



February 28, 2018

VIA EMAIL

California Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814-2828
mswstakeholders@dtsc.ca.gov

Re: California Department of Toxic Substances Control (DTSC) Evaluation and
Analysis of Metal Shredding Facilities and Metal Shredder Wastes

Dear Sir/Madam:

Recycle Everything is submitting the following comments regarding DTSC's "Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes," published on January 31, 2018 (the "Report"). Recycle Everything is a southern California-based grassroots community campaign advocating for innovative Zero Waste solutions since 2012 and submits these comments because the Department's Report poses more questions than it answers, and leaves small and independent businesses without a realistic regulatory scheme under which to operate. Further, the Report unfairly benefits a small number of large metal shredding facilities to the detriment of the thousands of small, family-owned and independent businesses that everyday Californians rely upon to collect and process their scrap metal.

If the Report's findings stand without revision, small scrap metal recyclers may be left without a feasible means of operating in compliance with California law. Recycle Everything is concerned that potential regulations based on the Report may hinder local government efforts to meet State diversion mandates.

Small Scrap Metal Recyclers Are Left to Guess Whether the Report Applies to Them.

The regulatory origin of the Report is the Metal Shredding Facilities Law, codified at California's Health & Safety Code Sections 25150.82 through 25150.86. The Metal Shredding Facilities Law defines "Metal Shredding Facility" to mean "an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate

the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of end-of-life vehicles, appliances, and other forms of scrap metal.” HSC § 25150.82(b); *see* Report p. 3 (citing definition)¹. The Metal Shredding Facilities Law requires DTSC to determine whether alternative management standards should be developed for Metal Shredding Facilities. HSC §§ 25150.82(c), (d). As such, the Metal Shredding Facilities Law would seem to limit the Report’s application to only those facilities currently operating (or desiring to operate) a shredder.

This limited application would be consistent with the small number of facilities reviewed by DTSC in preparing the Report. To wit, DTSC estimates that 2,500 scrap metal recycling facilities are located in California. Report at 4. *See also* Report at 21 (noting that DTSC’s data review identified “approximately 2,000 businesses that managed scrap metal”); *id.*, Table 1. This group includes “feeder yards that collect scrap metal from the public and businesses, automobile dismantlers that process end-of-life vehicles (approximately 1,200), and metal shredding facilities which shred and separate the scrap metal for export.” Report at 4. A distinction between a metal shredder and a scrap metal recycler is not clearly made, and it appears that small scrap metal recyclers could be inadvertently swept up by the forthcoming changes, even though they don’t appear to be the subject of this report.

However, DTSC concludes that only six Metal Shredding Facilities are actually “authorized to operate in California.” *Id.* at 22; *id.*, Table 2. Each of those six facilities holds an “f” letter issued by DTSC (or its predecessor), and conducts its full suite of recycling operations (i.e., shredder, eddy current, magnet separator, shaker table, trommel, and/or hand separation) under that letter and DTSC OPP 88-6. Report at 22-23. DTSC then collected information only from those six metal shredder facilities to complete the Report. *Id.* 23-31. No other kind of scrap metal facility was asked to provide information, nor does it appear from the Report that DTSC reviewed the operations of any other facility to arrive at its conclusions. Given this, one might view the Report and its conclusion – that California’s existing hazardous waste permit scheme is the “most efficient” and “most protective” manner to regulate metal shredding facilities – as limited to only these six metal shredder facilities. But as it is unclearly written, it appears that DTSC intends the Report’s application to have broader implications.

While the basis for limiting the Report’s investigation to only the six Metal Shredding Facilities evaluated is those facilities’ “f” letters, DTSC nevertheless asserts that it “assessed the generation and management of hazardous wastes by metal shredding facilities based on existing law and regulation, without consideration of the ‘f’ letters or OPP 88-6.” Report at 40. Through that lens,

¹ Recycle Everything notes that the Report is marked with the phrase “DO NOT CITE OR QUOTE.” Given that it would be impossible to submit comments on the Report without citing or quoting to its text, we will refer to the Report throughout this comment letter.

DTSC evaluates each of the processes employed by scrap metal recycling facilities to separate ferrous metals from nonferrous metals, such as the eddy current and magnet, and also the output of that separation, like metal shredder aggregate and metal shredder residue. DTSC then somehow concludes that *all* of these processes and outputs should be regulated under California's hazardous waste permit scheme.

