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Gavin Newsom
Governor

5-DAY PUBLIC NOTICE AND COMMENT PERIOD

Conditional Exclusion for Chemically Treated Metal Shredder Residue

Department of Toxic Substances Control Reference Number: R-2021-12E

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control ("DTSC") proposes to adopt emergency regulations that define chemically treated metal shredder residue ("CTMSR") in title 22, California Code of Regulations, division 4.5, section 66260.10, and amend section 66261.4 allowing for the transportation and disposal of CTMSR as a nonhazardous waste under a conditional exclusion while ensuring protection of human health and the environment.¹

FINDING OF EMERGENCY

On October 28, 2021, the California Court of Appeal, First Appeal District declined to modify a ruling by the Superior Court of the State of California in and for the County of Alameda (the "Superior Court") in *The Athletics Investment Group LLC ("Oakland A's"), v. DTSC*. Consequently, DTSC must within 30 days from October 28, 2021, rescind the conditional nonhazardous waste classification ("f letter") previously granted by DTSC to Schnitzer Steel Industries, Inc. ("Schnitzer"). Schnitzer is a metal shredding facility in Oakland, California, and the real party in interest in the Superior Court proceedings. The scope of the relief granted by the Superior Court, which also requires DTSC to regulate Schnitzer's metal shredder waste pursuant to the requirements of 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"), creates an emergency necessitating immediate action to avoid serious and imminent harm to the public peace, health, safety, and general welfare. Five other metal shredding facilities in California are operating subject to the same type of nonhazardous waste classification (*i.e.*, "f letter") that DTSC granted to Schnitzer. By requiring the rescission of Schnitzer's nonhazardous waste classification, the Superior Court's ruling creates a situation in which hazardous waste management laws are inconsistently applied to businesses conducting the same activities in the State.

These emergency regulations avoid serious harm to public health and the environment by providing uniform regulation of all California metal shredding facilities that received and are operating pursuant to the same nonhazardous waste classification from DTSC. The lack of uniform regulation of all of California's metal shredding facilities, and the rescission of Schnitzer's nonhazardous waste classification, will lead to immediate, unnecessary strain on California's limited Class I hazardous waste landfill capacity, increased pollution burden on vulnerable communities near Class I hazardous waste landfills, a lack of available alternative daily cover ("ADC") at Class III landfills, potential diversion of limited authorized hazardous waste transporter capacity, and negative impacts on air quality and carbon emissions due to increased waste transportation distances. DTSC has a statutory obligation under the HWCL to regulate the management of hazardous waste to protect against hazards to public health and the environment. Consistent regulatory requirements for all California metal shredding facilities are fundamentally necessary to fulfill that obligation.

¹ All further section references are to title 22, California Code of Regulations, division 4.5 unless otherwise indicated.

AUTHORITY & REFERENCE

Authority:

- Health and Safety 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 and Safety 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 and Safety Code section 25141.5 sets forth the criteria and procedures to be followed by DTSC in identifying and regulating hazardous waste.
- Health and Safety Code section 25150.82 provides the State definition of “metal shredding facility.”

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Background and Effect of the Regulatory Action

Regulatory Status of CTMSR

Metal shredding facilities follow the same basic process to recover and recycle scrap metal. They receive unprocessed, obsolete vehicles, appliances, and other sources of scrap metal from feeder yards or the general public and process this feedstock through a shredder (also called a hammer mill). The shredded material is then treated to facilitate the separation of economically valuable ferrous and non-ferrous metals from the remaining metal shredder residue.² The metal shredder residue is then chemically treated to reduce the solubility of toxic contaminants. The resulting material is known as chemically treated metal shredder residue, or CTMSR.

