of the buildings as they must do during the course of the day.

As discussed in Section V below, the Coalition believes that Health and Safety Code section 25116.5 provides the statutory authority and foundation for promulgation of regulatory Best Management Practices for the metal shredding industry, compliance with which would be necessary to ensure that in-process materials retain their status as “intermediate manufacturing process streams.” These regulatory BMPs would apply directly to metal shredding facilities and would be enforceable by the Department and CUPAs. This alternative Path Forward is fully consistent with existing law and resolves the “fatal flaw” that lies at the heart of the Department’s Path Forward, i.e., the proposal that ferrous and nonferrous metal separation and removal operations must be regulated through a hazardous waste facilities permit or some other form of authorization from the Department. From industry’s perspective, this is a non-starter.

At most, the scope of DTSC’s authority to require a permit or other form of authorization for metal shredding facilities is necessarily limited to the process utilized to chemically treat metal shredder residue after all processing operations have been completed. While we recognize the Department’s authority to require some form of authorization for the treatment process, we also believe such a change in policy is unnecessary. Under OPP #88-6, the treatment process is considered an in-line process, not subject to hazardous waste permitting, because the treated residue is subject to a final ferrous metal separation step before being transported off-site for use as alternative daily cover. It is notable and significant that the Draft Report does not identify any risks associated with the treatment process that would warrant regulation under a hazardous waste facilities permit.

4.7 The Metal Shredder Residue Treatability Study demonstrates that the current chemical treatment process effectively reduces the solubility of residual metals in metal shredder residue and supports the permanent declassification of CTMSR.

Based on its review of the analytical data presented in the Metal Shredder Residue Treatability Study conducted by Terraphase Engineering, Inc., and the results of the duplicate analyses conducted by the Department’s Environmental Chemistry Laboratory (“ECL”), the Department has concluded that the chemical treatment process used by the industry to treat metal shredder residue achieves significant reductions in the solubility of metals remaining in the residue. The study was conducted pursuant to a work plan approved by the Department in accordance with rigorous scientific protocols and



procedures and involving analysis of over 1,000 samples of waste that had been treated with various treatment dosages.

The Draft Report accurately notes that, due to the extraordinary variability in metal shredder residue, the treatment process is not able to achieve applicable STLCs, as determined by Waste Extraction Test, on a consistent basis, even at the highest treatment doses. Draft Report, Sec. 2.4.1, at pp. 43-45. Significantly, the report fails to mention that samples of CTMSR were also analyzed by a number of other waste extraction tests that are more representative of actual conditions in a nonhazardous waste landfill. Soluble concentrations of metals in these samples were extremely low or non-detect in many samples, demonstrating that the treated material is essentially non-leachable under ambient conditions. Multiple extractions were also performed to demonstrate the effectiveness of the treatment over time.

Due to the lack of any evidence of impacts to groundwater or other releases at the landfills that have historically accepted CTMSR for disposal or use as alternative daily cover, the Draft Report concludes that CTMSR may continue to be safely managed in this manner. The report does not identify a need for increasing the level of treatment that has historically been applied. The Coalition concurs with this conclusion, and believes the Treatability Study provides a solid technical justification for permanent declassification of CTMSR pursuant to Health and Safety Code section 25141.6. This section authorizes the Department to declassify wastes that exhibit hazardous characteristics where “it is not necessary to manage the waste as a hazardous waste because the waste possesses mitigating physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment.”

4.8 There is no need or justification for requiring CTMSR to be managed as a hazardous waste prior to its disposal or use in a landfill as alternative daily cover.

Based on the discussion above, the Coalition strongly believes CTMSR should continue to be classified as a nonhazardous waste for all purposes. The Draft Report indicates that because CTMSR (i) “continues to exhibit hazardous waste characteristics, even after chemical treatment to stabilize the soluble metals in the waste,” and (ii) is managed in “waste piles” rather than tanks or containers, the treated material must be managed as a hazardous waste, pursuant to a hazardous waste permit or other form of authorization from the Department. Draft Report, Sec. 2.4.2, at pp. 51-52. Similarly, the report indicates that CTMSR must be transported to the landfills under hazardous waste manifest, using a registered hauler. Draft Report, Sec. 2.4.2, at p. 55. These observations are nonsensical and are inconsistent with the conclusions reached elsewhere in the report, as follows:

Although CTMSR is identified as a hazardous waste, DTSC believes that the classification and management of it as a hazardous waste is not necessary to prevent or mitigate potential hazards to human health or safety or to the environment posed by it, if appropriate conditions are developed.



DTSC therefore concludes that CTMSR does not need to be classified or managed as a hazardous waste to prevent or mitigate potential hazards to human health or safety or the environment.

Draft Report, Sec. 5.5, at p. 111 (emphasis added). There is no possibility that CTMSR will pose any risk during the short period of time it is staged at the facility prior to being transported to a landfill (often one day or less), and nothing would be accomplished through the imposition of unnecessary permit requirements.

Similarly, there is no justification for requiring the material to be transported to the landfill under hazardous waste manifest, using a registered hauler. Currently, CTMSR is transported under bills of lading and all shipments are appropriately tracked. Indeed, were the material to arrive at Class II or Class III landfills under a hazardous waste manifest, it would be rejected by the landfills. Imposition of these unnecessary requirements would greatly increase the cost of managing CTMSR, eliminating much of the economic benefit associated with treatment of the material in the first instance.

The Coalition is willing to work with the Department to identify and develop any conditions to declassification that may be appropriate, the most obvious of which is that the material must continue to be treated by chemical stabilization. However, consistent with the current “f” letters and the Department’s conclusions set forth above, the declassification of CTMSR, whether pursuant to Health and Safety Code section 25141.6 or some other regulatory mechanism, must apply immediately upon completion of the treatment and final separation process. Management of CTMSR would certainly remain subject to appropriate BMPs.

4.9 Metal shredding facilities do not pose a significant risk to human health and the environment.

The Draft Report concludes that metal shredding facilities pose public health and environmental threats and are out of compliance with existing hazardous waste control law. Draft Report, Sec. 6, at p. 112.⁸ The Coalition profoundly disagrees with this assessment of the industry and believes the Department’s conclusions are driven by an institutional compulsion to regulate the industry, not on its existing authority or any need to do so in the manner envisioned. Our view of the situation is reinforced by the fact that the Department was able to identify only four incidents or conditions as “evidence” of harm, none of which is related to hazardous waste management activities conducted at metal shredding facilities and none of which would have been prevented had these facilities been subject to hazardous waste management requirements and permits. These

⁸ Department staff spent thousands of hours studying metal shredding facilities over the past two years. This level of effort is documented by information provided in metal shredding facility fee invoices issued to Coalition members. Nothing in the report reflects that the thousands of hours spent resulted in a basis for the Report’s recommendation to require a Hazardous Waste Facility Permit.



are (i) a 2007 explosion in the air pollution control system at the Terminal Island facility, now operated by SA Recycling; (ii) releases of Light Fibrous Material (a component of in-process material) from the Sims and Schnitzer facilities; (iii) the infrequent occurrence of fires in scrap metal stockpiles; and (iv) the presence of metal-contaminated soils. None of these incidents or conditions is related to metal shredder residue or any other hazardous waste that is generated at these facilities through de-pollution or routine maintenance activities. Items (i) and (ii) were each associated with the day-to-day metal shredding and processing operations conducted by these facilities, separate and apart from handling or processing of any residue. Items (iii) and (iv) had nothing to do with the shredding process.

More importantly, each of the referenced incidents or conditions has already been corrected or has been determined not to require corrective action by a regulatory agency with jurisdiction over the matter. Specifically, the 2007 explosion at the Terminal Island shredder was the result of an equipment failure. It had nothing to do with the inadequate regulatory oversight, the lack of a permit, or a gap in regulations. SA Recycling, which took ownership of the facility following the incident, cooperated fully with the South Coast Air Quality Management District (“SCAQMD”), the agency with primary jurisdiction over the matter, and moved promptly to install new emissions control devices on the shredder, including a \$1.5 million dollar regenerative thermal oxidizer (“RTO”) to control volatile organic compounds (“VOC”). DTSC was also involved in the resolution of this incident, notwithstanding the fact that it was unrelated to any hazardous waste management activity at the facility. As a result of the new air control devices, 98% of the VOC generated by the shredding process has been eliminated, as documented through emissions monitoring.

With respect to the dispersal of Light Fibrous Material, both facilities have made very extensive capital improvements to minimize the potential for this material to escape from the process. These improvements include, among other things, installation of full enclosures around the shredder and downstream nonferrous processing operations, state-of-the-art emission control systems, covered conveyor systems, and various process modifications. These improvements have been implemented in an enforceable manner, along with a vast array of Best Management Practices to minimize the potential for release of in-process material. Nothing of significance would or could be accomplished through the imposition of hazardous waste permit requirements.

With respect to the potential for fires, all metal shredding facilities are keenly aware of this risk and implement comprehensive fire prevention and control procedures. Even the Draft Report acknowledges that the potential for fires in scrap metal piles is not a risk that can be addressed through the hazardous waste program.

Finally, the presence of metal-contaminated soil at metal shredding facilities is the result of decades of operation at these locations (not necessarily by the current owner or operator of the shredder), involving the stockpiling of vast quantities of exempt scrap metal on the ground and the constant movement of these materials using heavy equipment. In unpaved areas, metal can become embedded in the soil and over time can



lead to contamination. In other cases, soil contamination is known to be attributable to legacy conditions on the property, unrelated to the current metal shredding operations.

As a result of enforcement actions taken by regional water quality control boards, and through implementation of the General NPDES Permit for Discharges of Storm Water Associated with Industrial Activities, soil and groundwater investigations have been conducted at metal shredding facilities and corrective actions—such as excavation, capping of affected soils, and erosion controls—have been taken where necessary. Other facilities have voluntarily removed contaminated soils, installed concrete and now conduct operations on paved areas. For example, the contaminated soils at Ecology’s facility were located in an area that is separate and apart from the hammermill. No amount of regulatory oversight of the shredder would have affected the soil in this area. Moreover, the soil was excavated, manifested, and transported by registered haulers to an authorized disposal site within a matter of days. The area from where the soil was removed was capped in concrete, to ensure cleanliness of the underlying soil, within 14 days. DTSC was involved in the cleanup of this area and is aware of the fact that the area was unaffiliated with any aspect of hazardous waste management activity, or any other processes, at the shredding facility. Soil conditions at industrial facilities are primarily the responsibility of regional water quality control boards, and duplicative regulation by the Department through the hazardous waste permitting program is unnecessary.

The Coalition rejects the proposition that had these facilities complied with hazardous waste laws and regulations, none of these incidents or conditions would have come to pass. The Department cannot re-write history by evaluating an industry against a body of laws and regulations that are not applicable to the operations in question. Moreover, the hazardous waste laws and regulations may not be applied prospectively to the industry in the absence of appropriate statutory amendments or regulatory changes adopted in accordance with the requirements of the Administrative Procedure Act and basic due process. The Department cannot simply declare by administrative *fiat* that metal shredding facilities are now and have always been hazardous waste management facilities.