For these reasons, we urge DTSC to specify that it intends the Report to apply to only those facilities that hold an "F" letter and do not apply to scrap metal recycling facilities.

Small Scrap Metal Recycling Businesses Must Speculate About Future Operations.

The Report is replete with vague and ambiguous language, leaving businesses operating in California guessing as to how the Report might impact their operations. For example, the Report concludes that physical separation of "ferrous metals from metal shredder aggregate using magnets may be considered a hazardous waste treatment activity, depending on the circumstances." Report at 49 (emphasis added). DTSC does not elaborate on what "circumstances" would be considered hazardous waste treatment, nor does DTSC identify at which point in a facility's process a permit could be required.

The Report further concludes that sorted ferrous and non-ferrous metals are "reclaimed materials, and because they have been segregated from the metal shredder aggregate (which may contain hazardous wastes, depending on the circumstances), [they] are not expected to exhibit hazardous characteristics." Report at 49-50. As a result, a "metal shredding facility would not need a hazardous waste facility permit to conduct this activity unless residual amounts of metal shredder aggregate, or hazardous constituents of the metal shredder aggregate, remain in the segregated materials." *Id.* at 50 (emphasis added). The Report does not explain the term "residual amounts" or offer guidance on any test method or other analysis that may be required to prove (or disprove) that an amount is "residual." And, there is no discussion of any statutory or regulatory standard that DTSC may use to determine "residual."

DTSC also notes that metal shredder aggregate or metal shredder residue that falls from conveyors or outside of waste management units and "is not retrieved or cleaned up results in all operational areas of the metal shredding facilities being contaminated with the hazardous constituents present in the metal shredder wastes." Report at 55 (emphasis added). Yet, the Report offers no guidance to businesses as to the timing of retrieval or cleanup, nor is there any indication that DTSC intends to offer any guidance (much less regulation) on these points. Thus, businesses are left to wonder how quickly they must clean up aggregate or residue so as not to be tagged for "contaminating" their yards. Moreover, it is presumed, but less than clear, that DTSC

would agree that the “retrieved or cleaned up” aggregate or residue need not be managed as a hazardous waste. At a minimum, these questions should be answered clearly so that businesses understand the regulatory framework within which they must operate.

DTSC Should Reconsider the Need for Hazardous Waste Permits and Develop Alternative Management Standards.

In the Report, DTSC concludes that “the most appropriate level of regulation for these kinds of facilities is a hazardous waste permit.” Report at 1. DTSC suggests that metal shredding facilities will be subject to either a full or standardized permit, with conditions and requirements tailored to the specific facility through an “operations plan” incorporated into the permit. *See id.* at 91. Yet the Report acknowledges that the 2,000+ scrap metal facilities in California have operated without a permit under DTSC’s scrap metal exemption for over 30 years. Moreover, there does not appear to exist a permit that is applicable to a scrap metal facility under existing HWCL.

To impose California’s hazardous waste permitting scheme, DTSC was required by the Metal Shredding Facilities Law to compare alternative management standards to the hazardous waste management requirements that the alternative standards would replace. *See* HSC § 25150.82(e). DTSC was required to make only one of the four showings described in the Metal Shredding Facilities Law in order to adopt alternative management standards specific to metal shredding facilities. Unfortunately, the Report sheds little light on any actual analysis performed by DTSC for any of those four demonstrations, and instead, indicates that DTSC made a cursory and summary attempt, at best.

- DTSC fails to adequately explain why Permit-By-Rule would not apply to Metal Shredding Facilities.

By way of example, DTSC suggests at certain points of the Report that metal shredding facilities might qualify for a permit-by-rule. Ultimately, however, DTSC seems to discard this possibility. DTSC notes that in previous circumstances, alternative management standards for PBR (and universal waste) were appropriate “because the quantities of hazardous waste being managed under those alternative management standards were much smaller ... the types of waste management activities being used with those wastes were limited, and because of that, detailed operating requirements could be developed and included in the alternative management standards that were adopted.” Report at 95. DTSC goes on to justify imposing the significant burden of a hazardous waste permit on Metal Shredder Facilities because of the “significant quantities” of hazardous waste produced by the six “F” letter holders and the number of “hazardous waste management units” at those facilities. *See, e.g.*, Report at 95-100.

