

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, 11th Floor
Sacramento, CA 95812-0806

Project Title: Emergency Rulemaking – Conditional Exclusion for Chemically Treated Metal Shredder Residue

Project Location: Statewide

County: All

Project Applicant: Jessica Twining

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 readopt a conditional exclusion which would allow for the transportation and disposal of chemically treated metal shredder residue ("CTMSR") as a nonhazardous waste while ensuring protection of human health and the environment. The Department of Toxic Substances Control ("DTSC") proposes to amend section 66260.10, division 4.5, title 22 of the California Code of Regulations to define CTMSR. DTSC also proposes to amend section 66261.4, division 4.5, title 22 of the California Code of Regulations to allow for the transportation and disposal of CTMSR as a nonhazardous waste under a conditional exclusion.

Background: DTSC is the State agency charged with administering and enforcing 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, the "HWCL"). The HWCL is the comprehensive statutory and regulatory framework governing the generation, handling, treatment, storage, transportation, 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.

On October 28, 2021, the California Court of Appeal declined to modify a ruling of the California Superior Court, County of Alameda, resulting in a requirement that DTSC rescind, within no more than 30 days, a nonhazardous waste classification granted under section 66260.200(f), division 4.5, title 22 of the California Code of Regulations, known as an "f letter," granted by DTSC to Schnitzer Steel, Inc. ("Schnitzer"). That "f letter" is applicable to Schnitzer's metal shredding facility in Oakland, California ("Schnitzer Oakland"). Five other metal shredding facilities in California currently are operating subject to similar DTSC-granted "f letters." The Superior Court's ruling obligates DTSC to rescind only Schnitzer's "f letter" and does not apply to the "f letters" granted to the other five metal shredding facilities. By requiring the rescission of Schnitzer's "f letter," the Superior Court's ruling creates a situation in which the HWCL is inconsistently applied across businesses conducting the same activities in the State, causing confusion for the metal shredding facilities, hazardous and nonhazardous waste landfills, and waste transporters, as well as local and state regulatory agencies. This lack of uniform regulatory status for all of California's affected metal shredding facilities and the waste from those facilities has caused DTSC to conclude that the

situation created by the Superior Court's ruling constitutes an emergency necessitating immediate action to avoid serious harm to the public peace, health, safety, and general welfare. This emergency rulemaking will include the necessary conditions for applicability of the regulations, scope of regulations, and any projected fees.

The serious harm and threats to public health and the environment described in the initial Finding of Emergency rulemaking actually came to fruition from approximately November 29, 2021, when DTSC (pursuant to the Superior Court's ruling) rescinded Schnitzer's "f letter", until January 3, 2022, when Schnitzer halted sending out-of-state the metal shredder residue they generated and subsequently managed as hazardous waste.

On April 18, 2022, the Superior Court in *Oakland A's v. DTSC* issued an order finding that the emergency regulations may not be applied to Schnitzer Oakland. Under that ruling, DTSC is prohibited from applying the emergency regulations to Schnitzer Oakland and from providing Schnitzer Oakland with the emergency regulations' conditional exclusion for transportation and disposal of CTMSR. The Superior Court's ruling currently is subject to an automatic stay because of the filing of a notice of appeal of that ruling by DTSC on May 17, 2022. Whether the automatic stay remains in place or is lifted, the effectiveness of the emergency regulations as applied to Schnitzer Oakland is subject to appellate court review. In the absence of readoption of the emergency regulations, the emergency circumstances described above, and the serious harm and threats to public health and the environment anticipated by the initial Finding of Emergency, would resume.

The conditional exclusion for CTMSR will replace the existing "f letters" and allow DTSC to ensure that CTMSR is safely transported and disposed at authorized landfills in a manner that protects human health and the environment. The impacts realized from not pursuing this emergency rulemaking include the following:

- Diversion of limited authorized hazardous waste transporters from transportation of hazardous waste to transportation of CTMSR;
- Class III landfills that were previously accepting the CTMSR to be used beneficially as alternative daily cover at those facilities will be unable to use this waste as alternative daily cover and will need to seek an alternative source of this material.
- Increased out-of-state disposal, contrary to the goals of the Health and Safety Code section 25179.1(b). This was observed during an approximate one-month period when Schnitzer Oakland sent their metal shredder residue out-of-state to three states (Nevada, Arizona, and Utah);
- Increased carbon dioxide, air pollutants, and respirable particulate emissions due to longer transportation distances traveled to dispose of waste; and
- Increased pollution, noise, and traffic burdens on already disproportionately impacted communities.

This rulemaking will accomplish several important objectives for the regulation of metal shredding facilities in California. The proposed regulations will codify standard conditions related to metal shredder activity and wastes, thus establishing uniform regulatory procedures for all of California's metal shredding facilities that conduct chemical stabilization of their metal shredder residue. The proposed regulations also will establish necessary waste characteristic thresholds and conditions for transportation, documentation, and recordkeeping under which CTMSR may be safely transported and disposed of in designated nonhazardous waste landfills. Finally, the proposed regulations will provide a level playing field and opportunity for any new metal shredding facilities to begin chemical stabilization under a uniform, industry-wide standard for conditional CTMSR exclusion.

Project Activities: Pursuant to this emergency rulemaking, DTSC is working to finalize a regular rulemaking which will make the proposed emergency regulatory amendments permanent. This regular rulemaking project consists of amending sections 66260.10 and 66261.4 in division 4.5, title 22 of the California Code of Regulations.

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 establishing clear conditions for the transportation and disposal of CTMSR as a nonhazardous waste, such as waste characteristic thresholds and documentation and recordkeeping requirements. These conditions will preserve California's limited hazardous waste landfill capacity while ensuring that metal shredding facilities transport and dispose of their wastes in an environmentally-protective 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 requirements for CTMSR transportation and disposal and by ensuring all metal shredding facilities operate under identical requirements.

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, 11th Floor
Sacramento, CA 95812-0806

Additional project information is available on DTSC's Regulations page: www.dtsc.ca.gov/regs/

Contact Person	Contact Title	Phone Number
Jessica Twining	Senior Environmental Scientist	(916) 926-9036

Approver's Signature:

Date: June 7, 2022

 for Diana Peebler

Click or tap to enter a date.

Approver's Name	Approver's Title	Approver's Phone Number
Diana Peebler	Branch Chief	(510) 540-3866

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Date Received for Filing and Posting at OPR: