



ATTORNEY \_\_\_\_\_  
DUE DATE 6/10/16  
8/29/2016 MAIL-BACK

**RESUBMITTAL  
EMERGENCY  
MASTER FILE**

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Ed Benelli  
FROM: OAL Front Desk *jo*  
DATE: August 30, 2016  
RE: Return of Rulemaking Materials  
OAL Matter Number 2016-0531-02  
OAL Matter Type Emergency Resubmittal (ER)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Annual Fee on Metal Shredding Facilities."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement:** Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at [postedregslink@oal.ca.gov](mailto:postedregslink@oal.ca.gov).

**NOTE ABOUT EXEMPTIONS.** Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

1 **TEXT OF PROPOSED EMERGENCY REGULATIONS**

2 **Department of Toxic Substances Control Reference Number: R-2015-01**

3 **Office of Administrative Law Emergency Number: 2015-xxxx-xxx**

4 **DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS**

5 **CHAPTER 56. Annual Fee on Metal Shredding Facilities**

6 *Article 1. ↗*

per agency  
request

7 **Add sections 69600.1 through 69600.20 to division 4.5 of title 22 of the California Code of**  
8 **Regulations, to read:**

9  
10 **Chapter 56. Annual Fee for Metal Shredding Facilities**

11  
12 **§ 69600.1. Scope and Purpose.**

- 13 (a) This chapter establishes an annual fee upon metal shredding facilities, as defined in section  
14 69600.3(a), of this chapter, in order to reimburse the Department for its costs to implement  
15 sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the Health and Safety Code.
- 16 (b) Nothing in this chapter is a limitation on the authority of any other governmental agency to  
17 adopt or enforce additional requirements related to metal shredding facilities or to develop  
18 any other regulatory program allowed by law.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
20 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),  
21 Health and Safety Code.

22  
23 **§ 69600.2 Definitions.**

- 24 (a) "Metal Shredding Facility" has the same meaning as defined subsection (b) of section  
25 25150.82 of chapter 6.5 of division 20 of the California Health and Safety Code.
- 26 (b) "Projected Annual Fee" means the Department's estimate of the annual fee for each metal  
27 shredding facility based on its estimate of the reasonable and necessary costs for each  
28 calendar year to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of  
29 the California Health and Safety Code.

1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
2 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),  
3 Health and Safety Code.

4  
5 **§ 69600.3. Applicability.**

6 (a) The annual fee requirements apply to metal shredding facilities that meet all the  
7 requirements set forth below:

8 (1) are located within the state of California,

9 (2) are operating using one of the following authorities or classifications that allow lawful  
10 metal shredding operations:

11 (A) A notification issued by the Department in accordance with section 66260.200(f) of  
12 title 22 of the California Code of Regulations that otherwise hazardous waste may be  
13 classified and managed as nonhazardous. Successor entities to metal shredding  
14 facilities that received the notification are included in this section;

15 (B) An order issued or entered into by the Department under chapter 6.5 of division 20  
16 of the Health and Safety Code that authorizes a metal shredding facility to continue  
17 operations pursuant to specified management and operating conditions;

18 (C) A judgment issued by a court with jurisdiction in a matter to which the Department  
19 and at least one metal shredding facility are parties that authorizes operations  
20 pursuant to specified management and operating conditions; or

21 (D) A permit issued by the Department under chapter 6.5 of division 20 of the Health  
22 and Safety Code that authorizes metal shredding operations.

23 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
24 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.84(a), and 25150.84(b), Health and  
25 Safety Code.

26  
27 **§ 69600.4. Assessment of the Annual Fee.**

28 (a) The Department shall assess an annual fee on each metal shredding facility in an amount  
29 sufficient to reimburse the Department's annual costs.

30 (b) The Department's annual costs shall include costs incurred to conduct the following  
31 activities:

- 1 (1) Development and administration of the Annual Fee;
- 2 (2) Environmental Analysis and Evaluation;
- 3 (3) Assessment of Off-site Migration;
- 4 (4) Stakeholder Workshops and other outreach activities;
- 5 (5) Regulation Development and Adoption; and
- 6 (6) Laboratory Support.
- 7 (c) The annual fee shall be determined by dividing the Department's annual costs by the
- 8 number of metal shredding facilities operating in any portion of the calendar year to which
- 9 the fee applies.
- 10 (d) To provide metal shredding facilities with the best estimate of the annual fee, the
- 11 Department has projected the annual fees for calendar years 2015, 2016, and 2017 in the
- 12 following fee schedule:

Calendar Year	Projected Annual Fee
2015	\$43,900
2016	\$69,800
2017	\$52,700

- 14
- 15 (e) If the annual fee invoiced differs from the Department's projected annual fee due to higher
- 16 or lower actual costs incurred for any calendar year, a change in the number of metal
- 17 shredding facilities, or both, the Department shall explain any difference in the invoice to
- 18 each metal shredding facility.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:

20 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),

21 Health and Safety Code.

22

23 § 69600.5. Administration of the Annual Fee.

- 1 (a) The Department shall invoice each metal shredding facility for the annual fee for calendar  
2 year 2015 no later than July 1, 2016.
- 3 (b) The Department shall invoice each metal shredding facility for the annual fee for calendar  
4 year 2016 no later than February 1, 2017.
- 5 (c) The Department shall invoice each metal shredding facility for the annual fee for calendar  
6 year 2017 no later than February 1, 2018.
- 7 (d) The annual fee shall be due and payable to the Department sixty (60) calendar days after  
8 the facility is invoiced.
- 9 (e) A transfer of ownership or operation of assets of a metal shredding facility during a calendar  
10 year shall not cause an additional annual fee to be assessed if the fee for the same calendar  
11 year has been paid by the previous owner or operator.

12 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
13 Section 25150.84(a), Health and Safety Code.

14

15 **§ 69600.6. Administration of Late Fees.**

- 16 (a) A late fee of ten percent (10%) shall be assessed on any payment that is not received as  
17 postmarked by due date, or on such later date as notified by the Department.
- 18 (b) Beginning on the first day of the calendar month following the due date, simple interest  
19 shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate  
20 per month, or fraction thereof" as established by the State Board of Equalization pursuant  
21 to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the  
22 fee is paid in full.
- 23 (c) The late fee or interest assessed pursuant to this section may be waived if the Department  
24 determines that the failure to make a timely payment was due to reasonable cause and  
25 circumstances beyond the person's control, and occurred notwithstanding the exercise of  
26 ordinary care and the absence of willful neglect. Mere disagreement with the fee  
27 assessment shall not be deemed reasonable cause. A person seeking to be relieved of late  
28 fees or interest shall submit a written statement to the Department, signed under penalty  
29 of perjury, setting forth the facts upon which he or she bases the claim for relief.
- 30 (d) If the Department provides a refund because of an erroneous billing, the refund shall be  
31 subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as  
32 established by the State Board of Equalization pursuant to section 6591.5 of the Revenue  
33 and Taxation Code. Except, no refund shall be given and no interest shall accrue where the  
34 erroneous billing was due to incorrect information provided by the person seeking the  
35 refund.

1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
2 Section 25150.84(a), Health and Safety Code.

3  
4 **§ 69600.7. Dispute Resolution.**

5 (a) No refund shall be granted for any fees erroneously collected unless the person who seeks  
6 the refund submits written notification of the error to the Department within one year of  
7 the date the person is notified of the fee assessment.

8 (b) A person may dispute the assessment of the annual fee by submitting a petition to the  
9 Department director. The person must submit the petition in writing within one year of the  
10 date the person is notified of the fee assessment. The petition must state the specific  
11 grounds upon which it is founded. If requested, the Department shall hold a conference  
12 with the party and provide all reasonable information and an explanation of the charges  
13 assessed. If the matter cannot be resolved informally, the director shall designate a hearing  
14 officer to decide the petition. The hearing officer shall be in neither a subordinate nor a  
15 supervisory or managerial position to any staff involved in making the initial determination  
16 of the fee assessment. A hearing shall be conducted in person, by telephone, or by video  
17 conference at which all relevant evidence will be admissible. The hearing officer shall  
18 prepare a written final decision to approve or deny the petition.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
20 Section 25150.84(a), Health and Safety Code.

21  
22 ~~§ 69600.8. [Reserved]~~

23 ~~§ 69600.9. [Reserved]~~

24 ~~§ 69600.10. [Reserved]~~

25 ~~§ 69600.11. [Reserved]~~

26 ~~§ 69600.12. [Reserved]~~

per agency  
request

27 ~~§ 69600.13. [Reserved]~~

28 ~~§ 69600.14. [Reserved]~~

29 ~~§ 69600.15. [Reserved]~~

30 ~~§ 69600.16. [Reserved]~~

31 ~~§ 69600.17. [Reserved]~~

1 ~~§ 69600.18.~~ [Reserved]

2 ~~§ 69600.19.~~ [Reserved]

3 ~~§ 69600.20.~~ [Reserved]

per agency  
request

# EMERGENCY NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2016-0531-02ER</b>
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For use by Office of Administrative Law (OAL) only

2016 MAY 31 P 1:40

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**JUN 9 2016**  
1:42 PM

AGENCY WITH RULEMAKING AUTHORITY Department of Toxic Substances Control	AGENCY FILE NUMBER (if any) R-2015-01
--	--

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Annual Fee on Metal Shredding Facilities	TITLE(S) Title 22 CCR	FIRST SECTION AFFECTED Chpt 56, sec 69200.1	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Ed Benelli	TELEPHONE NUMBER (916) 324-6564	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Annual Fee on Metal Shredding Facilities	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2015-1214-02 (E)</b>
--	---

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT <del>Chapter 56, sections 69600.1 through 69200.20</del>	<b>See attached sheet</b>
	AMEND none	
	REPEAL none	
TITLE(S) Title 22 CCR		

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code § 11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§ 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code § 11349.3, 11349.4)	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Deemed emergency purs. to statute</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, § 44 and Gov. Code § 11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, § 100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
--	---	--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM § 6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) <b>PH</b>		

7. CONTACT PERSON Ed Benelli	TELEPHONE NUMBER (916) 324-6564	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Edward.Benelli@dtsc.ca.gov
---------------------------------	------------------------------------	-----------------------	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE <b>5/20/16</b>
TYPED NAME AND TITLE OF SIGNATORY Barbara A. Lee, Director, California Department of Toxic Substances Control	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**JUN 09 2016**

**Office of Administrative Law**

SECTIONS TO BE ADOPTED:

T22 SECTION 69600.1

69600.2

69600.3

69600.4

69600.5

69600.6

69600.7

~~69600.8~~

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~~69600.20~~

per agency  
request

**State of California  
Office of Administrative Law**

In re:  
Department of Toxic Substances Control

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: 69600.1, 69600.2, 69600.3,  
69600.4, 69600.5, 69600.6,  
69600.7

Amend sections:  
Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION

Government Code Sections 11346.1 and  
11349.6

OAL Matter Number: 2016-0531-02

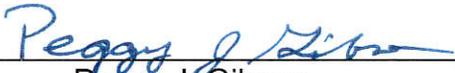
OAL Matter Type: Emergency Resubmittal  
(ER)

The Department of Toxic Substances Control is permitted by Health and Safety Code section 25150.84 to collect an annual fee from metal shredding facilities to reimburse the department's costs to evaluate metal shredding facilities and their wastes. This emergency action establishes which metal shredders are subject to the fee and how the fee is assessed.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

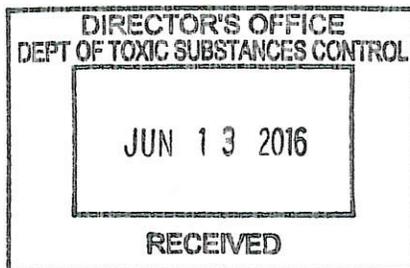
This emergency regulatory action is effective on 6/9/2016 and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner pursuant to Health and Safety Code section 25150.84.

Date: June 9, 2016

  
Peggy J. Gibson  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Barbara A. Lee  
Copy: Ed Benelli



OFFICE OF ADMINISTRATIVE LAW  
300 CAPITOL MALL, SUITE 1250  
SACRAMENTO, CALIFORNIA 95814

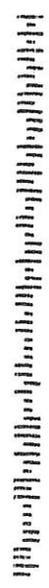
LEGAL OFFICE  
DEPT OF TOXIC SUBSTANCES CONTROL  
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Barbara A. Lee, Director  
Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento 95812-0806

95812-080606



**State of California  
Office of Administrative Law**

**In re:**  
Department of Toxic Substances Control

**Regulatory Action:**

**Title 22, California Code of Regulations**

**Adopt sections:** 69600.1, 69600.2, 69600.3,  
69600.4, 69600.5, 69600.6,  
69600.7

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2016-0531-02**

**OAL Matter Type: Emergency Resubmittal  
(ER)**

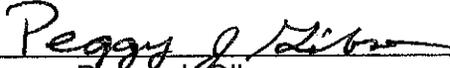
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Date: June 9, 2016

  
Peggy J. Gibson  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Barbara A. Lee  
Copy: Ed Benelli

OFFICE OF ADMINISTRATIVE LAW  
300 CAPITOL MALL, SUITE 1250  
SACRAMENTO, CALIFORNIA 95814



RECEIVED JUN 10 2016

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HW

Ed Bennelli  
Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento 95812-0806

95812-080606



### Rulemaking Approval Tracking Sheet

R-2015-01

Type (circle as appropriate): Regular      **Emergency**      Cert of Compliance

45-Day Notice      15-Day Notice      Final Approval

Subject: Emergency Regulations: Annual Fee on Metal Shredding Facilities

Contact: Benjamin Molin Phone Number: (916) 323-4910

**Policy Branch Chief**

Name: Valetti Lang      Signature: [Signature]      Date: 4/27/16

**Program Division Chief**

Name: Rick Brausch      Signature: [Signature]      Date: 4/27/16

**Policy Deputy Director**

Name: Elise Rothschild      Signature: [Signature]      Date: 4-28-16

**OLC**

Bypass\* (readoption only)

Name: Christopher Cho      Signature: [Signature]      Date: 4-28-16

**Chief Counsel**

Name: Frances McChesney      Signature: [Signature]      Date: 4/28/16

**Public Participation**

Bypass\*

Name: Jim Marxen      Signature: [Signature]      Date: 5-2-16

**Budget Office**

Bypass\*

Name: Sara Murillo      Signature: [Signature]      Date: 4/29/16

**CEQA (OPEA)**

Name: Kathie Schievelbein      Signature: [Signature]      Date: 4/29/16

**Director**

Name: Barbara Lee      Signature: [Signature]      Date: 5/2/16

Please call Jackie Buttle or Ben Molin after you have reviewed/signed off on the regulation so she can send it to the next reviewer.

**Director's Briefing**  
**Re-Submission of Emergency Regulations to Establish an**  
**Annual Fee on Metal Shredding Facilities**

**Re-Submission of Emergency Regulations:** In December 2015, the Department of Toxic Substances Control (DTSC) submitted to the Office of Administrative Law (OAL) emergency regulations to establish an annual fee on metal shredding facilities. DTSC received feedback from OAL indicating that the emergency regulations, as submitted, would not be approved. Rather than receiving OAL's disapproval, DTSC chose to withdraw the proposed regulations, revise them to address OAL's concerns, and resubmit them. Since that time, DTSC has worked extensively with OAL to address clarity standard requirements, and has modified the proposed regulations accordingly.

OAL's primary concern was that the emergency regulations did not meet the clarity standard, which in this case requires that the fee payers be given advance notice of the fee amount they are expected to pay. In its previously submitted regulations, DTSC proposed to notice fee payers of the fee amount through an annual notification. OAL however insisted that the fee amounts should be stated in the text of the regulation itself.

DTSC, in response, has inserted estimates of the fee amounts into the text of the regulation to provide the fee payers with adequate notice of the fees. DTSC will provide an accounting of its costs in the invoice to each metal shredding facility. OAL has indicated that it will approve the regulations as they are now written.

**Background:** Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014) authorizes DTSC to develop alternative management standards for the metal shredding industry. DTSC is conducting an evaluation of the industry and its waste management practices to determine if alternative management standards can be developed that will ensure their activities do not harm public health or the environment. SB 1249 authorizes DTSC to establish an annual fee on metal shredding facilities to reimburse its costs to conduct the evaluation. SB 1249 authorizes DTSC to adopt the annual fee regulations as emergency regulations.

**What is Being Proposed:** The annual fee regulations establish who the fee applies to, how the fee is to be determined, and what the administrative procedures for payments and disputes are. The regulations establish that the fee applies to metal shredders who: 1) hold an historic "f letter", 2) are operating under a consent order, 3) have a judgement issued by a court that allows continued operations, or 4) have a permit to operate. Six metal shredders are currently authorized by the historic "f letters." If other metal shredders that are not currently authorized seek to continue operations either through a consent order, a judgement, or under a permit, those metal shredders would also be subject to the fee.

The annual fee will be determined by dividing DTSC's annual costs by the number of authorized metal shredding facilities. DTSC has estimated its costs based on the anticipated workload, necessary contracting funds, and related overhead expenditures. For the calendar years 2015, 2016, and 2017, DTSC's costs are estimated to be \$263,500, \$419,000, and \$316,500, respectively. The emergency rulemaking will assess an equal fee among the six shredding facilities currently authorized by the historic "f letters." Thus, the annual fee for each facility in calendar years 2015, 2016, and 2017 is projected to be \$43,900, \$69,800, and \$52,700, respectively.

**Probable Support/Opposition:** DTSC has been in regular contact with representatives from the six metal shredding facilities, their legal counsel, and the California Chapter of the Institute of Scrap Recycling Industries (ISRI), to brief them on DTSC's evaluation and on the proposed fee regulations. The metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover its costs through an annual fee. ISRI and its individual members have not objected to the fee regulations in general. Their only expressed concern is to the limitation that DTSC has established for identifying the group of fee payers. They would like to see DTSC charge the fee to all metal shredders (including those that may have been illegally operating). DTSC has indicated that once any of the additional metal shredders take steps to become authorized, they will be expected to pay the fee.

**Outreach Efforts:** Through periodic discussions with ISRI and other industry stakeholders since the passage of SB 1249, DTSC has received significant input on the proposed rulemaking, and has taken those concerns into consideration in the preparation of these regulations. This emergency rulemaking will follow the statutory requirements for public participation, including the required opportunity for public comment. DTSC will provide the finding of emergency and the proposed text to every person who has filed a request at least five working days prior to submission of the emergency rulemaking to OAL. After submission of the emergency rulemaking to OAL, interested persons will have five calendar days to submit comments to DTSC and OAL. DTSC will respond to comments from the public and other stakeholders, if warranted, before OAL approves the emergency action and files the regulation with the Secretary of State.

**Potential for Litigation:** The metal shredding industry, through ISRI, eventually expressed support for SB 1249 legislation. ISRI has stated a desire to see the group of fee payers expanded, an outcome which would result in a lower individual fee for each payer. It has not suggested to date that it would pursue the matter legally.

If the Department ultimately decides to regulate ISRI's operations under full hazardous waste standards, ISRI will likely be hostile to a fee that, in part, funds work to increase regulations for its industry.

**Timetable/ Schedule for Adoption:**

- a) Mail-out Regulatory Notice (May 16, 2016)

## DIRECTOR'S BRIEFING

### Annual Fee on Metal Shredding Facilities

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- b) Regulation Notice posted to DTSC Web page (May 16, 2016)
- c) Press Release posted to DTSC Web page (May 16, 2016)
- d) Regulation Package submitted to OAL after 5 working days (May 23, 2016)
- e) Public comments accepted for 5 calendar days (May 27, 2016)
- f) Regulation becomes effective 10 calendar days after submission to OAL, if approved by OAL (June 2, 2016)
- g) Invoices for 2015 sent to fee-payers no later than July 1, 2016.
- h) Fees for 2015 must be paid to DTSC within sixty (60) days

#### **Key Stakeholders:**

Margaret Rosegay, Pillsbury Winthrop Shaw Pittman LLP, Representing ISRI  
Robert Hoffman, Paul Hastings, LLC, Representing SA Recycling  
Sims Metal Management, Oakland, CA ("f letter" holder)  
Schnitzer Steel Products, Redwood City, CA ("f letter" holder)  
SA Recycling, Terminal Island, Anaheim, and Bakersfield ("f letter" holders)  
Ecology Auto Parts, Colton, CA ("f letter" holder)  
Other facilities not currently authorized (Universal Service Recycling, Stockton, CA, etc.)

#### **Contacts:**

Program: Ed Benelli, Hazardous Waste Management Program - (916) 324-6564  
Regulations Coordinator: Ben Molin - (916) 323-4910  
Budget Office: Sara Murillo, Chief - (916) 322-6756  
Public Participation: Tim Reese, Information Officer II - (916) 323-3395  
Office of Legal Affairs: Christopher Cho, Attorney - (916) 322-4060

**Cal/EPA Summary**  
**DTSC: Re-Submission of Emergency Regulations to Establish an**  
**Annual Fee on Metal Shredding Facilities**

**Title: Annual Fee on Metal Shredding Facilities (R-2015-01)**

**Sections Added:** Title 22 of the California Code of Regulations (22 CCR), sections 69600.1 through 69600.20

**Re-Submission of Emergency Regulations:**

In December 2015, the Department of Toxic Substances Control (DTSC) submitted to the Office of Administrative Law (OAL) emergency regulations to establish an annual fee on metal shredding facilities. DTSC received feedback from OAL indicating that the emergency regulations, as submitted, would not be approved. Rather than receiving OAL's disapproval, DTSC chose to withdraw the proposed regulations, revise them to address OAL's concerns, and resubmit them. Since that time, DTSC has worked extensively with OAL to address clarity standard requirements, and has modified the proposed regulations accordingly.

OAL's primary concern was that the emergency regulations did not meet the clarity standard, which in this case requires that the fee payers be given advance notice of the fee amount they are expected to pay. In its previously submitted regulations, to account for DTSC's actual costs, which are not yet known, DTSC had proposed to communicate to the fee payers through an annual notification. OAL insisted that the regulations must include DTSC's best estimate of its costs, based on the anticipated workload, the necessary contracting funds, and all related overhead expenditures. DTSC has now modified the regulations to reflect its best estimate of costs, so that fee payers now know in advance what their projected annual fee will be. To account for unknown actual costs, the regulations have DTSC calculating its actual costs at the end of each year, and invoicing the fee payers for its actual costs based on the current number of authorized metal shredding facilities. DTSC will provide an accounting of its costs in the invoice to each metal shredding facility. OAL has indicated that it will approve the regulations as they are now written.

**Reason the Regulation is Needed:**

This emergency rulemaking is needed to ensure that the Department of Toxic Substances Control (DTSC) has sufficient funding and resources to thoroughly evaluate metal shredding facilities and their wastes, as required by Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014). Health and Safety Code section 25150.84 grants DTSC authority to adopt emergency regulations to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse DTSC's costs.

**Alternatives Considered:**

DTSC has identified three alternatives, and has chosen to adopt the proposed emergency regulation to establish an annual fee on metal shredding facilities. The other alternatives were to: 1) Redirect existing resources to implement the requirements

of SB 1249, which would prevent DTSC from performing other high priority work that is necessary to meet its critical mandates and specifically funded commitments, and 2) Maintain the status quo or do nothing, which would that require that DTSC ignore a statutory responsibility, and allow the risks and hazards posed by the metal shredding industry and its waste management practices to continue unabated.

**California Environmental Quality Act (CEQA):**

The proposed regulation is a project that falls under CEQA purview. However, DTSC has determined that adoption of this regulation will have no significant adverse impacts on the environment. In collaboration with DTSC's Office of Planning and Environmental Analysis (OPEA), DTSC has prepared a CEQA notice of exemption for this regulation.

**Authority and Reference:**

These additions to 22 CCR sections 69600.1 through 69600.20 are being adopted under the authority of Health and Safety Code sections 25150.82 and 25150.84.

**Related Federal, State, or Local Requirements:**

The proposed regulation does not duplicate or conflict with existing federal, state or local laws or requirements. DTSC has determined that there will be no fiscal effect of the proposed regulations on local government, and that this regulation does not affect federal funding of state programs.

**California Environmental Protection Agency (Cal/EPA) Coordination Issues:** None anticipated.

**Probable Support/Opposition:** DTSC has been a regular contact with representatives of metal shredding facilities, their legal counsel, and the California Chapter of the Institute of Scrap Recycling Industries (ISRI), to brief them on DTSC's evaluation and on the proposed fee regulations. The metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover fees. Neither ISRI nor any of their individual members have expressed opposition to DTSC's evaluation or to the proposed fee regulations.

**Peer Review Requirements:** DTSC has determined that no external scientific peer review is required for this rulemaking.

**Outreach Efforts:** This emergency rulemaking will follow the normal requirements for public participation specified by the Office of Administrative Law (OAL), including the required opportunity for public comment found in the Government Code sections 11346.1(a)(2) and 11349.6(b). DTSC will provide the finding of emergency and the proposed text to every person who has filed a request at least five working days prior to submission of the emergency rulemaking to OAL. After submission of the emergency

rulemaking to OAL, interested persons will have five calendar days to submit comments to DTSC and OAL. DTSC will respond to comments from the public and other stakeholders, if warranted, before OAL approves the emergency action and files the regulation with the Secretary of State.

**Fiscal and Economic Impact:** This action will have limited economic impacts because it imposes a new regulatory requirement on small number of private businesses. DTSC estimated its costs based on the anticipated workload, necessary contracting funds, and related overhead expenditures. In calendar years 2015, 2016, and 2017, DTSC's costs are estimated to be \$263,500, \$419,000, and \$316,500, respectively. The emergency rulemaking will assess an equal fee among the six known and authorized shredding facilities currently operating in the state. Thus, the annual fee for each facility in calendar years 2015, 2016, and 2017 will be \$43,900, \$69,800, and \$52,700, respectively. The action will have no adverse fiscal impacts on local governments because it does not impose new mandates.

**Enforcement Mechanism:** An extensive dispute resolution process is established in the emergency regulation. DTSC will hold a conference and provide all reasonable information and an explanation of the charges assessed, and designate a hearing officer to decide the petition, if needed. Additional actions to ensure compliance would be undertaken by DTSC's Office of Criminal Investigations and Office of Legal Affairs.

**Potential for Litigation:** No increased litigation is anticipated.

**Time Frame and Workload:** DTSC anticipates submitting the emergency rulemaking package to OAL in May 2016. Following the public notice and comment period, the workload is expected to be minimal.

**Contacts:**

Program: Ed Benelli, Hazardous Waste Management Program - (916) 324-6564  
Financial Planning/Business Management: Sara Murillo, Chief - (916) 322-6756  
OPEA: Kathie Schievelbein, Chief - (916) 322-6756  
CEQA: John Meerscheidt, Senior Environmental Planner - (916) 255-3552  
Public Participation: Patrice Bowen, Chief - (916) 322-3800  
Office of Legal Counsel: Christopher Cho, Attorney - (916) 322-4060

## NOTIFICATION OF PROPOSED EMERGENCY REGULATORY ACTION

### Adoption of Annual Fee on Metal Shredding Facilities

Department Reference Number: R-2015-01

Office of Administrative Law Emergency Number: 2015-xxxx-xxx

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The Department of Toxic Substances Control (DTSC) is proposing to adopt emergency regulations to establish an annual fee on metal shredding facilities subject to the requirements of Senate Bill 1249 (Hill, Chapter 756, Statutes of 2014). A "metal shredding facility" is defined by Health and Safety Code (HSC) section 25150.82(b) 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 non-recyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. A metal shredding facility does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations.

DTSC is authorized by HSC section 25150.84(a) to collect an annual fee from metal shredding facilities that are subject to the requirements of the chapter. DTSC is authorized to establish a fee at a rate sufficient to provide for the reasonable and necessary costs of the Department to implement the chapter, as applicable to metal shredding facilities. DTSC is authorized to update the fee periodically as necessary. DTSC is authorized by HSC section 25150.84(c) to adopt regulations to establish an annual fee as an emergency regulation.

DTSC proposes to add regulations to establish an annual fee on metal shredding facilities in California Code of Regulations, title 22, division 4.5, chapter 56, commencing with section 69600.1. The annual fee will be determined by dividing the Department's annual costs by the number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. The number of metal shredding facilities will be determined based on reasonably available information. The Department has projected its annual costs to implement the necessary activities required in chapter 6.5, division 20 of California Health and Safety Code related to metal shredding facilities. The regulations provide metal shredding facilities with the projected annual fees for calendar years 2015, 2016, and 2017.

Government Code section 11346.1(a)(2) requires that every person who has filed a request for notice of DTSC's proposed regulations receive this notification of proposed emergency regulatory action (establishment of an annual fee schedule on metal shredding facilities) at least five (5) working days before the proposed emergency action is filed with the Office of Administrative Law (OAL). Upon filing and posting on OAL's Internet Web site, interested persons will have five (5) calendar days to submit comments on the proposed emergency regulations pursuant to Government Code section 11349.6. OAL will have ten (10) calendar days from the date of DTSC's filing to

**NOTIFICATION OF PROPOSED EMERGENCY ACTION**

**Annual Fee on Metal Shredding Facilities**

**Page 2**

review and make a decision on the proposed emergency rule. If approved, the emergency regulations will become effective upon filing with the Secretary of State.

Attached to this notice are the proposed regulatory text and the Finding of Emergency. These documents will be posted on DTSC's website at the following address:  
<http://www.dtsc.ca.gov/HazardousWaste/MetalShredderPortal.cfm>.

If you have any questions regarding this proposed emergency action, please contact the Regulations Coordinator, Benjamin Molin, at (916) 322-4882 or [Benjamin.Molin@dtsc.ca.gov](mailto:Benjamin.Molin@dtsc.ca.gov).

## TITLE 22

### EMERGENCY REGULATIONS ANNUAL FEE ON METAL SHREDDING FACILITIES

Department Reference Number: R-2015-01  
Office of Administrative Law Emergency Number: 2015-XXXX-XXX

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#### FINDING OF EMERGENCY

Health and Safety Code section 25150.84 grants authority to the Department of Toxic Substances Control (DTSC) to adopt regulations to impose a fee to be paid by metal shredding facilities as an emergency, and that the regulations are to be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

#### STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

The circumstances necessitating this regulation are deemed to be an emergency pursuant to statute. Specifically, Health and Safety Code section 25150.84(c) states that a regulation adopted pursuant to this subdivision, "is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare...and shall remain in effect for a period of two years or until revised by DTSC, whichever occurs sooner."

#### AUTHORITY AND REFERENCE

In accordance with Government Code section 11346.5(a)(2) this notice of proposed adoption of a regulation includes the following references to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific. These regulations are being proposed under the following authorities:

Health and Safety Code section 25150.82(b). This subsection defines a "metal shredding facility."

Health and Safety Code section 25150.82(c). This subsection grants DTSC authority to adopt alternative management standards for metal shredding facilities.

Health and Safety Code sections 25150.82(c)(1). This subsection requires DTSC to prepare an analysis of the activities to which the alternative management standards will apply.

**FINDING OF EMERGENCY**  
**Annual Fee on Metal Shredding Facilities**  
**Page 2**

Health and Safety Code sections 25150.82(d)(1)-(3). These subsections require DTSC to evaluate the regulatory oversight and hazardous waste management activities of metal shredding facilities.

Health and Safety Code section 25150.84(a). This subsection grants DTSC authority to adopt regulations to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse the department's costs.

Health and Safety Code section 25150.84(c). This subsection grants DTSC authority to adopt the fee regulations as an emergency regulation.

**INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

**Current State Law**

The fee authorized by this emergency regulation will be new upon its enactment and will not replace any other fee system. This regulation will therefore not conflict with, or modify, any other state law.

**Current Federal Law**

The fee authorized by this emergency regulation will be new upon its enactment and will not replace any other fee system. In addition, according to Health and Safety Code section 25150.84(f), the Department is prohibited from adopting standards that are less stringent than federal hazardous waste law. This regulation will therefore not conflict with, or modify, any federal law.

**Objective**

The overall objective of this emergency rulemaking is to ensure that the Department is reimbursed for its costs to evaluate metal shredding facilities and their wastes in order to ensure adequate protection of human health and the environment.

**Proposed Regulations:**

Introduction

This emergency regulation enables DTSC to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse the costs incurred by DTSC to implement Chapter 6.5 of Division 20 of the Health and Safety Code as applicable to metal shredders.

Additionally, this emergency regulation clarifies which metal shredding facilities are subject to the annual fee, how the annual fee is to be determined, how the annual fee is to be collected, and establishes the procedures necessary to administer this fee.

#### Definitions and Applicability

A metal shredding facility is defined according to the definition given in subsection (b) of section 25150.82 of chapter 6.5 of division 20 of Health and Safety Code, and reads, in part, "...any operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal..."

The emergency regulation applies to metal shredding facilities that are located within the state of California. In addition, the annual fee applies to metal shredding facilities that have a lawful means of operation: A notification issued by the Department in accordance with section 66260.200(f) of title 22 of the California Code of Regulations that otherwise hazardous waste may be classified and managed as nonhazardous; An order issued or entered into by the Department under chapter 6.5 of division 20 of the Health and Safety Code that authorizes a metal shredding facility to continue operations pursuant to specified management and operating conditions; A judgment issued by a court with jurisdiction in a matter to which the Department and at least one metal shredding facility are parties that authorizes operations pursuant to specified management and operating conditions; or, A permit issued by the Department under chapter 6.5 of division 20 of the Health and Safety Code that authorizes metal shredding operations.

#### Assessment of the Annual Fee

This emergency regulation requires the Department assess an annual fee on each metal shredding facility. The regulation establishes that the annual fee will be determined by dividing the Department's annual costs by the number of metal shredding facilities lawfully operating in any portion of the calendar year to which the fee applies.

The Department has projected its annual costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code in the Budget Change Proposal (BCP) to Implement SB 1249. The Department's projected annual costs in the BCP are shown in fiscal years. The BCP includes costs incurred to conduct the following activities: Development and administration of the Annual Fee; Environmental Analysis and Evaluation; Assessment of Off-site Migration; Stakeholder Workshops and other outreach activities; Regulation Development and Adoption; and Laboratory Support.

In the BCP to Implement SB 1249, the Department estimated the number of positions necessary to conduct the activities, and the personal services costs for those positions.

The Department estimated its operating expenses and equipment costs, such as costs for travel, training, and other general expenses. The BCP also included costs for consulting and professional services, such as costs for external contracts and for laboratory services. Those costs were totaled to yield the projected annual costs for each fiscal year, as shown in Table 1.

**Table 1 Projected Annual Costs by Fiscal Year**

Fiscal Year	Number of Positions	Personal Services Costs	Operating Expenses and Equipment Costs	Consulting and Professional Services Costs	Projected Annual Costs by Fiscal Year
2015/16	2.5	\$277,000	\$40,000	\$210,000	\$527,000
2016/17	2.0	\$236,000	\$25,000	\$50,000	\$311,000
2017/18	2.5	\$240,000	\$32,000	\$50,000	\$322,000

The Department then used its projected annual costs in fiscal years, based on the BCP to Implement SB 1249, to determine its projected annual costs for calendar years. The Department's projected annual costs for calendar years 2015, 2016, and 2017 are prorated from the portion of each fiscal year that applies to the corresponding calendar year, as shown in Table 2.

**Table 2 Projection of Annual Costs from Fiscal Year to Calendar Year**

Fiscal Year	Projected Annual Costs by Fiscal Year	Fiscal Year Pro-Rated to Calendar Year	Projected Annual Costs by Calendar Year	Calendar Year	Projected Annual Costs
2015/16	\$527,000	Jul-Dec 2015	\$263,500	2015	\$263,500
		Jan-Jun 2016	\$263,500	2016	\$419,000
2016/17	\$311,000	Jul-Dec 2016	\$155,500		
		Jan-Jun 2017	\$155,500		
2017/18	\$322,000	Jul-Dec 2017	\$161,000		

Using these projected annual costs, this emergency regulation establishes that the projected annual fees for calendar years 2015, 2016, and 2017 are set forth in the following fee schedule, as shown in Table 3.

**Table 3 Fee Schedule for Each Calendar Year**

Calendar Year	Projected Annual Costs	Number of Metal Shredding Facilities	Projected Annual Fee
2015	\$263,500	6	\$43,900
2016	\$419,000	6	\$69,800
2017	\$316,500	6	\$52,700

The emergency regulation establishes that if the annual fee differs from the Department's projection for any calendar year, the Department shall provide an explanation of the difference in the invoice to each metal shredding facility.

Administration of the Annual Fee

For the calendar year 2015, the Department will invoice each metal shredding facility for the annual fee no later than July 1, 2016. For calendar years 2016 and 2017, the Department will invoice each metal shredding facility by February 1 of the following year. In each case, the annual fee is due and payable to the Department sixty (60) calendar days after the facility is invoiced. Additionally, the emergency regulation establishes procedures to assess late fees, to resolve disputes over payment, and to provide refunds, if necessary.

Administration Late Fees

A late fee of ten percent (10%) shall be assessed on any payment that is not received as postmarked by due date, or on such later date as notified by the Department. Beginning on the first day of the calendar month following the due date, simple interest shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the fee is paid in full.

The late fee or interest assessed pursuant to this section may be waived if the Department determines that the failure to make a timely payment was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Mere disagreement with the fee assessment shall not be deemed reasonable cause. A person seeking to be relieved of late fee or interest shall submit a written statement to the Department, signed under penalty of perjury, setting forth the facts upon which he or she bases the claim for relief.

If the Department provides a refund because of an erroneous billing, the refund shall be subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code. Except, no refund shall be given and no interest shall accrue where the erroneous billing was due to incorrect information provided by the person seeking the refund.

Dispute Resolution

No refund shall be granted for any fees erroneously collected unless the person who seeks the refund submits written notification of the error to the Department within one year of the date the person is notified of the fee assessment.

A person may dispute the assessment of the annual fee by submitting a petition to the Department director. The person must submit the petition in writing within one year of the date the person is notified of the fee assessment. The petition must state the specific grounds upon which it is founded. If requested, the Department shall hold a conference with the party and provide all reasonable information and an explanation of the charges assessed. If the matter cannot be resolved informally, the director shall designate a hearing officer to decide the petition. The hearing officer shall be in neither a subordinate nor a supervisory or managerial position to any staff involved in making the initial determination of the fee assessment. A hearing shall be conducted in person, by telephone, or by video conference at which all relevant evidence will be admissible. The hearing officer shall prepare a written final decision to approve or deny the petition.

### **STUDIES RELIED ON**

DTSC's projected annual costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code are based on estimates found in the Budget Change Proposal (BCP) to Implement SB 1249. The BCP to Implement SB 1249 is available on the Department's Web page at: <http://www.dtsc.ca.gov/InformationResources/upload/BCP-4-Implementation-of-SB-1249.pdf>. DTSC has found that no other external documents or studies are necessary for this rulemaking.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

### **FISCAL IMPACT ESTIMATES**

#### **Mandates on Local Agencies and School Districts**

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will create no new mandates on local agencies or school districts.

#### **Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement**

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4,

commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

**Cost or Savings to Any State Agency**

In accordance with Government Code section 11346.5(a)(6), DTSC has made a preliminary determination that the proposed regulations will result in a savings to the Department based on the reimbursement of state costs for staffing and other expenditures necessary to implement chapter 6.5, division 20, Health and Safety Code as applicable to metal shredding facilities. Without this reimbursement, DTSC would incur substantial costs associated with the required activities.

**Cost or Savings in Federal Funding to the State**

In accordance with Government Code section 11346.5(a)(6) this notice of proposed adoption of a regulation includes an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.



1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
2 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),  
3 Health and Safety Code.

4  
5 **§ 69600.3. Applicability.**

6 (a) The annual fee requirements apply to metal shredding facilities that meet all the  
7 requirements set forth below:

8 (1) are located within the state of California,

9 (2) are operating using one of the following authorities or classifications that allow lawful  
10 metal shredding operations:

11 (A) A notification issued by the Department in accordance with section 66260.200(f) of  
12 title 22 of the California Code of Regulations that otherwise hazardous waste may be  
13 classified and managed as nonhazardous. Successor entities to metal shredding  
14 facilities that received the notification are included in this section;

15 (B) An order issued or entered into by the Department under chapter 6.5 of division 20  
16 of the Health and Safety Code that authorizes a metal shredding facility to continue  
17 operations pursuant to specified management and operating conditions;

18 (C) A judgment issued by a court with jurisdiction in a matter to which the Department  
19 and at least one metal shredding facility are parties that authorizes operations  
20 pursuant to specified management and operating conditions; or

21 (D) A permit issued by the Department under chapter 6.5 of division 20 of the Health  
22 and Safety Code that authorizes metal shredding operations.

23 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
24 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.84(a), and 25150.84(b), Health and  
25 Safety Code.

26  
27 **§ 69600.4. Assessment of the Annual Fee.**

28 (a) The Department shall assess an annual fee on each metal shredding facility in an amount  
29 sufficient to reimburse the Department's annual costs.

30 (b) The Department's annual costs shall include costs incurred to conduct the following  
31 activities:

1 (1) Development and administration of the Annual Fee;

2 (2) Environmental Analysis and Evaluation;

3 (3) Assessment of Off-site Migration;

4 (4) Stakeholder Workshops and other outreach activities;

5 (5) Regulation Development and Adoption; and

6 (6) Laboratory Support.

7 (c) The annual fee shall be determined by dividing the Department's annual costs by the  
8 number of metal shredding facilities operating in any portion of the calendar year to which  
9 the fee applies.

10 (d) To provide metal shredding facilities with the best estimate of the annual fee, the  
11 Department has projected the annual fees for calendar years 2015, 2016, and 2017 in the  
12 following fee schedule:

13

Calendar Year	Projected Annual Fee
2015	\$43,900
2016	\$69,800
2017	\$52,700

14  
15 (e) If the annual fee invoiced differs from the Department's projected annual fee due to higher  
16 or lower actual costs incurred for any calendar year, a change in the number of metal  
17 shredding facilities, or both, the Department shall explain any difference in the invoice to  
18 each metal shredding facility.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
20 Sections 25150.82(a), 25150.82(b), 25150.82(c), 25150.82(d), 25150.84(a), and 25150.84(b),  
21 Health and Safety Code.

22  
23 **§ 69600.5. Administration of the Annual Fee.**

- 1 (a) The Department shall invoice each metal shredding facility for the annual fee for calendar  
2 year 2015 no later than July 1, 2016.
- 3 (b) The Department shall invoice each metal shredding facility for the annual fee for calendar  
4 year 2016 no later than February 1, 2017.
- 5 (c) The Department shall invoice each metal shredding facility for the annual fee for calendar  
6 year 2017 no later than February 1, 2018.
- 7 (d) The annual fee shall be due and payable to the Department sixty (60) calendar days after  
8 the facility is invoiced.
- 9 (e) A transfer of ownership or operation of assets of a metal shredding facility during a calendar  
10 year shall not cause an additional annual fee to be assessed if the fee for the same calendar  
11 year has been paid by the previous owner or operator.

12 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
13 Section 25150.84(a), Health and Safety Code.

14

15 **§ 69600.6. Administration of Late Fees.**

- 16 (a) A late fee of ten percent (10%) shall be assessed on any payment that is not received as  
17 postmarked by due date, or on such later date as notified by the Department.
- 18 (b) Beginning on the first day of the calendar month following the due date, simple interest  
19 shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate  
20 per month, or fraction thereof" as established by the State Board of Equalization pursuant  
21 to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the  
22 fee is paid in full.
- 23 (c) The late fee or interest assessed pursuant to this section may be waived if the Department  
24 determines that the failure to make a timely payment was due to reasonable cause and  
25 circumstances beyond the person's control, and occurred notwithstanding the exercise of  
26 ordinary care and the absence of willful neglect. Mere disagreement with the fee  
27 assessment shall not be deemed reasonable cause. A person seeking to be relieved of late  
28 fees or interest shall submit a written statement to the Department, signed under penalty  
29 of perjury, setting forth the facts upon which he or she bases the claim for relief.
- 30 (d) If the Department provides a refund because of an erroneous billing, the refund shall be  
31 subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as  
32 established by the State Board of Equalization pursuant to section 6591.5 of the Revenue  
33 and Taxation Code. Except, no refund shall be given and no interest shall accrue where the  
34 erroneous billing was due to incorrect information provided by the person seeking the  
35 refund.

1 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
2 Section 25150.84(a), Health and Safety Code.

3

4 **§ 69600.7. Dispute Resolution.**

5 (a) No refund shall be granted for any fees erroneously collected unless the person who seeks  
6 the refund submits written notification of the error to the Department within one year of  
7 the date the person is notified of the fee assessment.

8 (b) A person may dispute the assessment of the annual fee by submitting a petition to the  
9 Department director. The person must submit the petition in writing within one year of the  
10 date the person is notified of the fee assessment. The petition must state the specific  
11 grounds upon which it is founded. If requested, the Department shall hold a conference  
12 with the party and provide all reasonable information and an explanation of the charges  
13 assessed. If the matter cannot be resolved informally, the director shall designate a hearing  
14 officer to decide the petition. The hearing officer shall be in neither a subordinate nor a  
15 supervisory or managerial position to any staff involved in making the initial determination  
16 of the fee assessment. A hearing shall be conducted in person, by telephone, or by video  
17 conference at which all relevant evidence will be admissible. The hearing officer shall  
18 prepare a written final decision to approve or deny the petition.

19 Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference:  
20 Section 25150.84(a), Health and Safety Code.

21

22 **§ 69600.8. [Reserved]**

23 **§ 69600.9. [Reserved]**

24 **§ 69600.10. [Reserved]**

25 **§ 69600.11. [Reserved]**

26 **§ 69600.12. [Reserved]**

27 **§ 69600.13. [Reserved]**

28 **§ 69600.14. [Reserved]**

29 **§ 69600.15. [Reserved]**

30 **§ 69600.16. [Reserved]**

31 **§ 69600.17. [Reserved]**

- 1 § 69600.18. [Reserved]
- 2 § 69600.19. [Reserved]
- 3 § 69600.20. [Reserved]

STATE OF CALIFORNIA  
**Budget Change Proposal - Cover Sheet**  
 DF-46 (REV 07/14)

Fiscal Year 2015-16	Business Unit 3960	Department Department of Toxic Substances Control	Priority No. 4
Budget Request Name 3960-003-BCP-BR-2015-GB		Program 3625 Hazardous Waste Mgmt 9900100 Administration 9900200 Distributed Administration	Subprogram

Budget Request Description  
 Implementation of SB 1249

**Proposal Summary**

The Department of Toxic Substances Control requests an augmentation from the Hazardous Waste Control Account of \$527,000 and 2.5 positions in fiscal year (FY) 2015/16; \$311,000 and 2.0 positions in FY 2016/17; \$322,000 and 2.5 positions in FY 2017/18; and \$128,000 and 1.5 positions in FY 2018/19 ongoing to implement Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014). SB 1249 requires DTSC to evaluate the risks and threats posed by metal shredders and the management of metal shredder waste, and to either develop alternative management standards that govern metal shredding activities, or rescind its 1987 era decisions that have allowed metal shredders to be managed as nonhazardous waste. SB 1249 also authorizes DTSC to assess a fee on the metal shredders to cover its costs in implementing the bill and for ensuring compliance with its standards in the future.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR      Project No.      Date:		

If proposal affects another department, does other department concur with proposal?  Yes       No  
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>[Signature]</i>	Date 1/5/15	Reviewed By <i>Sara Benson</i>	Date 1/6/15
Department Director <i>[Signature]</i>	Date 1/6/15	Agency Secretary <i>[Signature]</i>	Date 1/6/15

**Department of Finance Use Only**

Additional Review:  Capital Outlay     ITCU     FSCU     OSAE     CALSTARS     Technology Agency

BCP Type:       Policy       Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature JAN 9 2015
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## Analysis of Problem

### A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation from the Hazardous Waste Control Account (HWCA) of \$527,000 and 2.5 positions in fiscal year (FY) 2015/16; \$311,000 and 2.0 position in FY 2016/17; \$322,000 and 2.5 positions in FY 2017/18; and \$128,000 and 1.5 positions in FY 2018-19 ongoing to implement Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014). SB 1249 requires DTSC to evaluate the risks and threats posed by metal shredders and the management of metal shredder waste, and to either develop alternative management standards that govern metal shredding activities, or rescind its 1987 era decisions under which metal shredders have operated without hazardous waste permits and managed their waste as nonhazardous waste. This proposal will allow DTSC to perform the responsibilities specified in the bill in the amount of time required by the bill. Even more importantly, this proposal will allow DTSC to reduce risks and hazards faced by California's most vulnerable and impacted communities in the vicinity of these types of facilities. SB 1249 also authorizes DTSC to assess a fee on the metal shredders to cover its costs in implementing the bill and for ensuring compliance with its standards in the future.

### B. Background/History

At the end of their useful lives, automobiles and appliances are required to be "de-polluted" by removing hazardous components containing mercury, lead, and polychlorinated biphenyl (PCBs). At some facilities the remaining metal is then baled or compacted before being sent to a shredder for metal separation and recovery, or the metal may be directly exported. At other facilities, the remaining metal is processed through a shredder or a shearer on site, and that residue is further treated to remove ferrous and non-ferrous metals. Both the ferrous and non-ferrous metals are sold to smelters where they are recycled and used to manufacture various metal products. In automobile processing, approximately 25 percent of the original weight remains as shredder waste, which is a mixture of foam, plastics, rubber, glass, wood, paper, leather, textiles, and a small fraction of remaining metal pieces. About 480,000 tons of metal shredder waste was generated in 2013 in California. Although metal recycling facilities have been commonly referred to as "auto shredders," approximately 50 percent of the metal shredded is from appliances or other manufactured metal objects.

Beginning in 1984, shredder waste has been regulated as a hazardous waste in California because lead, cadmium, copper, and zinc are in the waste at concentrations that exceed the State's hazardous waste levels. In 1988, DTSC adopted a policy and issued decisions that allowed the metal shredder facilities to treat the metal shredder waste at their facilities and allowed them to manage it as nonhazardous waste under specified conditions. The treatment was intended to reduce the solubility of the metals and decrease their potential to leak from landfills.

This approval was generally based on a number of factors, including assumptions as to the "typical" composition of the waste, measured and expected concentrations of contaminants, negotiated practices of chemical and physical treatment of the waste, and anticipated disposal practices. All of these factors were integral to DTSC's decisions for each of the shredders.

Since DTSC made its determinations and established its policies in 1988, much has changed with the metal shredder industry, its practices, and the composition of automobiles and appliances in general. DTSC has become increasingly concerned that the composition of metal shredder waste and its characteristics have changed, and with that has been an increase in the hazardous contaminants found in the metal shredder waste. Over the years, DTSC has continued to monitor the changes in the waste's composition and concentrations of hazardous constituents.

In 2002 DTSC, after a significant effort to sample and analyze the metal shredder waste being generated by the metal shredding industry, produced a draft staff report. The draft report presented information alleging that the assumptions that DTSC's previous decisions were based on were no longer supported, and that its policy regarding metal shredder waste was no longer fully protective of human health and the environment. This report was never finalized. DTSC did not act on its allegations until 2008.

## Analysis of Problem

In 2008, DTSC sent letters to all of the holders of the "f" letters proposing to rescind the previous decisions and repeal the policy that allowed the shredders to treat their waste without a permit. The industry responded with a significant amount of technical information to rebut DTSC's reasons for rescinding its decision, and procedural arguments contesting DTSC's ability to rescind the decisions. After DTSC extended the proposed effective date several times to time for the industry to provide additional information, the proposed rescission was delayed indefinitely. At that time, the metal shredding industry did express interest in negotiating a resolution to the continuing concerns about its waste and the questions about DTSC's previous decisions and policy. Proposed legislation was drafted but never introduced.

In 2012, in part at the request of the industry and its desire for a permanent resolution on its regulatory status, DTSC once again engaged with the industry. Recognizing the industry's desire for a permanent solution, DTSC raised the same questions previously raised about treatment efficacy and protectiveness of the policy and the industry's practices. DTSC invited the industry to provide information that supported the effectiveness of the chemical treatment, as well as to document its claims that the treatment was the best available treatment. DTSC anticipated that, with the information provided, it could determine whether its previous decisions should remain or be removed or replaced, and whether these facilities should continue operating without a permit.

DTSC and the metal shredding industry were negotiating the details of the study to be conducted, and planning for implementing the study, when SB 1249 was introduced and ultimately enacted. Those efforts are anticipated to be continued and incorporated into the analysis and evaluation required by SB 1249.

### C. State Level Considerations

DTSC has been actively coordinating with the Department of Resources Recycling and Recovery (CalRecycle), the Air Resources Board, the Regional Water Quality Control Boards (Water Boards), local air quality management districts, the Certified Unified Program Agencies, and local enforcement agencies on this issue. The state entities most directly impacted by DTSC's decisions regarding the waste classification and management of metal shredder residues are CalRecycle and the Water Boards. These agencies share responsibilities in regulating solid waste disposal facilities, and both have adopted regulatory standards for disposing of non-hazardous wastes that rely on DTSC's waste classification decisions. Regulations from both the Water Boards and CalRecycle prohibit the disposal of hazardous wastes in solid waste landfills. CalRecycle regulations allow the use of metal shredder residue wastes as alternative daily cover, but only because DTSC classifies metal shredder residue waste as non-hazardous. DTSC has hosted several meetings with the California Environmental Protection Agency (CalEPA), CalRecycle, the Water Boards, and local enforcement agencies to inform them of DTSC's current treatability study, and to seek their input and advice. DTSC plans to continue to provide direct communication and accurate information to all affected agencies to assist them in planning their operations. If DTSC develops alternative management standards that change the classification or management of metal shredder residues, these other agencies will need to assess the impacts of those changes and may need to also change their regulations.

### D. Justification

SB 1249's author introduced the legislation to enhance oversight of the metal shredding industry by DTSC in order to protect California communities and the environment, and ultimately to answer the questions that have been raised over the years about the protectiveness of DTSC's regulatory decisions and oversight of this industry.

SB 1249 imposes new requirements and responsibilities on DTSC to fully evaluate the metal shredding industry, and to then develop alternative management standards to regulate the metal shredding industry. SB 1249 also authorizes DTSC to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs for the Department to implement these provisions.

In implementing the requirements of SB 1249, DTSC will be performing the following activities:

## Analysis of Problem

- **Annual Fee Schedule** – SB 1249 authorizes DTSC to assess an annual fee on metal shredders to pay for DTSC's reasonable and necessary costs to implement the requirements of SB 1249 and any alternative management standards that DTSC adopts. DTSC will be adopting the fee schedule and fee administration regulations as emergency regulations (as authorized by SB 1249) and will update the fee schedule annually to reflect DTSC's changing implementation costs and any newly identified metal shredding facilities that will be fee payers.
- **Conduct Environmental Analysis, Waste Treatability Study, and Report of Findings** –DTSC will be conducting a thorough evaluation of the industry, its practices, and the public health and environmental threats posed by the metal shredding process, the treatment of the wastes it generates, and the storage, transportation, and disposal of those wastes. Part of this evaluation will include evaluation of the results of a Treatability Study being conducted by the metal shredders on metal shredder wastes. The Treatability Study will allow DTSC to evaluate the treatment processes and chemicals needed to immobilize soluble toxic metals in the waste, to determine what treatment methods and chemical "recipes" yield the most protective results. DTSC intends to complete the Environmental Analysis, the Waste Treatability Study, and prepare a Draft Report of Findings, by January 1, 2016.
- **Assessment of Off-site Migration** – DTSC will be contracting for services to assess whether treated or untreated metal shredder waste can or does migrate off-site and impact residents or business occupants in the areas surrounding either the metal shredders, the transportation routes, or the disposal facilities where the treated metal shredder waste is disposed. The findings of this assessment will be incorporated into DTSC's environmental analysis and Report of Findings, and will inform DTSC's adoption of management standards for the industry and its waste. DTSC intends to complete this assessment by January 1, 2016.
- **Method Verification and Independent Evaluation** – DTSC will be contracting for services to verify the laboratory methods used to analyze metal shredder wastes, and to collect samples and independently verify the results being presented by the metal shredders in its Treatability Study. DTSC intends to complete this verification and evaluation by January 1, 2016.
- **Pre-Regulation Stakeholder Workshops** – Because the work required by SB 1249 is not part of a process routinely conducted by DTSC, it is important for DTSC to share the results of its efforts, the findings of its industry evaluation, and drafts of the standards it intends to adopt, to garner input and feedback that will help to improve the information being used to guide DTSC's subsequent regulatory efforts, and to reduce possible challenges or criticism of DTSC's efforts and regulatory proposals in the future. DTSC intends to conduct at least two public workshops (one in Northern California and one Southern California), but may conduct more workshops depending on stakeholder feedback and any modifications DTSC makes to its evaluation or regulation proposal. DTSC intends to hold these workshops prior to January 1, 2017.
- **Regulation Adoption** – Using the findings and stakeholder feedback from the workshops, DTSC will be preparing the necessary rulemaking documents, including proposed regulation text, an Initial Statement of Reasons, California Environmental Quality Act analysis, and Fiscal and Economic Impact analysis in support of adopting alternative management standards as regulations in accordance with the Administrative Procedures Act requirements. DTSC anticipates that its proposed rulemaking will also need to undergo scientific peer review. Section 57004 of the California Health and Safety Code requires DTSC to "submit the scientific portions of a proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation." DTSC must adopt these regulations prior to January 1, 2018. The authority granted in SB 1249 sunsets as of January 1, 2018.

## Analysis of Problem

- **Laboratory Support** – DTSC anticipates using the analytical and sample preparation expertise of its own Environmental Chemistry Laboratory in support of all of the evaluation, study, and assessment efforts that DTSC must conduct in implementing SB 1249.
- **Inspections/Enforcement** – After DTSC adopts the Alternative Management Standards as regulations, it must regularly and routinely inspect the metal shredders, waste handlers, and disposal facilities to ensure that they are in compliance with those regulations. The safeguards that the regulations are intended to provide will succeed only to the extent of compliance with the regulations. Any noncompliance must also be followed up with appropriate enforcement actions that deter noncompliance and correct any environmental harm and conditions of noncompliance observed. DTSC intends to conduct inspections and enforcement on a regular basis, in most instances at least annual inspections, but more as circumstances may require. This activity will continue into the indefinite future.

### E. Outcomes and Accountability

DTSC anticipates accomplishing the following:

- Regulations establishing an annual fee and fee administration requirements will be adopted as Emergency Regulations soon after January 1, 2015. DTSC anticipates that the facilities will make their first payment of this fee during calendar year 2015. DTSC will annually evaluate the fee assessment in comparison with its costs, and make adjustments to the fee in later years.
- DTSC will continue to work with the metal shredders to complete a Treatability Study that they have begun to assess the chemical makeup and potential treatment methods for metal shredder residue by January 1, 2016.
- DTSC anticipates conducting the required analysis of the risks and hazards posed by metal shredding activities and metal shredder residue, and providing its draft findings, by January 1, 2016.
- DTSC will conduct at least two workshops with the industry and interested stakeholders (one in Northern California and one in Southern California) to solicit feedback on its analysis and findings. More workshops will be scheduled if the feedback received in earlier workshops result in significant changes to DTSC's draft analysis and findings. These workshops are anticipated in the first half of calendar year 2017.
- DTSC will conduct at least two workshops with the industry and interested stakeholders (one in Northern California and one in Southern California) to solicit feedback on a set of draft regulations, prior to formally proposing them through the Administrative Procedures Act requirements. More workshops will be scheduled if the feedback received in earlier workshops result in significant changes to DTSC's draft regulations. These workshops are anticipated in the second half of calendar year 2017.
- DTSC anticipates a formal public notice for proposed rulemaking for its Proposed Alternative Management Standards for Metal Shredding Facilities on or about January 1, 2017, to be completed no later than January 1, 2018.
- DTSC will perform routine and ongoing inspections (and appropriate enforcement follow-up) at least once per year for each metal shredder, and at least once per year for each disposal facility. The inspections are to ensure compliance with the adopted Alternative Management Standards.

## Analysis of Problem

### F. Analysis of All Feasible Alternatives

#### **Alternative 1: Augment DTSC's budget as requested to implement the requirements of SB 1249.**

##### **Pros:**

- Metal shredders are often found in proximity to highly impacted communities. This alternative will reduce risks and hazards faced by California's most vulnerable and impacted communities.
- Will provide DTSC the resources it needs to fully analyze the metal shredding industry and its waste management practices.
- Will provide DTSC the resources it needs to develop the required set of Alternative Management Standards.
- Reduces risks and hazards posed by the metal shredding industry and its waste management practices.
- Allows DTSC to perform the responsibilities established in the bill in the time frame required by the bill.
- Contributes to improved quality of life in these impacted areas.

##### **Con:**

- Will increase the size of state government.

#### **Alternative 2: Redirect existing staff to implement the requirements of SB 1249.**

##### **Pros:**

- Requires no additional funds and allocation of additional positions.
- Reduces risks and hazards posed by the metal shredding industry and its waste management practices.
- Allows DTSC to perform the responsibilities established in the bill in the time frame required by the bill.
- Because metal shredders are often found in proximity to highly impacted communities, would reduce risks and hazards faced by California's most vulnerable and impacted communities.
- Contributes to improved quality of life in these impacted areas.

##### **Con:**

- Prevents DTSC from performing other high priority work that is necessary to assess environmental risks and hazards, and adopting other regulations and requirements that would limit or prevent risks and hazards to the environment and the public, some of which are in California's most vulnerable and impacted communities.
- Prevents DTSC from meeting its critical mandates.

#### **Alternative 3: Request fewer resources to implement the requirements of SB 1249.**

##### **Pro:**

- Will allow DTSC to analyze some of the aspects of the metal shredding industry and its waste management practices.
- Will allow DTSC to develop some Alternative Management Standards.
- Would reduce some risks and hazards posed by the metal shredding industry and its waste management practices.

## Analysis of Problem

- Would provide limited resources for DTSC to perform the responsibilities established in the bill.
- Because metal shredders are often found in proximity to highly impacted communities, could reduce risks and hazards faced by California's most vulnerable and impacted communities.
- Could contribute to improved quality of life in these impacted areas.

### Con:

- Would require the expenditure of additional funds and allocation of additional positions.
- DTSC would not be able to complete its work in the time frame required by the bill – the authority granted by SB 1249 to adopt regulations will sunset on January 1, 2018.

### Alternative 4: Maintain status quo/Do nothing.

#### Pro:

- Would avoid the expenditure of additional funds or allocation of additional positions.
- Would ensure HWCA funds remain available for other DTSC priorities.

#### Con:

- Would not enable DTSC to fulfill a statutory responsibility.
- Would not provide resources necessary for DTSC to analyze the metal shredding industry and its waste management practices.
- Would not provide resources necessary for DTSC to develop a set of Alternative Management Standards.
- Would allow potential risks and hazards posed by the metal shredding industry and its waste management practices to continue unabated.
- Would perpetuate potential risks and hazards faced by California's most vulnerable and impacted communities.

## G. Implementation Plan

### MAJOR PROVISIONS AND EXPENDITURES FOR THE IMPLEMENTATION OF SB 1249

#### Prior to January 2015

Develop emergency regulation package for industry fee and fee administration requirements

#### July 2015

Conduct sampling and field work required by SB 1249 for MSR Treatability Study

Conduct additional analysis and prepare findings required by SB 1249 (Anticipated completion by January 1, 2016)

Prepare contract for assessment of off-site air migration (contract funds)

Prepare method verification, bench-scale treatability testing and independent evaluation of treatability study results (contract funds)

MSR Treatability Study samples submitted to DTSC's Berkeley ECL lab for analysis

#### January 2016

Pre-Administrative Procedures Act (APA) workshops - draft straw language for discussion and to solicit comments and feedback from stakeholders - multiple events in Sacramento, Southern California, and the Bay Area

Manage contract for assessment of off-site air migration (anticipated completion by June 30, 2016)

## Analysis of Problem

Manage contract for method verification, bench-scale treatability testing and independent evaluation of treatability study results (anticipated completion by June 30, 2016)

MSR Treatability Study samples submitted to DTSC's Berkeley ECL lab for analysis

### June 2016

Field observation activities to verify the assessment and rulemaking assumptions for metal shredding facilities

Inspection and enforcement follow-up of the metal shredding facilities

Identification of additional metal shredding operations subject to the Alternative Management Standards (ongoing)

### January 2017

Adopt regulations per APA. Regulations to contain DTSC's proposed alternative management standards for metal shredding facilities (rulemaking will include required scientific peer review, fiscal and economic analysis, and CEQA analysis) (to be conducted from January 1, 2017 to January 1, 2018)

### Prior to January 1, 2018

Adopt Alternative Management Standards for Metal Shredding Facilities

## H. Supplemental Information

The operating expenses for the requested positions include computers, telephones, in state travel, and training. The Environmental Scientist will also require health and safety equipment for field work in the amount of \$11,000 annually. DTSC also requests contract funds: \$210,000 for the assessment of off-site air migration and method verification, bench scale treatability testing, and independent evaluation of Treatability Study results and outside laboratory sample analysis; DTSC will need approximately 150 samples of treated and untreated metal shredder waste analyzed during the course of the Treatability Study. The analysis of these samples would be conducted by contract laboratories, or by DTSC's Environmental Chemistry Laboratory, with contract funds used to pay for more routine analyses of samples collected as part of other DTSC efforts that can be conducted by contract laboratories. DTSC will also contract out for additional laboratory services for highly specialized work that DTSC's Environmental Chemistry Laboratory does not have the expertise, equipment, or capacity to perform. This contracted lab work will include method verification, bench scale treatability testing, and independent evaluation of Treatability Study results.

Other than the laboratory position (0.5 Chemist) which will be headquartered in DTSC's Berkeley Environmental Chemistry Laboratory, all positions will be located at the CalEPA headquarters building in Sacramento.

## I. Recommendation

DTSC recommends Alternative 1 to augment DTSC's budget with fee-based revenues (HWCA) to implement the requirements of SB 1249. This alternative will provide DTSC the resources it needs to fully analyze the metal shredding industry and its waste management practices, to develop the required set of Alternative Management Standards, and ultimately reduce risks and hazards posed by the metal shredding industry and its waste management practices. Additionally, this alternative will allow DTSC to perform the responsibilities established in the bill in the time frame required by the bill. Most importantly, this alternative will reduce risks and hazards faced by California's most vulnerable and impacted communities.

# BCP Fiscal Detail Sheet

BCP Title: Implementation of SB 1249

DP Name: 3960-003-BCP-DP-2015-GB

## Budget Request Summary

FY15

	CY	BY	BY+1	BY+2*	BY+3*	BY+4*
Positions - Permanent	0.0	0.5		0.5	-	-
Positions - Temporary	0.0	2.0		1.5	-	-
<b>Total Positions</b>	<b>0.0</b>	<b>2.5</b>		<b>2.0</b>	<b>1.5</b>	<b>1.5</b>
Salaries and Wages						
Earnings - Permanent	0	188	161	164	76	76
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$188</b>	<b>\$161</b>	<b>\$164</b>	<b>\$76</b>	<b>\$76</b>
Total Staff Benefits	0	89	75	76	35	35
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$277</b>	<b>\$236</b>	<b>\$240</b>	<b>\$111</b>	<b>\$111</b>
Operating Expenses and Equipment						
5301 - General Expense	0	18	14	18	9	9
5304 - Communications	0	3	2	3	1	1
5320 - Travel: In-State	0	5	4	5	3	3
5322 - Training	0	5	4	5	3	3
5340 - Consulting and Professional Services - External	0	210	50	50	0	0
5362 - Capital Asset Purchases - Equipment	0	8	0	0	0	0
539X - Other	0	1	1	1	1	1
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$250</b>	<b>\$75</b>	<b>\$82</b>	<b>\$17</b>	<b>\$17</b>
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$527</b>	<b>\$311</b>	<b>\$322</b>	<b>\$128</b>	<b>\$128</b>
<b>Fund Summary</b>						
Fund Source - State Operations						
0014 - Hazardous Waste Control Account	0	527	311	322	128	128
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$527</b>	<b>\$311</b>	<b>\$322</b>	<b>\$128</b>	<b>\$128</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$527</b>	<b>\$311</b>	<b>\$322</b>	<b>\$128</b>	<b>\$128</b>
<b>Program Summary</b>						
Program Funding						
3625 - Hazardous Waste Management	0	527	311	322	128	128
9900100 - Administration	0	3	2	3	1	1
9900200 - Administration - Distributed	0	-3	-2	-3	-1	-1
<b>Total All Programs</b>	<b>\$0</b>	<b>\$527</b>	<b>\$311</b>	<b>\$322</b>	<b>\$128</b>	<b>\$128</b>

**Personal Services Details**

**Salary Information**

Positions	Salary Information				
	Min	Mid	Max		
0765 - Sr Envirnal Scientist (Spec) (Eff. 07-01-2015)	0.0	0.5	0.5	-	-
0765 - Sr Envirnal Scientist (Spec) (Eff. 07-01-2015)(LT 06-30-2018)	0.0	0.5	0.5	-	-
3726 - Hazardous Substances Engr (Eff. 07-01-2015)(LT 06-30-2017)	0.0	1.0	1.0	-	-
8060 - Chemist (Eff. 07-01-2015)(LT 06-30-2016)	0.0	0.5	0.0	-	-
<b>Total Positions</b>	<b>0.0</b>	<b>2.5</b>	<b>2.0</b>	<b>2.5</b>	<b>1.5</b>

**Salaries and Wages**

	CY	BY	BY+1	BY+2*	BY+3*	BY+4*
0765 - Sr Envirnal Scientist (Spec) (Eff. 07-01-2015)	0	37	37	-	-	-
0765 - Sr Envirnal Scientist (Spec) (Eff. 07-01-2015)(LT 06-30-2018)	0	37	37	-	-	-
3726 - Hazardous Substances Engr (Eff. 07-01-2015)(LT 06-30-2017)	0	87	87	-	-	-
8060 - Chemist (Eff. 07-01-2015)(LT 06-30-2016)	0	27	0	-	-	-
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$188</b>	<b>\$161</b>	<b>\$164</b>	<b>\$164</b>	<b>\$76</b>

**Staff Benefits**

5150350 - Health and Welfare Insurance	0	28	24	24	11	11
5150500 - OASDI	0	12	10	10	5	5
5150600 - Retirement - General	0	46	39	40	18	18
5150900 - Staff Benefits - Other	0	3	2	2	1	1
<b>Total Staff Benefits</b>	<b>\$0</b>	<b>\$89</b>	<b>\$75</b>	<b>\$76</b>	<b>\$35</b>	<b>\$35</b>
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$277</b>	<b>\$236</b>	<b>\$240</b>	<b>\$111</b>	<b>\$111</b>

\*Data by Classification not available at this time.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
 Workload Analysis Chart  
 Budget Request Name: 3980-003-BCP-BR-2015-GB  
 Budget Request Description: Implementation of SB 1249  
 PRIORITY: 4

ACTIVITY/TASK	Basis/Assumption for Workload Standard	PROJECTED 2015-16					DIFFERENCE ADDITIONAL HOURS NEEDED
		HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY		
<b>Annual Fee Schedule</b> Development of Fee Regulations	DTSC will be adopting a fee schedule and fee administration regulations as emergency regulations (as authorized by SB 1249) and will update the fee schedule annually to reflect DTSC's changing implementation costs and any newly identified metal shredding facilities that will be fee payers	618	1	700	0	700	
<b>Industry Evaluation</b> Analysis and Draft Findings	DTSC will be conducting a thorough evaluation of the industry, its practices, and the public health and environmental threats posed by the metal shredding process, the treatment of the wastes it generates, and the storage, transportation and disposal of those wastes	1718	1	1,718	0	1,718	
<b>Stakeholder Workshops</b> Conduct workshops on draft findings and draft regulations	DTSC intends to conduct at least two public workshops (one in Northern California and one in the Bay Area), but may conduct more workshops depending on stakeholder feedback and any modifications DTSC makes to its evaluation or regulation proposal.	530	2	1,060	0	1,060	
<b>Laboratory Support</b> Analysis of treated and untreated metal shredder waste.	DTSC will need approximately 150 samples of treated and untreated metal shredder waste analyzed during the course of the evaluation. The analysis of these samples would be conducted by DTSC's Environmental Chemistry Laboratory, or by contract laboratories, with contract funds used to pay for more routine analyses of samples collected as part of other DTSC efforts that can be conducted by contract laboratories	6.75	150	1,013	0	1,013	
<b>Inspections/Enforcement</b> Metal Shredder Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	0	12	0	0	0	

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart

Budget Request Name: 3960-003-BCP-BR-2015-GB

Budget Request Description: Implementation of SB 1249

PRIORITY: 4

ACTIVITY/TASK	Basis/Assumption for Workload Standard	PROJECTED 2015-16					DIFFERENCE ADDITIONAL HOURS NEEDED
		HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY		
Metal Shredder Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	0	4	0	0	0	
Disposal Facility Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	0	6	0	0	0	
Disposal Facility Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	0	2	0	0	0	
<b>TOTAL HOURS REQUIRED PER YEAR</b>				<b>4,491</b>	<b>0</b>	<b>4,491</b>	
<b>NUMBER OF PY (Position) NEEDED (HRS/1800)</b>				<b>2.5</b>	<b>0.0</b>	<b>2.5</b>	

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
 Workload Analysis Chart  
 Budget Request Name: 3960-003-BCP-BR-2015-GB  
 Budget Request Description: Implementation of SB 1249  
 PRIORITY: 4

ACTIVITY/TASK	Basis/Assumption for Workload Standard	PROJECTED 2016-17					DIFFERENCE ADDITIONAL HOURS NEEDED
		HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY		
Annual Fee Schedule Development of Fee Regulations	DTSC will be adopting a fee schedule and fee administration regulations as emergency regulations (as authorized by SB 1249) and will update the fee schedule annually to reflect DTSC's changing implementation costs and any newly identified metal shredding facilities that will be fee payers	700	1	700	0	700	
Stakeholder Workshops Conduct workshops on draft findings and draft regulations	DTSC intends to conduct at least two public workshops (one in Northern California and one in the Bay Area), but may conduct more workshops depending on stakeholder feedback and any modifications DTSC makes to its evaluation or regulation proposal.	590	2	1,180	0	1,180	
Adopt Regulations Adopt regulations (per APA)	Prepare the required rulemaking documents, including proposed regulation text, an Initial Statement of Reasons, California Environmental Quality Act analysis, and Fiscal and Economic Impact analysis in support of adopting alternative management standards as regulations in accordance with the Administrative Procedures Act requirements. The proposed rulemaking will also need to undergo scientific peer review. Section 57004 of the California Health and Safety Code requires DTSC to "submit the scientific portions of a proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation."	1718	1	1,718	0	1,718	
Inspections/Enforcement Metal Shredder Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	0	12	0	0	0	
Metal Shredder Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution	0	4	0	0	0	

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart

Budget Request Name: 3960-003-BCP-BR-2015-GB

Budget Request Description: Implementation of SB 1249

PRIORITY: 4

		PROJECTED 2016-17						
ACTIVITY/TASK	Basis/Assumption for Workload Standard	HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY	DIFFERENCE ADDITIONAL HOURS NEEDED		
Disposal Facility Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	0	6	0	0	0	0	
Disposal Facility Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	0	2	0	0	0	0	
<b>TOTAL HOURS REQUIRED PER YEAR</b>								
<b>NUMBER OF PY (Position) NEEDED (HRS/1800)</b>								
				3,598	0	3,598		
				2.00	0	2.00		

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
 Workload Analysis Chart  
 Budget Request Name: 3960-003-BCP-BR-2015-GB  
 Budget Request Description: Implementation of SB 1249  
 PRIORITY: 4

PROJECTED 2017-18						
ACTIVITY/TASK	Basis/Assumption for Workload Standard	HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY	DIFFERENCE ADDITIONAL HOURS NEEDED
Annual Fee Schedule Development of Fee Regulations	DTSC will be adopting a fee schedule and fee administration regulations as emergency regulations (as authorized by SB 1249) and will update the fee schedule annually to reflect DTSC's changing implementation costs and any newly identified metal shredding facilities that will be fee payers	600	1	600	0	600
Adopt Regulations Adopt regulations (per APA)	Prepare the required rulemaking documents, including proposed regulation text, an Initial Statement of Reasons, California Environmental Quality Act analysis, and Fiscal and Economic Impact analysis in support of adopting alternative management standards as regulations in accordance with the Administrative Procedures Act requirements. The proposed rulemaking will also need to undergo scientific peer review. Section 57004 of the California Health and Safety Code requires DTSC to "submit the scientific portions of a proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation."	1718	1	1,718	0	1,718
Inspections/Enforcement Metal Shredder Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	40	12	480	0	480
Metal Shredder Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	250	4	1,000	0	1,000
Disposal Facility Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	40	6	240	0	240

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart

Budget Request Name: 3960-003-BCP-BR-2015-GB

Budget Request Description: Implementation of SB 1249

PRIORITY: 4

		PROJECTED 2017-18					DIFFERENCE ADDITIONAL HOURS NEEDED
ACTIVITY/TASK	Basis/Assumption for Workload Standard	HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY		
Disposal Facility Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	230	2	460	0	460	
<b>TOTAL HOURS REQUIRED PER YEAR</b>				<b>4,498</b>	<b>0</b>	<b>4,498</b>	
<b>NUMBER OF PY (Position) NEEDED (HRS/1800)</b>				<b>2.50</b>	<b>0</b>	<b>2.50</b>	

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
 Workload Analysis Chart  
 Budget Request Name: 3980-003-BCP-BR-2015-GB  
 Budget Request Description: Implementation of SB 1249  
 PRIORITY: 4

ACTIVITY/TASK	Basis/Assumption for Workload Standard	PROJECTED 2018 +				NUMBER OF ADDITIONAL HOURS NEEDED
		HOURS TO COMPLETE TASK	NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY	
Annual Fee Schedule		600	1	600	0	600
Development of Fee Regulations	DTSC will be adopting a fee schedule and fee administration regulations as emergency regulations (as authorized by SB 1249) and will update the fee schedule annually to reflect DTSC's changing implementation costs and any newly identified metal shredding facilities that will be fee payers					
Inspections/Enforcement Metal Shredder Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	40	12	480	0	480
Metal Shredder Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	250	4	1,000	0	1,000
Disposal Facility Inspections	Hours include inspection preparation (file reviews and data evaluation); actual facility inspection (surveillance, facility walk-through, interviewing staff, evidence gathering/documentation); post-inspection activities (writing report, determining violations and required compliance actions); writing Statement of Violations (detailing inspection findings and violations observed); and Compliance verification. Hours include all necessary travel to facility site.	40	6	240	0	240

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
 Workload Analysis Chart  
 Budget Request Name: 3960-003-BCP-BR-2015-GB  
 Budget Request Description: Implementation of SB 1249  
 PRIORITY: 4

ACTIVITY/TASK	Basis/Assumption for Workload Standard	HOURS TO COMPLETE TASK	PROJECTED 2018 +				DIFFERENCE ADDITIONAL HOURS NEEDED
			NUMBER OF TASKS PER YEAR	NUMBER OF HOURS NEEDED PER YEAR	NUMBER OF HOURS IN BASE FOR ACTIVITY		
Disposal Facility Enforcement Actions	Hours included in enforcement follow up involve enforcement case preparation, calculating appropriate penalties, drafting enforcement order, discussion of order and violations with violator and settlement negotiations, and, if settlement cannot be reached, case referral to an administrative hearing or referral to the Attorney General's Office for prosecution.	200	2	400	0	400	
<b>TOTAL HOURS REQUIRED PER YEAR</b>				<b>2,720</b>	<b>0</b>	<b>2,720</b>	
<b>NUMBER OF PY (Position) NEEDED (HRS/1800)</b>				<b>1.51</b>	<b>0</b>	<b>1.51</b>	

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME Toxic Substances Control	CONTACT PERSON Ed Benelli	EMAIL ADDRESS edward.benelli@dtsc.ca.gov	TELEPHONE NUMBER 916-324-6564
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Emergency Regulations to Establish an Annual Fee for Metal Shredding Facilities			NOTICE FILE NUMBER Z

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees       e. Imposes reporting requirements  
 b. Impacts small businesses                       f. Imposes prescriptive instead of performance  
 c. Impacts jobs or occupations                       g. Impacts individuals  
 d. Impacts California competitiveness               h. None of the above (Explain below):

Only State government costs are considered in this Emergency Rulemaking.

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.*

*If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The Toxic Substances Control estimates that the economic impact of this regulation (which includes the fiscal impact) is:

(Agency/Department)

- Below \$10 million  
 Between \$10 and \$25 million  
 Between \$25 and \$50 million  
 Over \$50 million *(If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c))*

3. Enter the total number of businesses impacted: n/a

Describe the types of businesses (include nonprofits): n/a

Enter the number or percentage of total businesses impacted that are small businesses: n/a

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: Private sector costs are unquantified in this Emergency Rulemaking

5. Indicate the geographic extent of impacts:  Statewide  
 Local or regional (List areas): n/a

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: \_\_\_\_\_

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?  YES  NO

If YES, explain briefly: Unquantified

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS Include calculations and assumptions in the rulemaking record.

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ Unquantified

a. Initial costs for a small business: \$ Annual ongoing costs: \$ Years:

b. Initial costs for a typical business: \$ Annual ongoing costs: \$ Years:

c. Initial costs for an individual: \$ Annual ongoing costs: \$ Years:

d. Describe other economic costs that may occur:

2. If multiple industries are impacted, enter the share of total costs for each industry: Unquantified

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ Unquantified

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ n/a

Number of units: n/a

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: n/a

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$

C. ESTIMATED BENEFITS. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Unquantified

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: Only State costs are considered in this Emergency Rulemaking

3. What are the total statewide benefits from this regulation over its lifetime? \$ Unquantified

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: Unquantified

D. ALTERNATIVES TO THE REGULATION Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: n/a



ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$

a. Funding provided in

Budget Act of or Chapter, Statutes of

b. Funding will be requested in the Governor's Budget Act of

Fiscal Year:

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in

b. Implements the court mandate set forth by the Court.

Case of: vs.

c. Implements a mandate of the people of this State expressed in their approval of Proposition No.

Date of Election:

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected:

e. Will be fully financed from the fees, revenue, etc. from:

Authorized by Section of the Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in

3. Annual Savings. (approximate)

\$

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain

**ECONOMIC AND FISCAL IMPACT STATEMENT**

**(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT (CONTINUED)**

**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ 18,000

*It is anticipated that State agencies will:*

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain see attachment

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain \_\_\_\_\_

FISCAL OFFICER SIGNATURE



DATE

4/29/16

*The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

AGENCY SECRETARY



DATE

5/19/16

*Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

Attachment

**Economic and Fiscal Impact Analysis for  
Emergency Regulations to Establish an Annual Fee for Metal Shredding Facilities**

**Department of Toxic Substances Control Reference Number R-2015-01**

**B. FISCAL EFFECT ON STATE GOVERNMENT**

**Question 4. Explanation:**

The only state agency anticipated to incur costs as a result of these regulations is DTSC, which will be the agency implementing the regulations. DTSC must expend resources to prepare its projected annual costs, identify and tally its actual annual costs, prepare and send invoices, and respond to any inquiries or disputes from metal shredding facilities that will be required to pay the fee being administered through these regulations. Although DTSC will incur these costs (estimated to be approximately \$18,000 per year), DTSC is authorized by statute to recover these costs, and plans to include these costs in the actual annual costs that are invoiced each year.

**Benelli, Edward@DTSC**

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**From:** Benelli, Edward@DTSC  
**Sent:** Thursday, June 09, 2016 10:35 AM  
**To:** 'state.clearinghouse@OPR.ca.gov'  
**Subject:** Ref. No. 2016-0531-02ER Notice of Exemption for DTSC Proposed Emergency Fee Regulations for Metal Shredding Facilities  
**Attachments:** 2016 4-27 Signed Notice of Exemption.pdf

Please find attached the Notice of Exemption for the Department of Toxic Substances Control's Proposed Emergency Fee Regulations for Metal Shredding Facilities, Office of Administrative Law Ref. No. 2016-0531-02ER.

Ed Benelli  
Hazardous Substances Engineer  
Research and Policy Development  
Hazardous Waste Management Program  
California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806  
Phone (916) 324-6564  
Fax (916) 322-1005  
Email [edward.benelli@dtsc.ca.gov](mailto:edward.benelli@dtsc.ca.gov)

## 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:** Annual Fee on Metal Shredding Facilities

**Project Location:** Statewide

**County:** All

**Project Description:**

This project is a rulemaking to adopt emergency regulations that will allow Department of Toxic Substances Control (DTSC) to collect a fee from all metal shredding facilities. The emergency regulations will allow DTSC to recover the costs it incurs to evaluate the metal shredding industry as required by Health and Safety Code section 25150.82.

This rulemaking will allow DTSC to assess a fee equally among metal shredding facilities that are subject to Health and Safety Code section 25150.82. DTSC has so far identified six authorized metal shredding facilities to which the fee regulations will apply and that will be part of the evaluation. Other facilities, currently unknown to DTSC, may be subject to the fee if they are identified during the evaluation.

This rulemaking will include the projected annual fees, payment due dates and late fees, and appeal procedures. DTSC will administer and collect all fees associated with this rulemaking. The fee amount invoiced will be determined based on DTSC's actual expenditures divided by the number of known metal shredding facilities that meet the requirements described in the regulation. Each facility will be invoiced annually.

**Background**

On January 1, 2015, Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014) became law, which requires DTSC to thoroughly evaluate metal shredding facilities and the metal shredder waste they generate to ensure these activities do not harm public health or the environment. Based on the findings from the evaluation, DTSC will determine if management requirements can be developed specifically for metal shredding activities and waste as an alternative to full hazardous waste management requirements while still protecting human health and the environment.

SB 1249 authorizes DTSC to adopt regulations to assess fees and provides DTSC authorization to adopt its regulations as emergency regulations.

**Project Activities:** To implement SB 1249, DTSC is working to adopt emergency regulations to establish an annual fee on metal shredding facilities.

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

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

**Exemption Status:** (check one)

- Ministerial [PRC, Sec. 21080(b)(1); CCR, Sec. 15268]
- Declared Emergency [PRC, Sec. 21080(b)(3); CCR, Sec. 15269(a)]
- Emergency Project [PRC, Sec. 21080(b)(4); CCR, Sec. 15269(b)(c)]
- Categorical Exemption: [State type and section number]
- Statutory Exemptions: [State code section number]
- General Rule [CCR, Sec. 15061(b)(3)]

**Exemption Title:** With Certainty, No Possibility of a Significant Environmental Effect

**Reasons Why Project is Exempt:**

This project will not result in a change in any of the physical conditions within the areas affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Therefore, in

accordance with section 15061(b)(3) of Title 14 of the California Code of Regulations, DTSC has determined with certainty that there is not a possibility that the activities in question will result in a significant effect.

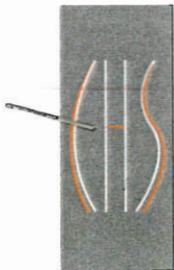
Evidence to support the above reasons is documented in the project file record, available at:

Department of Toxic Substances Control  
Hazardous Waste Management Program  
1001 "I" Street  
Sacramento, CA 95814

Edward Benelli	Hazardous Substances Engineer	(916) 324-6564
Project Manager Name	Project Manager Title	Phone #
		4/27/14
Branch Chief Signature		Date
Rode Bronsch	Division Chief	916 327-1186
Branch Chief Name	Branch Chief Title	Phone #

TO BE COMPLETED BY OPR ONLY

Date Received For Filing and Posting at OPR:



cohn  
HANDLER  
STURM  
an accountancy corporation

May 28, 2016

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Re: Emergency Regulation: Annual Fee on Metal Shredding Facilities

To Whom It May Concern:

I am writing this letter to oppose the implementation of annual fees on metal shredding facilities. These facilities are responsible for recycling society's metal waste, allowing it to be melted down and made into new products. They are helping the environment by keeping known pollutants out of landfills and off of the streets. They provide a valuable service to the environment and our society as a whole. If too many fees are imposed on the recycling industry, they will not be able to afford the cost of the recycling process. If facilities cannot afford to operate, they will be forced to shut down. If fewer recycling facilities are available, it is very likely that greater amounts of metal will end up in our landfills. The toxic effects this will have on our environment are not debatable.

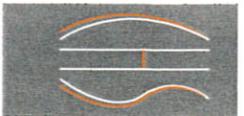
There are thousands of metal shredders throughout the world. California has the strictest regulations when it comes to metal shredding facilities. They are so strict that many businesses are being forced to relocate to other states. We need to keep jobs and industry in California, while simultaneously, promoting recycling and a greener environment. The bigger picture here is the risk on the environment. This is far more important than government budget and finances.

Please consider the long term effects this proposal could have on our environment. Thank you for taking the time to read this letter.

Regards,

Alex Sturm, CPA  
Cohn Handler Sturm  
11620 Wilshire Blvd., Suite 875  
Los Angeles, CA 90025

2016 JUN -2 A 10:59  
OFFICE OF  
ADMINISTRATIVE LAW



cohn  
HANDLER  
SECURM  
an accountancy corporation

14620 Wilshire Boulevard, Suite 875  
Los Angeles, California 90025

OFFICE OF ADMINISTRATIVE LAW  
ANNUAL METAL SHREDDING FEES  
300 CAPITOL MALL, SUITE 1250  
SACRAMENTO, CA 95814-4339

2016 JUN -2 A 10: 59

OFFICE OF  
ADMINISTRATIVE LAW

5-28-16

Department of Toxic Substances/ OAL  
re:metal shredding fees

2016 JUN -1 A 11:09

OFFICE OF  
ADMINISTRATIVE LAW

The fees imposed are unjust and unwarranted. Metal shredders play an important role in keeping old cars off the road and out of landfills. Auto shredders pay for old, broken down cars and people feel good when they get paid for scrapping these cars. I am afraid that if fees are imposed auto shredders will not take cars anymore or will start charging for people to drop them off. This will hurt the environment and could pose potential hazards for people that come into contact with these rusty old cars that lay unwanted on city streets.

**Ashley Buckelew**

17455 Rando St.  
Encino, Ca. 91316

2016 JUN -1 A 11:09  
OFFICE OF LAW  
ADMINISTRATIVE LAW

Office of Administrative Law  
300 Capitol Mall Ste. 1250  
Sacramento, Ca. 95814-4339  
Re: Metal Shredding Fees

2016 JUN -1 A 11:08

OFFICE OF  
ADMINISTRATIVE LAW

5-31-16

Office of Administrative Law/ DTSC

I am opposed to an annual fee based on future reimbursement for monitoring shredding facilities. These fees should cover the studies that are currently going on involving the treatment study and the shredders themselves. California is not a business friendly environment and the cost of doing business here is too great. Metal shredders are playing an important role in helping the environment and lowering the impact of old discarded metal products. Automobiles and other metal products need to be recycled and the only companies that can do it must have shredders in order to recover all of the metals and to be profitable doing it. I know that recycling facilities are required to have numerous permits by different government entities and to add another, even bigger fee would be unfair. Most states do not regulate shredders like California is trying to do, and the amount of materials recycled will be impacted greatly if more fees are imposed. Many companies throughout the world are using ASR for energy and other purposes, this should be researched and implemented in California.



2016 JUN -1 A 11:08

OFFICE OF  
ADMINISTRATIVE LAW

Office of Administrative Law  
ambient metal shredding fees  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4334

5-30-16

DTSC Director

I disagree with an annual shredder fee because the amount of shredders in operation may be too hard to discern and the amount a shredder is in operation each year may differ depending on the company. There are too many variables to asses such a large fee in order to operate a metal shredder. I understand that many companies and industries operate small shredders and that auto shredders have the largest shredders which involves treating and disposing of auto fluff at landfills. I have read about the treatment method before disposal and hope that there is a safe and fair solution to the final treatment process because auto shredding is the best way to recycle all of the old, environmentally unsound vehicles in this state. Recyclers should be given grants from the state to create safer and more efficient processes to recover all metals from products. California should allow any and all metals to be recycled if they have value and can be recovered.

regards



Deepak Peruvemba

2029 CENTURY PARK EAST, SUITE 1760

LOS ANGELES, CA 90402

2016 JUN -1 A 11:08  
OFFICE OF  
ADMINISTRATIVE

2029 Century Park East  
Los Angeles, Ca. 90402

Office of Administrative Law  
300 Capitol Mall Suite 1250  
Sacramento, Ca. 95814-4339  
Re: Metal Shredding Fees

2016 JUN - 1 A 11:11  
OFFICE OF ADMINISTRATIVE

5-29-16

Department of Toxic Substances Control

2016 JUN -1 A 11: 07  
OFFICE OF  
ADMINISTRATIVE LAW

I do not agree with the annual fee for metal shredders. SB 1249 was designed to better monitor the auto shredder industry and to come up with safe and effective treatment methods for auto shredder residue. The DTSC has been working on this with the auto shredders and once completed there should not be any future necessity to impose fees on shredders. The 7 auto shredders should share the costs of implementing this new program because they benefit by taking their auto shredder waste to local landfills as opposed to out of state landfills. I think the landfills should also help fund the research because it will benefit them as well. The state needs to work with businesses more instead of try to put more hardships on them. The environment has become a hot topic in recent years and recycling companies/ metal shredders play an important role in cutting down on green house gases, air pollution, and water pollution.

Sincerely,



2016 JUN - 1 A 11:07

OFFICE OF  
ADMINISTRATIVE LAW

Office of Administrative Law  
Annual Metal Shredding Fees  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Re: Fees for shredding

5-28-16

To whom it may concern;

I am opposed to a shredder fee because metal recyclers already face many challenges, both regulatory and politically. Metal shredders are necessary because without them many types of metals would not be able to be recycled and automobiles would not be able to be processed. Metal recycling plays an important role in our economy and global green movements. If shredder operating costs go up jobs will be lost and the prices paid for recyclables will go down which could prevent people from recycling metal. The DTSC should not rely on metal shredders to support their financial needs.

Sincerely  
Grace Lee  
1641 Bucksglen  
Thousand Oaks CA 91362



2016 JUN -1 A 11:06  
OFFICE OF  
ADMINISTRATIVE LAW

Office of Administrative Law  
300 Capitol Mall Suite 1250  
Sacramento, Ca. 95814 -4339

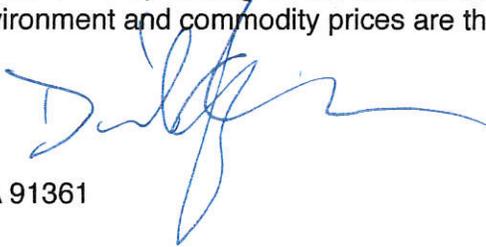
RE: Metal Shredding Fees

Department of Toxic Substances Control  
5-28-16

2016 JUN -1 A 11: 05  
OFFICE OF  
ADMINISTRATIVE LAW

I am opposed to a metal shredding fee. I do not believe such high fees are necessary to regulate metal shredders. These fees are excessive and show how poorly California treats businesses. Auto shredders are a necessary part of the recycling process because if they do not shred cars then cars end up rusting on the streets. Metal recyclers are already facing a tough business environment and commodity prices are the lowest they have been in years.

Sincerely  
Dave Josker  
1568 Covington  
westlake village CA 91361



2016 JUN -1 A 11:06

Office of Administrative Law

OFFICE OF  
ADMINISTRATIVE LAW

300 Capitol Mall Suite 1250

Sacramento CA 95814-4339

Re: Retail Shredding Fee

2016 JUN -1 A 11:06

Office of Administrative Law

OFFICE OF  
ADMINISTRATIVE LAW

300 Capitol Mall Suite 1250

Sacramento CA 95814-4339

Re: Retail Shareability Fee

2016 JUN -1 A 11: 05  
OFFICE OF  
ADMINISTRATIVE LAW

Department of Toxic Substance Control/ OAL

5-29-16

The annual shredder fee should be shared with the landfills that use the auto shredder residue as alternative daily cover. You should also add a fee to new car sales in order to compensate recyclers for the shredding and treatment process to handle the end of life vehicles. I believe that this is a complicated matter and should not be decided in an emergency regulation. Auto shredders have been disposing of this waste for decades in landfills throughout the state. If the material can be rendered safe it should be allowed to be used at landfills and the fees should not be assessed for longer than it takes to make the process safe. Not all shredders are the same and there should be some distinction between their processes and the materials they shred.

Sincerely,

Victoria Blackwood  
11728 kiowa  
Los Angeles, CA 90049

2016 JUN -1 A 11: 05  
OFFICE OF  
ADMINISTRATIVE LAW

Department of Toxic Substance Control/ OAL

5-29-16

The annual shredder fee should be shared with the landfills that use the auto shredder residue as alternative daily cover. You should also add a fee to new car sales in order to compensate recyclers for the shredding and treatment process to handle the end of life vehicles. I believe that this is a complicated matter and should not be decided in an emergency regulation. Auto shredders have been disposing of this waste for decades in landfills throughout the state. If the material can be rendered safe it should be allowed to be used at landfills and the fees should not be assessed for longer than it takes to make the process safe. Not all shredders are the same and there should be some distinction between their processes and the materials they shred.

Sincerely,

Victoria Blackwood  
11728 kiowa  
Los Angeles, CA 90049

2016 JUN -1 A 11: 05  
OFFICE OF  
ADMINISTRATIVE LAW

Department of Toxic Substance Control/ OAL

5-29-16

The annual shredder fee should be shared with the landfills that use the auto shredder residue as alternative daily cover. You should also add a fee to new car sales in order to compensate recyclers for the shredding and treatment process to handle the end of life vehicles. I believe that this is a complicated matter and should not be decided in an emergency regulation. Auto shredders have been disposing of this waste for decades in landfills throughout the state. If the material can be rendered safe it should be allowed to be used at landfills and the fees should not be assessed for longer than it takes to make the process safe. Not all shredders are the same and there should be some distinction between their processes and the materials they shred.

Sincerely,

Victoria Blackwood  
11728 kiowa  
Los Angeles, CA 90049

11728 Kiowa Ave.  
Los Angeles, Ca. 90049

Office of Administrative Law  
300 Capitol Mall Suite 1250  
Sacramento, Ca. 95814-4339  
Re: Metal Shredding Fees

2016 JUN -1 A 11:05

OFFICE OF  
ADMINISTRATIVE LAW

11728 Kiowa Ave.  
Los Angeles, Ca. 90049

Office of Administrative Law  
300 Capitol Mall Suite 1250  
Sacramento, Ca. 95814-4339  
Re: Metal Shredding Fees

2016 JUN -1 A 11:05

OFFICE OF  
ADMINISTRATIVE LAW

11728 Kiowa Ave.  
Los Angeles, Ca. 90049

Office of Administrative Law  
300 Capitol Mall Suite 1250  
Sacramento, Ca. 95814-4339  
Re: Metal Shredding Fees

2016 JUN -1 A 11:05

OFFICE OF  
ADMINISTRATIVE LAW

**McNeill, Lindsey@OAL**

---

**From:** Wake, Luke <Luke.Wake@nfib.org>  
**Sent:** Wednesday, June 01, 2016 4:19 PM  
**To:** Benelli, Edward@DTSC; OAL Reference Attorney  
**Cc:** DeVore, Ken; Lee, Barbara@DTSC; Molin, Benjamin@DTSC  
**Subject:** NFIB Comments Opposing Annual Fee on Metal Shredding Facilities (OAL  
Emergency No. 2016-0531-02ER)  
**Attachments:** NFIB\_Comments\_Metal\_Shredding\_Fees.pdf

Mr. Benelli:

Please see NFIB's attached comments concerning DTSC's proposed fee on metal shredding facilities. We appreciate your consideration of the points raised therein.

Best regards,

Luke A. Wake  
Senior Staff Attorney  
**NFIB Small Business Legal Center**  
921 11<sup>th</sup> Street, Suite 400  
Sacramento, CA 95814  
(916) 448-9904  
luke.wake@nfib.org

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## CALIFORNIA

Ed Benelli  
Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento, 95814

Re: **Annual Fee on Metal Shredding Facilities**  
**OAL Emergency Number 2016-0531-02ER**

Mr. Benelli:

The National Federation of Independent Business (NFIB) is writing with concerns regarding DTSC's proposed Emergency Regulations imposing an annual fee on metal shredding facilities (the "Emergency Regulations"). NFIB speaks on behalf of California's small business community and raises concerns here because the Department's Emergency Regulations may potentially affect small and independent businesses. The Emergency Regulations were transmitted to the Office of Administrative Law (OAL) only yesterday, May 31, which means that the five calendar day comment period opened yesterday. Yet, DTSC's website erroneously states that the public comment period opened May 28 and closes today, June 1. (See Exhibit A- Erroneous DTSC Website Notice.) In light of this procedural inaccuracy and out of an abundance of caution, we are submitting this skeletal comment letter to you.

### **There is No Emergency Here**

The Emergency Regulations should not be adopted as currently written for at least two reasons. First, the need to impose an annual fee on metal shredding facilities does not rise to the level of an "emergency" as required by applicable regulations. Second, the manner in which the annual fee has been calculated is unfair and unjustifiable under the circumstances.

Government Code section 11346.1 requires the agency proposing emergency regulations to articulate the basis for the "emergency." DTSC purports to make such a showing, but it is woefully inadequate. Instead of citing any facts or circumstances justifying any need to act immediately or any showing of potential harm, DTSC merely cites to Health and Safety Code section 25150.84(c) as its basis for the Emergency Regulations. Health and Safety Code section 25150.84(c) allows DTSC to adopt regulations to establish an annual fee as an emergency regulation. This circular reasoning cannot satisfy the requirements of Government Code 11346.1, and cannot be sufficient to constitute specific facts constituting the need for immediate action. *See* Govt. Code § 11346.1(b)(2) ("If the

situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations . . . the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations.”)

Even if referring to statutory authority could suffice, SB 1249 was enacted in 2014. The legislature’s authorization to act on an “emergency” basis is now nearly two years old. If DTSC wanted to act on its legislatively-bestowed emergency authority, it should have done so immediately after receiving such authority. Indeed, the legislature contemplated any such regulations being in effect for only two years. To have waited two years only proves that there is no emergency. At this juncture, a finding of emergency based upon expediency, convenience, best interest, general public need, or speculation is *not* adequate to demonstrate the existence of an emergency. Govt. Code § 11346.1(b)(2).

Moreover, the facilities currently deemed subject to the annual fee – the six shredding facilities operating pursuant to “(f) letters” – have been operating under those variances since the 1980s. It strains reason to say that there is an emergency with respect to those facilities now, thirty-six years later.

#### **Any Imposed Fee Should be Proportional to Public Impacts**

Even if these procedural deficiencies could be set aside, the Emergency Regulations are fatally flawed in substance. The annual fee in the Emergency Regulations was calculated by dividing the DTSC’s own assessment of its projected costs (or desired spend?) by the number of metal shredding facilities which are unspecified but which DTSC currently believes fall within the parameters of the regulations. Our understanding is that DTSC believes the project costs would be divided equally between six facilities, presumably the six facilities currently operating in California pursuant to (f) variance letters. But the Emergency Regulations purport to apply to three other categories of metal shredding facilities. Cal. Code Regs. tit. 22 § 69600.3(a)(2)(B)-(D) (applying annual fee requirements to metal shredding facilities that operate under: (1) an order issued or entered into by DTSC pursuant to specified management and operating conditions; (2) a judgment issued by a court in a matter to which DTSC and at least one metal shredding facility are parties; and (3) a permit issued by DTSC).

Because the regulations may apply to facilities other than the six facilities currently operating pursuant to (f) letters, the regulations must be designed to fairly apply to all facilities. Any proposed regulations must account for significant differences in capacity, operations, size, and public impact of a given facility. Valid annual fee calculations must be proportional to and dependent upon those considerations.

The fees currently set forth in section 69600.4 should be divided and allocated based not on the aggregate number of metal shredding facilities, but instead based on a proportional assessment of facility size and the weight of scrap metal produced annually. Such a proportional fee structure is reasonable, better comports with applicable constitutional standards, and is consistent with the approach taken in similar fee schemes in California.

Annual hazardous waste facility permits under Health & Safety Code § 25200 are assessed by DTSC based on the size (Small, Medium, and Large) and Series (A, B, and C) designation of a given facility's operations. Facility "size" is consistently based on the weight of hazardous waste stored or treated by the facility. Likewise, Environmental Fees are regularly assessed under Health & Safety Code § 25205.6, based upon the size of the operating business, as established by the number of employees. And electronic waste recycling fees are assigned by CalRecycle on a tiered basis, again determined on the size of waste processed. Each of these regulatory schemes implements a reasonable and proportional fee structure that is sensibly and lawfully based on a facility's actual public impact. The fee scheme for metal shredding facilities should be no different. Below we provide a proposed revision to fix this problem:

Proposed Revision to Section 69600.4

*The annual fee shall be determined by dividing the Department's annual costs by the pro rata tonnage of scrap metal produced annually at each of the metal shredding facilities operating in any portion of the calendar year to which the fee applies.*

For the forgoing reasons NFIB respectfully urges DTSC to withdraw and or amend the proposed regulations.

Respectfully submitted,



LUKE A. WAKE  
Senior Staff Attorney  
NFIB Small Business Legal Center  
921 11th Street, Suite 400  
Sacramento, CA 95814  
(916) 448-9904  
[luke.wake@nfib.org](mailto:luke.wake@nfib.org)

Exhibit A: Erroneous DTSC Website Notice

CC: Barbara Lee  
Director, DTSC  
[Barbara.lee@dtsc.ca.gov](mailto:Barbara.lee@dtsc.ca.gov)

Benjamin Molin  
[Benjamin.molin@dtsc.ca.gov](mailto:Benjamin.molin@dtsc.ca.gov)



California Department of

Toxic Substances Control

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MANAGING HAZARDOUS WASTE

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- Laws
- Regulations
- Policies



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- California Statutory Law
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- DTSC Legislative Summaries
- CA Code Excerpts / Health and Safety Codes
- Hazardous Waste Fee Summary
- Governor's Reorganization Plan 1 of 1991 (unmodified)
- U.S. EPA List of Major Environmental Laws

Laws | Regulations | Policies

## Emergency Regulations: Annual Fee on Metal Shredding Facilities

DTSC Reference Number: R-2015-01  
CAL Reference Number: 2015-XXXX-XXX

CAL Approval Date  
Secretary of State Filing Date: 06/06/16  
Effective Date:  
Expiration Date: 06/06/18

Public Comment Period: 05/28/16 - 06/01/16

When DTSC submits an emergency regulation to the Office of Administrative Law (OAL), the public notice is placed on OAL's Emergency Regulations page. The public has five calendar days to submit comments to OAL on the emergency regulation after DTSC has submitted the regulation to OAL (Cal. Code Regs., tit. 1, ch. 1, art. 2, § 55). These comments must be in writing, received prior to OAL's decision, must identify the emergency topic and must be copied to DTSC Headquarters. DTSC may or may not respond to comments.

- Notification of Proposed Emergency Regulatory Action
- Finding of Emergency
- Text of Proposed Emergency Regulations



Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200  
MAILING ADDRESS : P.O. Box 2824, San Francisco, CA 94126-2824 | San Francisco, CA 94111-5998

Margaret Rosegay  
tel: 415.983.1305  
[margaret.rosegay@pillsburylaw.com](mailto:margaret.rosegay@pillsburylaw.com)

June 6, 2016

Mr. Ed Benelli  
Department of Toxic Substances Control  
[Edward.Benelli@dtsc.ca.gov](mailto:Edward.Benelli@dtsc.ca.gov)

Office of Administrative Law  
OAL Reference Attorney  
[staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Re: Comments on Department of Toxic Substances Control Proposed  
Emergency Fee Regulations for Metal Shredding Facilities – Ref. No.  
2016-0531-02ER

Dear Sir/Madam:

This letter is submitted on behalf of Schnitzer Steel Industries, Inc., Sims Metal Management, SA Recycling, and Ecology Auto Parts, Inc., in connection with the Department of Toxic Substances Control's proposed emergency regulations establishing an annual fee for metal shredding facilities, pursuant to the requirements of Senate Bill 1249 (Health & Saf. Code, § 25150.82, et seq.).

Schnitzer Steel, Sims, SA Recycling and Ecology (hereafter, the "Shredder Coalition") own and operate the six largest metal shredding facilities in the state of California and have been working with the Department over a period of many years to develop an alternate regulatory program for metal shredder residue that would replace the so-called "f" letters and DTSC Official Policy/Procedure # 88-6 that have been in place since the mid to late 1980s. SB 1249 was enacted effective January 1, 2015, and provides an overarching framework for the continued classification of treated metal shredder residue as a nonhazardous waste and the promulgation of alternative management standards that would be applicable to all metal shredding facilities (as defined in HSC § 25150.82). SB 1249 also authorized the Department to adopt emergency regulations assessing an annual fee on all metal shredding facilities to cover the reasonable and necessary costs of implementing the law.

The Shredder Coalition has two principal, and related, concerns with the proposed emergency regulations, as discussed below.

**Comments on Proposed Section 69600.3**

First, the applicability section of the proposed regulations states that the annual fee requirements apply to metal shredding facilities that “are operating using one of the following authorities or classifications that allow lawful metal shredding operations.” The regulations identify four different ways that metal shredding facilities can be “allowed” to operate, including (A) receipt of a “notification” that provides for the classification and management of shredder residue as a nonhazardous waste; (B) issuance of an order by the Department authorizing a facility to continue operations pursuant to specified management and operating conditions; (C) issuance of a judgment by a court authorizing a facility to continue operations pursuant to specified management and operating conditions; or (D) issuance of a hazardous waste permit “that authorizes metal shredding operations.” See Proposed § 69600.3(a)(2). Schnitzer Steel, Sims, SA and Ecology each holds a valid “notification” (an “f” letter) and is thus subject to the fee.

While the Shredder Coalition does not dispute the Department’s authority to assess the annual fee for SB 1249 implementation, the underlying basis for identification of facilities that are subject to the fee is contrary to the statute. HSC section 25150.84 states that all metal shredding facilities in the state are subject to the fee. The statute does not authorize the Department to make any distinction between those facilities that are engaged in “lawful metal shredding operations” versus those that are engaged in allegedly unlawful operations.

The projected annual fee for Calendar Years 2015-2017 is based on dividing the total projected cost for each year by six, the number of shredding facilities operated by the members of the Shredder Coalition. See Proposed section 69600.4(c). The Shredder Coalition has provided the Department with the names of at least three additional metal shredding facilities that are currently operating in the state. Thus, the total annual fee for each of these years should be divided by at least nine, not six. One of the primary purposes of SB 1249 was to “level the playing field” by subjecting all metal shredding facilities to the same standards and regulatory requirements (to the extent applicable to their particular operations). It would be ironic if the very facilities that have been operating outside the current regulatory framework are allowed to escape responsibility for payment of their fair share of the Department’s costs to develop the new program until an enforcement order or court judgment has been issued against them, events that may never occur. In short, all metal shredding facilities in the state, regardless of their current status, should share equally in the

Department's costs. The Department's decision to not assess the fees pursuant to the statute violates the consistency standard in Government Code section 11349.1(a)(4).

More importantly, section 69600.3(a)(2) reflects an implicit, but overly broad and unlawful, assertion of jurisdiction over metal shredding operations. SB 1249 expressly recognizes that metal shredding operations are "production operations." See Health & Saf. Code, § 25150.82(d)(3)(C). The definition of "metal shredding facility" in SB 1249 is essentially the same as the definition of "scrap recycling facility" in HSC § 25211: "a facility where machinery and equipment are used for **processing and manufacturing** scrap metal into prepared grades and whose **principal product** is scrap iron or nonferrous metallic scrap for sale for remelting purposes. A scrap recycling facility includes . . . a metal shredding facility . . ." (emphasis added). The Department has no authority to issue a permit that purports to authorize metal shredding operations.

Throughout SB 1249, clear distinctions are drawn between metal shredding operations and hazardous waste management activities that may be conducted to some degree at metal shredding facilities. The legislative history of the bill is crystal clear that nothing in SB 1249 was intended to give the Department new and expanded jurisdiction over metal shredding facilities. The Department has authority to regulate hazardous wastes (e.g., metal shredder residue) that are generated and managed at metal shredding facilities, but it does not have jurisdiction under the Hazardous Waste Control Law to regulate manufacturing or processing operations.

The Shredder Coalition acknowledges that there is a difference of opinion between the industry and the Department over the precise point at which the operations conducted at metal shredding facilities may reasonably and properly be viewed as waste management activities, rather than processing activities. Historically, the Department has limited its jurisdictional reach solely to the management of metal shredder residue, the non-metallic residue that remains after all recoverable ferrous and nonferrous metal has been removed from the shredder output. More recently, the Department has asserted that it has jurisdiction over the "downstream" processing operations that are used to separate nonferrous metals from the intermediate processing stream known "aggregate." Aggregate is the material that remains after ferrous metal has been removed from the shredder output, but before nonferrous metals has been separated and removed from the shredder output. Aggregate contains large quantities of nonferrous metals which are in fact more valuable than the ferrous metal that represents the larger bulk fraction of shredder output. Aggregate is not a hazardous waste so long as it remains within the confines of the processing operation.

Even more recently, some representatives of the Department have claimed that it may assert jurisdiction over the initial removal of ferrous metal from the shredder output, a position it has never taken before and for which there is no statutory authority. In other words, the Department's view of its jurisdictional reach has apparently expanded to include the entire output of a metal shredder, subjecting any and all metal separation and removal processes to regulation as "treatment" of hazardous waste. Needless to say, the industry is opposed to this interpretation, given its glaring inconsistency with the law.

And now, under the auspices of this emergency rulemaking, the Department appears to have taken the final step and is claiming that even the metal shredding process itself must be "allowed" by the Department, through one of the mechanisms listed in proposed section 69600.3(a)(2). This is tantamount to an assertion by the Department that metal shredding operations are hazardous waste management activity. This interpretation violates the Necessity, Authority and Consistency standards in Government Code sections 11349.1(a)(1), (2) and (4). It also effectively negates the scrap metal exemption in current law. See 22 Cal. Code Regs., § 66260.10 (definition of "scrap metal"). Furthermore, this interpretation is contrary to recent representations made by the Department that it does not have jurisdiction over the metal shredding process *per se*.

Regardless of when or how this jurisdictional debate is ultimately resolved, the Shredder Coalition maintains that it is contrary to the Administrative Procedure Act for the Department to stake any jurisdiction claim within the context of the fee regulation. HSC § 25150.84 authorizes the Department to assess an annual fee against all "metal shredding facilities" and there is no need to predicate the fee on a prior determination of "lawfulness" of those operations. This emergency rulemaking process cannot be used as a backdoor means of resolving the legal and policy questions that lie around the scope of the Department's jurisdiction over this important industry.

For all of the foregoing reasons, section 69600.3(a)(2) of the proposed regulations should be revised to state simply that "the annual fee requirements apply to all metal shredding facilities, as defined in HSC section 25150.82."

#### **Comments on Proposed Section 69600.4**

Proposed section 69600.4(a) states that "the Department shall assess an annual fee on each metal shredding facility in an amount sufficient to reimburse the Department's annual costs." As drafted, this language would subject each facility to a fee equal to

June 6, 2016

Page 5

the Department's entire annual cost. While this is not the Department's intention, we believe subsection (a) should be clarified to refer to each facility's *pro rata* share of the annual cost. In addition, to avoid any potential that costs unrelated to implementation of SB 1249 are included in the Department's annual costs, subsection (b) should be revised to refer specifically to authorizing statutory language.

As revised, proposed sections 69600.4(a) and (b) would read as follows:

- (a) The Department shall assess an annual fee on each metal shredding facility in an amount sufficient to reimburse that facility's *pro rata* share of the Department's annual costs, as determined in subsection (c).
- (b) The Department's annual costs shall include costs incurred to conduct the following activities, to the extent authorized by section 25150.83 of chapter 6.5 of the Health and Safety Code:

We also note a reference to HSC § 25150.83 in the authorities cited is missing and needs to be added to the Note at the end of this section.

\* \* \* \* \*

The Shredder Coalition appreciates the opportunity to provide these comments.

Very truly yours,



Margaret Rosegay

Cc: Rick Brausch, DTSC  
ISRI Shredder Coalition  
Bob Hoffman  
Tim Flanigan

**McNeill, Lindsey@OAL**

---

**From:** Pomeroy, Charles H. <charles.pomeroy@dentons.com>  
**Sent:** Wednesday, June 01, 2016 11:25 AM  
**To:** OAL Reference Attorney  
**Cc:** Benelli, Edward@DTSC  
**Subject:** 2016-0531-02ER; Comment on Proposed Emergency Regulation for Annual Fee on Metal Shredding Facilities  
**Attachments:** 201606011107.pdf

Dear Staff Member:

Please see the attached comment.



Charles H. Pomeroy  
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June 1, 2016

**Via Email (staff@oal.ca.gov)**

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814-4339

Re: 2016-0531-02ER; Proposed Emergency Regulation of Annual Fee on Metal Shredding Facilities

Dear Staff Member:

This comment is provided by this firm on behalf of Kramar's Iron and Metal Company ("Kramar's") concerning the proposed emergency regulations pertaining to an annual fee for a "Metal Shredding Facility." The comment reflects issues that should be considered by both the issuing agency, the Department of Toxic Substances Control (the "Department") and the Office of Administrative Law ("OAL"). As required, a copy of this communication is being simultaneously emailed to the Department contact.

According to Government Code section 11349.1(a), the OAL is required to make determinations on six standards for any proposed regulation, which are:

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Nonduplication.

For the reasons set forth below, Kramar's believes that the proposed regulations do not meet the standards for (3) Clarity or (4) Consistency, and requests that the OAL reject the proposed emergency regulation and return it to the Department.

Discussion

The Finding of Emergency for the proposed regulation states that it applies to metal shredding facilities that have a lawful means of operation. Kramar's initially notes the proposed regulation references California Health & Safety Code section 25150.82 for the definition of a "Metal Shredding Facility" which "means an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal..." (*emphasis added*). Based on the literal language of the section, facilities that only process end-of-life vehicles, or just appliances, or only other forms of scrap metal, or any two of the three, would not qualify as a metal shredding facility. If the term "metal shredding facility" is supposed to cover an operation that handles only one of the three forms of scrap metal (appliance, automotive or other), then this provision (now being adopted by reference) should have been stated as covering "end-of-life vehicles, appliances or other forms of scrap metal..." (*emphasis added*). Thus, only a metal

shredding facility that handles all of the described forms of scrap metal meets the specific definition. It does not appear that the term is meant to cover facilities that do not perform shredding on all three forms of scrap metal. To support this proposition, the proposed emergency regulation for fees appears focused on the seven auto shredders in the state as being the ones primarily subject to this regulation, since this fee is imposed initially on six auto shredders (one is idled). See Table 3, Finding of Emergency. These shredders also perform shredding on appliances and other forms of scrap metal.

Kramar's notes that the enabling legislation for section 25150.82, Senate Bill 1249, was intended to address the California Integrated Waste Management Act of 1989, which applied to appliances and vehicles (SB 1249, Preamble (1)). Therefore it is possible to limit the term "Metal Shredding Facility" to operations that handle all of the following: end-of-life vehicles, appliances and other forms of scrap metal derived from them, which is generally only the seven auto shredders identified. Unfortunately, it is not clear to operators employing hammermills in the state for the purpose of shredding metal what is meant by the term "Metal Shredding Facility." Although incorporated, unless the term is clear, it is not possible for the potentially regulated community (i.e., all operators employing metal shredders) to determine if these provisions currently or prospectively will apply to them. For that reason, the proposed emergency regulation's incorporated term "Metal Shredding Facility" as it is applied does not meet the required Clarity standard.

As discussed above, an operation meeting the definition of a "Metal Shredding Facility" may or may not be limited; however, Kramar's must assume for purposes of this rulemaking that the underlying term includes all other forms of metal shredders in the state and therefore the following comments are made to the remaining provisions of this proposed emergency regulation.

#### Section 69600.3

Proposed Title 22, California Code of Regulations (CCR) section 69600.3 sets forth the applicability of the annual fee. The annual fee only applies to a subset of the "Metal Shredding Facilities" (as defined under Health & Safety Code section 25150.82) as set forth at section 69600.3(2)(A) through (D). Unless this regulation is meant to cover the six identified facilities only for now and the future, the regulations fails to consider additional issues created by limiting the section to four subcategories. The lack of these exceptions is inconsistent with numerous existing hazardous waste regulations that provide exceptions to (e.g., Title 22 CCR sections 66261.4, 66261.6, 66265.1, etc.) and the failure to include these exceptions provides a lack of clarity as to what regulations may or may not apply in any given circumstance. As such, this section does not meet the Clarity and Consistency standards.

First, the section does not exclude shredders that do not generate any metal listed as hazardous by the Department (Title 22 CCR section 66261.24(a)(2)(A), Table II) or any other hazardous waste. For example, aluminum is not a listed hazardous waste and when shredded it will not generate a hazardous waste. There are other metals (e.g., ferrous compounds) that also are not listed as hazardous waste by the Department. Thus, if the material is not hazardous as defined by the Department's regulations, or is otherwise regulated (as noted below), then it should not be subject to this fee. If facilities as described are not subject to the annual fee, then the regulation should so state.

Second, and similar to the foregoing, there are metal shredding facilities that generate elemental metals, which are not subject to regulation as hazardous wastes. See Title 22 CCR section 66261.24(a)(2)(A) Table II, footnote b. Please see Attachment 1 to this letter, which elaborates upon issues affecting the ability to determine whether scrap metals constitute or can be determined as hazardous waste, both of which affect what operations may or may not be subject to the metal shredding facility annual fee.

Third, there are metal shredding facilities that would not be subject to the listed subsections due to an exclusion pursuant to Health & Safety Code section 25143.2(d)(4), which allows excluded recyclable materials (ERM) to not be otherwise regulated as a hazardous waste once the material is shipped for further recycling to a lawful location out-of-state, again exempting the qualified metal shredding facility from regulation and an annual fee.

Section 69600.3((a)(2)(A) cannot be used as a substitute for the foregoing. That section presumes all scrap metal is a hazardous waste that requires the Department to issue a notification under Title 22 CCR section 66260.200(f) that it is nonhazardous. Such a process should not be used in lieu of an outright exception since scrap metal that is recycled is not subject to regulation, including section 66260.200(f). See Title 22 CCR sections 66261.6(a)(3)(A) and (B). It would also not work for non-hazardous metals, like aluminum.

For Clarity and Consistency, the following is suggested by Kramar's as a new subsection:

"(b) The annual fee shall not apply to a metal shredding facility that does not generate hazardous waste or is otherwise managing the recyclable material as an excluded recyclable material in accordance with the applicable provisions of Health & Safety Code Section 25143.2 ."

Finally, the section does not apply to existing metal shredding facilities that may be generating hazardous waste from shredding activities but are not currently identified by the Department. Thus, the Department is imposing the entire financial burden of the metal shredding facility annual fee on lawful facilities. There is no mechanism in the regulation to reconcile fees already paid by qualified metal shredding facilities when the Department adds potentially dozens of additional facilities to the list. See discussion in Section 69600.4, below.

#### Section 69600.4

Section 69600.4(c) specifies that the annual fee shall be determined by dividing the Department's annual costs by the number of metal shredding facilities operating. As stated above, the Department is for the moment identifying what appears to be a subset of the term "metal shredding facility," but there appears to be nothing precluding the Department from broadening the list at any time. More troubling about the proposed regulation, if uncorrected, is that it imposes two burdens on the qualifying metal shredding facilities. First, the entire fee will be due if the facility operates during any portion of the calendar in which the fee applies, thereby imposing the full *per capita* annual fee for what could be a single day or two of operation in the year. Second, the annual fee does not account for volume generated by the metal shredding facility, thereby increasing the cost of smaller operators. It is understood that a facility shredding mostly vehicles is likely to generate huge volumes of scrap metal and is more likely to be operating daily. A small metal shredder facility not shredding vehicles or appliances may generate far less than 1% of the volume of the large vehicle shredder. The disparity in shredded metal volume (and waste generated) is striking, yet the fee is proposed to be the same.

Kramar's suggests the proposed regulation be revised and reduced for infrequent users as well as low volume shredders. The methodology to allow for a lesser fee for a metal shredder facility could come in the form of a certification by the user. Two categories, large and small, would provide less disparity from use and allow for a more balanced fee per facility. The fee could be set based on a number of days and volume. The current approach is not consistent with existing law. The approach proposed herein would

be Consistent with other hazardous waste fee provisions set forth in the Health & Safety Code (e.g., sections 25205.4, 25205.5).

Section 69600.7

The proposed dispute resolution provision creates a one year statute of limitations for refund. While the state is not limited to one year to seek its fees under this section, a party seeking refund is given one year from the date of original notice. This proposed regulation is not unlike the other fees the Department seeks under a variety of programs with one exception. In those situations, a refund is available three years from the date of the overpayment or when taxes are due and payable. See Revenue & Taxation Code sections 43452; 43452.2. The current proposed regulation is inconsistent with other refund schemes set forth for hazardous waste. To be Consistent, the same period for refund that applies to other fees associated with hazardous waste should be allowed. Kramar's suggests that a three year period for refund be applied.

\* \* \*

Kramar's appreciates the opportunity to provide these comments.

Sincerely,



Charles H. Pomeroy

CHP:pac  
Attachment  
cc: Ed Benelli (via email)  
edward.benelli@dtsc.ca.gov

## ATTACHMENT 1

This attachment describes when a metal listed in California may not be a hazardous waste under California law due to (a) its composition, or (b) the inaccuracy of the waste determination performed using state-required laboratory analysis.

California's hazardous waste regulations identify, for the characteristic of toxicity (Title 22, CCR Chapter 11, article 3), a limited number of metals if certain soluble or total concentrations of that metal are present in a sample. These values, as determined by specific EPA-approved laboratory methods, incorporated within SW-846, are identified as a Solubility Threshold Limit Concentration ("STLC") and a Total Threshold Limit Concentration ("TTLIC"), respectively. Title 22, CCR Chapter 11, article 3, section 66261.24(a)(2)(A), Table II ("Table II"). The basis for each metal's Table II listing is found within the Statement of Reasons, R-45-78, 1984 ("SOR") issued in two parts by the Department when this regulation was promulgated.