The Resource Conservation and Recovery Act (“RCRA”) establishes regulatory thresholds for hazardous waste at the federal level, while the California HWCL establishes regulatory thresholds for hazardous waste at the State level. Analytical testing of CTMSR performed by DTSC, as well as by the metal shredding industry, has provided justification for the classification of CTMSR as a non-RCRA hazardous waste exhibiting the characteristic of toxicity. However, several metal shredding facilities, including, but not limited to, Schnitzer, have previously applied for and received from DTSC nonhazardous waste classifications for CTMSR. These nonhazardous waste classifications were granted under the legal authority of California Code of Regulations, title 22, section 66260.200(f). Facilities which have such nonhazardous waste classifications, commonly referred to as “f letters,” are allowed to manage their CTMSR as nonhazardous waste and dispose of it in specific nonhazardous waste landfills (also known as Class III or municipal solid waste landfills) designated by the State Water Resources Control Board. At these specified landfills, CTMSR is either land disposed or used as ADC.

Preparation of the Final Report

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.

² Auto shredder waste, as defined in California Code of Regulations, title 22, section 66268.29(b), is equivalent to metal shredder residue.

This initial research resulted in the publication of DTSC's *Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes* ("Draft Report") in January 2018, which was open to public comment.

Following the publication of the Draft Report, DTSC received multiple comments from industry and members of the public. Those comments were reviewed, analyzed, and addressed in the preparation of a final draft. Throughout 2019, DTSC convened a series of "stakeholder consultation group" meetings. These stakeholder meetings were designed to gather more information from both the metal shredding industry and community groups regarding appropriate types and levels of regulation, topics of concern, and facility improvements intended to mitigate environmental concerns.

Between the end of the stakeholder consultation group meetings and the publication of DTSC's *Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes* ("Final Report"), DTSC evaluated the information gathered through the comments and stakeholder consultation group meetings, reviewed contemporary enforcement cases and violations at California's metal shredding facilities, analyzed independent information and proposals provided by industry, and finalized its own conclusions regarding metal shredder aggregate and the appropriate regulatory classification thereof. This process, which took place between late 2019 through the publication of the Final Report in August 2021, required multiple levels of review and analysis including, but not limited to, a review of the Federal Register dating back to 1985, a study of the regulation of metal shredding facilities in other states, review of regulatory explanatory letters from the U.S. Environmental Protection Agency (EPA) to the regulated community, a review of DTSC (formerly the Department of Health Services (DHS)) rulemaking packages related to the definition and management of scrap metal, as well as DHS/DTSC correspondences and briefs regarding the metal shredding industry. Without this review period, as well as the independent verification of the information gathered through the completion of the Final Report in 2021, DTSC might have acted prematurely to promulgate regulations based on incomplete draft findings. The conclusions reached following this thorough evaluation process now provide DTSC with the technical basis to promulgate regulations regarding metal shredding facilities and wastes to protect human health and safety and the environment.

The Final Report assessed the practice of CTMSR management under the "f letter" authority. According to the Final Report, CTMSR has been disposed of or used as ADC at authorized nonhazardous waste landfills for over 30 years. DTSC analyzed two comparative studies to assess whether disposal of CTMSR at nonhazardous waste landfills led to leachate containing elevated levels of hazardous waste constituents, specifically lead and zinc. The results of the comparative leachate analyses allowed DTSC to conclude in its Final Report that the existing practice of disposing of CTMSR as a nonhazardous waste has not contributed to migration of its hazardous constituents (*i.e.*, soluble metals) from these landfills.

Schnitzer Litigation and Status of Schnitzer's "f letter"

On August 5, 2020, the Oakland A's petitioned the Superior Court for a writ of mandate requiring DTSC to rescind Schnitzer's "f letter." In an order dated April 16, 2021 the Superior Court directed DTSC to rescind Schnitzer's "f letter." Schnitzer appealed the decision to the Court of Appeal, which resulted in an automatic stay of the Superior Court's order during the appeal. The Oakland A's filed a motion to lift that stay, and on August 10, 2021, the Superior Court issued an order lifting the stay. The Superior Court stayed its own order for 15 days to allow Schnitzer time to file a petition for a writ of supersedeas requesting that the Court of Appeal review the Superior Court's order. The order also extended that stay until the Court of Appeal issued a final ruling on Schnitzer's petition, provided Schnitzer timely filed a petition. On August 25, 2021, Schnitzer filed a petition for writ of supersedeas with the Court of Appeal seeking review of the Superior Court's ruling lifting the stay. On October 28, 2021, the Court of Appeal denied Schnitzer's writ petition, making the Superior Court's order final, and requiring DTSC to rescind Schnitzer's "f letter" within 30 days.

Key Risks and Concerns Associated with Result of Appellate Court Decision

The Superior Court's ruling obligates DTSC to rescind only Schnitzer's "f letter." That ruling does not apply to the other five metal shredding facilities operating in the State with a similar nonhazardous waste classification

determination from DTSC. This situation creates an inconsistent application of the HWCL to Schnitzer, the other five metal shredding facilities operating under “f letters,” hazardous and nonhazardous waste landfills, and waste transporters, as well as local and State regulatory agencies. This inconsistency has broad effects which will imminently impact all of the aforementioned entities. Additionally, this inconsistency in application of the HWCL is contrary to the intention of Health and Safety Code section 25180(d), which provides that the Department exercise its enforcement authority such that “generators, transporters, and operators of storage, treatment, transfer, and disposal facilities are treated equally and consistently.”

On the part of Schnitzer, with the Court-ordered rescission of the “f letter,” Schnitzer will immediately need to begin to transport their CTMSR, a wastestream estimated at nearly 195,000 tons per year as hazardous waste, either to one of two Class I landfills in the State, or to a landfill out of State. The nearest Class I landfill in California to Schnitzer is the Kettleman Hills Landfill (“Kettleman”) which, over the past six years, has averaged acceptance of roughly 221,000 tons of hazardous waste per year. Requiring Schnitzer to send over 195,000 tons of CTMSR per year to Kettleman would necessitate a minimum 90% increase in Kettleman’s hazardous waste acceptance rate, with between 30 and 37 additional truckloads transporting greater than 747 tons of hazardous waste to Kettleman each day that they operate (5 days per week). As previously described, this will lead to immediate, unnecessary strain on California’s limited Class I hazardous waste landfill capacity, with accompanying increased pollution burden on vulnerable communities near Class I hazardous waste landfills, and diversion of limited authorized hazardous waste transporter capacity.

Negative impacts on air quality and carbon emissions due to increased waste transportation distances will also occur and must therefore also be considered. Currently, Schnitzer disposes of its CTMSR at one of two authorized Class III landfills (Altamont and Vasco Road Landfills), each of which is roughly 40 miles from Schnitzer. Kettleman is, at a minimum, 201 miles from Schnitzer. Based on the increased transportation distance of 161 miles each way, the minimum additional traveled distance for a single load of CTMSR being shipped from Schnitzer to Kettleman, as opposed to Altamont or Vasco Road, is 322 additional miles. Assuming Schnitzer transports 30 to 37 truckloads 5 days per week to Kettleman, the surrounding communities alongside the I-5 corridor will experience the following increased air pollution burdens based on modeling conducted by U.S. EPA each day as follows:

- Between 2.1 – 2.6 kilograms of PM_{2.5},³ which can cause negative health impacts from inhalation.
- An increase of between 4.4 to 5.4 kilograms of volatile organic compounds from diesel fuel, which can cause lung irritation when inhaled.
- Between 23.1 to 28.5 kilograms of increased carbon monoxide emissions.
- Finally, 2.3 to 2.8 kilograms of increased PM₁₀⁴ and 88.8 to 109.5 kilograms of increased nitrous oxides, which contribute to smog and visible air pollution.

Additionally, increased carbon dioxide emissions can also be expected due to the increased use of diesel fuel. Transporting CTMSR to Kettleman as opposed to one of the two local Class III landfills would result in between 32,993 and 40,691 pounds of increased carbon dioxide emissions **per day**, assuming CTMSR is transported 5 days per week. The negative impacts due to increased transportation distances would be increased if Schnitzer decides to dispose of its CTMSR out of State.

On the part of the other five metal shredding facilities operating under “f letters,” this Court-ordered rescission, in the absence of a regulatory remedy, will necessitate immediate preparations for future regulatory changes, including likely challenges to the validity of their own “f letters.” The broad impact of the regulatory inconsistency regarding the management of CTMSR will thus impact all “f letter” facilities in the State.

³ PM_{2.5} refers to fine inhalable particles with diameters of 2.5 micrometers and smaller.

⁴ PM₁₀ refers to inhalable particles with diameters 10 micrometers and smaller.

Additionally, the Class III landfills which currently accept CTMSR, and use it as a valuable element in their day-to-day operations as ADC, will be immediately and negatively impacted by the rescission of Schnitzer's "f letter" and the accompanying regulatory inconsistency. Currently, Schnitzer sends its CTMSR to two Class III landfills, which use the CTMSR as ADC. Most recently, in 2020, these two landfills combined accepted 233,673.1 tons of CTMSR for use as ADC. The total amount of ADC used at these facilities in 2020 was 383,560.75 tons (with CTMSR therefore comprising 61% of all ADC used at these two landfills). The immediate loss of CTMSR from Schnitzer, representing over half of the total ADC used at these landfills, would necessitate the immediate identification and sourcing of an equivalently large substitute form of daily cover or ADC. Other sources of ADC currently used include green waste and shredded auto tires, which are available in limited quantities. The most likely source of an equivalent amount of daily cover⁵ to CTMSR is previously undisturbed soil, which the landfills will need to excavate. The economic and environmental impact of nearly 200,000 tons per year of soil excavation is a significant consideration.

The aforementioned immediate, broad-ranging, and negative impacts are the results of the inconsistency and the unequal regulatory framework that will be the outcome of the Superior Court's ruling in the absence of the proposed emergency regulatory action. Therefore, immediate adoption of the proposed emergency regulatory action is the only timely option to mitigate the environmental and public health impacts associated with inconsistent regulatory management of CTMSR.

Benefits of the Proposed Regulatory Action

The proposed emergency regulations address the inconsistent application of the HWCL and the corresponding inequality in the regulatory framework created by the court-ordered "f letter" rescission at one of six similarly-authorized "f letter" metal shredding facilities. The proposed emergency regulations will codify conditions related to metal shredder activity and wastes, thus establishing uniform regulatory requirements for those similarly-situated metal shredding facilities. As previously indicated, the conclusion of DTSC's Final Report is that the existing "f letter" framework has not led to migration of hazardous constituents from the nonhazardous waste landfills to which CTMSR has been sent. However, management of CTMSR from the generating metal shredding facility to its final disposition has not been regulated under the "f letters," which do not mandate specific treatment, transportation, documentation, or recordkeeping requirements. The proposed emergency rulemaking will provide greater levels of environmental and public health protections than the existing "f letter" framework by establishing the necessary waste treatment standards, transportation, documentation, and recordkeeping conditions by which CTMSR may be safely transported and disposed of in authorized nonhazardous waste landfills. These conditions are based on the findings of the Final Report, which describes the current treatment protocols at California metal shredding facilities and contains an assessment of, and recommendations for mitigating, the hazards associated with transporting and disposing of CTMSR at Class III landfills. Further, the proposed emergency rulemaking will mitigate immediate, unnecessary strain on California's limited Class I hazardous waste landfill capacity, increased pollution burden on vulnerable communities near Class I hazardous waste landfills due to the additional transportation and disposal activity, diversion of limited authorized hazardous waste transporter capacity, negative impacts on air quality, and increased carbon emissions due to increased waste transporter traffic and increased waste transportation distances. Additionally, the diversion of a significant volume of CTMSR from Schnitzer to Class I hazardous waste landfills also represents a significant loss of ADC used by nonhazardous waste landfills to control odor and vectors from those landfills. Finally, the proposed emergency regulations will provide a level playing field and opportunity for similarly-situated metal shredding facilities to employ chemical stabilization under a uniform, industry-wide standard for conditional CTMSR exclusion. By specifying the conditions necessary for CTMSR to be transported and disposed of in an environmentally-protective and health-protective manner, the proposed emergency regulations will further the purposes of the HWCL, provide clarity for regulators and regulated entities, and protect California's communities and environment.

⁵ Requirements for daily cover are set forth in 40 Code of Federal Regulations, part 258.21(a).

Related State Laws and Regulations

California's hazardous waste management requirements are set forth in the HWCL (Health & Saf. Code, §§ 25100, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 22, div. 4.5). Management of CTMSR is subject to regulation under the HWCL. Within the HWCL, Health and Safety 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. The proposed amendments to California Code of Regulations, title 22, sections 66260.10 and 66261.4 protect against hazards to public health and the environment from the inconsistent regulation of CTMSR during transportation and disposal resulting from the Superior Court's ruling.

Existing law in section 66261.4 provides the current State exclusions from classification as waste and/or hazardous waste, consistent with the HWCL and its implementing regulations. These exclusions are subject to various conditions. The proposed emergency regulations amend section 66261.4 by adding a new subsection (b)(6), creating an exclusion for CTMSR from regulation as a hazardous waste for the purposes of transportation and disposal, provided certain conditions are met.

The previous "f letters" had been granted to the metal shredding facilities which applied for them because of the determination by DTSC that the CTMSR "possesses mitigating physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment." Based on the conclusions of the Final Report, CTMSR disposal as a nonhazardous waste has not led to harmful impacts at receiving landfills. The conditions that would be created by the proposed subsection 66261.4(b)(6) would strengthen the environmental and health-protective regulatory framework by which CTMSR is currently transported and land disposed of in a manner consistent with existing State regulations for hazardous waste management. To qualify for conditional exclusion, the following conditions must be satisfied:

- (b)(6)(A) - This condition clearly delineates the types of facilities which would potentially be subject to the proposed regulations, namely metal shredding facilities, as previously defined, which have authorization by DTSC to conduct waste stabilization. Only metal shredding facilities which generate CTMSR can qualify for the conditional exclusion.
- (b)(6)(B) – This condition requires that CTMSR must have been treated to levels consistent with the results of the treatability study described in the Final Report. Application of these treatment levels on CTMSR has already been documented to not result in leaching into the environment from destination landfills. This was depicted in the comparative leachate analysis described in the Final Report. The use of these treatment levels applies an equal regulatory standard to all of the affected shredding facilities and will serve to enhance protection of public health and the environment.
- (b)(6)(C) – This condition requires that CTMSR not be a RCRA hazardous waste. California cannot adopt environmental regulations which are less stringent than federal regulations, and so this condition is necessary to ensure ongoing compliance with federal regulations.
- (b)(6)(D) – This condition requires that CTMSR meet the thresholds for the organic hazardous constituents in Table III in section 66261.24(a)(2)(B). This is because the chemical treatment process primarily stabilizes inorganic hazardous constituents, and not organic hazardous constituents. For example, polychlorinated biphenyls (PCBs), an example of an organic hazardous constituent not mitigated by chemical treatment, have historically been found in CTMSR. Inclusion of this additional condition is necessary to ensure environmental and public health protection from hazardous constituents that are not stabilized by chemical treatment.
- (b)(6)(E) – This condition creates a requirement that each facility which seeks to utilize this conditional exclusion must maintain records demonstrating compliance with the applicable conditions.
- (b)(6)(F) – This condition requires that CTMSR only be sent to previously-approved nonhazardous waste landfills, which either directly land dispose the CTMSR or use it as ADC to protect against wind dispersion, odors, and other vectors. These landfills already presently accept CTMSR under the existing

“f letter” regulatory framework; this condition thus ensures consistency and minimizes disruption to the regulated community.

- (b)(6)(G) – This condition requires that CTMSR be contained during shipment and transportation. Containerization is used to minimize the incidence of unauthorized releases into the environment. The terms of this condition are consistent with those already utilized for universal waste transporters under section 66273.54 of this division.
- (b)(6)(H) – This condition requires that CTMSR be accompanied by a shipping document containing various details about the origin, amount, transportation, and final disposition of the CTMSR.
- (b)(6)(I) – This condition creates a recordkeeping requirement for any metal shredding facility seeking to manage its CTMSR under this conditional exclusion.
- (b)(6)(J) – This last condition requires that a facility must deliver to DTSC a copy of any relevant document as previously identified in the proposed subsection 66261.4(b)(6).

The proposed amendments to sections 66260.10 and 66261.4 represent additions to the current State regulations for hazardous waste management. The proposed amendments would strengthen protection of public health and the environment and create uniform standards for treatment, recordkeeping, transportation, and disposal of CTMSR by affected metal shredding facilities. Therefore, the proposed emergency regulations will not be inconsistent or incompatible with existing State regulations.

