

NO. A162524

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION THREE

THE ATHLETICS INVESTMENT GROUP LLC,  
Petitioner and Respondent,

v.

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL,  
et al.,  
Respondents,

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SCHNITZER STEEL INDUSTRIES, INC.,  
Real Party in Interest and Appellant.

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**APPLICATION TO FILE AS AMICI CURIAE AND  
PROPOSED BRIEF OF AMICI CURIAE IN SUPPORT OF  
PETITIONER AND RESPONDENT**

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Appeal from Judgment on Petition for Writ of Mandate  
Alameda County Superior Court, No. RG20069917  
Honorable Paul D. Herbert

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....3

APPLICATION TO FILE .....6

STATEMENT OF INTEREST AS AMICI CURIAE.....6

STATEMENT OF LEAVE TO FILE.....8

BRIEF OF AMICI CURIAE ..... 10

INTRODUCTION ..... 10

ARGUMENT ..... 12

I. Toxic pollution from metal shredding facilities endangers people and environments across California ..... 12

    A. Noxious discharge from metal shredding facilities pollutes California’s air, water, and soil, and can cause serious illness ..... 12

    B. Metal shredders disproportionately harm environmental justice communities..... 18

II. Schnitzer’s interpretation of SB 1249 would perpetuate the exact harms the California Legislature sought to remedy ..... 24

CONCLUSION..... 27

WORD COUNT CERTIFICATE ..... 29

Exhibit 1 ..... 30

**TABLE OF AUTHORITIES**

**CASES**

*Carter v. Cal. Dep’t of Veterans Affs.*,  
38 Cal. 4th 914 (2006)..... 27

*Coal. of Concerned Comtys., Inc. v. City of Los Angeles*,  
34 Cal. 4th 733 (2004)..... 24

*Granberry v. Islay Invs.*,  
161 Cal. App. 3d 382 (Ct. App. 1984)..... 24

*Jackpot Harvesting Co. v. Superior Ct.*,  
26 Cal. App. 5th 125 (Ct. App. 2018) ..... 24

*McHugh v. Protective Life Ins. Co.*,  
12 Cal. 5th 213 (2021)..... 25

*People v. Schnitzer Steel Industries, Inc.*,  
(Super. Ct. of Cal., Alameda Cty., filed  
Feb. 2021) ..... 16

*Sierra Club v. Superior Ct.*,  
57 Cal. 4th 158 (2013)..... 24

**STATUTES AND LEGISLATIVE HISTORY**

S. Rules Comm., Analysis: Bill No. SB 1249 (Cal.  
Aug. 27, 2014) ..... 25

Senate Bill 1249 ..... 25, 27

Cal. Gov’t Code § 65040.12..... 18

**DTSC SOURCES**

DTSC, Draft Evaluation and Analysis of Metal  
Shredding Facilities and Metal Shredder  
Wastes (Jan. 2018)..... 25

DTSC, Evaluation and Analysis of Metal Shredding  
Facilities and Metal Shredder Wastes  
(Aug. 2021) ..... 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23

DTSC, *Lead in Jewelry* ..... 17

**OTHER GOVERNMENTAL SOURCES**

Cal. Air Res. Bd., *Facility Search Engine*..... 14, 21

Cal. Air Res. Bd., *Inhalable Particulate Matter and  
Health (PM2.5 and PM10)*..... 21

Nat'l Evt'l Just. Advisory Council, *Fish Consumption and Environmental Justice* 64 n.182 (Nov. 2002)..... 18

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Cal. Evt'l Just. All., *CalEnviroscreen: A Critical Tool for Achieving Environmental Justice in California* (2018)..... 20

Env'tl Just. Health All. et al., *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities* (Sept. 2018)..... 19

Gayle Windham et al., *Autism Spectrum Disorders in Relation to Distribution of Hazardous Air Pollutants in the San Francisco Bay Area*, 114 *Env'tl Health Perspectives* 1438 (Sept. 2006)..... 17

Gerdau, *Material Safety Data Sheet: [Auto Fluff/ Shredder Residue]*..... 16, 22

Kimberly Veklerov, *Fire at Oakland recycling plant sends black plume into sky*, *S.F. Chron.* (updated June 4, 2018 at 11:17 a.m.), 2018 WLNR 17192131 ..... 23

Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, 15 *Nat'l L.J.* S2, Sept. 1992..... 19