Metal shredding facilities have been in operation in the state for over 50 years, yet the Department was able to identify only a small handful of circumstances to support its claim that the industry poses a threat to public health and the environment. This fact alone belies the Department’s claim and actually attests to the responsible manner in which these facilities have been operated over the years. Coalition members believe metal shredders’ environmental compliance record is comparable to, if not better than, that of many other heavy industrial sectors operating in the state. The Draft Report discusses the enforcement history of metal shredding facilities from 2007 to the present and reveals nothing beyond the types of routine citations that are common throughout



many industrial sectors. See Draft Report, Sec.2.5, at pp.58-66.⁹ Further, while discrete hazardous waste management activities may be conducted at other types of industrial facilities (and thus permitted or authorized in some manner by the Department), none of these industrial facilities is regulated as a hazardous waste management facility *per se* as the Department seeks to do here. Coalition members submit that the risk of equipment failures and explosions, releases of in-process materials, fires, and incidental soil contamination are inherent in all industrial settings. The occurrence of these same generic risks in the metal shredding industry does not justify regulation by the Department beyond its statutory authority.

The specific geographic locations of Coalition members' facilities does not alter this evaluation. Each of the six shredding facilities is located in an industrial zone, as specified by their respective local zoning and land use ordinances, and is a legal use. The Draft Report ignores these zoning designations and goes on to state that the facilities are located in cities that "are some of California's most densely populated communities, and together they account for 10 percent of the state's population (Draft Report, Sec. 3.5, at p. 81), seeming to suggest that these facilities are so dangerous that they may only safely be located in remote, sparsely populated areas. The report also notes that metal shredding facilities are located in disadvantaged communities where populations are already burdened by other environmental factors, possibly causing them to exhibit greater sensitivity (*id.*, at p. 85) and speculates that "sensitive land uses that are in close proximity would be especially vulnerable to releases that occur at metal shredding facilities or landfills."

While Coalition members appreciate the environmental justice import of these statements in the Draft Report, the report presents no evidence that any releases are occurring at levels that pose an unacceptable risk. In fact, the Draft Report notes to the contrary that no releases of CTMSR were detected during air monitoring conducted at landfills that accepted the material for disposal or use as ADC. Draft Report, Sec. 5.4, at p. 110) ("DTSC does not expect CTMSR or contaminants commonly found in CTMSR to migrate off-site at a landfill via the pathway of windborne dispersion."). Surprisingly, the report makes no mention at all of ambient air monitoring conducted at three metal shredding facilities by Geocon Consultants as part of the Department's SB 1249 evaluation. This monitoring revealed elevated dust emissions at the facility fence lines, but the levels of metals and other constituents of potential concern in the dust, including lead, were all significantly below ambient air quality standards.

DTSC's Human and Ecological Risk Division has also conducted an evaluation of potential human health risks associated with off-site dispersal of LFM from a metal shredding facility and concluded that the rates of potential exposure were so low that no

⁹ The Draft Report contain many errors, omissions and mischaracterizations of the events or circumstances that are described in this section.

significant risk was presented. In addition, the local air quality management district determined that the facility has a risk profile under the Toxic Hot Spots Program that is less than that associated with a typical service station. Fugitive and stack emissions from all metal shredding facilities are regulated by local air districts and are subject to emission limits and standards that are protective of human health.

In summary, the Department's claim that metal shredding facilities pose a public and environmental threat and must be regulated as hazardous waste management facilities in order to mitigate that threat is not supported by substantial evidence in the record or elsewhere. The Coalition members are willing to work cooperatively with the Department to develop an appropriate regulatory program based on Best Management Practices designed to ensure that in-process materials do not escape the process and remain within the definition of "intermediate manufacturing process stream." However, wholesale application of the hazardous waste regulatory scheme to metal shredding facilities is contrary to existing law and unnecessary in light of the facts in the record and the numerous regulatory programs implemented by other environmental and public health agencies in the state.

4.10 The Draft Report describes the numerous regulatory programs that currently apply to metal shredding operations, but inappropriately discounts them as inadequate to protect human health and the environment.

As discussed above, the Coalition adamantly disagrees with the Department's unsupported conclusion that metal shredding facilities pose a significant risk to human health or the environment. Apart from the myriad environmental and operational improvements that have been implemented by the facilities on a voluntary basis to mitigate the potential for releases, the facilities are subject to a host of existing regulatory programs administered by other federal, state and local agencies. These programs are described in considerable detail in the Draft Report, but the report ultimately concludes that none of them is sufficiently comprehensive to address all of the activities at metal shredding facilities that the Department believes must be regulated.

Careful consideration of the actual facts tells a different story. Over the years, hundreds of inspections have been conducted at metal shredding facilities by local air districts, regional water quality control boards, storm water management agencies, CUPAs, county health departments, fire departments, local code enforcement, CalRecycle, the Air Resources Board, Department of Weights and Measures, federal and state OSHA, and federal and state Departments of Transportation. DTSC's working assumption appears to be that the paucity of citations, and the generally minor nature of the citations, means that these agencies are not doing their jobs. This assumption is both incorrect and dismissive of the important role these agencies have in protection of human health and the environment. The positive record of the six shredding facilities over the last 40-50 years, as evidenced by the minimal violations received in relation to the many million tons of material processed, cannot be overstated.



The Department has neither the expertise, the resources, nor the authority to assume primary regulatory control over metal shredding facilities. The agencies listed above, and likely others, have their respective areas of responsibility that must be carried out, irrespective of DTSC's view that it should have plenary responsibility over metal shredding facilities. The approach outlined in the Draft Report, which contemplates that many existing regulatory obligations would be gathered together and included as conditions in a hazardous waste facility permit, would result in redundant and potentially conflicting compliance obligations and is contrary to the intent of the Legislature in enacting SB 1249. See Health & Saf. Code, § 25150.82(g) ("Nothing in the alternative management standards authorized by this section is intended to duplicate or conflict with other laws, rules, or regulations adopted by other state agencies or affected air quality management districts. The department shall, as much as possible, align the alternative management standards with the laws, rules, and regulations of other state agencies or affected air quality management districts."). While this legislative admonition was focused on alternative management standards, it is equally applicable to any other regulatory approach the Department may seek to implement.

4.11 The Draft Report fails to describe the many Best Management Practices and other environmental improvement projects that have been implemented at metal shredding facilities to minimize or eliminate potential releases to the environment.

Section 2 of the Draft Report lists some of the basic BMPs employed by metal shredding facilities to minimize the potential for release of in-process materials from their operations. However, the Coalition members have spent millions of dollars on sophisticated improvements to metals separation equipment, design and construction of customized facility and equipment enclosures, covered storage bays, deluge systems, state-of-the art emission control systems, storm water detention and treatment systems, concrete paving, enclosed conveyance systems, fencing and windscreens, modified operating practices, and round-the-clock housekeeping and inspections. All of these improvements have resulted in a significant reduction in the potential for releases of in-process materials or metal shredder residue, but are not discussed in the report. In many respects, the Draft Report is already outdated, and many of the conclusions presented in the report are reflective of conditions that existed in the past.

Some of these improvements are listed in the appendices relating to the individual facilities and should be referenced in the final report.

SECTION V PATH FORWARD

In conjunction with issuance of the Draft Report, the Department outlined the following proposed “path forward” for metal shredding facilities, projected to occur over the next three years:

- The development of regulations establishing management requirements to support the conditional exemption of treated metal shredder residue so that it may continue to be used as alternative daily cover
- The development of Best Management Practices and an appropriate regulatory framework
- Issuance of conditional authorization and rescission of “f” letters
- Application for/issuance of a hazardous waste permit

As addressed below, the Coalition members have a number of significant questions and concerns about each of these steps.

5.1 DTSC’s “path forward” must be implemented in a manner that provides metal shredding facilities with due process of law.

The existing regulatory framework for metal shredding facilities has been in place since the late 1980’s and consists of (i) the existing scrap metal exemption contained in sections 66260.10 and 66261.6(a)(3) of the Title 22 regulations; (ii) DTSC Official Policy and Procedure #88-6, which provides that the metal-bearing material produced by the operation of a metal shredder is in-process material and does not become waste until it has been “exhausted” by removal of all recoverable ferrous and nonferrous metal; (iii) an “in-line” treatment exemption for the chemical stabilization process used to reduce the solubility of residual metals in metal shredder residue; and (iv) issuance of “f” letters administratively classifying treated residue as nonhazardous waste and allowing its use as alternative daily cover in municipal landfills or disposal at other approved locations. Each of the elements of this regulatory framework is an actual or *de facto* regulation conditionally exempting metal shredding facilities and treated metal shredder residue from the requirements of the Hazardous Waste Control Law. This framework has been relied upon by the industry for almost 30 years, and has served as the basis for investment in, profitability and viability of metal shredding facilities across the state.

The elements of this framework determine “how a certain class of cases will be decided” and “implement, interpret, or make specific the law” as applied to an entire industrial sector, thereby embodying the two principal characteristics of a regulation identified by the California Supreme Court in the seminal case of Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal. 4th 557 (1996) (“Tidewater”). With respect to the “f” letters in particular, the similarity of the waste generated by metal shredding operations conducted statewide, the similarity of the analytical data and other technical information submitted by the shredders in support of their individual applications, the similarity of the criteria

used to evaluate individual shredder’s eligibility for declassification, the similarity of the conditions imposed on the shredders to sustain the declassifications over time, and the evergreen nature of the declassification decisions themselves, all support the inherently regulatory nature of hazardous waste declassification. Other aspects of the framework share the same feature of universality. Collectively, these elements represent controlling law governing the entire metal shredder industry in California. As such, any modification of this framework must be accomplished in accordance with the rulemaking requirements of the Administrative Procedure Act (“APA”).¹⁰

5.1.1 The Department should declassify CTMSR pursuant to Health and Safety Code section 25141.6 and formalize its determination through a rulemaking conducted in accordance with the APA.

In the case of treated metal shredder residue, DTSC’s “path forward” document states that the agency intends to adopt regulations establishing management requirements to support the conditional exemption of treated metal shredder residue so that it may continue to be used as alternative daily cover. On the other hand, the Draft Report variously describes this step in the path forward both as a “conditional exemption” for purposes of disposal and as a determination that CTMSR does not need to be classified or managed as a hazardous waste. The Report does not discuss the conditions that must be met in order for CTMSR to be eligible for declassification, nor does the report acknowledge the inconsistency between these two alternatives. In short, it is unclear whether the Department intends to declassify treated residue pursuant to Health and Safety Code section 25141.6,¹¹ or whether it is contemplating some other type of conditional exemption from hazardous waste disposal requirements, as distinguished from declassification of the waste itself.

Significantly, the Draft Report states that the Department found no evidence that management of treated metal shredder residue as a nonhazardous waste has resulted in any risk to human health or the environment. Indeed, untreated metal shredder residue was disposed of for decades in California before the adoption of the hazardous waste management regulations in the early 1980’s. Accordingly, it is the Coalition members’ unequivocal expectation that the Department will replace the current “f” letters with a

¹⁰ Gov’t. Code, § 11340, et seq.

¹¹ Under section 25141.6, the Department may propose “to make a determination that a waste meets one or more of the criteria and guidelines for the identification of hazardous wastes . . . but that it is not necessary to manage the waste as hazardous waste because the waste possesses physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment.” The Department must post a public notice announcing its intention on its website and submit copies of the notice to the California Environmental Policy Council, CalRecycle, the State Water Resources Control Board, any person who requests the public notice, and any solid waste enforcement agency or California Regional Water Quality Control Board in a jurisdiction affected by the determination.



comparable regulatory declassification, pursuant to Health and Safety Code section 25141.6, and will not simply grant an exemption from hazardous waste disposal requirements. If declassified (i.e., classified as a nonhazardous waste), treated residue is not subject to hazardous waste generator fees; it may be managed in stockpiles without need for a hazardous waste permit; and it may be transported to landfills without use of a hazardous waste manifest or registered hauler. Were any of these hazardous waste requirements to be imposed on shredders, the economic consequences would be devastating for the industry.

Consistent with the current “f” letters, the nonhazardous classification must apply immediately upon completion of treatment. Contrary to the discussion in the Draft Report, there is no plausible rationale for requiring treated metal shredder residue to be managed as a hazardous waste for the short period of time that it is staged at the facility, prior to being transported to a landfill for use as ADC. Similarly, there is no plausible rationale for requiring CTMSR to be transported to the landfills under hazardous waste manifest, using registered haulers. Indeed, were the material to arrive at Class II or Class III landfills under a hazardous waste manifest, it would be rejected. Imposition of these unnecessary requirements would greatly increase the cost of managing CTMSR, eliminating much of the economic benefit associated with treatment of the material in the first instance.

In the absence of a duly enacted regulation providing an alternative basis for nonhazardous classification of treated metal shredder residue, any attempt to rescind an “f” letter issued to an individual shredder would be analogous to repeal of a permit to manage metal shredder residue as a nonhazardous waste and as such, would be subject to an adjudicatory, evidentiary hearing.

5.1.2 OPP # 88-6 is also a *de facto* regulation that cannot be rescinded or modified except in compliance with the APA.

With respect to other aspects of the “path forward,” particularly the status of OPP #88-6, we believe the Department is bound by the same due process constraints. The Department has allowed OPP #88-6 to remain in effect for 30 years, clearly elevating it to the status of a *de facto* regulation. This document sets forth foundational principles that cannot be changed except in accordance with the APA. Under OPP #88-6, shredder output and aggregate are not considered “wastes” because they contain valuable ferrous and nonferrous metals that will be separated and removed by downstream processing equipment. These materials do not become waste until they have been exhausted. OPP #88-6 also establishes that CTMSR does not become a “waste” until it has undergone final separation for residual metals. At that point, the “f” letters come into play, classifying the treated residue as a nonhazardous waste. Any modifications to this regulatory framework can only be accomplished through regulations that have been adopted in accordance with the APA.

5.2 DTSC’s authority to issue hazardous waste facility permits to metal shredding facilities is limited to hazardous waste management activities conducted at those facilities.

DTSC’s “path forward” must be consistent with its legal authority to regulate hazardous waste management activities at metal shredding facilities. As discussed above at length, the Department may not summarily classify shredder output and aggregate as hazardous wastes, contrary to OPP #88-6 and the statutory definition of “intermediate manufacturing process stream.” Nor may DTSC declare that separation and removal of metals from these in-process materials constitutes “treatment” of hazardous waste for which a permit must be obtained.

At most, the Department may require a permit or other form of authorization for the metal shredder residue treatment process where the facility either declines to conduct final screening of the treated material or where the final screening process fails to produce an economically meaningful quantity of metal. Under either of those scenarios, neither or which exists at any of the facilities operated by Coalition members, the residue that enters the treatment process would be considered a hazardous waste and the Department would have authority to require a permit or other form of authorization for the treatment process.

5.3 Issuance of Standardized Permits to metal shredding facilities is inconsistent with local land use designations applicable to the facilities.

The Draft Report and Path Forward document both indicate that DTSC intends to require metal shredding facilities to apply for and obtain a hazardous waste management facility permit for storage and treatment of shredder output, aggregate and metal shredder residue. Based on DTSC’s description of the various permit tiers that exist under the Hazardous Waste Management Program, it appears DTSC may believe that a Standardized Permit is the most appropriate form of permit. As discussed above, the Coalition strongly disagrees with the Department’s characterization of scrap metal processing operations as hazardous waste treatment, and believes this permitting “path forward” exceeds DTSC’s jurisdiction under the HWCL and would have significant unanticipated consequences.

However, to the extent that the permit requirement is properly limited to the treatment process used to stabilize metal shredder residue, Coalition members recognize the Department’s authority to require a permit or other form of authorization for treatment of any hazardous wastes that may occur. However, requiring metal shredding facilities to obtain a Standardized Permit for the MSR treatment process is inconsistent with the current land use/zoning designations applicable to the facilities and could adversely affect the viability of their long-term operations.

Facilities that operate under Standardized Permits issued by the Department are considered Treatment, Storage and Disposal Facilities (“TSDFs”) for purposes of local zoning ordinances. We have reviewed the zoning ordinances covering each of the metal



shredding facilities operated by Coalition members. In all cases, the facilities are located in an industrial zone, designated variously as General Industrial (Sims and Schnitzer), Heavy Industrial (SA Recycling/Terminal Island, SA Recycling/Bakersfield, and Ecology), and Recycling Area (SA Recycling/Anaheim).

The facilities are currently considered lawful uses in their respective jurisdictions (as “grandfathered” uses, conditional uses or permitted uses).¹² In accordance with OPP #88-6, the separation and removal of ferrous and nonferrous metal from shredder output and aggregate, as well as the in-line treatment of metal shredder residue, are currently considered part of the industrial process, and thus not subject to hazardous waste permitting.

With very limited exception, TSDFs are not expressly listed as permitted uses in any of these zones. Depending on how the ordinances are interpreted, a facility that is conducting hazardous waste management operations, as distinguished from industrial processing/recycling operations, could be deemed to be an illegal use and ultimately required to cease operation. In other cases, the legal classification of the facility could change from a permitted use to a conditional use or a non-conforming use, subjecting it to local permitting and other requirements that prohibit or limit expansion or modification. Land use decisions for facilities that are considered non-conforming or conditional uses are also subject to the California Environmental Quality Act, leading to the possible imposition of costly mitigation measures to address perceived community concerns.

5.4 To the extent DTSC believes it is necessary to regulate the chemical treatment process used to reduce the solubility of trace metals in metal shredder residue, this can be accomplished through the Permit-by-Rule program.

We believe the Department’s authority to require a permit or other form of authorization for a metal shredding facility is limited to the chemical treatment of metal shredder residue. The existing Permit-by-Rule (“PBR”) permit tier allows for chemical stabilization of nonRCRA hazardous wastes and is an appropriate mechanism for bringing this activity at metal shredding facilities within the Department’s hazardous waste permit program, if that is ultimately determined to be necessary. Statements in the Draft Report that suggest this permit tier is limited to small volume wastes are misguided and unsupported.

Most importantly, facilities that operate under PBR, or under the Conditionally Authorized or Conditionally Exempt permit tiers, are not considered “hazardous waste

¹² “Permitted uses” are those that are expressly listed as allowed uses within a zone. Permitted uses may be conducted without a local land use permit.



treatment facilities” for purposes of local land use decisions. Under Health and Safety Code section 25201.3,

- (a) A local agency shall not deem any of the following generators performing any of the following hazardous waste treatment activities to be a hazardous waste treatment facility for purposes of making a land use decision, and the department shall not require any of the following generators or facilities performing any of the following treatment activities to publish a notice regarding those activities:
 - 1. A facility operating pursuant to a permit-by-rule.
 - 2. A generator granted conditional authorization pursuant to this chapter for specified treatment activities.
 - 3. A generator granted performing conditionally exempt treatment pursuant to this chapter.
- (b) For purposes of this section, “land use decision” means a discretionary decision of a local agency concerning a hazardous waste facility project...including the issuance of a land use permit or conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code, and any local agency decision concerning a hazardous waste facility which is in existence and the enforcement of those decisions. This section does not limit or restrict the existing authority of a local agency to condition or otherwise regulate, facilities operating . . . pursuant to a permit-by-rule . . .

Section 25201.3 thus provides critical protection against the adverse land use consequences described above. DTSC guidance materials specifically recognize the “land use decision” protection in the context of the PBR program. See, DTSC, *Fixed Treatment Unit Operating Under Permit By Rule* (2003), at p.5 (“For the purposes of local land use decisions, your facility is not considered a hazardous waste treatment facility if your facility is authorized under PBR. You are also not required to publish a public notice regarding your treatment operation.”).

While the Title 22 regulations clearly designate the CUPA as being primarily responsible for implementing PBR program requirements (see 22 CCR § 67450.2(b) and § 67450.3(c)), other provisions of the regulations contemplate a retained enforcement role for the Department. See § 67450.3(c)(8) (requiring the operator to maintain relevant documents on site and to “make these documents available upon demand at the facility to any representative of the CUPA or authorized agency, Department, the EPA or a local governmental agency.”). See also § 67450.9 (specifying that the Department retains the authority to deny, revoke, and suspend permit-by-rule authorizations).



This conclusion is consistent with corresponding provisions of the Health and Safety Code. Section 25180(a) generally provides the Department with full enforcement authority and grants CUPAs concurrent enforcement authority where relevant. Health & Saf. Code, § 25180(a)(1) (“Except as provided in paragraph (2), the standards in this chapter and the regulations adopted by the department to implement this chapter shall be enforced by the department”); subd. (a)(2) (specified standards, including PBR, “shall be enforced by the department *and* . . . [w]ithin the jurisdiction of a CUPA, the unified program agencies” (emphasis added)).

Considered together, the Department has ample discretion to oversee implementation, obtain relevant document submittals, and enforce any noncompliance that it identifies at facilities that re operating under permit-by-rule.

5.5 Regulations establishing Best Management Practices for metal shredding facilities should be implemented through Health and Safety Code section 25116.5, pertaining to “intermediate manufacturing process streams.”

The Department’s proposal to incorporate Best Management Practices as enforceable conditions in hazardous waste permits for metal shredding facilities is a fundamentally flawed approach that exceeds the Department’s legal authority and, if implemented, would lead to the eventual demise of the metal shredding industry in the state. The Coalition has identified an alternative approach that is both lawful and will accomplish the same objective—i.e., ensuring that metal shredding operations are conducted in a manner that does not result in releases of in-process materials or wastes that could affect surrounding communities.

The Department has the inherent authority under the Hazardous Waste Control Law to adopt regulations implementing any definition that is presently contained in the statute. We are suggesting that in lieu of hazardous waste permit conditions (which we believe to be unlawful and subject to legal challenge), the regulatory Best Management Practices contemplated by the Department’s proposed Path Forward should be adopted pursuant to Health and Safety Code 25116.5, the definition of “intermediate manufacturing process stream.” The purpose of these regulations would be to ensure that metal shredding facilities conduct their operations in a manner that ensures in-process materials are retained within the process and not discarded by being abandoned in the environment. We believe this is consistent with the Legislature’s intent in adopting Health and Safety Code section 25116.5¹³ and would be a win-win approach that will accomplish the Department’s stated objectives, avoid the need for protracted legal challenges, and allow the industry to remain economically viable.

¹³ See Footnote 4.



SECTION VI

SPECIFIC TEXTUAL AND FACILITY-SPECIFIC COMMENTS

We direct your attention to Appendix C, which provides specific comments based on the text of the Draft Report, and to Appendices D through I, which provide specific comments pertaining to the Schnitzer Steel, Sims, SA Recycling and Ecology facilities.

