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5-DAY PUBLIC NOTICE AND COMMENT PERIOD SCRAP METAL DEFINITION REVISION

Department of Toxic Substances Control Reference Number: R-2021-08E

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control ("DTSC") proposes to adopt emergency regulations to amend title 22, California Code of Regulations, division 4.5, sections 66260.10, 66261.6, and 66273.9. DTSC proposes to clarify the definition of scrap metal found in sections 66260.10 and 66273.9 by aligning it with the federal definition of scrap metal while also removing duplicative language in the current State definition of scrap metal. DTSC also proposes to amend section 66261.6 to clarify the conditions under which scrap metal may be exempted, as a "recyclable material," from regulatory requirements of hazardous waste.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

FINDING OF EMERGENCY

The August 2021 finalization of DTSC's analysis of the metal shredder industry ("Final Report"), along with several recent findings and occurrences, led DTSC to determine that the current regulatory system has created an unforeseen emergency necessitating immediate action to avoid serious and imminent harm to the public peace, health, safety, and general welfare.

DTSC acknowledges that the metal shredding and scrap metal recycling industry in California provides a useful service by facilitating recycling of scrap metal. However, in order to allow these facilities to continue to operate and provide valuable scrap metal recycling services in California, enactment of an emergency rulemaking is necessary to resolve a lack of clarity in certain applicable regulations and to provide a pathway for scrap metal recycling to occur in an environmentally- and health-protective manner. Failure to immediately rectify the existing regulations will result in ongoing environmental and public health impacts. That failure would likewise leave shredding facilities, which may be able to modify their operations to ensure environmental and health protectiveness, with no legal pathway to continue to operate. This emergency rulemaking will facilitate scrap metal recycling in California while protecting the environment and public health.

DTSC's Final Report led to several conclusions about the metal shredder industry in California. Based on testing of the nonrecyclable component of metal shredder output conducted at California metal shredding facilities, DTSC has concluded that the metal shredder output which emerges from the shredder (*i.e.*, hammermill) contains a large volume of California-regulated hazardous waste including, but not limited to, fine powders of lead, copper, and zinc. DTSC has found that metal shredding facilities generate and manage a large volume of a mixed wastestream (*i.e.*, metal shredder output) that is subject to regulation under the Hazardous Waste Control Law (Health & Saf. Code, §§ 25100, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 22, div. 4.5) (collectively, "HWCL"). The Final Report further concludes that the point of generation of this hazardous waste is at the shredder itself, and that all activity downstream of the hammermill constitutes hazardous waste management.

The hazardous waste component of metal shredder output includes, among other constituents, lead, copper, and zinc. The harmful effects of these contaminants on humans, particularly children, and the environment are well-documented. Lead is absorbed and stored in bones, blood, and tissues. It can cause demineralization of bones, and in high concentrations may cause abdominal pain, fatigue, memory loss, anemia, kidney, and brain damage. Lead's neurotoxic effects are particularly well-known in children, who show signs of lead toxicity at lower levels than adults. Lead poisoning can lead to permanent, irreversible neurological effects and intellectual disability in children. Additionally, lead can cross the placental barrier, potentially damaging a developing fetus's nervous system, similarly permanently affecting behavior and intelligence. Copper poisoning can cause hepatic and renal damage and even death. Exposure to copper dust can cause irritation to the nose, mouth, and eyes. Copper also binds to particles suspended in water, leading to persistent soil and groundwater contamination. Copper that enters water eventually collects in sediments of rivers, lakes, and estuaries. Acutely elevated copper concentrations are toxic to aquatic organisms. Chronic exposure adversely affects aquatic species survival, growth, reproduction, blood chemistry, and brain function. Copper toxicity also can cause severe gastrointestinal effects, elevated heart rate, and even coma in humans. Zinc exposure can cause stomach cramps, anemia, aberrant changes in cholesterol levels, and breathing problems that mimic acute respiratory distress syndrome. Zinc also is a strong aquatic pollutant and is highly toxic to fish, a fact that is highly relevant given that several metal shredding facilities are located directly adjacent to bodies of water.

The Final Report identified numerous incidents at various California metal shredding facilities indicating ongoing risks to human health and safety and the environment. These risks include fires and resultant smoke inhalation, explosions, contamination of soil and storm water, and offsite migration and deposition of hazardous waste and/or hazardous waste constituents into heavily trafficked commercial areas. Since 2018, alleged violations cited by DTSC during its numerous inspections of California metal shredding facilities include the following:

- In June 2018, a large fire occurred at Schnitzer Steel in Oakland, CA. DTSC issued citations alleging failure to maintain and/or operate the facility to minimize the possibility of a fire. This matter is under ongoing enforcement.
- In September 2018, DTSC issued citations to Sims Metal Management in Redwood City, CA associated with alleged offsite migration of hazardous waste and/or hazardous waste constituents generated during the metal shredding process. This material, hazardous for lead, was found on the sidewalk parallel to the facility's yard, and in the parking lot of the neighboring commercial complex located across the street from the facility. This matter is under ongoing enforcement.
- In March 2019, DTSC issued additional citations to Sims Metal Management in Redwood City, CA following a joint inspection by DTSC and San Mateo County Environmental Health. DTSC's citations alleged offsite migration of hazardous waste and/or hazardous waste constituents generated during the metal shredding process, unauthorized storage and disposal of hazardous waste, and failure to operate the facility to minimize the release of hazardous waste and/or hazardous waste constituents to air and soil. This matter is under ongoing enforcement.
- In June 2020, a large fire occurred at Schnitzer Steel in Oakland, CA. DTSC issued citations alleging failure to minimize the possibility of a fire and failure to remove Materials that Require Special Handling ("MRS") from appliances prior to be processed in a manner that could result in the release of MRS. This matter is under ongoing enforcement.

These incidents demonstrate the ongoing environmental risks posed by these facilities under the current system. Compounding the severity of these ongoing risks, several of the metal shredding facilities are located in proximity to residential areas, hospitals, schools, and daycare centers, increasing the probability that the harmful effects of these risks will be borne by children, pregnant mothers, the elderly, and those already suffering with pre-existing health conditions. Finally, several of the facilities are located in environmental justice communities, which have historically borne an unacceptably high pollution burden relative to others in the State. Immediate action is needed to mitigate these risks to human health and safety and the environment. By clarifying the scope of what qualifies as scrap metal and what is exempt when recycled, the proposed emergency rulemaking will ensure that metal shredding facilities conduct their operations in an environmentally- and health-protective manner compliant with the HWCL, as further explained below.

The current State definition of “scrap metal,” found in Cal. Code Regs., tit. 22, §§ 66260.10 and 66273.9, subsection (a) indicates that “scrap metal” may be defined as “(1) manufactured solid metal objects and products; (2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings; (3) solid metal residues of metal production; or (4) printed circuit boards that are recycled [except for printed circuit boards referenced in subsec. (b)(7) of this section].” Subsection (b) of the aforementioned sections provides seven existing exclusions to the State definition of “scrap metal.” The current scrap metal definition has been identified as lacking clarity with regards to when a waste would meet the definition of scrap metal. This classification is critical in determining when a recycling exemption applies for scrap metal being recycled, as it is the condition of the exemption.

The current California scrap metal recycling exemption, found in Cal. Code Regs., tit. 22, § 66261.6(a)(3)(B), distinguishes between California-regulated and federally-regulated hazardous waste status for scrap metal for purposes of qualification for the exemption. The exemption states that scrap metal is not subject to regulation as a hazardous waste if it is a “recyclable material.” The exemption also states that scrap metal which meets the definition of a federally-regulated hazardous waste is not subject to regulation under the HWCL when recycled. The current exemption does not clearly indicate that all scrap metal must be recycled in order to qualify for the exemption, only that it must be a “recyclable material,” so the recycling requirement is implied rather than expressly stated.

As concluded in the Final Report, metal shredder output does not meet the definition of scrap metal under California law, and therefore is not exempt from regulation under the HWCL. The lack of clarity in the scrap metal definition, as well as the ambiguous implied regulatory distinction between California-regulated and federally-regulated scrap metal, has resulted in a situation in which it is unclear how metal shredder output is regulated in California. By contrast, the United States Environmental Protection Agency’s (U.S. EPA’s) definition of scrap metal is clear in identifying which materials are considered scrap metal, resulting in clear application of the relevant federal regulations. On November 26, 2019, a civil complaint was filed in Sacramento Superior Court (“ISRI Matter”) by a trade group (the Institute of Scrap Recycling Industries (“ISRI”)) representing metal recyclers and several companies operating metal shredding facilities (defined in Health & Saf. Code, § 25150.82(b)) in the State. Because the plaintiffs include many of the larger metal shredding facilities in the State as well as the metal recycling trade organization (*i.e.*, ISRI), the pending ISRI Matter demonstrates an urgent need for clarification of the scrap metal definition and the potentially applicable regulatory exemptions to address the aforementioned environmental and public health impacts. Certainty must be provided to both the regulated community and the regulatory agencies that administer the HWCL. By aligning itself with U.S. EPA, California will resolve this lack of clarity and provide a pathway for better protection of public safety and the environment.

The proposed emergency rulemaking addresses the lack of clarity in the existing State definition of scrap metal and the scrap metal recycling exemption, resolving the sources of potential misinterpretations of the applicability of the HWCL among the regulated community. Metal shredding facilities have erroneously concluded that they conduct recycling activities on scrap metal, thus operating without the fundamentally necessary protections identified in the HWCL. Previous incidents have been addressed by DTSC via facility-specific enforcement actions; however, in light of DTSC’s new understanding of the industry’s misinterpretation of the regulatory system, these piecemeal, reactive actions have been shown to be insufficient in addressing the newly recognized larger, systemic problems associated with metal shredding facilities. By clarifying that they conduct activities on hazardous waste and not scrap metal, metal shredding facilities will now unambiguously need to seek authorization from DTSC to operate. Immediate adoption of the proposed emergency rulemaking is the only option to mitigate the existing environmental and public health impacts associated with metal shredding activities, avoid and prevent future harmful events such as fires, explosions, and the release of hazardous waste (which DTSC’s Final Report has confirmed are a certainty under the current regulatory system), and provide a pathway for metal shredders to operate in an environmentally- and health-protective manner.

AUTHORITY & REFERENCE

Authority

- Health & Saf. Code section 25150 grants DTSC the authority to adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to public health, domestic livestock, wildlife, or the environment.
- Health & Saf. Code section 25159.5 provides that when DTSC is adopting or revising standards and regulations, DTSC is required, insofar as practicable, to make the standards and regulations conform with the corresponding regulations adopted by U.S. EPA pursuant to the Resource Conservation and Recovery Act (Title 42 United States Code section 1609 *et seq.*) (“RCRA”).
- Health & Saf. Code section 58009 authorizes DTSC to commence and maintain actions to enforce its rules and regulations and, among other things, to protect and preserve the public health.
- Health & Saf. Code section 58012 authorizes DTSC to adopt and enforce regulations for the execution of its duties.

Reference

This regulation implements, interprets, or makes specific the following statutes:

- Health & Saf. Code section 25150 grants DTSC the authority to adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to public health, domestic livestock, wildlife, or the environment.
- Health & Saf. Code section 25159.5 provides that when DTSC is adopting or revising standards and regulations, DTSC is required, insofar as practicable, to make the standards and regulations conform with the corresponding regulations adopted by U.S. EPA pursuant to RCRA.
- Health & Saf. Code section 58009 authorizes DTSC to commence and maintain actions to enforce its rules and regulations and, among other things, to protect and preserve the public health.
- Health & Saf. Code section 58012 authorizes DTSC to adopt and enforce regulations for the execution of its duties.
- 40 Code of Federal Regulations part 261.1(c)(6) provides the current federal definition of scrap metal.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Sections Affected

DTSC proposes to amend section 66260.10 of article 2, chapter 10, division 4.5 of Title 22, of the California Code of Regulations; section 66261.6(a)(3)(B) of article 1, chapter 11, division 4.5 of Title 22, of the California Code of Regulations; section 66273.9 of article 1, chapter 23, division 4.5 of Title 22, of the California Code of Regulations.

Background and Effect of the Regulatory Action

A statutory change enacted by Senate Bill 1249 (Chapter 756, Statutes of 2014) led to research into, and analysis of, the environmental and public health impacts of the existing metal shredder industry in California. As demonstrated in its Final Report (published August 2021) on the metal shredding industry, DTSC has determined that metal shredding facilities generate and manage a large volume of a mixed wastestream (*i.e.*, metal shredder output) that is subject to regulation under the HWCL. This is because metal shredder output includes a large volume of California-regulated hazardous waste, which is generated at the shredder itself. The point of generation of the hazardous waste (*i.e.*, at the shredder) is the point at which DTSC regulates this mixed wastestream through its ultimate disposition. The Final Report also identified numerous violations of storm water requirements, soil contamination, fires, explosions, and offsite migration of hazardous wastes and/or hazardous waste constituents at various California metal shredding facilities, demonstrating ongoing risks to human health and safety and the environment. Appropriate regulation of this mixed wastestream under the HWCL is needed immediately to address these environmental impacts and ensure protection of human health and the environment. DTSC has determined that the conclusions made in the Final Report demonstrate an emergency necessitating immediate action to avoid serious harm to the public peace, health, safety, and general welfare. The proposed emergency regulatory action aligns the State definition of scrap metal, as well

as the State scrap metal recycling exemption, with the corresponding federal regulatory scheme applicable to scrap metal management.

Benefits of the Proposed Regulatory Action

This emergency regulatory action will ensure protection of public health and the environment by addressing the lack of clarity in the existing State definition of scrap metal and the scrap metal recycling exemption. The proposed regulatory amendments align the State definition of scrap metal with that of U.S. EPA, remove duplicative language in the State scrap metal definition, and clarify the conditions under which scrap metal being recycled may be exempt from the regulatory requirements for hazardous waste. This action will provide clarity to both the regulated community and regulatory agencies as to the appropriate management of scrap metal, encourage legitimate recycling, and prevent ongoing releases of hazardous wastes to protect public health and safety and the environment. Immediate regulation of metal shredding facilities by way of emergency action will ensure that these environmental impacts will be addressed in a manner consistent with the HWCL. Finally, by enacting these emergency regulatory changes, metal shredding facilities will be able to continue to provide a beneficial service in California via legitimate metal recycling, while operating in an environmentally protective manner.

Related State Laws and Regulations

Definition of “Scrap Metal” in sections 66260.10 and 66273.9

Existing law in Cal. Code Regs., tit. 22, §§ 66260.10 and 66273.9, provides the current State definition of “scrap metal.” (The “scrap metal” definition found in Cal. Code Regs., tit. 22, ch. 10, § 66260.10 is repeated verbatim in Cal. Code Regs., tit. 22, ch. 23, § 66273.9. All subsequent analysis and description of the current and proposed “scrap metal” definition identified in Cal. Code Regs., tit. 22, ch. 10, § 66260.10 are equivalently applied to Cal. Code Regs., tit. 22, ch. 23, § 66273.9.)

Currently, subsection (a) indicates that “scrap metal” may be defined as “(1) manufactured solid metal objects and products; (2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings; (3) solid metal residues of metal production; or (4) printed circuit boards that are recycled [except for printed circuit boards referenced in subsec. (b)(7) of this section].”

The federal definition of “scrap metal” found in 40 Code of Federal Regulations § 261.1(c)(6) states that scrap metal “is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.” On January 4, 1985, U.S. EPA issued new regulations to define “scrap metal” in the Definition of Solid Waste (“DSW”), which provides a clear definition of scrap metal. This definition excludes hazardous wastes, fines, and other byproducts, including those with liquid components (50 Fed. Reg. 625 (Jan. 4, 1985)).

The proposed amendment to the State definition aligns with U.S. EPA’s goals regarding scrap metal management and the promotion of legitimate recycling, as described in the 2015 regulatory change to the DSW (80 Fed. Reg. 1694 (Jan. 13, 2015)) and subsequent Response to Vacatur of Certain Provisions on May 30, 2018 (83 Fed. Reg. 24664 (May 30, 2018)). The current language in subsection (a) of the State definition of scrap metal, which DTSC proposes to remove and replace with the above federal definition, is as follows:

(1) manufactured, solid metal objects and products:

- The material indicated in (a)(1) that is intended to be regulated as scrap metal is discussed and included in the definition of scrap metal by U.S. EPA in 50 Fed. Reg. 624 (Jan. 4, 1985) (there referred to as “obsolete scrap,” which is a spent material generated by consumers).
- The way in which (a)(1) is written does not immediately make clear that scrap metal is intended to cover “products made of metal that become worn out (or are off-specification)” (50 Fed. Reg. 624 (Jan. 4, 1985)), and not just any manufactured, solid metal object or product, regardless of discard status.
- DTSC proposes to align its definition of scrap metal to that of U.S. EPA, therefore, it is necessary that this part of the current definition be repealed and replaced.

(2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings:

- The material in (a)(2) is discussed and included in the definition of scrap metal by U.S. EPA in 50 Fed. Reg. 624 (Jan. 4, 1985).
- DTSC proposes to align its definition of scrap metal to that of U.S. EPA, therefore, it is necessary that this part of the current definition be repealed and replaced.

(3) solid metal residues of metal production:

- The material indicated in (a)(3) that is intended to be regulated as scrap metal is discussed and included in the definition of scrap metal by U.S. EPA in 50 Fed. Reg. 624 (Jan. 4, 1985).
- However, because “metal-containing process residues” are specifically not included as scrap metal by U.S. EPA, as discussed in 50 Fed. Reg. 625 (Jan. 4, 1985), the term “residues” is ambiguous as currently written in (a)(3).
- DTSC proposes to align its definition of scrap metal to that of U.S. EPA, therefore, it is necessary that this part of the current definition be repealed and replaced.