Listed metals within Table II, as explained in footnote b of Table II, are considered nonhazardous in their elemental (i.e., solid form) except when "in a friable, powdered or finely divided state." ("footnote b"). The footnote b exception to Table II exists for elemental metals, meaning basic metal objects, because as instructed by the SOR: "Metallic objects would not fail the test because they are explicitly exempted from the STLC and TTLIC criteria unless they occur in a friable, powdered or finely divided state." SOR, part 2 at 128. The SOR goes on to consider this exclusion for metal objects to cover "metal fragments," which should be "removed from the waste prior to the WET [{"Waste Extraction Test}]." SOR, Part 2 at 171. "Fragments," by definition, cover "particles or specks," but are not defined as "powdered or finely divided." <http://www.thefreedictionary.com/fragment>

Existing records demonstrate that the Department's predecessor agency, the Department of Health Services, was intent on regulating only solid-form metal when present at 10 microns or smaller. The SOR reasoning from the Department is explained as follows:

"Specifically, the Department views the TTLIC values as a means to assess public health risks that the handlers of wastes, and the general public, are exposed to through the inhalation pathway (see enclosed excerpt from the Statement of Reasons, R-45-78). We rigorously use the TTLIC criteria on a waste if it contains inorganics which are 10 microns or less in size. This size value is used because particles greater than 10 microns are not inhalable and thus do not pose a risk through this exposure pathway."

Letter, David J. Leu, Ph.D., Chief Alternative Technology Section to Robert D. Ghirelli, D.Env., California Regional Water Quality Control Board, September 8, 1988 at Page 1. (Metal Shredder Residue Library).

None of the terms found within the footnote b exception within Chapter 11, article 3 (i.e., "friable, powdered or finely divided state") are defined within any of California's hazardous waste regulations (i.e. Title 22, Division 4.5). The closest term to "powdered or finely divided state" within Title 22, is found at Chapter 10, article 2, under definitions at Title 22 CCR section 66260.10. "Fine powder," is defined as meaning "a metal in dry, solid form having a particle size smaller than 100 micrometers

(0.0004 inches) in diameter." This term, however, only appears in Chapter 11, article 1, where it is found at subsection (b)(6) within one of the subsection (b) exceptions to the definition of "scrap metal". See Section 66260.100, "scrap metal". The term does not appear in Chapter 11, article 3 (which identifies characteristic hazardous wastes) and is not directly linked by regulation, or otherwise, to any definition of what constitutes a hazardous waste. As subsection (b)(6) of the "scrap metal" definition, above, instructs, in order for "fine powder" to be regulated, it must also be a hazardous waste, something that "fine powder" is not by its own use and definition within the regulations.

Reviewing the record discussed above, a metallic fine powder (of 100 or less microns) would only become regulated as a hazardous waste if (1) it contained one of the metals listed in Table II in excess of the TTLC (or STLC) threshold, and (2) it also included a sufficient amount of a listed metal's particles of 10 microns or less (i.e., a "powdered or finely divided state" and not a metal fragment) that render the metallic fine powder as a whole a hazardous waste. No other explanation is found within the regulations, but the lack of a defined term is also telling. If the Department intended the term "powdered or finely divided state" to have the same meaning as "fine powder", then the term "powdered or finely divided state" would have been provided initially in the definition and used throughout the regulations, rather than creating a separate term with a different meaning.

The record supports distinct meanings for the two terms. Assuming arguendo, that 100 microns represents the equivalent to a "powdered or finely divided state" such a conclusion would contradict the Department's own argument that it was important to regulate only the smaller 10 micron particle fraction for its ability to be respired into the lungs. This particle size, known as thoracic dust, will pass through the nose and throat, reaching the lungs. Particles of 10 microns diameter and less are referred to as PM10 (i.e., particulate matter 10 microns) and are regulated by EPA for air emissions because of their potential harm to human health. EPA also now regulates smaller particulate matter (PM2.5), but has not regulated larger particulates.

A scrap metal may also be excluded per subsection (b)(4) within the exceptions to the "scrap metal" definition when a scrap metal is contaminated with a hazardous waste exhibiting a hazardous waste characteristic under article 3 (which might include a Table II-listed metal that is respirable because of a particle size falling under 10 microns). This exception applies to otherwise excluded scrap metal if that scrap metal is "contaminated with a hazardous waste." Effectively, the section expands the reach of subsection (b)(6) to cover other contaminants including chemicals such as PCBs and mercury as well as a 10 micron or less Table II-listed metal in a "powdered or finely divided state," when mixed with otherwise excluded scrap metal of any size.

Notably, while the regulations and agency records discuss terms associated with metal objects sized at 10 and 100 microns, there is nothing to suggest that metal objects larger than 100 microns are regulated. In fact, materials like cuttings, grindings, shavings and sandings, as expressed in subsection (a)(2), and residues, as expressed in (a)(3) of the "scrap metal" definition, respectively, clearly identify metallic materials of potentially smaller particle size than might be regulated as hazardous waste. For example, metallic grindings from wet or ball mill grinding can easily produce metallic particles less than 10 microns in size and therefore, any Table II listed-metal of that size would fall within the footnote b

exception and be regulated as hazardous waste. Additionally, the SOR has found that "metal fragments" are expressly excluded from regulation. SOR, part 2 at 170.

Finally, the other term within the footnote b exception, "friable" typically appears associated with asbestos, which is also listed in Table II. A common regulatory definition of "friable" is a material that "when dry, can be crumbled, pulverized, or reduced to powder by hand pressure." See Title 40 CFR section 61.141. Total metals are typically considered ductile, not brittle, unless subjected to extreme cold. Thus, it is highly unlikely one would encounter crumbling or powdering of total metals under hand pressure, particularly when insoluble in form. For that reason, the term "friable" does not appear to be relevant to this discussion.

The starting point for any analysis to determine if a particular material constitutes a hazardous waste or is excluded is for the generator of the material to perform a waste determination. Title 22, CCR section 66262.11, in relevant part, states:

"A person who generates a waste, as defined in section 66261.2, shall determine if that waste is a hazardous waste using the following method:

(a) the generator shall first determine if the waste is excluded from regulation under section 66261.4 or section 25143.2 of the Health and Safety Code;

(b) the generator shall then determine if the waste is listed as a hazardous waste in articles 4 or 4.1 of chapter 11 or in Appendix X of chapter 11 of this division. If the waste is listed in Appendix X and is not listed in articles 4 or 4.1 of chapter 11, the generator may determine that the waste from his particular facility or operation is not a hazardous waste by either:

(1) testing the waste according to the methods set forth in article 3 of chapter 11 of this division, or according to an equivalent method approved by the Department pursuant to section 66260.21; or (2) applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used and the characteristics set forth in article 3 of chapter 11 of this division.

As explained above, for wastes that are not listed, a generator can conclude, based on its knowledge of the hazard characteristic of the waste, that it does not believe the material is hazardous waste; however, the ultimate measure to support that conclusion is the performance of laboratory analysis according to the methods set forth in Title 22, chapter 11, article 3.

Characteristic hazardous wastes under article 3 of chapter 11 include the footnote b exceptions to Table II (i.e., metals in a powdered or finely divided state that are not metal fragments or objects). In order for a waste characteristic to be identified and defined for the regulated community, the Department must follow certain requirements. Title 22, CCR section 66261.10(a) states:

The Department shall identify and define a characteristic of hazardous waste in article 3 of this chapter only upon determining that:

(1) a waste that exhibits the characteristic may: (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) the characteristic can be: (A) measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are certified by the Department pursuant to Chapter 44 of this division and available to serve generators of waste; or (B) reasonably detected by generators of waste through their knowledge of their waste. (Emphasis added).

With respect to (a), above, not only must the characteristic be identified for its potential health or environmental effects ((a)(1)), but there must be a means to measure (a)(2)(A) or determine by knowledge (a)(2)(B) that the characteristic is present. With respect to (a)(1) and as noted in the discussion for #2 above, the Department has expressed within the SOR its reasoning for being concerned with Table II-listed metals in a powdered or finely divided state (i.e., 10 microns) as expressed in footnote b of Table II, which is part of article 3, Chapter 11 (Characteristics of Hazardous Waste). Note the term "fine powder" is not found nor referenced within article 3 of Chapter 11 whatsoever and is only part of article 1 of Chapter 11. Therefore "fine powder" cannot be acknowledged as having been identified, defined or measured as a characteristic hazardous waste pursuant to the regulatory requirements.

Before any sample reaches the laboratory, however, it must first be properly collected. Title 22, CCR section 66261.20(c) specifies the process to take samples in order to perform the available standardized test method noted in Title 22, CCR section 66261.10(a)(2)(A):

Sampling and sample management of wastes and other materials for analysis and testing pursuant to this article shall be in accord with the sampling, planning, methodology and equipment, and the sample processing, documentation and custody procedures specified in chapter nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference, see section 66260.11 of this chapter) ["SW-846"]. In addition to the sampling methods in chapter nine of SW-846, the Department will consider samples obtained using any of the other applicable sampling methods specified in Appendix I of this chapter to be representative samples.

Title 22, CCR section 66261.126, Appendix I, describes representative sampling methods approved by California as follows:

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. In addition to the sampling methods described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd edition, 1986 (incorporated by reference, see Section 66260.11), samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated

materials, will be considered by the Department to be representative of the waste... [List omitted]."

The aforementioned approved procedures do not expressly state the sampling method for a suspect material like metallic objects, but a standard procedure for suspect waste sampling is described in Chapter 9 of SW-846, which is incorporated by reference. Essentially, there must be a degree of sampling accuracy and precision to estimate reliably the chemical characteristics of a solid waste. Representative samples are defined as "exhibiting average properties of the whole waste." SW-846 Ch. 9 at 5. "If little or no information is available concerning the distribution of chemical contaminants of a waste, simple random sampling is the most appropriate sampling strategy." SW-846, Ch. 9 at 10. A common method to selecting a random sample is to divide the population by an imaginary grid, assign a series of consecutive numbers to the units of the grid, and select the numbers (units) to be sampled through the use of a random-numbers table.... "It is important to emphasize that a haphazardly selected sample is not a suitable substitute for a randomly selected sample." SW-846, Chapter 9 at 8.

Sampling methodology also differs for stratified random sampling and systematic random sampling, which are other types of probability sampling. The proper method is to be determined and selected based upon the material to be sampled. When reviewing the sampling strategies, a number of sampling collection instruments and waste's physical state are identified. All of these considerations, and more, (e.g., site considerations) are part of a sampling plan, which is to be prepared before any samples are taken. General procedures for determining if chemical contaminants of solid waste are present at hazardous levels are outlined. See generally, SW-846, Chapter 9.

No specific protocol or description is provided within SW-846, Chapter 9, that outlines a means to sample only a portion of a wastestream; i.e., to segregate the 10 micron fraction within a larger sample containing excluded but identical scrap metal. The inherent problem with segregation is that it would seem to contradict sampling the wastestream as a whole and would not appear to be random, but deliberate and specific.

Per SW-846, the laboratory method employed to determine a TTLC value is EPA Method 6010B following sample digestion per EPA Method 3050B. See Waste Extraction Test, Title 22, CCR 66261.126, Appendix II ("WET") at (b)(2) and (b)(1)(A). In addition to EPA methods for laboratory analysis, California's WET at (c) describes the procedure for testing metals for TTLC:

Samples shall be prepared for analysis for total and extractable content of substances listed in section 66261.24(a)(2)(A) and for extractable content of substances listed in section 66261.24(a)(2)(B) as follows:

(1) Type i: if the waste or other material is a millable solid, the sample shall be passed directly, or shall be milled to pass, through a No. 10 (two millimeter) standard sieve before it is analyzed. If the sample contains non-friable solid particles which do not pass directly through a No. 10 sieve and which are extraneous and irrelevant as hazardous constituents to the waste or other material, they shall be removed to the extent feasible by mechanical means and discarded. Solids which remain in the waste or other material after removal of the aforesaid extraneous

particles shall be milled to pass through a No. 10 sieve and shall then be combined and mixed well with the solids which passed through the sieve without milling. The reconstituted sample shall then be analyzed as prescribed in this appendix;

The WET procedure for waste type (c)(1) allows for extraneous and irrelevant non-friable solid particles to be removed if they do not go through a No. 10 (two millimeter; i.e., 2,000 micron) sieve. The SOR adds, "The first important step is the removal of the extraneous materials, such as rocks and pebbles, wood and plant pieces, and fragments of manufactured items of metal, plastic, rubber, and glass...". SOR Part 1 at 104-105. However, the WET does not account for smaller extraneous and irrelevant non-friable solids to be removed. Instead, the procedure then specifies that the total sample be passed through or milled to pass through a No. 10 sieve and the total material mixed together for the subsequent EPA Method laboratory analysis. Despite the SOR, at no point in the WET is it expressed that all scrap metal that is greater than 2,000 microns in size be removed unless it is deemed "extraneous and irrelevant as hazardous constituents" to the material. The difficulty in having a laboratory technician make such a decision when it involves scrap metals is that they must be fully aware of the regulatory aspects of the scrap metal definition, and exclusions, in order to properly remove such materials.

The issue is further compounded with smaller materials. At no point in the WET is there an exception to remove all scrap metal (because it is not a hazardous waste) that is less than 2,000 microns in size. For example, metal sandings of a Table-II listed metal that are clearly covered by (a)(2) of the "scrap metal" definition would, if tested by the WET (c)(1) procedure, pass through a No. 10 standard sieve and be found hazardous even though they are excluded by definition. The result would demonstrate a value in excess of the respective TTLC. Thus, any analysis fully conforming to the WET, by its own requirements, that mills or otherwise reduces "scrap metal" below 2,000 microns in size, and then analyzes it, fails to adequately address the definition of "scrap metal", a material excluded from hazardous waste regulation, thereby rendering the subsequent analytical result imprecise, biased and inaccurate.

The WET is the only sanctioned procedure to be followed for analysis in California and it "shall be used to determine the amount of extractable substance in a waste or other material as set forth in section 66261.24(a)(2)." WET at (a). Title 22, CCR section 66261.24 (a)(2) includes Table II and its footnote b exception. Since no other method is provided by regulation, there is no method in which the desired characteristic can be measured according to an available standardized test method as currently available in California, thereby precluding the ability to make a proper characteristic analysis. See Title 22, CCR section 66261.10(a)(2)(A). A generator requires a known and sanctioned laboratory method to determine when a material might be deemed hazardous, but if none are available, the generator must rely on its own knowledge of the material to determine if it is hazardous. See Title 22, CCR sections 66261.10(a)(2)(B) and 66262.11(b)(2).

Similarly, SW-846, as incorporated in California regulations, does not specify a method so as to segregate samples in a manner that conforms to footnote b of Table II. In other words, the method to segregate solid metals less than 10 microns within a sample so as to only analyze the excluded portion, has not been explicitly identified for field or laboratory use under California law. Without an accepted

method, the generator does not have a clear means to correctly characterize a waste stream except based upon its own knowledge. Without a clear method to determine whether a scrap metal is subject to hazardous waste regulations or not, it is impossible to determine whether an operation constitutes a "metal shredding facility" as defined and incorporated by the proposed emergency regulations and whether the operation is or will be subject to the fee requirements.

971289431V-1

Wednesday, May 25, 2016

Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

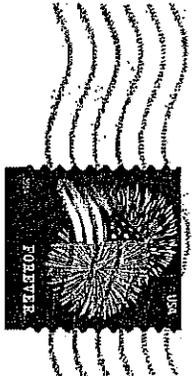
Re: Annual Metal Sheet Shredders Fee

When will California learn that over regulating and over taxing companies that play a vital role in our economy will hurt citizens in the long run? Every single citizen uses a product that at some point will end up in a recycling facility. These facilities are necessary to sustain our environmental needs in a world that is constantly tryin to build things bigger, better, and faster. Shredders serve a vital role in the cycle of life of all metal products. Shredders are able to separtè ferrous and non-ferrous metals, we are saving our precious natural resources and cutting down on many environmental impacts that come from mining and melting virgin materials. The DTSC needs to find another way to support their agencies financial needs or to split the fees between all industries that they monitor, not just one select industry.

117 N. Kings Road  
Los Angeles, CA 90048

SANTA CLARITA CA 913

31 MAY 2016 PM 3 L



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IDENTIFICATION  
PURPOSES

Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

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95812-080605



Alli Littman  
653 Arguella Blvd.  
Apt. 3  
San Francisco, CA 94118

DTSC  
P.O. Box 806  
Sacramento, CA 95812-0806

May 30, 2016

I am opposed to the proposed "Annual Fee on Shredding Facilities" for the following reasons:

1. Metal recyclers play an important role in our economy and affect our global green footprint. If shredder operating costs increase - as you propose - affected shredder operations will offset the increased costs by laying off employees and/or decreasing the prices they pay for recyclables. This decrease in price will give less incentive for people to recycle metals, leading to a lower cumulative number of recyclables circulating across California. Recycling is an important and valuable industry to our state.

2. I do not believe such high fees are necessary to regulate metal shredders. These fees are excessive and show how California has become an anti-business state. The fee gives further incentive for businesses to relocate their facilities outside the state, where such fees are nonexistent.

3. Auto shredding is more cumbersome compared to most other types of metal shredding. Because of the inherent complexities of cars (e.g. oil, electronics, rubber, automotive fluids), auto shredding merits specific rules and regulations. Shredding fees should not be imposed across the board; since auto shredding operations require special technology and handling, their fees (and related regulations) should be higher than for general metal shredding facilities.

Thank you for your consideration.



Alli Littman

653 Arguella Blvd.  
Apt. 3 San Francisco, CA 94118

Ali Littman  
653 Arguello Blvd  
San Francisco, CA 94118

RECEIVED JUN 06 2003

DTSC Headquarters  
P.O. Box 806  
Sacramento, CA 95812-0806

Wednesday, May 25, 2016

Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Re: Annual Metal Sheet Shredders Fee

When will California learn that over regulating and over taxing companies that play a vital role in our economy will hurt citizens in the long run? Every single citizen uses a product that at some point will end up in a recycling facility. These facilities are necessary to sustain our environmental needs in a world that is constantly tryin to build things bigger, better, and faster. Shredders serve a vital role in the cycle of life of all metal products. Shredders are able to separte ferrous and non-ferrous metals, we are saving our precious natural resources and cutting down on many environmental impacts that come from mining and melting virgin materials. The DTSC needs to find another way to support their agencies financial needs or to split the fees between all industries that they monitor, not just one select industry.

Sincerely,

A concerned citizen

117 N. Kings Road  
Los Angeles, CA 90048

SANTA CLARITA CA 913

21 MAY 2016 PM 5:1



Department of Toxic Substances Control  
Annual Metal Shredders Fee  
P.O. Box 806  
Sacramento, CA 95812-0806

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95812-080605

POSTNET barcode consisting of vertical bars of varying heights.

**Hull, Kevin@OAL**

---

**From:** Ali Littman <alisonlittman41@gmail.com>  
**Sent:** Sunday, June 05, 2016 11:12 PM  
**To:** OAL Reference Attorney  
**Subject:** Public Comment: Emergency Regulations for Annual Fees on Metal Shredding Facilities  
**Attachments:** Collective Safety Letter.pdf

Hi there,

My comments are attached here.

Thank you!

Ali

May 25, 2016

Steve Zimmer  
President, Board of Education  
Los Angeles Unified School District  
333 S. Beaudry Avenue, 24<sup>th</sup> Floor  
Los Angeles, California 90017

Dear Board President Zimmer,

At schools throughout the Los Angeles area, educators work to provide an excellent education to all students in safe and secure facilities. It is with them in mind that we request a meeting with you and Superintendent King to discuss safety policies that directly impede the ability of school leaders to cultivate the kind of school environments that are safe and secure for all students and staff.

Our most pressing concern is the need to revise or rescind the District's random metal detector search policy that unfairly criminalizes students and undermines the trust built between educators, students and the community. We respectfully request a moratorium on the policy at all schools until we can collectively develop a revised policy that is approved by the District's Board and prioritizes student safety, supports a positive school climate, and protects students' dignity.

We know you share our aspiration for all students to have a learning environment where they feel not only safe, but respected and empowered. We believe a comprehensive approach to school safety is deeply embedded in the culture of a school and is supported by specific tools such as:

- curriculum and instructional materials on school safety, such as Safe & Civil Schools;
- restorative justice approaches to discipline, which build on trust and cooperation;
- layered approaches to behavioral and emotional supports, including low student-to-adult ratios, positive behavior intervention strategies, and trauma-informed practices;
- hiring appropriate support staff such as counselors and community intervention workers; and,
- community engagement efforts to promote safety, including establishing safe passages for students traveling to and from school on city streets.

We want to provide you with more background on this issue and demonstrate that schools are already ensuring safe learning environments for all students through a comprehensive, evidence-based, non-punitive approach. For example, many schools are employing restorative justice practices that prioritize repairing the harm caused by unacceptable behaviors, an approach that requires trust and cooperation among all. Additionally, by maintaining small school environments and low student-to-adult ratios, educators have been able to build trusting relationships with students that enable them to intervene, if necessary, long before any student's safety on campus is jeopardized and without unnecessarily criminalizing our children.