Comparable Federal Regulation or Statute

CTMSR is not regulated as hazardous waste under RCRA (it is not a listed hazardous waste and it does not exhibit any of the RCRA hazardous waste characteristics). In addition, the conditions being created for the applicability of the conditional exclusion requires that CTMSR not be a RCRA hazardous waste. Therefore, these regulations will not be inconsistent or incompatible with existing federal regulations.

DOCUMENTS RELIED UPON

This regulation proposal relied upon the following documents:

1. DHS Letter to Mr. Nick Andrusyshyn, Schnitzer Steel Products Co., June 13, 1988.
2. Metal Shredder Residue Treatability Study Report. Terraphase Engineering Inc., April 26, 2017.
3. Final Judgment and Order Overruling Demurrers and Granting Motion for Judgment on Writ of Mandate, April 16, 2021.
4. Peremptory Writ of Mandate, April 16, 2021.
5. Notice of Appeal, April 19, 2021.
6. Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Final Report), August 9, 2021.
7. Order Granting Petitioner’s Motion to Lift Stay Pending Appeal, August 10, 2021.
8. Petition for Writ of Supersedeas or Other Appropriate Relief to Preserve the Status Quo and Stay Judgment Pending Appeal, August 25, 2021.
9. Order Denying Petition for Writ of Supersedeas, October 28, 2021.
10. U.S. Environmental Protection Agency, Office of Transportation and Air Quality, “Average In-Use Emissions from Heavy-Duty Trucks,” October 2008 (EPA420-F-08-027).
11. U.S. Environmental Protection Agency, “Emission Facts: Average Carbon Dioxide Emissions Resulting from Gasoline and Diesel Fuel,” February 2005 (EPA420-F-05-001).

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

California Environmental Quality Act (CEQA) Compliance

Pursuant to California Code of Regulations, title 14, section 15187, subdivision (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 any adverse environmental impact. DTSC has determined the proposed regulation is categorically exempt from CEQA under California Code of Regulations, title 14, section 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 Safety Code section 57004, subdivision (e), the requirement for a scientific peer review is not applicable to an emergency regulation.

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 on 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 additional impact on State revenue or costs based on the assumption that implementation of the proposed regulations 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 as this waste stream is not regulated under RCRA.

COMMENT PERIOD

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 (OAL), DTSC provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action. After submission of the proposed emergency to OAL, OAL must allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

DTSC intends to submit this proposed emergency action to OAL on November 29, 2021. Comments on a proposed emergency rulemaking action must be submitted directly to OAL within five calendar days from the date OAL posts the proposed emergency regulation on the OAL website. The comment must state that it is about an emergency rulemaking action currently under OAL review and include the topic of the emergency. Comments on a proposed emergency rulemaking action should be submitted by mail, fax, or e-mail to:

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 by mail, fax, or e-mail to the Office of Legislation and Regulatory Review at:

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. 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.

PROPOSED REGULATORY TEXT

Note: Proposed changes are illustrated with proposed additions in underlining to show where the new text is being added and proposed deletions (repeal) in strikethrough to show where the existing text is being removed. 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:

"Chemical toilet waste" means the waste in or from a chemical toilet.

"Chemically treated metal shredder residue", or "CTMSR", for the purposes of section 66261.4 of chapter 11, means auto shredder waste, as defined in subsection (b) of section 66268.29 of chapter 18, that has undergone a process of ferrous and non-ferrous scrap metal removal and been treated via a waste stabilization process, as defined in this section.

"Chronic toxicity" means the ability of a substance or mixture of substances to cause injury, illness or damage to humans, animals or other living organisms by prolonged or repeated exposure or consumption over a period of days, weeks, months or years.

Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25200.21, 25245, 25259, 25316, 25355.5, 25356.9, 25358.9, 58004 and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.1, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25200.21, 25229, 25245, 25259, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529 and 58012, Health and Safety Code; and 40 CFR Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

Amend § 66261.4 Exclusions.

