

## CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

To: Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044, 1400 Tenth Street, Room 212  
Sacramento, CA 95812-3044

From: Department of Toxic Substances Control  
Hazardous Waste Management Program  
P.O. Box 806, 1001 "I" Street, 11<sup>th</sup> Floor  
Sacramento, CA 95812-0806

**Project Title:** Emergency Rulemaking – Regulation of Metal Shredder Aggregate

**Project Location:** Statewide

**County:** All

**Project Applicant:** Mohammed Omer

**Approval Action Under Consideration by DTSC:** Regulations

**Statutory Authority:** California Health and Safety Code, Chapter 6.5

**Project Description:** This project is an emergency rulemaking effort to define metal shredder aggregate and exclude it from the existing State definition of scrap metal. The August 2021 completion of the Department of Toxic Substance's (DTSC) analysis of the metal shredder industry ("Final Report"), along with several recent findings and occurrences (including fires and releases of hazardous waste from metal shredding facilities into the environment in close proximity to residential areas, hospitals, schools, and daycare centers), has led DTSC to conclude that the current regulatory system constitutes an emergency necessitating immediate action to avoid serious harm to the public peace, health, safety, and general welfare.

The revised regulations will provide clarity to the regulated community and regulatory agencies as to the appropriate definition and management of metal shredder aggregate. The revised regulations will allow DTSC to better enforce hazardous waste management standards at metal shredding facilities. This emergency rulemaking will include the necessary conditions for applicability of the regulations, scope of regulations, and any projected fees.

**Background:** DTSC is the State agency charged with administering and enforcing the state hazardous waste management requirements in the California Hazardous Waste Control Law, Health and Safety Code section 25100 *et seq.* and its implementing regulations in California Code of Regulations, title 22, section 66260.1 *et seq.* (collectively, "HWCL"). The HWCL is the comprehensive statutory and regulatory framework governing the generation, handling, treatment, storage, transport, and disposal of hazardous waste. The HWCL mandates a "cradle to grave" registration, tracking, storage, treatment, and disposal system for the protection of the public from the risks posed by hazardous waste and for the protection of the environment – i.e., soil, air, surface water, groundwater – from contamination by hazardous wastes and their constituents.

DTSC is authorized by the United States Environmental Protection Agency (U.S. EPA) to administer and enforce California's hazardous waste management program in lieu of the federal hazardous waste management program – the Resource Conservation and Recovery Act (RCRA). As a RCRA authorized state, California must be as stringent as U.S. EPA. However, California is authorized by U.S. EPA to impose requirements that are more stringent and/or broader in scope than the federal requirements.

As mentioned above, DTSC has determined that the current regulatory system constitutes an emergency necessitating immediate action to avoid serious harm. In particular, DTSC has found that metal shredding facilities in California generate and manage a large volume of a mixed wastestream known as metal shredder aggregate, composed of recoverable scrap metal and non-RCRA hazardous waste. The lack of a clear definition of metal shredder aggregate within the current regulatory system, as well as the existing State definition of "scrap metal" not clearly excluding metal shredder aggregate from definition as scrap metal, are sources of potential misinterpretations of the applicability of the HWCL among the regulated community. Certainty must be provided to both the regulated community and the regulators that administer the HWCL and its implementing regulations. The proposed amendments will clearly define "metal shredder aggregate" and amend the definition of "scrap metal" to make clear that metal shredder aggregate is not a scrap metal and is not exempt from regulation under the HWCL. This change will provide clarity to both the regulated community and regulatory agencies as to the appropriate management of metal shredder aggregate, encourage metal shredding facilities to seek authorization so that they may operate in an environmentally- and health-protective manner, and prevent ongoing releases of hazardous wastes to protect public health and safety and the environment.

Previous incidents have been addressed by DTSC via facility-specific enforcement actions; however, in light of DTSC's new understanding of the inability of facility improvements to wholly mitigate environmental and public health concerns, these piecemeal, reactive actions have been insufficient in addressing the newly recognized larger systemic problems associated with metal shredding facilities. Immediate adoption of the proposed emergency rulemaking is the only option to mitigate the existing environmental and public health impacts associated with metal shredding activities, avoid and

prevent future harmful events such as fires, explosions, and releases of hazardous waste, which DTSC's Final Report has confirmed are a certainty under the current regulatory system, and provide a pathway for metal shredders to operate in an environmentally- and health-protective manner.

**Project Activities:** Under this proposed emergency rulemaking, DTSC shall amend sections 66260.10 Definitions and 66273.9 Definitions of division 4.5 of title 22 of the California Code of Regulations to define metal shredder aggregate and exclude it from the State definition of scrap metal.

**Name of Public Agency Approving Project:** Department of Toxic Substances Control

**Name of Person or Agency Carrying Out Project:** Department of Toxic Substances Control

**Exempt Status:** Title 14, California Code of Regulations, section 15308. Actions by Regulatory Agencies for Protection of the Environment

**Reasons Why Project is Exempt:** DTSC has determined that the proposed regulatory amendments are actions taken by DTSC to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The proposed regulation amendments would assure protection of the environment and combat environmental harm by mitigating risks to human health, safety, and the environment posed by metal shredding facilities by defining metal shredder aggregate and clarifying that it is not a scrap metal. Providing clarity will help to ensure that metal shredding facilities conduct their operations in an environmentally- and health-protective manner. No construction activities are proposed with this rulemaking project and therefore, there are no significant effects on the environment due to unusual circumstances. The proposed regulatory amendments would not allow for environmental degradation or relaxation of environmental protection standards. The proposed regulatory amendments would help to maintain, enhance, restore, and protect the environment by clarifying the scope of the existing regulatory program and eliminating potential for a regulatory misinterpretation.

The administrative record for this project is available to the public by appointment at the following location:

Department of Toxic Substances Control  
Hazardous Waste Management Program  
P.O. Box 806, 1001 "I" Street, 11<sup>th</sup> Floor  
Sacramento, CA 95812-0806

Additional project information is available on DTSC's Regulations page: [www.dtsc.ca.gov/regs/](http://www.dtsc.ca.gov/regs/)

Contact Person	Contact Title	Phone Number
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Approver's Signature:

Date:

*Diana Peebler*

October 1, 2021

Approver's Name	Approver's Title	Approver's Phone Number
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