As a strong advocate for restorative justice, you are well aware that a growing body of research is demonstrating the benefits of moving from zero-tolerance policies to ones that foster positive learning environments. Our concern is that so-called "random wandering" alienates students, discourages them from attending school, creates a negative environment that undermines trust and respect, runs counter to restorative justice practices, and effectively treats children as young as 10 years old as criminal suspects.

We know you share with us a strong commitment to eliminating barriers to positive student learning environments where students can fully succeed and take advantage of all the educational opportunities provided to them. Accordingly, we request the District immediately revise its random metal detector search policy. We look forward to discussing collaborative and mutually workable approaches to school safety with you and thank you for your continued leadership to support the students of Los Angeles.

Sincerely,

Concerned organizations and community leaders

Pastor Mike Cummings, We Care Outreach Ministries

Reverend James Jones

Dr. Azad Paul Kurkjian, Board Certified Child and Adolescent Psychiatry

Bill Martinez, Former Executive Director Community Youth Gang Service





studentsfirstCA  
 StudentsMatter  
 TEACHFORAMERICA



Watts/Cantury Latino Organization



CC:

Superintendent Michelle King; Dr. George McKenna; Board Member Monica Garcia; Board Member Scott Schmerelson; Dr. Ref Rodriguez; Board Member Monica Ratliff; Dr. Richard Vladovic; Claudia Vizcarra; Dr. Sharon Robinson; Lizette Patron; Edgar Campos; Arlene Irlando; Aixle Aman; Ruby Chavez; Chris Torres; Nancy Ceballos

**McNeill, Lindsey@OAL**

---

**From:** Rishi Malhotra <rishirmalhotra@gmail.com>  
**Sent:** Thursday, June 02, 2016 9:27 PM  
**To:** OAL Reference Attorney; Benelli, Edward@DTSC  
**Subject:** Public Comment: Emergency Regulations for Annual Fees on Metal Shredding Facilities  
**Attachments:** Letter to DTSC.pdf

Hi! I am writing regarding this DTSC:

[https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal\\_Shredding\\_Fees.cfm](https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal_Shredding_Fees.cfm)

DTSC Reference Number: R-2015-01

My comments are attached. Thank you.

Best,

Rishi

Rishi Malhotra  
16450 Cheltenham Road  
Riverside, CA 92504

To Whom It May Concern,

I am writing to give public comment to the "Proposed Emergency Regulations: Annual Fee on Metal Shredding Facilities".

DTSC Reference Number: R-2015-01

[https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal\\_Shredding\\_Fees.cfm](https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal_Shredding_Fees.cfm)

There are many issues with regards to an annual fee on metal shredding facilities and there are many types of shredders in use throughout California. Does this regulation only apply to "Auto Shredders"? It seems the DTSC and SB 1249 are only interested in regulating shredders that process automobiles and treat the waste before disposal. If so, you should state in your provision that this regulation only applies to auto shredders. There are many industries that use shredders to process metal, concrete, wood, and trash. All of these shredders put metal through the shredders at some point in their processing of non-metallic materials. However most require minimal processing, do not process all of the metals, and do not take residue to landfills as auto shredders do.

Because the shredding of automobiles is a much different process than shredding other metals, regulations should be clear on the different processes involved. To date, this state has very stringent regulations regarding metal recycling – adding further regulations to this would not be good for the environment. Recycling metals eliminates pollution from the air, ground, and water – recycling metals enables us to reuse metals rather than exploit more resources from the ground. The current federal standards on metal recycling are much better for the environment and economy – encouraging further metal recycling-- while California state regulations – such as this one – seem to be discouraging metal recycling. Blanket classifying shredded materials as hazardous and thus unrecyclable and not valuable will have huge impacts on the recycling industry. I encourage you to apply your regulation more pointedly at auto shredding facilities as opposed to all metal shredding facilities at large.

As an engaged public citizen in the state of California, I urge you to strongly consider these comments.

Regards,  
Rishi Malhotra

*Rishi Malhotra*



COHN  
HANDLER  
STURM  
an accountancy corporation

May 28, 2016

DTSC Headquarters (Joe Serna Jr. Cal/EPA Headquarters Building)  
1001 I Street  
Sacramento, CA 95814-2828

Re: Emergency Regulation: Annual Fee on Metal Shredding Facilities

To Whom It May Concern:

I am writing this letter to oppose the implementation of annual fees on metal shredding facilities. These facilities are responsible for recycling society's metal waste, allowing it to be melted down and made into new products. They are helping the environment by keeping known pollutants out of landfills and off of the streets. They provide a valuable service to the environment and our society as a whole. If too many fees are imposed on the recycling industry, they will not be able to afford the cost of the recycling process. If facilities cannot afford to operate, they will be forced to shut down. If fewer recycling facilities are available, it is very likely that greater amounts of metal will end up in our landfills. The toxic effects this will have on our environment are not debatable.

There are thousands of metal shredders throughout the world. California has the strictest regulations when it comes to metal shredding facilities. They are so strict that many businesses are being forced to relocate to other states. We need to keep jobs and industry in California, while simultaneously, promoting recycling and a greener environment. The bigger picture here is the risk on the environment. This is far more important than government budget and finances.

Please consider the long term effects this proposal could have on our environment. Thank you for taking the time to read this letter.

Regards,

Alex Sturm, CPA  
Cohn Handler Sturm  
11620 Wilshire Blvd., Suite 875  
Los Angeles, CA 90025



**Benelli, Edward@DTSC**

---

**From:** Molin, Benjamin@DTSC  
**Sent:** Thursday, June 02, 2016 8:19 AM  
**To:** Frederick Chun  
**Cc:** Benelli, Edward@DTSC  
**Subject:** RE: Annual Fee on Metal Shredding Facilities

Dear Mr Chun,

I believe our Regulatory Assistance Officers could best answer your question - they can research any particular question and provide the department's approved response.

Web page at: <http://www.dtsc.ca.gov/ContactDTSC/Regulatory-Assistance-Officers.cfm>

Within California, you can contact a Regulatory Assistance Officer by calling (800) 728-6942. If you are calling from out-of-state, please call (916) 324-2439.

In addition to the toll free number, you may email questions directly to the Regulatory Assistance Officers at: [RAO@dtsc.ca.gov](mailto:RAO@dtsc.ca.gov)

Thank you for your time and consideration.

Ben Molin  
Associate Governmental Program Analyst  
California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806  
Phone (916) 322-4882

---

**From:** Frederick Chun [<mailto:FChun@SantaClaraCA.gov>]  
**Sent:** Wednesday, June 01, 2016 1:12 PM  
**To:** Molin, Benjamin@DTSC  
**Cc:** Frederick Chun  
**Subject:** Annual Fee on Metal Shredding Facilities

Benjamin,

I received and reviewed the proposed emergency regulation.

Though I don't have a facility within my jurisdiction, I used to be a CUPA manger in a jurisdiction of one of the six identified facilities.

After reviewing the documents I have a couple of questions:

If a new metal shredder facility is identified, would their fee be prorated in §69600.5?

Assessment of fees in 69600.4 (b)(1-6) – Would any of the fees be used by DTSC for actual inspections of these facilities? Or is the lumped into (2) Environmental Analysis and evaluation?

Regards,

Fred

Frederick Chun  
Assistant Fire Marshal

Santa Clara Fire Department  
Fire Prevention and Hazardous Materials Division  
1675 Lincoln Street  
Santa Clara, CA 95050  
[fchun@santaclaraca.gov](mailto:fchun@santaclaraca.gov)  
(408) 615-4961

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COHN  
HANDLER  
STURM  
an accountancy corporation

May 28, 2016

DTSC Headquarters (Joe Serna Jr. Cal/EPA Headquarters Building)  
1001 I Street  
Sacramento, CA 95814-2828

Re: Emergency Regulation: Annual Fee on Metal Shredding Facilities

To Whom It May Concern:

I am writing this letter to oppose the implementation of annual fees on metal shredding facilities. These facilities are responsible for recycling society's metal waste, allowing it to be melted down and made into new products. They are helping the environment by keeping known pollutants out of landfills and off of the streets. They provide a valuable service to the environment and our society as a whole. If too many fees are imposed on the recycling industry, they will not be able to afford the cost of the recycling process. If facilities cannot afford to operate, they will be forced to shut down. If fewer recycling facilities are available, it is very likely that greater amounts of metal will end up in our landfills. The toxic effects this will have on our environment are not debatable.

There are thousands of metal shredders throughout the world. California has the strictest regulations when it comes to metal shredding facilities. They are so strict that many businesses are being forced to relocate to other states. We need to keep jobs and industry in California, while simultaneously, promoting recycling and a greener environment. The bigger picture here is the risk on the environment. This is far more important than government budget and finances.

Please consider the long term effects this proposal could have on our environment. Thank you for taking the time to read this letter.

Regards,

Alex Sturm, CPA  
Cohn Handler Sturm  
11620 Wilshire Blvd., Suite 875  
Los Angeles, CA 90025



Wednesday, May 25, 2016

Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Re: Annual Metal Sheet Shredders Fee

When will California learn that over regulating and over taxing companies that play a vital role in our economy will hurt citizens in the long run? Every single citizen uses a product that at some point will end up in a recycling facility. These facilities are necessary to sustain our environmental needs in a world that is constantly tryin to build things bigger, better, and faster. Shredders serve a vital role in the cycle of life of all metal products. Shredders are able to separte ferrous and non-ferrous metals, we are saving our precious natural resources and cutting down on many environmental impacts that come from mining and melting virgin materials. The DTSC needs to find another way to support their agencies financial needs or to split the fees between all industries that they monitor, not just one select industry.

Sincerely,

A concerned citizen

117 N. Kings Road  
Los Angeles, CA 90048

SACRAMENTO, CA 95812

31 MAY 2016 PM 5:1



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Department of Toxic Substances Control  
Annual Metal Shredders Fee  
P.O. Box 806  
Sacramento, CA 95812-0806

95812-0806



Wednesday, May 25, 2016

Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Re: Annual Metal Sheet Shredders Fee

When will California learn that over regulating and over taxing companies that play a vital role in our economy will hurt citizens in the long run? Every single citizen uses a product that at some point will end up in a recycling facility. These facilities are necessary to sustain our environmental needs in a world that is constantly tryin to build things bigger, better, and faster. Shredders serve a vital role in the cycle of life of all metal products. Shredders are able to separte ferrous and non-ferrous metals, we are saving our precious natural resources and cutting down on many environmental impacts that come from mining and melting virgin materials. The DTSC needs to find another way to support their agencies financial needs or to split the fees between all industries that they monitor, not just one select industry.

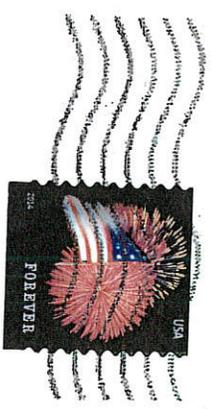
117 N. Kings Road  
Los Angeles, CA 90048

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Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

SALITA CLARITA CA 913

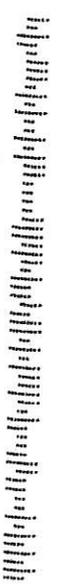
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95812-080606



Ali Littman  
653 Arguello Blvd.  
Apt. 3  
San Francisco, CA 94118

DTSC  
P.O. Box 806  
Sacramento, CA 95812-0806

May 30, 2016

I am opposed to the proposed "Annual Fee on Shredding Facilities" for the following reasons:

1. Metal recyclers play an important role in our economy and affect our global green footprint. If shredder operating costs increase - as you propose - affected shredder operations will offset the increased costs by laying off employees and/or decreasing the prices they pay for recyclables. This decrease in price will give less incentive for people to recycle metals, leading to a lower cumulative number of recyclables circulating across California. Recycling is an important and valuable industry to our state.
2. I do not believe such high fees are necessary to regulate metal shredders. These fees are excessive and show how California has become an anti-business state. The fee gives further incentive for businesses to relocate their facilities outside the state, where such fees are nonexistent.
3. Auto shredding is more cumbersome compared to most other types of metal shredding. Because of the inherent complexities of cars (e.g. oil, electronics, rubber, automotive fluids), auto shredding merits specific rules and regulations. Shredding fees should not be imposed across the board, since auto shredding operations require special technology and handling, their fees (and related regulations) should be higher than for general metal shredding facilities.

Thank you for your consideration.

  
Ali Littman

653 Arguello Blvd.  
Apt. 3 San Francisco, CA 94118

Al: Littman  
653 Arguello Blvd  
San Francisco, CA 94118

DTSC Headquarters  
P.O. Box 806  
Sacramento, CA 95812-0806

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To Whom It May Concern,

I am writing to give public comment to the "Proposed Emergency Regulations: Annual Fee on Metal Shredding Facilities".

DTSC Reference Number: R-2015-01

[https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal\\_Shredding\\_Fees.cfm](https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Metal_Shredding_Fees.cfm)

There are many issues with regards to an annual fee on metal shredding facilities and there are many types of shredders in use throughout California. Does this regulation only apply to "Auto Shredders"? It seems the DTSC and SB 1249 are only interested in regulating shredders that process automobiles and treat the waste before disposal. If so, you should state in your provision that this regulation only applies to auto shredders. There are many industries that use shredders to process metal, concrete, wood, and trash. All of these shredders put metal through the shredders at some point in their processing of non-metallic materials. However most require minimal processing, do not process all of the metals, and do not take residue to landfills as auto shredders do.

Because the shredding of automobiles is a much different process than shredding other metals, regulations should be clear on the different processes involved. To date, this state has very stringent regulations regarding metal recycling – adding further regulations to this would not be good for the environment. Recycling metals eliminates pollution from the air, ground, and water – recycling metals enables us to reuse metals rather than exploit more resources from the ground. The current federal standards on metal recycling are much better for the environment and economy – encouraging further metal recycling-- while California state regulations – such as this one – seem to be discouraging metal recycling. Blanket classifying shredded materials as hazardous and thus unrecyclable and not valuable will have huge impacts on the recycling industry. I encourage you to apply your regulation more pointedly at auto shredding facilities as opposed to all metal shredding facilities at large.

As an engaged public citizen in the state of California, I urge you to strongly consider these comments.

Regards,  
Rishi Malhotra

*Rishi Malhotra*

1511 Malkstra  
101 SO Cheltenham Rd.  
Riverside, CA 92504

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DTSC Headquarters  
P.O. Box 806  
Sacramento, CA 95812-0806

5-30-16

DTSC Director

I disagree with an annual shredder fee because the amount of shredders in operation may be too hard to discern and the amount a shredder is in operation each year may differ depending on the company. There are too many variables to asses such a large fee in order to operate a metal shredder. I understand that many companies and industries operate small shredders and that auto shredders have the largest shredders which involves treating and disposing of auto fluff at landfills. I have read about the treatment method before disposal and hope that there is a safe and fair solution to the final treatment process because auto shredding is the best way to recycle all of the old, environmentally unsound vehicles in this state. Recyclers should be given grants from the state to create safer and more efficient processes to recover all metals from products. California should allow any and all metals to be recycled if they have value and can be recovered.

regards



Deepak Peruvemba

2029 CENTURY PARK EAST, SUITE 1760  
LOS ANGELES, CA 90402

2029 Century Park East  
Los Angeles, Ca. 90402

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DTSC Headquarters  
Hazardous Waste Management Program  
Shredder Fees  
P.O. Box 806  
Sacramento, Ca. 95812 - 0806

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95812-080606

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5-31-16

Office of Administrative Law/ DTSC

I am opposed to an annual fee based on future reimbursement for monitoring shredding facilities. These fees should cover the studies that are currently going on involving the treatment study and the shredders themselves. California is not a business friendly environment and the cost of doing business here is too great. Metal shredders are playing an important role in helping the environment and lowering the impact of old discarded metal products. Automobiles and other metal products need to be recycled and the only companies that can do it must have shredders in order to recover all of the metals and to be profitable doing it. I know that recycling facilities are required to have numerous permits by different government entities and to add another, even bigger fee would be unfair. Most states do not regulate shredders like California is trying to do, and the amount of materials recycled will be impacted greatly if more fees are imposed. Many companies throughout the world are using ASR for energy and other purposes, this should be researched and implemented in California.

A handwritten signature in blue ink, appearing to read "W. A. H.", is located at the bottom right of the page.



SANTA CLARITA, CA 913  
JUN 06 2016

DTSC Headquarters  
Joe Serra Jr, CAC/ESA HQ Building  
annual metal shredding  
PO Box 806  
Sacramento, CA 95812-0806

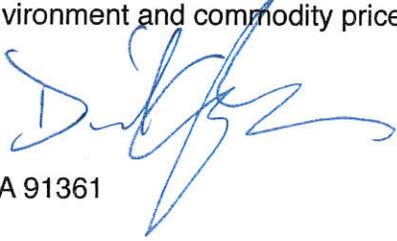
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Department of Toxic Substances Control  
5-28-16

I am opposed to a metal shredding fee. I do not believe such high fees are necessary to regulate metal shredders. These fees are excessive and show how poorly California treats businesses. Auto shredders are a necessary part of the recycling process because if they do not shred cars then cars end up rusting on the streets. Metal recyclers are already facing a tough business environment and commodity prices are the lowest they have been in years.

Sincerely  
Dave Josker  
1568 Covington  
westlake village CA 91361



RECEIVED JUN 06 2016

DTU c Headquarters - Hialeah, Lake Margaret Bayview Shredder  
PO Box 806  
Sacramento CA 95812-0806  
Fees

SANTA CLARITA, CA 91380

31 MAY 2015 PM 11



95812080101



5-29-16

Department of Toxic Substances Control

I do not agree with the annual fee for metal shredders. SB 1249 was designed to better monitor the auto shredder industry and to come up with safe and effective treatment methods for auto shredder residue. The DTSC has been working on this with the auto shredders and once completed there should not be any future necessity to impose fees on shredders. The 7 auto shredders should share the costs of implementing this new program because they benefit by taking their auto shredder waste to local landfills as opposed to out of state landfills. I think the landfills should also help fund the research because it will benefit them as well. The state needs to work with businesses more instead of try to put more hardships on them. The environment has become a hot topic in recent years and recycling companies/ metal shredders play an important role in cutting down on green house gases, air pollution, and water pollution.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. S. S. S.", with a long horizontal flourish extending to the right.

SANTA CLARITA, CA 91353  
31 MAY 2015 PM 11



DTSC Headquarters  
Joe Serna Jr. Cal/EPA  
P.O. Box 806  
Sacramento, Ca 95812-0806  
Re: Fees for shredding

RECEIVED JUN 06 2016

95812080606



5-28-16

Department of Toxic Substances/ OAL  
re:metal shredding fees

The fees imposed are unjust and unwarranted. Metal shredders play an important role in keeping old cars off the road and out of landfills. Auto shredders pay for old, broken down cars and people feel good when they get paid for scrapping these cars. I am afraid that if fees are imposed auto shredders will not take cars anymore or will start charging for people to drop them off. This will hurt the environment and could pose potential hazards for people that come into contact with these rusty old cars that lay unwanted on city streets.

**Ashley Buckelew**

7455 Rancho St.  
Emeryville, Ca. 94608

SMITH CLARK CO. 913

31 MAY 2006 PM 11



DTSC Headquarters  
Hazardous Waste Management Program  
Shredder Fees  
P.O. Box 806  
Sacramento, Ca. 95812-0806

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7455 Rancho St.  
Fincino, Ca. 91316

SANITA CLARITA, CA 91316

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P.O. Box 806  
Sacramento, Ca. 95812 - 0806

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Department of Toxic Substance Control/ OAL

5-29-16

The annual shredder fee should be shared with the landfills that use the auto shredder residue as alternative daily cover. You should also add a fee to new car sales in order to compensate recyclers for the shredding and treatment process to handle the end of life vehicles. I believe that this is a complicated matter and should not be decided in an emergency regulation. Auto shredders have been disposing of this waste for decades in landfills throughout the state. If the material can be rendered safe it should be allowed to be used at landfills and the fees should not be assessed for longer than it takes to make the process safe. Not all shredders are the same and there should be some distinction between their processes and the materials they shred.

Sincerely,

Victoria Blackwood  
11728 kiowa  
Los Angeles, CA 90049

11728 Kiowa Ave.  
Los Angeles, Ca. 90049

SACRAMENTO, CA 95812

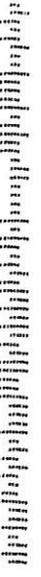
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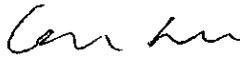


5-28-16

To whom it may concern;

I am opposed to a shredder fee because metal recyclers already face many challenges, both regulatory and politically. Metal shredders are necessary because without them many types of metals would not be able to be recycled and automobiles would not be able to be processed. Metal recycling plays an important role in our economy and global green movements. If shredder operating costs go up jobs will be lost and the prices paid for recyclables will go down which could prevent people from recycling metal. The DTSC should not rely on metal shredders to support their financial needs.

Sincerely  
Grace Lee  
1641 Bucksglen  
Thousand Oaks CA 91362





SANTA CLARA COUNTY, CA 95050

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