Amending subsection (a) (1-3) of the State definition of “scrap metal” by repealing the existing language and adopting the language in the federal definition of “scrap metal” is necessary to provide clarity regarding the definition and thus proper management of “scrap metal” in California. This revision will not conflict with existing State law(s).

Existing law in Cal. Code Regs., tit. 22, §§ 66260.10 and 66273.9, provides the existing exclusions to the State definition of “scrap metal” in subsection (b). Removal of the existing exclusions to the State definition of scrap metal (with the exception of circuit boards) is necessary to correct the duplicative language in the current State scrap metal definition and will not modify any other State law(s), as those exclusions are already discussed in other sections of the HWCL and will be unaffected by this emergency rulemaking. Those exclusions to the definition of scrap metal may be found in the following sections of the HWCL:

(1) lead-acid storage batteries, waste elemental mercury, and water-reactive metals such as sodium, potassium and lithium:

- Lead-acid storage batteries are currently regulated in accordance with Cal. Code Regs., tit. 22, §§ 66266.80 and 66266.81;
- Waste elemental mercury is currently regulated in accordance with Cal. Code Regs., tit. 22, § 66266.120; and
- Water-reactive metals are currently regulated as hazardous waste as they exhibit the hazardous characteristic of reactivity in accordance with Cal. Code Regs., tit. 22, § 66261.23, subsec. (a)(2), (3) & (4).
- DTSC finds the language here as currently written to be duplicative and therefore must be repealed.

(2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion:

- Magnesium is currently regulated as hazardous waste as it exhibits the characteristic of ignitability in accordance with Cal. Code Regs., tit. 22, § 66261.21(a)(2).
- DTSC finds the language here as currently written to be duplicative and therefore must be repealed.

(3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department:

- Beryllium is currently regulated as a P015 listed waste if in the form of a powder, in accordance with Cal. Code Regs., tit. 22, § 66261.33(e).

- Beryllium in physical states or sizes other than powders may be considered either scrap metal or hazardous waste (for the hazardous waste characteristic of toxicity), as currently described in Cal. Code Regs., tit. 22, § 66261.24.
- Additionally, the language in the exclusion referencing “the opinion of the Department” is suggestive of a subjective determination of capability to produce “adverse health effects or environmental harm” being made by DTSC, which is lacking in clarity and therefore potentially problematic.
- DTSC finds the language here as currently written to be both duplicative and lacking clarity, and therefore must be repealed.

(4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division:

- Any discarded material contaminated with a hazardous waste such that the discarded material then exhibits a hazardous waste characteristic would then itself be identified as a hazardous waste, as currently described in Cal. Code Regs., tit. 22, §§ 66261.21-66261.24.
- DTSC finds this language as currently written to be duplicative and therefore must be repealed.

(5) any metal contaminated with an oil that is a hazardous waste and that is free-flowing:

- Used oil is already regulated as a hazardous waste in California under Health & Saf. Code div. 20, ch. 6.5, art. 13.
- Metals containing used oil that is free flowing would be considered hazardous waste. If the metal container meets the empty container standards identified in Cal. Code Regs., tit. 22, § 66261.7(b), then the metal could be managed as scrap metal when it is recycled.
- DTSC finds the language here as currently written is duplicative and therefore must be repealed.

(6) sludges, fine powders, semi-solids and liquid solutions that are hazardous wastes:

- Each of the listed items is not scrap metal under current State law, nor are they identified as scrap metal under the federal definition (see 61 Fed. Reg. 2361 (Jan. 25, 1996)).
- Because these are already defined as hazardous wastes, they could not be regulated as scrap metal.
- DTSC finds this language as currently written to be duplicative and therefore must be repealed.

Recycled Scrap Metal Exemption in section 66261.6(a)(3)(B)

Existing law in Cal. Code Regs., tit. 22, § 66261.6(a)(3)(B) currently describes the conditions under which scrap metal, as a “recyclable material,” may be exempted from regulatory requirements of a hazardous waste. The exemption states that scrap metal, as defined in Cal. Code Regs., tit. 22, § 66260.10, is not subject to regulation as a hazardous waste if it is a “recyclable material.” The current exemption also states that scrap metal which meets the definition of a RCRA (*i.e.*, federally-regulated) hazardous waste is not subject to regulation under the HWCL when recycled. There is no California-regulated scrap metal due to the hazardous waste toxicity threshold criteria in Cal. Code Regs., tit. 22, § 66261.24, Table II, footnote b. The current exemption does not indicate clearly that all scrap metal must be recycled in order to qualify for the exemption, only that it must be a “recyclable material,” so the recycling requirement is implied rather than expressly stated.