But any alleged distinction between PBR and other permits is belied by the facts. To start, California's permit-by-rule regulations do not limit the volume of waste that may be treated by fixed or transportable treatment units. Even if they did, DTSC evaluated only the facilities of the six "F" letter holders, and included no discussion as to whether a facility that generates a smaller volume of waste might be allowed to operate with any authorization other than a standardized or full permit, such as a conditional authorization or permit-by-rule. Lastly, one of the treatments expressly allowed under PBR is the exact same treatment currently used by metal shredding facilities to produce "chemically-treated metal shredder residue." See 22 CCR § 67450.11(a)(6) (A). Given these facts, we urge DTSC to clarify the applicability of the scrap metal exemption, and at what point in the processing of scrap metal it loses its scrap metal exemption and becomes an activity requiring a permit, even where no shredder is used. And then after that point, whatever it is, whether PBR might be available for metal shredding facilities and if so, under what circumstances. DTSC should further clarify whether it intends to impose a volumetric threshold for permitting decisions, and if not, explain its reasoning.

- DTSC relies upon issues unrelated to the management or treatment of metal shredder aggregate to summarily reject its long standing scrap metal exclusion and conclude a permit is required under the HWCL.

The Report cites to a few examples of offsite releases, onsite contamination, and an explosion and fire as evidence of the problems presented by the six metal shredding facilities analyzed, and as justification for more stringent control of those operations. Report at 56-68. However, none of the cited problems are related to the management or treatment of metal shredder aggregate or residue per se. Each of the identified have remedies which, if implemented, would mitigate those problems. As a result, there does not appear to be a rationale for DTSC to abandon its long-standing policy regarding scrap metal facilities and concluding a full permit is required for these small businesses. The Report should specify how small metal recyclers may continue to operate under the scrap metal exemption.

- Several viable alternative management standards are available for application to Metal Shredding Facilities.

As an initial salvo, we identify four alternative management standards that could be considered by DTSC, whether under SB 1249 or under separate existing statutory authority. First, DTSC could develop new regulations under separate existing authority that classify and treat metal shredding facilities as recyclers and subject them only to self-implementing requirements, already existing in Title 22, that are deemed necessary to safeguard against offsite migration of contaminants (e.g., appropriate fencing, wetting of waste piles, and storage of waste piles on

pavements only). While those regulations are developed, all metal shredding facilities would be authorized to operate pursuant to OPP 88-6 and the conditional authorization provided in the (f) letters. Second, DTSC could create a new authorization tier similar to the existing conditional authorization tier for metal shredding facilities, allowing for larger quantities of waste from metal shredders to be treated via chemical stabilization. This may be simplest most affordable option for small businesses that meet the definition of a metal shredder facility. Third, DTSC could specify a certain size (diameter) of material as a threshold for hazardous waste permitting applicability. For example, only material that is less than three inches in diameter would be subject to hazardous waste management standards. Each of these options provide a viable means to safely and adequately regulate metal shredder residue and waste, and should be considered by DTSC. A fourth possibility is to develop a program with similarities to the one adopted for universal waste.

The Report Unfairly Benefits the “f” Letter Holders.

DTSC has been evaluating the operations and potential environmental impacts from metal shredding facilities since at least the early 2000s. In 2002, DTSC issued a report summarizing sampling and analysis conducted at three metal shredding facilities, identifying “longstanding and continuing issues related to the treatment, storage, and handling of hazardous waste” at those facilities. Report at 15. Yet, for the sixteen years since that report was issued, the “f” letter holders have continued to operate largely without regulatory scrutiny or enforcement, managing the metal shredder aggregate and metal shredder residue as a product (not a waste) and the chemically-treated metal shredder residue as solid waste.

The Report does not expressly revoke “f” letters or OPP 88-6, nor are we aware of any action by DTSC to formally rescind the “f” letters “in accordance with applicable law.” HSC § 25150.82(k)(1). And DTSC has not adopted alternative management standards for metal shredder facilities or CTMSR. Id. § 25150.82(k)(2). As such, the “f” letter holders apparently may continue their “in-line” operations that result in CTMSR, which can then be managed as solid waste, without compliance with the HWCL. This puts the six holders of “f” letters at a distinct advantage over any other facility that might want to operate a shredder. Yet, DTSC makes zero attempt in the Report to put small and independent businesses on a level playing field with those six facilities, a serious oversight which we urge DTSC to rectify immediately.

Recycle Everything appreciates the opportunity to submit these comments and looks forward to the Department’s response.

Sincerely,

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Scott Schmidt
Founder
Recycle Everything