APPENDIX A

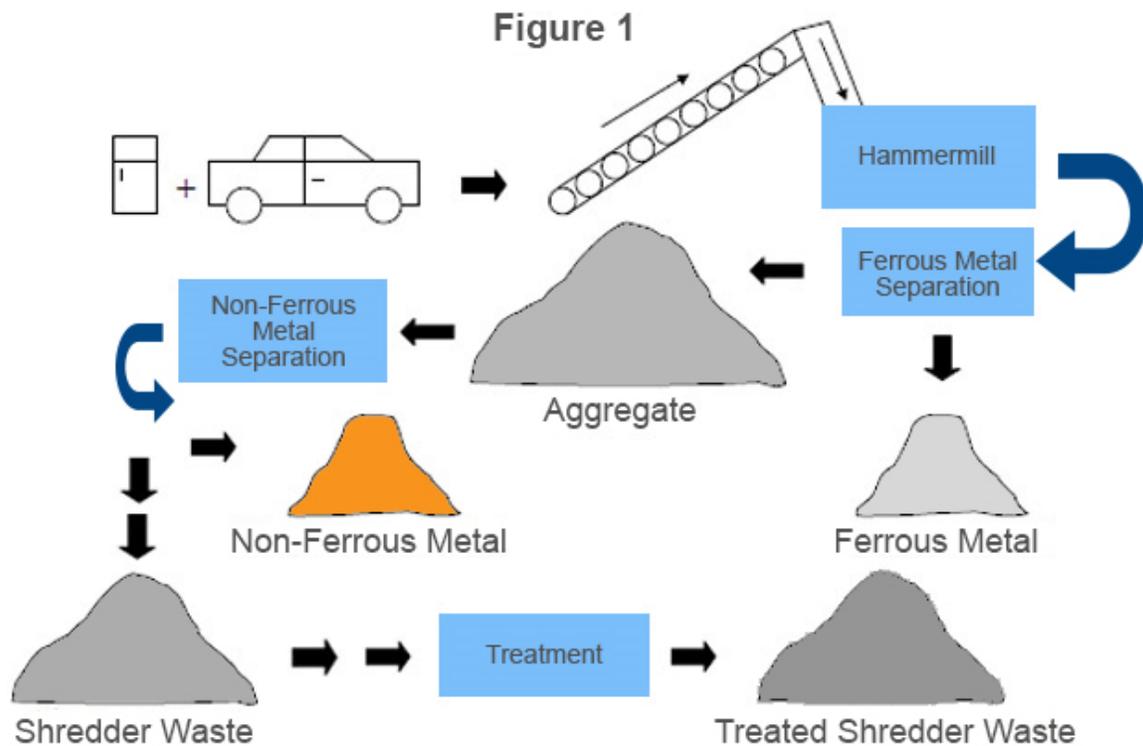
DTSC Schematic of a Metal Shredding Facility

Appendix A – DTSC Schematic of a Metal Shredding Facility

What is Metal Shredder Waste?

The shredding of scrap metal (e.g., end-of-life vehicles) results in a mixture of recyclable materials (e.g., ferrous metals and nonferrous metals) and non-recyclable material (i.e., metal shredder waste). Aggregate is generated after the initial separation of ferrous metals, and consists of nonferrous metals which can be further recovered and metal shredder waste. Metal shredder waste consists mainly of glass, fiber, rubber, automobile fluids, dirt and plastics found in automobiles and household appliances that remain after the recyclable metals have been removed. (See Figure 1)

Because scrap metal contains regulated hazardous constituents it can contaminate and ultimately cause metal shredder waste to exhibit a characteristic of hazardous waste for toxicity. In a 2002 draft report on auto shredder waste, DTSC showed that metal shredder waste often exceeded the soluble threshold limit concentrations (STLCs) for lead, cadmium and zinc using the Waste Extraction Test (WET) method and the total threshold limit concentration (TTLC) for lead, copper and zinc.



Source:

http://www.dtsc.ca.gov/HazardousWaste/MetalShredderPortal.cfm#metal_shredding_facility

APPENDIX B

AB 2088 Bill Analysis

BILL ANAL

AB 2088
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Date of Hearing: April 16, 1996

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Bernie Richter, Chair

AB 2088 (Alpert) - As Introduced: January 22, 1996

SUBJECT:

SUMMARY: Facilitates the reuse and recycle of materials in a manufacturing process and restores some of the control of the manufacturing process to the individual California business entities lost through the "permit-by-rule" regime which permits the Department of Toxic Substances Control (DTSC) to move upstream in a normal manufacturing flow to identify specific manufacturing processes as a California-only "hazardous waste handling operation/unit."

Specifically, this measure changes the definition of recycled material to exclude an intermediate manufacturing process stream from classification as a recovered, recycled, or waste material if the material is used onsite on a batch or continuous basis as a raw material in the production of a commercial product.

FISCAL EFFECT: Minor: fee revenue from facilities no longer subjected to the tiered permitting program will be directly offset by workload reductions within DTSC.

EXISTING LAW:

Federal

- 1) Provides for the identification and classification of waste chemical substances and mixtures which might present an unreasonable risk of injury or to the health of the environment, establishes testing requirements and standards for the identification of such substances and requires the adoption of regulations relating to the use or disposal of such substances.

Toxic Substances Control Act (TSCA) is the primary federal statute

- 2) Establishes the nation's basic hazardous waste management program including the identification and listing of hazardous waste and exempts certain types of RCRA waste treatment operations integral to the manufacturing process from the federal permit and regulatory system. The California Department of Toxic Substances Control (DTSC) is the lead agency for enforcing the provisions of RCRA. As an authorized state, California's regulations must be consistent with, and at least as strict as, the federal regulations.

Resource Conservation and Recovery Act (RCRA)

AB 2088
Page 2

California

- 1) The state's hazardous waste management program among other things:

Hazardous Waste Control Act establishes the state's program

Requires any person who stores, treats or disposes of hazardous waste in excess of specified limits to obtain a hazardous waste

facility permit from the DTSC. Imposes a complex system of fees and a labyrinthine set of regulations on persons who generate, store, treat, dispose of or otherwise manage hazardous waste.

Requires the DTSC to adopt analytic tests and to specify characteristics which must be used to determine when a waste is a hazardous waste. Because DTSC has adopted tests which are more stringent than the equivalent federal tests, more types of wastes meet the definition of hazardous waste in this state (non-RCRA or California-only waste).

Defines recyclable and recycled material and hazardous waste recycling. Specifies, among other things, that specified recyclable materials, unless granted a variance, are subject to the requirements of the hazardous waste management program.

- 2) Establishes the "tiered permitting" system which is applicable to facilities that treat only non-RCRA and/or non-regulated RCRA waste. The system consists of four levels of regulation that establish increasingly more stringent operating requirements and impose significantly more costly permitting regimes.

Wright-Polanco-Lempert Hazardous Waste Treatment Reform Act of 1992 completed the legislative development of the "tiered permitting" program.

BACKGROUND: The designation of a manufacturing process as a hazardous waste handling operation entitles the DTSC to subject the facility to a hazardous waste permitting process under the tiered permitting structure causing an increase in fees, a loss of management flexibility, and the designation of the intermediate product (which otherwise could be used or reused by the facility) as a toxic and hazardous waste in perpetuity. The California tiered permitting legislation was necessitated because of the unique waste classification/waste characterization system used by the DTSC which forces these process and wastes streams to be treated as hazardous.

This bill is sponsored by the California Manufacturers Association and is a reintroduction of AB 353 (Richter). AB 353 was not moved by the author in deference to the Regulatory Structure Update (RSU) program instituted in 1995 by the Department of Toxic Substances Control (DTSC). According to the DTSC, purpose of the RSU project "is to improve the implementation of California law.

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The starting point is the evaluation of all aspects of California's hazardous waste management program which differ from the federal RCRA program." As the review progresses, the DTSC is developing recommendations to retain, modify, or eliminate the state's requirements which are different from federal counterparts and implementing changes to the state's regulations which are within the department's authority.

The measure goes right to the heart of the Regulatory Reform effort by asking the questions: " What is a waste?" and " Where in the production process does an industrial material become a waste?" These questions highlight one of the primary differences between the federal hazardous waste management program and the state's program. According to DTSC, roughly half of the total volume of waste that must be managed as hazardous waste in California is not identified as hazardous by the federal RCRA regulations. The increased cost of compliance with California's program is a source of concern not only for the affected businesses and industries, but for the general public.

Amendments to Health and Safety Code (HSC) Sections 25121 and 25124 are proposed to clarify the state's hazardous waste requirements. These amendments are proffered because the distinction between waste management practices and manufacturing processes in California have been blurred, resulting in confusion over regulation of facilities, both among the regulated community and the regulating agencies. The DTSC has used a very broad

interpretation of HSC Sections 25121 and 25124 in an attempt to classify an increasing number of traditional plan operations and/or facilities as "waste handling operations" thereby subjecting these manufacturing process units to the tiered permitting regime.

This situation results in application of onerous requirements (designed for hazardous waste management facilities) or practices being applied, arguably inappropriately, to manufacturing activities thereby adding significant cost and creating significant regulatory overlap. Manufacturing facilities have had varying degrees of success in fending off DTSCs expansion of authority over these instream manufacturing processes.

ARGUMENTS IN SUPPORT: Manufacturing facilities have recurring problems with the DTSC classifying viable commercial operations as waste handling activities. A modern manufacturing process complying with the wide range of waste reduction and source minimization requirements, not to mention pure economics, uses many materials within the individual production flow or from other manufacturing process systems within the manufacturing facility.

From a public policy perspective, making full use of all industrial materials by turning them into viable commercial products should be encouraged. The overall process of industrial waste reduction and utilization conserves valuable resources, saves money, reduces waste, and is ultimately better for the environment.

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The proponents argue that this bill will:

- * Eliminate obstacles for the cost-effective use of all materials within a manufacturing process until the remaining products have no further economic use within the facility and are, therefore, subject to disposal or discard.
- * Establish clear boundaries for DTSC jurisdiction.
- * Eliminate the need to justify that certain processes are not "waste handling operations."
- * Answers the question "when does processing end and waste handling begin?"

Further, all the manufacturing activities addressed in this bill are already regulated extensively by other agencies relative to environmental safety and worker health and safety concerns through the facility permitting process, Cal OSHA oversight programs, and the all-inclusive hazardous materials handling, storage, planning, reporting, training, and contingency requirements including spills and cleanup obligations.

ARGUMENTS IN OPPOSITION: The Legislature and subsequently the DTSC have expended a significant amount of time, energy, and resources developing and implementing the tiered permitting program. This bill would render a portion of that program moot.

Notwithstanding the federal RCRA program exemptions and exclusions, the opponents argue that the non-RCRA tiered permitting program subjects impacted manufacturing facilities to the level of regulation that appropriately reflects the risk they pose to health, safety, and the environment. The level of regulation includes requirements for contingency plans, personnel training, labeling, record keeping and reporting; compliance with existing hazardous materials laws, ordinances and codes; and assessment and cleanup requirements.

COMMENTS: The difference between the federal and state programs highlighted by this bill in part stems from DTSCs interpretation of the federal program. A side-by-side comparison of the definition of a waste between the federal program and the state's program is illuminating. The definitions used within the federal RCRA program are derived from language used to describe solid

waste. The state's program definitions attempt to individually address all forms of waste. The interpretation problems arise specifically because the federal program uses a series of poorly defined or incompletely defined exclusions to subsequently classify solid, liquid, semisolid or contained gaseous material as RCRA solid wastes predicated with a simple statement that RCRA is not intended to move upstream into the manufacturing process. DTSC has used the ambiguity of the federal definitions as a means to expand the definition of wastes and has factually moved upstream into the normal manufacturing process to capture and to expand its jurisdiction into legitimate manufacturing operations by identifying individual processes as waste handling operations

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when factually, the process identified is not or would not be so classified by the federal program.

To Wit: The convoluted/arcane federal program:

classifies as a waste any "discarded material" that is not excluded by definition or by a variance. A discarded material is any material which is "abandoned" (except as specified), "recycled" (as defined), or considered "inherently waste-like" (except as specified). Materials are "abandoned" by being disposed of, burned or incinerated or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned. Materials are a solid waste if they are recycled or accumulated, stored, or treated before recycling if they are used in a manner constituting disposal unless they are a commercial chemical product applied to land and that is their ordinary manner of use or, unless, if they are burned for energy recovery if they themselves are a fuel. Reclaimed materials are classified as a solid waste unless the material is a secondary material that has been reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process; "provided . . ." etc., etc.

Simply, the DTSC has picked and chosen from the federal language to create a rationale for classifying intermediate manufacturing products or by-products and the subsequent handling and reuse of those products as waste management operations. In other instances, DTSC has introduced modifiers to the federal language to create specific openings for their definitions. For example: DTSC has modified the reclaimed materials definition to capture as a waste handling operation reclaimed material that does not return to the original process " at the original point of entry for the original purpose." (See above.)

REGISTERED SUPPORT / OPPOSITION:

Support

California Manufacturers Association (Sponsor)
Jefferson Smurfit Corp.
Container Corp. of America
Aluminum Company of America
California Portland Cement Company
Simpson Paper Company
National Steel and Shipbuilding Company
Rohr, Inc.
Chemical Council of California

Opposition

None received

Analysis prepared by: David C. Nunenkamp / aestm / 445-0991 /

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APPENDIX C

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities
and Metal Shredder Wastes, California Metal Shredder Coalition

Appendix C

California Metal Shredder Coalition

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

<i>Page</i>	<i>Comment</i>
Executive Summary	
1	The Coalition disputes DTSC’s assertion that metal shredding facilities pose public health and environmental threats.
1	The purpose of the Treatability Study was not “to identify the highest level of treatment that could be achieved on metal shredder residue with current technology.” Rather, the purpose was to evaluate a range of treatment doses to determine their effectiveness in reducing soluble concentrations of trace metals remaining in metal shredder residue (“MSR”).
1	The “numerous examples of accidents, improper storage of hazardous wastes, soil contamination, and releases of hazardous wastes” are not given proper context in either the Executive Summary or remainder of the Draft Report. By failing to describe these incidents in context, DTSC attempts to make accidents and “releases” appear worse than is actually the case.
1	DTSC claims it has “showed through a series of demonstrations that the most appropriate level of regulation for these kinds of facilities is a hazardous waste permit.” The Coalition disputes this assertion and maintains that no such “demonstrations” have been made.
1	DTSC has chosen not to pursue alternative management standards for metal shredding facilities. The Coalition is dissatisfied with the level of analysis conducted by DTSC and maintains that adoption of alternative management standards was a viable option.
1	DTSC has no authority to require metal shredding facilities to obtain a hazardous waste facility permit. Metal shredding facilities are not out of compliance with existing law.
Introduction	
Section 1.1	
3	DTSC contends it consulted with many state and local agencies in preparing the Draft Report. When and through what mechanisms did such consultation occur? Are there records of meetings with the agencies?
3	SB 1249 authorized DTSC to evaluate metal shredding production processes, but did not authorize DTSC to regulate such production processes under the HWCL.
Section 1.2	
4	The definition of “Metal Shredder Wastes” is incorrectly defined to include “metal shredder aggregate.” This definition reflects a fundamental error that is repeated consistently throughout the Draft Report. Metal shredder aggregate is not waste. It is further noted that under OPP #88-6, metal shredder residue is not a “waste” until after it has undergone treatment and final screening for remaining ferrous metal.
Section 1.3	

4	The Draft Report incorrectly states there “are currently six metal shredding facilities in California.” There are currently at least 10 metal shredding facilities operating in the state, all of which are known to DTSC.
4	De-pollution operations typically occur at feeder yards, before the scrap metal is transported to metal shredding facilities.
5	Figure 1 incorrectly describes the material exiting the hammermill as “metal shredder aggregate.” Aggregate is the material that remains after most ferrous metal has been removed. The material exiting the hammermill is called “Shredder Output.” Figure 1 also does not show the final screening for ferrous metals that occurs after “chemical stabilization.”
5-6	Draft Report correctly notes that “scrap metal is not regulated as a hazardous waste since it is being recycled.” Scrap metal continues to be recycled as it passes through the separation process. Separation and removal of metals from in-process materials thus cannot be considered “treatment” of hazardous waste.
6	The six metal shredding facilities operated by Coalition members have comprehensive scrap acceptance policies. DTSC failed to evaluate the other four shredders operating in California so it is unknown whether they have similar policies.
7	The photograph of Schnitzer’s shredder is outdated. The shredder was fully enclosed in May 2017. Similarly, the photographs of SA’s shredder and drum magnet in Anaheim are outdated. Both the shredder and drum magnet are enclosed.
7	The Draft Report’s incorrect conflation of metal shredder aggregate with “waste” continues in the discussion of hammermills. Materials processed by and exiting the hammermill are not “shredded waste.” Shredder output and aggregate are both in-process materials that fall within the definition of “intermediate manufacturing process stream” in HSC 25116.5.
9	Non-ferrous metals are also removed using induced magnetic currents, not density.
10	The reference to “residual automobile fluids” being a component of MSR is incorrect. All automotive fluids are drained from vehicles before they are processed in the shredder. Any residual fluids are volatilized in the shredder due to the high operating temperature.
10	The first sentence on page 10 states “[a] large amount of <i>waste</i> remains after all the metals that can be economically recovered have been removed.” Under OPP #8-6, metal shredder residue is not considered a “waste” until it has undergone final screening for any remaining ferrous metal. See photograph on page 13.
10	Even assuming MSR could be classified as a “waste,” that determination would occur at the point of generation, NOT during the separation process as per the incorrect definitions in the Draft Report.
11	The description of “Chemical Stabilization” is incomplete, and fails to consider that materials continue to go through the separation process even after chemicals have been added to them.
Section 1.4	
13	Lower-tier permits are not necessarily reserved for lower-risk and lower-volume waste streams. Treatment of many high-volume streams are authorized by permit-by-rule. In any event, CTMSR is a very low-hazard waste stream.
15	The correct name of Sims’ predecessor is Levin Metals Corporation.

15	Schnitzer Steel and Sims also applied for and obtained nonhazardous waste classifications for their treated shredder residue.
15	The Draft Report inappropriately cites to DTSC’s 2002 draft report entitled “California’s Automobile Shredding Waste Initiative.” That report contained many conclusions that were not supported by evidence, and the report was never finalized. The 2002 draft states “DO NOT CITE OR QUOTE” on each page. Further, the 2002 investigation did not identify any “longstanding and continuing issues related to treatment, storage, and handling of hazardous waste at the facilities.” The treatment process in use at the time is identical to the process that is used today and that has been determined by DTSC to support the permanent declassification of CTMSR.
16	SA Recycling is not a subsidiary of Sims.
16	Sims did not pay penalties of \$2.4 million. Most of the funds were used for enclosure of the shredder. The “entire facility” was not enclosed.
16	The discussions with DTSC in 2012 related exclusively to the effectiveness of the treatment process for MSR and whether treated MSR should continue to be classified as a nonhazardous waste. At no time has industry ever acquiesced or agreed with DTSC’s position that hazardous waste treatment occurs during the metal separation and removal process.
17	DTSC’s description of the history of SB 1249 is inaccurate. As originally drafted, the bill applied broadly to metal shredding facilities. The bill was amended to make it clear that DTSC’s authority to adopt alternative management standards applied only to hazardous waste management activities at metal shredding facilities.
Section 1.5	
17	SB 1249 does not contain any reference to “metal shredder aggregate.”
19-20	The discussion about the Legislature’s directives, should the Department decide to adopt alternative management standards, is no longer germane. See comment above re the Department’s failure to accomplish SB 1249’s directive by January 1, 2018.
Section 2.1	
22	DTSC’s evaluation failed to account for all metal shredding facilities operating in California.
22	The exclusion of Universal Recycling Services (Stockton) and Kramar’s Iron and Metal (Sun Valley) from the SB 1249 evaluation due to “pending enforcement activities” is contrary to law. Nothing in SB 1249 allowed DTSC to exclude any metal shredding facilities from the scope of the evaluation.
Section 2.3	
33	The California Air Toxics Program (“Hot Spots Program”) does not apply to all metal shredding facilities. Reporting requirements under the Hot Spots Program apply to only to facilities that release or have the potential to release organic gases, particulates, or oxides of nitrogen or sulfur in amounts that exceed the thresholds specified in Health Safety Code § 44322. <ul style="list-style-type: none"> - They emit 10 tpy or more of VOC, NOx, SOx, or PM - They emit 25 tpy or more of a combination of VOC, NOx, SOx, and PM - They emit less than 10 tpy of VOC, NOx, SOx, or PM, but the facility activity is listed in ARB’s Emission Inventory Criteria and Guidelines for the Air Toxics “Hot Spots” Program

	<ul style="list-style-type: none"> - Their emissions exceed one or more of the reporting thresholds in Table 2a (Emission Reporting Thresholds for Any Industry). These levels are back-calculated from cancer risks of 25 in 1 million and/or a hazard index of 3 using risk assessment procedures.
35	Description of Regenerative Thermal Oxidizers (RTOs) states that “Incoming gases are passed over this heated bed, which destroys the organic compounds by oxidizing (burning) them.” Oxidation is not the same as burning.
Section 2.4	
41-42	The discussion of STLCs and TTLCs in the context of metal shredder aggregate is irrelevant. STLCs and TTLCs are criteria used to determine if a certain waste exhibits hazardous characteristics. These criteria do not apply to materials that are not “wastes.” Metal shredder aggregate is not waste.
42	Draft Report claims that, “As with the metal shredder aggregate, the metal shredder residue also contains levels of lead, copper, and zinc that exceed their respective Soluble STLCs and TTLCs.” See comment above. Discussion of STLCs and TTLCs in context of metal shredder aggregate is irrelevant; metal shredder aggregate is not waste.
42	The characterization of metal shredder residue cannot be relied upon as a basis for determining the characteristics of in-process material.
42	The removal of ferrous and nonferrous metals is not “treatment.”
43	The Treatability Study was not designed to determine if the “optimized treatment could achieve the <i>required</i> reduction in soluble metals.” The treatment process successfully reduced soluble lead concentrations to less than 50 mg/l, which is the standard used for declassification of the treated waste. Reduction of other metals to less than STLC values was not required as a condition to declassification.
44	The Draft Report states that “The treatability study also demonstrated that the treatment process . . . could not consistently lower soluble concentrations for lead.” This is false. The treatment process is able to significantly reduce soluble lead concentrations below the 50 mg/l standard that is the basis for declassification of treated residue. The average concentration of lead was 13.4 mg/l.
44	The treatment process was not designed to reduce the total concentration of metals in treated residue, nor is this physically possible.
45	The items listed in the last paragraph are not “often contained in scrap metal,” as stated in the report. To the contrary, these are all items that are prohibited under the facilities’ scrap acceptance policies.
46-47	Residues and filters from air pollution control equipment are managed as hazardous wastes if they exhibit hazardous waste characteristics at the point of generation.
47	Wastewater treatment system residuals are managed as hazardous wastes if they exhibit hazardous waste characteristics at the point of generation.
47	Tanks bottoms from storm water collection systems are managed as hazardous wastes if they exhibit hazardous waste characteristics at the point of generation.
47	Wastes generated from equipment and facility maintenance activities are managed as hazardous wastes if they exhibit hazardous waste characteristics at the point of generation
Section 2.4.2	