NRDC et al., *Watered Down Justice* (Sept. 2019) ..... 19

Peter Hegarty, *Fire Breaks out at Schnitzer Steel in Oakland*, *E. Bay Times* (updated June 4, 2018 at 4:58 a.m.)..... 23

Sara E. Grineski et al., *Asian Americans and disproportionate exposure to carcinogenic hazardous air pollutants: A national study*, 185 *Soc. Sci. & Med.* 71 (July 2017)..... 19

ScrapWire, *After the Scrap Metal is Gone: What Happens to the Fluff in Automotive Recycling?*..... 13

Sultan Ayoub Meo et al., *Effect of Environmental Pollutants PM2.5, CO, NO2, and O3 on the Incidence and Mortality of SARS-CoV-2 Infection in Five Regions of the USA*, 18 Int'l J. Env't Rsch. & Pub. Health 7810 (July 2021)..... 21

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## **APPLICATION TO FILE**

Communities for a Better Environment, the Center on Race, Poverty & the Environment, San Francisco Baykeeper, the Sierra Club, and the Natural Resources Defense Council (Amici) respectfully request leave to file the accompanying brief in support of Petitioner and Respondent Athletics Investment Group in this proceeding. This proposed brief was drafted by counsel for Amici, and no party or counsel for a party in this proceeding authored the brief in whole or in part, or made any monetary contribution intended to fund its preparation.

### **STATEMENT OF INTEREST AS AMICI CURIAE**

Communities for a Better Environment (CBE) is one of the nation's preeminent environmental justice organizations. CBE builds people's power in California's communities of color and low-income communities to achieve environmental health and justice. CBE works to prevent and reduce pollution and to build green, healthy, and sustainable communities and environments. CBE maintains offices in Richmond and Huntington Park.

The Center on Race, Poverty & the Environment (CRPE) is a national environmental justice organization whose mission is to achieve environmental justice and healthy, sustainable communities through collective action and the law. CRPE fights across California against pollution from toxic industrial activity and advocates for a just, state-wide policy to responsibly handle waste while protecting civil rights and encouraging healthy communities. CRPE has offices in Emeryville and Delano.

Since 1989, San Francisco Baykeeper (Baykeeper) has been defending San Francisco Bay by holding polluters and government agencies accountable for the health of our wildlife and communities, and has a longstanding interest in protecting the Bay from pollution. Core to Baykeeper's mission are the organization's longstanding campaigns to challenge activities that harm the Bay, including pollution from metal shredders and other industrial sites. For over a decade, Baykeeper has documented the pollution that Real Party in Interest and Appellant Schnitzer Steel's metal shredding facility has released into the Bay. Baykeeper has over 5,000 members and supporters and has its office in Oakland, a mile and a quarter from Schnitzer's metal shredding facility.

Founded in 1892, the Sierra Club is the largest national grassroots environmental organization in the United States. With millions of members nationwide, and 169,100 members in California, the Sierra Club fights to defend everyone's right to a healthy environment. The Sierra Club's San Francisco Bay Chapter represents members in Alameda, Contra Costa, Marin, and San Francisco Counties, including 3,776 members in Oakland. The Sierra Club's national headquarters is located less than two miles from Schnitzer's facility.

The Natural Resources Defense Council (NRDC) is a national, not-for-profit environmental and public health membership organization that works to ensure the rights of all people to clean air, clean water, and healthy communities. NRDC is committed to advancing environmental justice and seeks to

break down the patterns of disproportionate environmental burdens borne by people of color and others who face social or economic inequities. NRDC has over 57,000 members in California and has offices in San Francisco and Santa Monica.

Proposed Amici CBE, CRPE, Baykeeper, and NRDC participated in the Superior Court proceedings in this matter and wish to reiterate their support for protective metal shredder regulations in this appeal. These Amici also supported the passage of the legislation at issue in this case—Senate Bill 1249, the Metal Shredding Facilities Law—because they understood that it would force Respondent California Department of Toxic Substances Control (DTSC) to rescind the “f letter” exemptions it had issued to metal shredding facilities and instead establish appropriate protections to keep Californians safe from metal shredding facility pollution. All Proposed Amici believe that it is critical for DTSC to protect communities across California from metal shredder pollution. This case represents an important step towards such protection.