(a) Materials which are not wastes. The following materials are not wastes for the purpose of this chapter:

(b) Wastes which are not hazardous wastes. The following wastes are not hazardous wastes:

(6) Chemically treated metal shredder residue (CTMSR) is not hazardous waste for the purposes of offsite transportation and disposal, provided all of the following conditions are met:

(A) The CTMSR is generated by a metal shredding facility, as defined in subsection (b) of section 25150.82 of the Health and Safety Code, that is authorized by the Department to conduct a waste stabilization process as defined in section 66260.10 of chapter 10 of this division;

(B) The CTMSR has been treated with 0.7 gallons per ton of silicate solution and 8.5% by weight of cement;

(C) The CTMSR does not meet the definition of a RCRA hazardous waste, as defined in section 66261.100 of chapter 11 of this division;

(D) CTMSR must not exceed the thresholds as identified in Table III in section 66261.24(a)(2)(B) of chapter 11 of this division;

(E) Each metal shredding facility shall maintain records to demonstrate that the CTMSR meets the conditions required by paragraphs (A), (B), (C), and (D).

(F) CTMSR may not be disposed of at any location other than a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, or that is regulated by waste discharge requirements issued pursuant to division 7 (commencing with section 13000) of the Water Code for discharges of designated waste, as defined in section 13173 of the Water Code, and that allow for the discharge of CTMSR. The discharge of CTMSR includes its use as alternative daily cover or for other beneficial reuse pursuant to section 41781.3 of the Public Resources Code and the regulations adopted to implement that section.

(G) CTMSR shall be contained during shipment and transport in a manner that prevents release into the environment. If a container is used, such a container shall prevent, under reasonably foreseeable conditions, leakage, spillage, or damage that could cause leakage. The transporter of CTMSR is prohibited from transporting CTMSR to a place other than a landfill approved to receive CTMSR. If an unauthorized release of CTMSR occurs while the CTMSR is being transported, then the transporter of CTMSR shall:

1. Immediately contain all releases to the environment of CTMSR and residues from CTMSR; and

2. determine whether any material resulting from such a release is a hazardous waste, and, if so, shall manage the hazardous waste in compliance with all applicable requirements of this division. The transporter of CTMSR is considered the generator of any hazardous waste resulting from such a release, and such transporter is subject to the requirements of chapter 12 of this division.

(H) Each shipment of CTMSR is to be accompanied by a shipping document, which shall be provided to the

Department upon request, containing all of the following information:

1. The quantity, by weight, of CTMSR being transported;
2. The name, physical and mailing addresses, and telephone number of the generating metal shredding facility;
3. The name, physical and mailing addresses, and telephone number of the destination landfill;
4. The date the shipment of CTMSR leaves the metal shredding facility;
5. The date the shipment of CTMSR arrives at the destination landfill; and
6. The name of the transporter which shipped the CTMSR from the metal shredding facility to the destination landfill.

(I) The authorized metal shredding facility shall retain on-site a copy of all documentation produced pursuant to this subsection for at least three years from the date that the CTMSR that is the subject of such documentation was generated. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding CTMSR management activity or as requested by the Department.

(J) The metal shredding facility shall either deliver in person or send to the Department by certified mail, return receipt requested, a copy of any relevant document identified in paragraph (I) of this subsection upon receipt of a request from the Department, at the following address: Department of Toxic Substances Control, P.O. Box 806, Sacramento, CA 95812-0806, with the words "Attention: CTMSR Annual Reporting" prominently displayed on the front of the envelope. The Department shall specify in its request all of the following: the identities of the documents for which copies are required; the place where those copies shall be delivered or sent; and the date by which those copies shall be submitted.

Note: Authority cited: Sections 25140, 25141, 25141.5, 25143.2.5, 25150, 25159, 25159.5, 25214.9, 58004 and 58012, Health and Safety Code. Reference: Sections 25117, 25212, 25124, 25140, 25141, 25141.5, 25143, 25143.1, 25143.2, 25143.2.5, 25143.4(a), 25143.11, 25150.82, 25159, 25159.5, and 25214.9, Health and Safety Code; and 40 CFR Section 261.4.