49	Separation of ferrous and nonferrous metals from shredder output and aggregate, respectively, is not a “hazardous waste treatment activity.” These are production operations, involving in-process materials. Shredder output and aggregate also fall within the scrap metal exemption.
49	“ <u>Physical Separation of Ferrous Metals from Metal Shredder Aggregate</u> ” heading appears twice (the second entry should refer to nonferrous metals). Separation of nonferrous metals from aggregate is not hazardous waste treatment.
49	Under OPP #88-6, the chemical stabilization of metal shredder residue is not considered hazardous waste treatment, based on the fact that the treated material undergoes a final metal separation (processing) step. In-line treatment is exempt from hazardous waste permit requirements. If this final processing step were eliminated, the treatment process would be considered hazardous waste treatment.
50	“Storage Processes” repeats DTSC’s misguided assertion that aggregate is waste. Metal shredder aggregate piles are not “storage” of hazardous waste, but non-waste management operations. The discussion of hazardous waste storage requirements has no application to aggregate stockpiles.
50-51	The final products produced by metal shredding facilities (ferrous and nonferrous metals) do not “contain hazardous wastes.” Applicable product specifications allow for a certain percentage of non-metallic material in the final product.
51-52	The discussion of CTMSR storage is flawed and inconsistent with DTSC’s conclusions elsewhere in the report, i.e., that CTMSR does not need to be classified or managed as a hazardous waste. See p. 111.
53	The movement of aggregate and other in-process material within the facility, by conveyor or otherwise, is not considered “transportation.” Releases of in-process materials during transfer are not releases of “hazardous waste or hazardous waste constituents” unless the materials are abandoned (discarded).
55	The discussion of transportation of CTMSR is also flawed. See comment above re DTSC’s inconsistent conclusions regarding CTMSR. Specifically, the Draft Report states that “[CTMSR’s] transportation is regulated as a hazardous waste management activity, and its transportation to another facility requires the use of a registered hazardous waste transporter.” This is incorrect.
55	The reference to “untreated” aggregate at Ecology’s facility is inappropriate. Aggregate is transferred to Arizona for separation and removal of nonferrous metals
55	The management of aggregate is stockpiles is not “land disposal.” In-process materials are not subject to laws relating to land disposal. Even if managed in unpaved areas, metals in the aggregate are not mobilized under ambient conditions and do not pose a threat to soil or groundwater. Some facilities have experienced releases of LFM, but corrective actions have already been taken to address this concern.
55	Conveyor systems at metal shredding facilities are not waste management units.
Section 2.5	
56	The description of enforcement actions appears to be designed to give the reader the impression that there are many ongoing issues with shredders and that further regulation by DTSC is justified. In fact, this discussion demonstrates that many other agencies have jurisdiction over metal shredding facilities and that their regulatory and enforcement programs are effective. All of the instances referred to in this section resulted in a correction and in many instances, the violation were minor or

	administrative in nature. Considering that the shredders have been in operation for over 40 years, the number of violations is minimal.
57	The heading “Storm Water Violations” implies that exceedances of numeric action levels (“NALs”) constitute violations of the Industrial General Permit (“IGP”). NALs exceedances are neither violations of the IGP or Clean Water Act. NALs are incorrectly described as “water quality thresholds.” See also p. 67.
57	No evidence is cited by the Draft Report in support of the assertion that “[a]ll six metal shredding facilities have been cited by DTSC and/or SWRCB for soil or off-site migration contamination, or have had monitoring conducted which revealed regulatory threshold exceedances.”
68	Draft Report overgeneralizes in concluding “Given the similarity of the material being shredded... each metal shredding facility is likely to emit similar pollutants, from its similar processes, to the air, water, and soil surrounding its facilities.” This is an overly simplified conclusion that does not account for operational differences at each facility. Also, the discussion of enforcement actions in the report proves this conclusion is not true.
Section 3.0	
69	The Draft Report incorrectly claims that OPP #88-6 “authorized” hazardous waste management activities that DTSC’s now believes should be regulated, i.e. “treatment.” This is disingenuous. OPP #88-6 recognizes aggregate as in-process material and focuses only on metal shredder residue.
Section 3.1	
70	The presence of non-metallic material in aggregate does not mean that aggregate is a hazardous waste or that it “contains” hazardous waste. Waste is not generated until all processing operations have concluded.
70-71	The quantity of hazardous waste managed at metal shredding facilities is the total of metal shredder residue plus any hazardous wastes that are routinely generated through de-pollution and facility/equipment maintenance activities. Aggregate should not be included in this total, as it is not a waste.
71	The concentration of copper in metal shredder residue does not typically exceed the STLC.
71	Mercury and PCBs are sometimes detected in samples of metal shredder residue, although at concentrations well below hazardous waste criteria.
75	The conclusion that “metal shredding wastes are not being managed in accordance with existing hazardous waste requirements for transfer, storage, or treatment of hazardous waste . . . allowing hazardous wastes to be released and causing potential impacts to human health and the environment” is premised on a legal fallacy and is not supported by substantial evidence.
Section 3.2	
75	Separation of ferrous and nonferrous metals from aggregate is not “treatment.”
76	Aggregate does not need to be stockpiled on impermeable liners, with leachate collection and leak detection systems and ongoing monitoring to detect the migration of contaminants. These requirements are only applicable to hazardous waste piles, not to stockpiles of in-process material.

78	Environmental monitoring, beyond that required by the regulations or permits issued by other agencies, is not warranted. Groundwater monitoring at metal shredding facilities confirms that the groundwater is not contaminated with heavy metals.
Section 3.3	
78	The description of chemical and physical hazards associated with treatment and storage of metal shredding wastes are overstated. Employees who have worked at metal shredding facilities for multiple years, and who work with and around aggregate and metal shredder residue, undergo regular health screening and show no negative health impacts.
Section 3.4	
80	The assertion that “waste management practices that are common to the metal shredding facilities... [have] <i>consistently</i> allowed the metal shredder wastes and their constituents to be released into the environment” is a reference to process-related materials (not wastes) and is an exaggeration. Moreover, metal shredding facilities have implemented major improvements to eliminate or minimize the potential for releases. Most of the inspections and violations cited in the Draft Report involve routine inspections and violations unrelated to releases.
Section 4.3	
98-100	The Coalition disagrees with DTSC’s interpretation and application of the criteria under SB 1249. Coalition members maintain that DTSC could reasonably have determined that adoption of alternative management standards was appropriate and would provide adequate protection of human health and the environment.
Section 6	
113	Metal shredding facilities are not subject to hazardous waste management requirements. As such, DTSC’s conclusion that these facilities are out of compliance and must be subject to hazardous waste permitting in order to “ensure they come into compliance with existing law” is premised on a legal fallacy.

APPENDIX D

Specific Comments, Schnitzer Steel, Oakland Facility

Appendix D

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

Schnitzer Steel, Oakland Facility

Page	Comment
Section 2.2	
25-26	<p>Following is a list of environmental improvements completed at the Schnitzer Facility since 2011:</p> <p>2011</p> <ul style="list-style-type: none"> - Purchased 3 DustBoss sprayers (misting turbines) to keep particulate emissions down - Upgraded ASR treatment system (installed new Pugmill mixing system) <p>2012</p> <ul style="list-style-type: none"> - Purchased 2 more DustBoss sprayers to minimize particulate emissions - Began installation of wheel wash system for trucks entering the dock - Began installation of wheel wash system at facility exit - Installed drip pan under the ship loading conveyor (to catch water coming off conveyor) <p>2013</p> <ul style="list-style-type: none"> - Repaired concrete containment wall at water side of facility - Began project to fully contain the concrete dock and routed storm water back to facility - Bought 3 more DustBoss sprayers to minimize particulate emissions - Completed wheel wash systems at dock and facility exit - Various improvements between 2012-2013 to result in <i>full containment</i> of facility to ensure that no storm water would run off property <p>2014</p> <ul style="list-style-type: none"> - Completed cover for ship-loading conveyor - Installed misting towers at shredder and at loading hopper for ship-loading conveyor - Completed containment of concrete pier - Built a concrete pad for torch cutting area - Installed covers on nonferrous metal recovery plant system conveyors - Design and permitting on storm water treatment system (purchased storm water treatment system) <p>2015</p> <ul style="list-style-type: none"> - Began design for Shredder Emission Control System - More containment of conveyor system (conveyor containment on wooden pier) <p>2016</p> <ul style="list-style-type: none"> - More design and permitting on shredder emission control system

	<ul style="list-style-type: none"> - Completed installation of storm water treatment system - Started design on nonferrous metal recovery plant Emission Control System <p>2017</p> <ul style="list-style-type: none"> - Installed Shredder Emission Control System - Continued design and permitting of nonferrous metal recovery plant Emission Control System <p>2018</p> <ul style="list-style-type: none"> - Optimized storm water treatment system (treatment system upgrades) - Installing enclosure for nonferrous metal recover plant emission control system - Expanding paved area in front of shredder - Continued optimization of storm water treatment system and shredder emission system
26	<p>Survey of Schntizer’s Oakland facility is devoid of any mention of the facility’s storm water treatment operations. The sentence “There are no storm water outfalls ... and no storm drains that connect to a separate municipal storm sewer system” is incorrect.</p> <p>Schnitzer operates a storm water treatment system and discharges the majority of its treated storm water to a sanitary sewer system operated and permitted by EBMUD. Discharge to EBMUD’s system is not allowed during or within 24-hours of a rainfall event. Schnitzer also maintains an individual NPDES permit which allows discharges to surface water through the City of Oakland MS4 if discharges become necessary during or immediately after rainfall events.</p>
26	<p>The statement that Schnitzer “reported that the scrap metal processed <i>at its facility</i> was composed of approximately 50 percent end-of-life vehicles, 10 percent appliances, and 40 percent other light tin or iron” is incorrect. Statistics relate to scrap metal sent through the facility’s metal shredder unit — not total amount of metal materials processed at the facility.</p>
Section 2.3.1	
35	<p>The list of eight bullet points that describe control measures at the Oakland facility is incomplete and outdated. Today, Schnitzer’s metal shredder unit is now fully enclosed. The enclosure captures all shredder emissions and routes the emissions through an emission control system consisting of a drop out box and two parallel wet Venturi scrubbers equipped with cyclonic separators. This expensive, substantial improvement at the Facility is not recognized in the Department’s characterization of the facility’s control measures.</p>
Section 2.3.2	
38	<p>The Draft Report is incorrect when it states that Schnitzer’s Oakland facility is subject to the Industrial General Permit. The facility is subject to requirements of an individual NPDES Permit No. CA0030228 (San Francisco Regional Water Quality Control Board Order No. R2-2016-0045).</p>