#### **STATEMENT OF LEAVE TO FILE**

Proposed Amici support and advocate on behalf of communities that suffer the burdens of pollution from metal shredding facilities for which respondent DTSC had granted “f letter” exemptions. Petitioner and Respondent Athletics Investment Group, LLC (Athletics) challenged the same regulatory exemption for the metal shredding facility located in Oakland, owned by Real Party in Interest and Appellant Schnitzer Steel. Proposed Amici are familiar with how DTSC’s





refusal to effectively regulate metal shredding facility pollution has threatened public health both in Oakland and around California. Although the Athletics sought, and the Superior Court granted, a writ of mandate that would revoke only Schnitzer Steel's letter, this Court's interpretation of SB 1249 will have implications throughout the state—including for Proposed Amici and the people and communities they represent. Proposed Amici believe their knowledge of and experience with metal shredding facility pollution will help put the issues in this case in proper perspective and aid the Court in considering the issues on appeal. Proposed Amici therefore respectfully request permission to file the attached amicus brief.

Dated: January 19, 2022

Respectfully submitted,

By:

  
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## BRIEF OF AMICI CURIAE

### INTRODUCTION

The principal question in this case is whether Senate Bill 1249, the Metal Shredding Facilities Law enacted in 2014, required DTSC by a date certain to rescind regulatory exemptions and impose more protective hazardous waste regulations on metal shredding facilities, either by applying existing hazardous waste laws or by adopting new waste management standards for those facilities. The Superior Court found that it did. In this brief, Amici address the real-world consequences of metal shredding facility pollution: the spread of harmful contaminants, such as cadmium and lead, into the air, water, and soil of some of California’s most vulnerable communities. Amici believe an appreciation of these harms is critical to understanding the Legislature’s intent when it passed SB 1249.

Starting in 1986, DTSC allowed metal shredding facilities in California to generate waste toxic enough to qualify as hazardous, but, under the “f letter” exemption mechanism, manage and dispose of that waste without adherence to California hazardous waste laws. Until this litigation, six metal shredding facilities operated under f letter exemptions.<sup>1</sup> DTSC

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<sup>1</sup> In response to the Superior Court’s writ and this Court’s denial of Schnitzer’s writ of supersedeas, DTSC rescinded Schnitzer’s f letter late last year. Appellant’s Motion for Judicial Notice ISO Reply Br. and Proposed Order, Ex. A at 2; *see also* Order denying petition filed (Oct. 28, 2021). However, DTSC has told this Court that it maintains the ability to reissue the f letter or an equivalent exemption should this Court vacate the Superior Court’s writ. *See* Informal response letter filed by [DTSC], (Oct. (continued...))

itself has concluded that these six metal shredding facilities—by failing to properly contain the hazardous waste their operations generate—have released toxic pollutants into California’s air, water, and soil.

Metal shredding facility pollution in the environment can cause both acute and long-lasting harms to human health. Metal shredder residue contains pollutants, including heavy metals like lead, that can engender irreversible health impacts. Exempt metal shredding facilities are located in communities that are already among the most pollution-burdened and vulnerable in the state. These are the communities that are least able to bear additional health and environmental harms.

The Legislature passed SB 1249 seven years ago to ensure that all communities would finally receive the protection from metal shredder pollution that DTSC has long denied. But Schnitzer’s interpretation of SB 1249 would allow DTSC to delay rescission of the f letters—and thus more robust protections for public health and the environment—indefinitely. The Superior Court’s well-reasoned decision rejected this interpretation. This Court should uphold that decision and avoid adoption of an interpretation that would fly in the face of legislative intent. The

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15, 2021) at 2. Despite DTSC’s rescission of Schnitzer’s f letter, given DTSC’s position that it could reissue the f letter if Schnitzer succeeds in this appeal, and given the fact that, as far as Amici are aware, the remaining five metal shredders maintain their f letters, Amici focus this brief on the consequences of the f letter regime and DTSC’s longstanding under-regulation of shredder facilities.

Legislature intended DTSC to take regulatory action, so any reasonable interpretation of the law should require DTSC to act.

For the sake of communities facing the impacts of metal shredder pollution across California, and to effectuate the Legislature’s intent, the Court should affirm the Superior Court’s ruling requiring DTSC to rescind Schnitzer’s letter and adequately regulate metal shredder waste.