This emergency regulation amends Cal. Code Regs., tit. 22, § 66261.6(a)(3)(B) to specify that scrap metal is exempt from regulatory requirements as a hazardous waste only when recycled. Additionally, it proposes to eliminate the regulatory distinction between federally-regulated and California-regulated scrap metals. This proposed revision is necessary because it removes previously unclear language and clarifies that all scrap metal meeting the definition found in Cal. Code Regs., tit. 22, § 66260.10 may qualify for this exemption if recycled. DTSC intends to encourage, as does U.S. EPA, the legitimate recycling of scrap metal. DTSC determined that conforming the exemption language in Cal. Code Regs., tit. 22, § 66261.6(a)(3)(B) with U.S. EPA’s goals regarding the scrap metal exemption for recycling, as described in the 1997 amendment to the DSW (62 Fed. Reg. 26011) (May 12, 1997), will help to ensure this outcome.

The proposed amendments to sections 66260.10, 66261.6(a)(3)(B), and 66273.9, all represent changes which align State regulations with U.S. EPA's goals for scrap metal management. Additionally, the proposed amendments either clarify State regulatory intent or remove duplicative language in the sections in question. Therefore, these regulations will not be inconsistent or incompatible with existing State regulations.

Comparable Federal Regulation or Statute

In 1985, U.S. EPA published a final rule that clarified the extent of U.S. EPA's jurisdiction over hazardous waste recycling activities and set forth a regulatory regime for recycling activities subject to U.S. EPA's jurisdiction. This clarification resulted in changes to the DSW to exclude certain hazardous secondary materials from regulation under Subtitle C of RCRA, which administers the federal Hazardous Waste Management Program. In its revision, U.S. EPA added a new definition of scrap metal to the DSW, indicating the need for scrap metal to be regulated differently within the broader category of solid waste. At that time, U.S. EPA first codified the materials which may be considered scrap metal as well as the types of materials which did not meet that definition. U.S. EPA also acknowledged the possibility that scrap metal meeting the criteria for hazardous waste may qualify for certain regulatory exemptions when recycled.

In 1997, U.S. EPA codified an amendment to the DSW which exempted scrap metal that was processed and then recycled from federal hazardous waste regulations (*i.e.*, RCRA Subtitle C). This amendment acknowledged that processed scrap metal being recycled is distinct from other types of materials which may be regulated, due to established markets for its utilization and its inherent positive economic value, among other characteristics. The 1997 amendment further identified that U.S. EPA considered scrap metal processing to be legitimate recycling and that such scrap metal processing should be excluded from RCRA Subtitle C regulations in order to promote the goal of safe recycling. U.S. EPA also indicated that unprocessed scrap metal or residuals that do not meet the regulatory definition of scrap metal are not covered by the exclusion and must continue to be managed as solid waste.

In 2015, U.S. EPA modified the DSW further to codify four legitimacy criteria to distinguish genuine recycling from "sham recycling," with one of those criteria being the need for hazardous secondary material to be contained. Scrap metal recyclers intending to claim the exclusion from RCRA Subtitle C regulations would need to meet these criteria. U.S. EPA continued to acknowledge the value of metal recycling while also ensuring the need for protection of human health and the environment. U.S. EPA's 2015 modification to the DSW was subject to litigation, such that the DSW provisions were modified in 2018. The 2018 "Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule" reflected the outcome of the litigation, which, in part, upheld the containment provisions in the 2015 rule. DTSC is currently moving forward with adoption of the mandatory provisions of the latest DSW. DTSC's analysis of the DSW has demonstrated the evolution of the federal understanding of scrap metal management and recycling, as well as the necessary scope of regulation thereof.

The current federal definition of "scrap metal" is found in 40 Code of Federal Regulations part 261.1(c)(6). The current federal definition of "excluded scrap metal" is found in 40 Code of Federal Regulations part 261.1(c)(9). The current federal definition of "processed scrap metal" is found in 40 Code of Federal Regulations part 261.1(c)(10). The current federal definition of "home scrap metal" is found in 40 Code of Federal Regulations part 261.1(c)(11). The current federal definition of "prompt scrap metal" is found in 40 Code of Federal Regulations part 261.1(c)(12). The current federal recycled scrap metal exclusion is found in 40 Code of Federal Regulations part 261.4(a)(13). California is not adopting the federal processed scrap metal definition or the exemption for the recycling process from regulatory requirements (40 Code of Federal Regulations part 261.6(c)). The proposed regulatory revision will ensure that California State law conforms with federal law regarding scrap metal recycling and when scrap metal recycling is exempt. The State adoption of the federal definition of scrap metal will not conflict with, or modify, any federal law.