APPENDIX E

Specific Comments, Sims Redwood City Facility

Appendix E

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

Sims, Redwood City Facility

<i>Page</i>	<i>Comment</i>
Section 1.4	
16	The description of the referenced enforcement action is inaccurate. Sims paid DTSC \$375,000 as a civil penalty, \$125,000 to California EPA for a Supplemental Environmental Project, and \$450,000 to reimburse DTSC for its investigative costs. Sims additionally committed to expenditures of at least \$1.44 million for facility improvements which included enclosure of the shredder and other equipment to prevent future releases into the surrounding community.
Section 2.2	
27-28	<p>Following is a list of environmental improvements completed at the Sims Facility since 2012:</p> <p><u>Equipment Purchases</u></p> <ul style="list-style-type: none"> ▪ Purchase and use of Tymco Regenerative Sweeper ▪ Purchase and use of water truck ▪ Purchase of multiple “Dust Bosses” and “buffalo turbine” <p><u>Construction of enclosures</u></p> <ul style="list-style-type: none"> ▪ Enclosure of shredder mill structure ▪ Enclosure of Material Recovery Plant Buildings ▪ Enclosure of additional portion of MSR Building ▪ Enclosure of certain aggregate handling systems, e.g., conveyors, etc. ▪ Enclosure of nonferrous bays (installation of roof and misting system) ▪ Installation of enclosed chutes to place nonferrous commodities into collection bins ▪ Enclosure of non-ferrous commodity shipping container loader (with built-in water sprayer) ▪ Enclosure of screening unit and associated magnets into a structure ▪ Full enclosure of shiploading conveyor <p><u>Installations</u></p> <ul style="list-style-type: none"> ▪ Increase height of most perimeter fencing, along with windscreen and “candy cane” rolled top ▪ Installation of additional concrete surfacing ▪ Installation of shredder air recirculation system ▪ Installation of shredder air handling system upgrades ▪ Installation of systems to inject water and foam into shredder mill ▪ Installation of rubber sheeting around Z-Box and material transfer points

	<ul style="list-style-type: none"> ▪ Installation of industrial “cold strips” over door of MSR Building ▪ Installation of belt scrapers on certain conveyors ▪ Installation of “rain bird” sprinklers at infeed and shred stockpiles ▪ Installation of spray bar for incoming trucks prior to unloading ▪ Installation of shiploading conveyor pit “air tunnel” ▪ Installation of telescoping shiploading chute
28	The Sims facility is not surrounded by sensitive wetlands. The facility is located in the Port of Redwood City and surrounded by other industrial uses. Bair Island State Marine Park is located on the opposite side of Redwood Creek.
28	Water is not used in the Material Recovery Plant.
28	The fencing surrounding the facility is 34 feet high on the east and portion of the south sides, and 25 feet on a portion of the west side, of the facility. The rest of the west and north sides of the facility have standard height fences.
Section 2.3.1	
36	Sims has also installed a filter system manufactured by Englo to recirculate air inside the shredder enclosure.
Section 2.3.2	
38	Sims does not have an NPDES permit to discharge storm water to San Francisco Bay. Although the facility is a zero discharge facility, it is enrolled in the Industrial General Permit.
Section 2.5	
63	Sims does not have an NPDES permit. The EPA Compliance Order did not allege any NPDES permit violations. The enforcement action related to incidental losses of material from the facility’s shiploading conveyor. The conveyor has since been fully enclosed and EPA terminated the Compliance Order upon determining that Sims had fulfilled all requirements of the order.
64	The fire that occurred in December 2013 is believed to have been caused by arson.

APPENDIX F

Specific Comments, SA Recycling, Terminal Island Facility

Appendix F

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

SA Recycling, Terminal Island Facility

<i>Page</i>	<i>Comment</i>
Section 2.2	
24	<p>Following is a list of environmental improvements completed at the Terminal Island Facility:</p> <ul style="list-style-type: none"> • Enclosed all aggregate storage, the non-ferrous recovery process and all MSR and TMSR • Downstream non-ferrous metals recovery operations are partially covered • Non-ferrous product storage is covered • Installed dust control units in the non-ferrous recovery process • Covered belt conveyors to prevent particulate matter emissions • Enclosed shredder chamber in a building to control/capture potential emissions • Installed PM and VOC controls on the shredder including Regenerative Thermal Oxidizer, scrubber, and particulate filters • Facility is completely paved and graded • Regular maintenance of concrete cap is conducted • Facility acquired industrial vacuum sweeper and water truck • Constant sweeping and watering throughout the yard to prevent particulate matter emissions due to traffic • Sprinklers are installed throughout the facility for dust control Use of track-out devices (rumble strips) to prevent dust emissions and to prevent tracking out materials on a public roadway • Constant watering of materials off-loaded by the tin pile. • Complete depollution of end-of-life appliances and vehicles to prevent air emissions during handling and shredding process • Continuous training of operators to ensure the application of pollution control measures • Shredder is enclosed • Facility has large canopy for maintenance activities • Hazardous materials and wastes are covered • Electric crane for ship-loading • Scales are equipped with radiation gate monitors for screening inbound material and outbound containers • Facility has specialized equipment and processing stations for end-of-life vehicles • Facility is paved and graded to capture all stormwater in any of six (6) catch basins, before being pumped in-ground to the water treatment plant for storage and treatment prior to reuse or discharge; facility is able to reuse much of the water for housekeeping and operations

	<ul style="list-style-type: none"> • At the treatment plant, water is clarified mechanically via shaker table to remove any gross solids and delivered to tanks to allow for settling • Water is treated chemically with a metal precipitant, coagulant and polymer flocculent prior to clarification via inclined-plate clarifier; polishing is done via activated carbon and zeolite media filtration • A discharge tank for treated water allows for field monitoring – pH, turbidity – to be performed prior to discharge
24	The description of the SA Recycling Terminal Island facility is misleading. It notes that the facility captures storm water and wash water from the yard and reuses it after chemical treatment and clarification. “Water that is not reused is discharged to the Cerritos Channel . . .” This sentence should be revised to state that all discharged water at the Terminal Island facility is subject to treatment.
25	The description of the facility also notes that “1,000 to 4,000 tons of metal shredder waste with its ferrous metals removed, prior to the removal of non-ferrous metals” is typically stored onsite. Again, as stated consistently through the Coalition’s collective comments (Attachment A), metal shredder aggregate is not “waste.”
Section 4	
34	Table 4 indicates that 2015 lead emissions from the Terminal Island facility were 13.4 lb. This appears to be in error, as the reported emissions for Anaheim were only 1 lb/yr and there were no reported emissions for other facilities.
Section 2.5	
58	The Draft Report notes exceedances of numeric action limits (“NALs”) in 2010 and 2011 for specific conductance and chemical oxygen demand, as well as zinc in 2011. NALs exceedances are not violations of the Industrial General Permit, they merely result in Level I or Level II ERA status, and (if necessary) additional BMPs and reporting to the applicable Regional Water Board. See Order 2014-0057-DWQ (the “Industrial General Permit”), at Sec. 66.
59	Explanation of Soil Contamination and Groundwater Monitoring fails to mention that SA Recycling was neither an owner nor operator of the Terminal Island facility from (1990 – 1994). The historic contamination described predates SA Recycling’s involvement at the facility.
59-60	“On May 21, 2007, there was an explosion at SA Terminal Island that damaged the air pollution control system . . .” While there was indeed a fire at the facility in 2007, that was prior to SA Recycling’s ownership of the site and should not be attributed to the company. Under SA Recycling’s management, a new state of the art RTO was constructed at the facility.

59-60	<p>With respect to regulatory inspections at the Terminal Island facility, the following should be noted. Over the past five years, SA Recycling – Terminal Island has had 13 regulatory inspections by nine different agencies. The inspecting agencies include the Los Angeles Regional Water Quality Control Board, Los Angeles Fire Department, Port Police Hazmat, Port of Los Angeles, CalRecycle, The Port of Los Angeles Tenant Stormwater Outreach Program, State of California Department of Food and Agriculture/Weights and Measures, Certified Unified Program Agency, Los Angeles Fire Department and the Department of Toxic Substances Control. Of the 13 inspections, nine resulted in clean reports without issue. Two of those inspections resulted in correspondence and further clarification of our processes, but no violations or corrective actions resulted. Three of the inspections that found minor issues that were corrected the same day or within with 30-day compliance window. Of the 13 inspections, all were routine or follow-up inspections with the exception of two compliant responses that were unsubstantiated by the inspection. The DTSC inspection investigation is ongoing. Over the past 5 years, DTSC management, including Barbara Lee and her staff, visited the site several times and reviewed the operations.</p>
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APPENDIX G

Specific Comments, SA Recycling, Anaheim Facility

Appendix G

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

SA Recycling, Anaheim Facility

<i>Page</i>	<i>Comment</i>
Section 1.3	
7	Bottom image depicts a now-outdated photograph of the Anaheim facility’s shredder unit. Today, the unit is fully enclosed and captures air with a baghouse and a regenerative thermal oxidizer (“ROT). These measures were costly, substantial improvements that prevent the spread of residues to the surrounding air and soil. A more recent picture would better reflect existing operations.
8	The picture of the drum magnets is also outdated. This equipment is now enclosed.
Section 2.2	
26	<p>Following is a list of environmental improvements completed at the Anaheim Facility:</p> <ul style="list-style-type: none"> • Enclosed the Metal Recovery Operations in a building • Installed dust control units in the non-ferrous metal recovery process • Covered belt conveyors to prevent particulate matter emissions • Enclosed shredder with collection hood • Installed PM and VOC controls on the shredder, including a state of the art Regenerative Thermal Oxidizer, scrubber and baghouse • All Aggregate operations are conducted underneath a roof, including truck load out • Non-ferrous metals recovery process, MSR treatment and storage operations are entirely under cover by canopy. The canopy is equipped with plastic curtains and solar panels are installed on the top of the canopy • The facility has been completely paved and graded. As a result, all stormwater is captured and any potential spills are contained onsite. • Facility acquired an industrial vacuum sweeper and water truck • Constant sweeping and watering throughout the yard is conducted to prevent particulate matter emissions due to traffic • Use of track-out devices (rumble strips) to prevent dust emissions and to prevent tracking out materials on a public roadway • Regular maintenance of concrete cap is performed. • Constant watering of materials off-loaded by the tin pile • Complete depollution of end-of-life appliances and vehicles to prevent air emissions during handling and shredding process • Continuous training of operators to ensure the application of pollution control measures • Vehicle processing is conducted under a canopy and recovered fluids are plumbed to storage tanks which are in a secondarily contained, covered structure • Welding operations are conducted under cover for repair and fabrication