## ARGUMENT

**I. Toxic pollution from metal shredding facilities endangers people and environments across California**

**A. Noxious discharge from metal shredding facilities pollutes California’s air, water, and soil, and can cause serious illness**

In August 2021, when DTSC finished its evaluation of hazardous waste management practices at exempt metal shredding facilities, like Schnitzer’s, it stated its observations in stark terms: “[N]umerous examples of accidents, improper hazardous waste storage, soil contamination, and hazardous waste releases outside the facilities that were found to be contaminating the surrounding community.” DTSC, Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Aug. 2021) 85 (“Final DTSC Report”).<sup>2</sup>

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<sup>2</sup> Available at [https://dtsc.ca.gov/wp-content/uploads/sites/31/2021/08/2021.08.09\\_Metal\\_Shredder\\_Analysis.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2021/08/2021.08.09_Metal_Shredder_Analysis.pdf). The Final DTSC Report is the final version of the Draft Report discussed in the Athletics’ brief, *see, e.g.*, Resp’t Br. (continued...)

DTSC has granted six metal shredding facilities “f letters:” special exemptions that allow the facilities to manage “treated” hazardous waste as nonhazardous material.<sup>3</sup> This is despite DTSC’s finding that this waste remains toxic enough to qualify as hazardous even after treatment, *id.* at 34, and despite DTSC’s conclusion that metal shredders’ handling of this waste can pose human health risks, *see, e.g., id.* at 65.

When metal shredding facilities process cars and other appliances, the leftover material that cannot be recycled—such as shredded plastics, foams, and textiles—accumulates into a “light fibrous material” known as metal shredder residue, “LFM,” or “auto fluff.”<sup>4</sup> *Id.* at 3. This residue has been found to contain myriad pollutants, including heavy metals such as lead, zinc, cadmium, and copper.<sup>5</sup> *Id.* After generating this toxic residue,

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at 9, and confirms the findings of the Draft Report. The Final DTSC Report was not released until after Schnitzer filed the Record on Appeal. Amici cite the Final DTSC Report in this brief to bring DTSC’s most recent findings on metal shredder pollution to the Court’s attention.

<sup>3</sup> The six exempt metal shredders are located in Oakland, Redwood City, Bakersfield, Terminal Island (in the Port of Los Angeles), Anaheim, and Colton. *See* Final DTSC Report at 13-14.

<sup>4</sup> ScrapWire, *After the Scrap Metal is Gone: What Happens to the Fluff in Automotive Recycling?*, <https://www.scrapware.com/blog/after-the-scrap-metal-is-gone-what-happens-to-the-fluff-in-automotive-recycling/> (last visited Jan. 14, 2022).

<sup>5</sup> Amici focus on the most common heavy metal pollutants that metal shredders release. However, in recent years, exempt metal shredders have released at least forty-six different pollutants into  
(continued...)

metal shredding facilities mix it with silicate and cement to reduce, but not eliminate, the ability of pollutants to migrate from metal shredder residue into the environment. *Id.* at 34. The resulting mixture is called “chemically treated metal shredder residue,” or CTMSR. *Id.* Operating under the f letter system, California’s exempt metal shredders store this chemically treated shredder residue in large piles open to the elements. *See id.* at 43, 65. Schnitzer stores up to 350 tons of chemically treated shredder residue at its facility at any given time, and usually transports 400 to 500 tons—enough to fill 20 dump trucks—offsite for landfill disposal each day. *See id.* at 17.

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the environment, including methylene chloride, xylenes, trichlorofluoromethane, and known carcinogens benzene and formaldehyde. *See Facility Search Engine*, Cal. Air Res. Bd., <https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php> (last visited Jan. 12, 2022) (search for each exempt metal shredder facility by name, click “submit,” then click on facility name to show pollutant details). Schnitzer’s facility exceeds California’s high priority enforcement threshold because it emits high levels of cancer-causing pollutants. *See Exhibit 1* (showing the California Air Resources Board data on air pollution that Schnitzer releases).



*Figure 1: Pile of chemically treated residue at Schnitzer Steel.  
Final DTSC Report at 43.*

Chemically treated residue remains hazardous after treatment. *Id.* at 77. And while DTSC has determined that disposing chemically treated residue in landfills approved to accept it does not pose risks to human health or the environment, *see id.* at 83,<sup>6</sup> it has found the opposite about the onsite management and storage of both untreated and chemically treated residue under the current regulatory scheme. DTSC’s evaluation found that storage of residue in open-air piles “allows for contamination of soils, leakage of contaminants into the subsurface, and the potential for migration of hazardous [pollutants] via surface water runoff and air dispersion throughout the site as well as offsite.” *Id.* at 65.

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<sup>6</sup> Amici note that, without first seeing an independent evaluation of this assertion, they cannot agree that this disposal practice poses no risks.