DOCUMENTS RELIED UPON

This regulation proposal relied upon the following documents:

1. Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Final Report), August 9, 2021.

2. Complaint for Declaratory and Injunctive Relief, *West Coast Chapter, Institute of Scrap Recycling Industries Inc vs. California Department of Toxic Substances Control* (Super. Ct. Sacramento County, 2019, No. 34-2019-00269900-CU-MC-GDS).
3. Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, 83 Fed. Reg. 24664 (May 30, 2018).
4. Definition of Solid Waste Final Rule, 80 Fed. Reg. 1694 (Jan. 13, 2015).
5. Revisions to the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008).
6. Land Disposal Restrictions – Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, 62 Fed. Reg. 25998 (May 12, 1997).
7. Land Disposal Restrictions – Supplemental Proposal to Phase IV: Clarification of Bevill Exclusion for Mining Wastes, Changes to the Definition of Solid Waste for Mineral Processing Wastes, Treatment Standards for Characteristic Mineral Processing Wastes, and Associated Issues, 61 Fed. Reg. 2338 (Jan. 25, 1996).
8. Hazardous Waste Management System; Definition of Solid Waste, 50 Fed. Reg. 614 (Jan. 4, 1985).

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

California Environmental Quality Act (CEQA) Compliance

Pursuant to Cal. Code Regs., tit. 14, § 15187(a), DTSC is required, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, to perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

DTSC has determined there is no possibility that the proposed regulation will result in a significant environmental effect. DTSC has determined the proposed regulation is categorically exempt from CEQA under Cal. Code Regs., tit. 14, § 15308, Actions by Regulatory Agencies for Protection of the Environment. If the proposed regulation is finalized, a Notice of Exemption will be filed with the State Clearinghouse for public inspection.

Peer Review

Under the provisions of Health and Saf. Code § 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard, or other requirement subject to scientific peer review.

LOCAL MANDATE

DTSC has made a determination that adoption of these regulations will not impose a mandate on local agencies or school districts and would require no State reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code.

FISCAL IMPACT STATEMENT

Local Agencies and School Districts

DTSC has made a determination that adoption of these regulations will not impose any new costs to any local agency or school district subject to State 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 or school districts.

Costs or Savings to Any State Agency

DTSC has made a determination that the proposed regulations will have no impact on State revenue or costs based on the assumption that implementing this clarifying revision to the State definition of scrap metal and the recycled scrap metal exemption will simply serve as part of the State's normal workload.

Federal Funding to the State

DTSC has made a determination that the proposed regulations will have no impact on federal revenue or costs. The State's RCRA grant will also not be affected in any way by this proposed rulemaking.

COMMENT PERIOD

The comment period will open on August 31, 2021 and close on September 7, 2021.

Comments on a proposed emergency rulemaking action must be submitted directly to OAL within five calendar days from when OAL posts the proposed emergency regulation on the OAL web site. Comments on a proposed emergency rulemaking action should be submitted by mail, fax, or e-mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
Fax Number: (916) 323-6826
staff@oal.ca.gov

When submitting a comment on an emergency rulemaking action, a copy of the comment must also be submitted to the Office of Legislation and Regulatory Review.

Office of Legislation and Regulatory Review
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Fax Number: (916) 324-1808
regs@dtsc.ca.gov

TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency rulemaking action currently under OAL review and include the topic of the emergency.

DTSC is not required to respond to comments submitted in connection with an emergency rulemaking action. If DTSC chooses to respond, however, it will submit its response to OAL within eight calendar days after the date of submission of the proposed emergency rulemaking action to OAL.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND OTHER RULEMAKING DOCUMENTS

Copies of the Notice of Proposed Action, Finding of Emergency, and the express terms of the proposed regulations (also known as the proposed regulatory text) are posted to DTSC's Internet website at <https://dtsc.ca.gov/dtsc-emergency-regulations/>.

ALL OTHER QUESTIONS/COMMENTS/INQUIRIES/UPDATES

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to the Office of Legislation and Regulatory Review, as specified above. To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable e-list or e-mail: regs@dtsc.ca.gov.

REGULATORY TEXT

Note: Proposed changes are illustrated with additions in underlining to show where the new text is being added. Proposed text for deletion (repeal) is shown in strikethrough. The symbol "****" means that intervening text not proposed for amendment is not shown.