	<ul style="list-style-type: none"> • Turnings are stored in a covered storage bay • Hazardous materials and wastes are stored under cover or within closable storage containers • Non-ferrous material storage is covered • Maintenance operations are partially covered • Scales are equipped with radiation gate monitors for screening inbound material and outbound containers • Facility has specialized equipment and processing stations for end-of-life vehicles and appliances • The facility reuses much of the water onsite (including stormwater) for housekeeping and operations • Water is treated chemically with a metal precipitant, coagulant and polymer flocculent prior to clarification via inclined-plate clarifier • A discharge tank for treated water allows for field monitoring – pH, conductivity, turbidity – to be performed prior to discharge
Section 2.5	
62	<p>The Department calls attention to a 2014 storm water notice of violation (“NOV”) that the facility experienced. The NOV related to failing to submit a Corrective Action Plan as required under the General Permit – not a failure due to discharges.</p> <p>The Draft Report incorrectly states that the 2014 NOV was for “exceeding limits for chemical oxygen demand and iron for the 2012-2013 reporting year, and exceeding numeric action levels (“NALs”) for specific conductance, chemical oxygen demand and iron. NALs are not violations of the Industrial General Permit, they merely result in Level I or Level II ERA status and additional reporting to Regional Board. See Order 2014-0057-DWQ (the “Industrial General Permit”), at Sec.66. The same can be said for the Draft Report’s mischaracterization of the 2015 NOV.</p>
62	<p>Discussion of the 1987 Remedial Action Order issued by DTSC is irrelevant to an understanding of how the Anaheim facility’s metal shredder operations are handled today. The Order resulted after Orange County Steel Salvage (prior owners) received a grant from the State to construct its shredding unit. The residue from metal shredding operations was a new issue, for which DTSC ultimately issued “f” letters. The facility’s shredding unit and related abatement technology has improved dramatically over the years. Thus, this discussion does little to aid DTSC in connection with its efforts to develop a new regulatory scheme for modern shredding facilities.</p>
62-63	<p>It should also be noted that the Anaheim facility has had 27 regulatory inspections by nine different agencies. The inspecting agencies include the City of Anaheim Stormwater, Anaheim Code Enforcement, Anaheim CUPA, Anaheim Fire Department, South Coast Air Quality Management District, Santa Ana Regional Water Quality Control Board, CalRecycle, State of California Department of Food and Agriculture/Weights and Measures, and the California Air Resource Board. Of the 27 inspections, 20 resulted in clean reports without issue. Of the six inspections that noted an area of concern, all were class II or lower violations, four of which were</p>

	paperwork/administrative issues. All issues were corrected within the 30-day compliance window. All 27 inspections were routine.
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APPENDIX H

Specific Comments, SA Recycling, Bakersfield Facility

Appendix H

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

SA Recycling, Bakersfield Facility

<i>Page</i>	<i>Comment</i>
Section 2.2	
29	<p>Following is a list of environmental improvements completed at the Bakersfield Facility:</p> <ul style="list-style-type: none">• Partially enclosed non-ferrous metal recovery process• Installed dust control units in the non-ferrous metal recovery process• Covered belt conveyors to prevent particulate matter emissions• Installed hood over shredder• Installed PM controls on the shredder (95% plus control efficiency design)• Facility is 100% paved to prevent dust emissions• Facility acquired industrial vacuum sweeper and water truck• Constant sweeping and watering throughout the yard to prevent particulate matter emissions due to traffic• Use of track-out devices (rumble strips) to prevent dust emissions and to prevent tracking out materials on a public roadway• Constant watering of materials off-loaded by the tin pile• Complete depollution of end-of-life appliances and vehicles to prevent air emissions during handling and shredding process• Training of operators to ensure the application of pollution control measures• Facility is completely paved and graded.• Regular maintenance of concrete cap is conducted.• Storage areas for Non-Ferrous Metals, as well as for hazardous materials and wastes are completely covered• Facility has a large warehouse for maintenance activities• Scales are equipped with radiation gate monitors for screening inbound material and outbound containers• Facility has specialized equipment and processing stations for end-of-life vehicles and appliances• Vehicle processing is partially covered by a canopy• Facility is graded and paved to capture all stormwater and deliver it to tank storage and a multi-chambered flow-through clarifier for settling, removal of solids.• Limited volumes of stormwater may be infiltrated onsite; facility is able to reuse much of the water for housekeeping and operations

Section 2.3.1	
34	Under Table 4, the “VOC Control Technology” row indicates that SA Recycling’s Bakersfield facility lacks a scrubber and a regenerative thermal oxidizer (RTO). While that may be true, this narrow assessment fails to consider other abatement technologies at the facility, including the Tert-Amyl Methyl Ether (TAME) unit and the “various moisture-coalescing filters and high-efficiency dust filters” noted on page 37 of the Draft Report.
Section 2.5	
65-66	<p>For the Draft Report’s recap of inspections at SA Recycling’s Bakersfield facility, the following should be noted:</p> <p>Over the past five years, the facility has had 16 regulatory inspections by four different agencies. The inspecting agencies include CalRecycle, San Joaquin Air Pollution Control District, State of California Department of Food and Agriculture/Weights and Measures and Kern County Public Health (APSA, Hazardous Material and Hazardous Waste Divisions). Of the 16 inspections, 14 resulted in clean reports without issue. The two inspections that found issue were both administrative and were corrected within the 30-day compliance window. All 13 inspections were routine.</p>

APPENDIX I

Specific Comments, Ecology, Colton Facility

Appendix I

Specific Comments on Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes

Ecology, Colton Facility

<i>Page</i>	<i>Comment</i>
Section 1.1	
1	Ecology does not generate “Metal Shredder Residue” at the Colton facility. “Metal Shredder Residue” is defined by the Draft Report as the material that remains after ferrous and non-ferrous metals are separated. Ecology’s Colton facility transports aggregate to its nonferrous metal processing plant in Arizona for separation and removal of non-ferrous metals. Metal Shredder Aggregate is not a hazardous waste.
Section 1.3	
6	The Draft Report correctly notes that metal shredding facilities that conduct the de-pollution operations on-site are subject to hazardous waste generator requirements (to the extent the removed items are hazardous wastes). However, it should be noted that the vast majority of scrap metal received at the Colton facility has already been de-polluted off-site.
Section 2.2	
30	<p>Following is a list of environmental improvements completed at the Ecology Facility since 2005 (inception of the facility):</p> <p><u>Stormwater Controls</u></p> <ul style="list-style-type: none"> ▪ Entire facility is enclosed by a 12” berm to contain all stormwater greater than a 100 year rain event ▪ Entire facility is equipped with infiltration galleries to capture and direct all stormwater to a half million gallon detention basin ▪ Storage of stormwater is accomplished by a one million gallon storage tank in addition to the detention basin ▪ All collected stormwater is used for on-site dust control, maintenance of scrap moisture levels and facility fire control ▪ Collected stormwater is used in the mill to cool process equipment during the shredding process and to eliminate sparking ▪ Main entrance and exit is equipped with rumble strips to avoid track-out onto exterior roadways ▪ Facility maintains an up to date SWPPP in the event of a storm event at-greater-than a 100 year rain event ▪ Aggregate storage area is enclosed on five sides to avoid wind dispersal and excess rainwater mixing with materials ▪ Covers are maintained over outdoor fuel storage areas

Groundwater Protection

- The entire shredder area, including areas where scrap piles are located, is paved with reinforced concrete to eliminate groundwater infiltration
- The aggregate storage area is additionally equipped with one-inch steel plate flooring, berms and siding to meet the DTSC's interim standards
- All diesel fuel storage tanks are designed with integral Secondary Containment storage.
- Over 2000 tons of contaminated soils were removed prior to purchase of the property in 2003

Air Quality

- All scrap storage piles are continuously kept moist to avoid dust generation
- All roads are kept moist with water trucks to avoid dust entrainment
- Shredder mill is equipped with a high efficiency HEPA particulate filter on the system exhaust
- Mill exhaust is further equipped with a Regenerative Thermal Exhaust system to eliminate VOC emissions at over 95% efficiency.
- RTO is equipped with Lo-NOx combustion burners to meet latest air quality standards
- Mill maintains a water injection rate of at least 10 gallons per minute to avoid fires and explosions
- All diesel-fueled cranes meet the Tier 3 air pollution standards required by the Air Resources Board
- Mill process equipment is equipped with cyclones for dust control over post-shredding material conveyors
- Material recovery bins are maintained underneath conveyors for return to the process
- Concrete block walls enclose the mill, aggregate, ferrous metals and material loading areas (wind protection)

Noise Prevention

- Mill area is equipped with four story tall sound barriers to meet CNEL standards established by the city
- Mill operation is self-limited to meet local community needs to day time hours

Hazardous waste control

- Facility is a DTSC Certified Appliance Recycler (CAR) and has been since the program inception in 2005
- All appliance materials meeting the MRSH definition are managed in accordance with the DTSC standards (hazardous waste labeling, covers on containers; special inspections; final disposal, etc.)
- Transport of all hazardous waste is performed by DOT/EPA licensed hazardous waste haulers
- Any contaminated soils, oils, mercury switches, Freons, etc. are removed by HazMat trained staff for proper storage, labeled and manifested for ultimate disposal

	<ul style="list-style-type: none"> ▪ Facility maintains Hazardous Waste Business Plan to meet the requirements of the San Bernardino County CUPA
30	The Facility is not subject to the California Air Toxics “Hot Spots” program. Risk assessment calculations indicate all potential air toxics present less than a 1 chance per million cancer risk and a non-cancer Health Hazard Index of less than 1.0, as defined by the South Coast Air Quality Management District.
30	The Draft Report refers to “nearby” residences to Ecology’s Colton Facility. The nearest residences are approximately ½ mile away from the facility’s shredder.
30	The Draft Report states that “[a]t one time, the facility recovered non-ferrous metals at the Colton facility and then chemically treated the remaining metal shredder aggregate on-site.” This is incorrect. Ecology has never treated metal shredder aggregate at the Colton facility.
30	The Draft Report incorrectly describes the Colton facility’s stormwater system. First, lined stormwater ponds have a maximum capacity of 450,000 gallons, not 1 million gallons. Second, the retention pond and storage system was built to withstand a 100-year rain event.
Section 2.3	
34	Table 4 summarizes air quality regulations for the six metal shredding facilities, as regulated by their respective local Air Quality Management Districts (“AQMDs”). Ecology notes two corrections that must be made to ensure accuracy of this table: <ul style="list-style-type: none"> - Ecology’s “Point Source” entry should be amended to read “Hood, H2O, and Cyclone” - Ecology’s “Particular Matter Emissions in 2015, tons/yr” entry should be amended to read “0.4”
Section 2.4.2	
55	The Draft Report states “Ecology ships [] aggregate as an excluded recyclable material under the provisions of subdivision (d) of Section 25143.2 of the Health and Safety Code.” Ecology maintains that its aggregate is an in-process material (not a waste) and that reliance on the ERM provisions of the law is legally unnecessary. Ecology does not concede that metal shredder aggregate is “excluded recyclable material.”
55	The materials that Ecology generates on-site do not meet DTSC’s definition of “Metal Shredder Residue.” “Metal Shredder Residue” is defined by the Draft Report as the material that remains after ferrous and non-ferrous metals are separated. See comment above re nonferrous metal separation operations that are conducted outside of California.
Section 3.1	
71	Table 6 depicts Ecology as having generated <u>and treated</u> 264,000 tons of metal shredder aggregate in 2014. This is incorrect. Separation and removal of ferrous metal from the material exiting the shredder is not “treatment.”