Amend § 66260.10 Definitions.

When used in this division, the following terms have the meanings given below:

“Schedule of compliance” means a schedule of remedial measures included in a permit or order, including an enforceable sequence of interim requirements (for example, actions, operations or milestone events) leading to compliance with applicable law.

“Scrap metal” means (a) any one or more of the following, except as provided in subsection (b) of this section:

~~(1) bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled; or manufactured, solid metal objects and products;~~

~~(2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings;~~

~~(3) solid metal residues of metal production; or~~

~~(24) printed circuit boards that are recycled [except for printed circuit boards referenced in subsec. (b)(7) of this section].~~

(b) “Scrap metal” excludes all of the following:

~~(1) lead acid storage batteries, waste elemental mercury, and water reactive metals such as sodium, potassium and lithium;~~

~~(2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion;~~

~~(3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department;~~

~~(4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division;~~

~~(5) any metal contaminated with an oil that is a hazardous waste and that is free flowing;~~

~~(6) sludges, fine powders, semi-solids and liquid solutions that are hazardous wastes; and~~

~~(7) any printed circuit board that has been removed from a universal waste electronic device or PV module by a universal waste handler as a result of the handler's conduct of activities authorized by sections 66273.71, 66273.72, and/or 66273.73 of chapter 23 of this division and is subject to management as a hazardous waste pursuant to sections 66273.71, 66273.72 and/or 66273.73.~~

“Semitrailer” means a vehicle designed for carrying persons, property or waste, used in conjunction with a motor vehicle, and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

Note: Authority cited: Sections 25141, 25141.5, 25150, 25159.5, 25214.6, 25150.6, 25201, 25214.9, 25219.1, 25259 and 58012, Health and Safety Code; and Section 42475, Public Resources Code. Reference: Sections 25141, 25141.5, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1, 25219.2 and 25259, Health and Safety Code; and 40 CFR Sections 261.4, 261.5 and 273.9.

Amend § 66261.6 Requirements for Recyclable Materials.

(a)(3) The following are not subject to regulation under this division, and are not subject to the notification requirements of Health and Safety Code section 25153.6:

(B) scrap metal as defined in section 66260.10 when recycled. However, scrap metal that meets the definition of a RCRA hazardous waste is not subject to regulation under this division and is not subject to the notification requirements of Health and Safety Code section 25153.6, only when the scrap metal is being recycled; and

Note: Authority cited: Sections 25143.2(e), 25150, 25159, 25159.5, 25170, 25179.6, 25245, 25250.22 and 58012, Health and Safety Code. Reference: Sections 25143, 25143.2, 25150, 25159, 25159.5, 25163, 25170, 25179.6, 25250.5 and 25250.22, Health and Safety Code; and 40 CFR Sections 261.6 and 266.23.

Amend § 66273.9 Definitions.

When used in this division, the following terms have the meanings given below:

“PV system” see “photovoltaic system.”

“Scrap metal” means (a) any one or more of the following, except as provided in subsection (b) of this section:

(1) bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled; ~~or manufactured, solid metal objects and products;~~

~~(2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings;~~

~~(3) solid metal residues of metal production; or~~

~~(24)~~ printed circuit boards that are recycled [except for printed circuit boards referenced in subsec. (b)(7) of this section].

(b) “Scrap metal” excludes all of the following:

~~(1) lead acid storage batteries, waste elemental mercury, and water reactive metals such as sodium, potassium and lithium;~~

~~(2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion;~~

~~(3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department;~~

~~(4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division;~~

~~(5) any metal contaminated with an oil that is a hazardous waste and that is free flowing;~~

~~(6) sludges, fine powders, semi solids and liquid solutions that are hazardous wastes; and~~

~~(7) any printed circuit board that has been removed from a universal waste electronic device or PV module by a universal waste handler as a result of the handler's conduct of activities authorized by sections 66273.71, 66273.72, and/or 66273.73 of chapter 23 of this division and is subject to management as a hazardous waste pursuant to sections 66273.71, 66273.72 and/or 66273.73.~~

“Solar cell” see “photovoltaic cell.”

Note: Authority cited: Sections 25141, 25141.5, 25150, 25159.5, 25214.6, 25150.6, 25201, 25214.9, 25219.1, 25259 and 58012, Health and Safety Code; and Section 42475, Public Resources Code. Reference: Sections 25141, 25141.5, 25150, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1, 25219.2 and 25259, Health and Safety Code; and 40 CFR Sections 261.4, 261.5 and 273.9.