Given that DTSC allows the exempt metal shredding facilities to accumulate and store their hazardous waste without adequate controls, it is unsurprising that all six facilities have polluted surrounding communities with dangerous contaminants. *See id.* at 46-57 (describing groundwater contamination, soil contamination, pollution via stormwater discharge violations, fires, and explosions at the six metal shredding facilities with f letters). For example, DTSC has discovered that Schnitzer's hazardous waste management practices over the years have contaminated site soil with PCBs, copper, lead, nickel, arsenic, zinc, and chromium, and have contaminated groundwater with hydrocarbons, arsenic, copper, lead, and nickel. *Id.* at 49-51. Contaminated groundwater has flowed from Schnitzer's facility into San Francisco Bay. *Id.* at 50. The Office of the Attorney General, in its own investigation of Schnitzer, discovered that Schnitzer's toxic metal shredder residue had blown onto public and private property near the facility.<sup>7</sup>

As metal shredder pollution spreads offsite, the polluted environment can impact people's health through ingestion of contaminated soil or inhalation of contaminated dust.<sup>8</sup> DTSC's analysis shows that such exposure can cause both acute and long-

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<sup>7</sup> *See* Stipulation for Entry of Final Judgement and Order on Consent at 3, *People v. Schnitzer Steel Industries, Inc.* (Super. Ct. of Cal., Alameda Cty., filed Feb. 2021), <https://bit.ly/3I19q7R>.

<sup>8</sup> *See* Gerdau, *Material Safety Data Sheet: [Auto Fluff/ Shredder Residue]* 1, <https://bit.ly/3mJtelg> (last visited Jan. 12, 2022) (discussing possible pathways for shredder residue to make its way into the body).



lasting harm. Lead—one of the primary pollutants that metal shredders release into the community—is a classic, and tragic, example. There is no safe level of lead exposure. When a person is exposed to lead, she absorbs it in her bones, blood, and tissues. *Id.* at 60. In adults, lead poisoning can cause abdominal pain, memory loss, and weakness. *Id.* Prolonged lead exposure can cause personality changes, and can increase risks of heart disease, kidney disease, and infertility. *Id.* A pregnant person will pass lead through the placenta to the fetus, which can cause miscarriage and stillbirth. *Id.* When “parents accidentally br[ing] home lead dust on their clothing,” it can give their children lead poisoning. *Id.* Childhood lead exposure can cause reduced cognitive abilities, anemia, and even death.<sup>9</sup> *Id.*

Metal shredding facilities also contaminate communities with cadmium, copper, and zinc, each of which presents additional threats to human and environmental health. Cadmium irritates the lungs, can damage the kidneys, and is a probable human carcinogen. *Id.* at 62. A study of San Francisco Bay Area children also found exposure to airborne cadmium linked to autism.<sup>10</sup> In humans, copper exposure can cause headaches, dizziness, and nausea. *Id.* at 60-61. In large amounts, it can cause liver damage, kidney damage, and death. *Id.*

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<sup>9</sup> DTSC, *Lead in Jewelry*, <https://dtsc.ca.gov/toxics-in-products/lead-in-jewelry/> (last visited Jan. 12, 2022).

<sup>10</sup> See generally Gayle Windham et al., *Autism Spectrum Disorders in Relation to Distribution of Hazardous Air Pollutants in the San Francisco Bay Area*, 114 *Env'tl Health Perspectives* 1438 (Sept. 2006), <https://doi.org/10.1289/ehp.9120>.

“Elemental copper does not break down in the environment” and is toxic to aquatic organisms. *Id.* at 61. Zinc, too, threatens human health: in people, it can cause anemia and changes in cholesterol levels. *Id.* Zinc is also “highly toxic to fish” and is “a strong aquatic pollutant.” *Id.* When other animals, including people, consume seafood or freshwater fish with high levels of metal contamination, those metals accumulate in their bodies.<sup>11</sup> Communities near metal shredders poorly regulated by DTSC across the state face the risk of these impacts.

**B. Metal shredders disproportionately harm environmental justice communities**

Toxic pollution from metal shredders disproportionately endangers low-income Black, Asian, and Latino communities. California has codified its goal of environmental justice, defined as “[t]he deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution,” and the elimination of “disproportionate[]” pollution effects on burdened communities. Cal. Gov’t Code § 65040.12(e)(2)(B). Despite this goal, people of color and people living at or near the poverty line are more likely

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<sup>11</sup> See Nat’l Env’tl Just. Advisory Council, *Fish Consumption and Environmental Justice* 64 n.182 (Nov. 2002), [https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report\\_1102.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/fish-consump-report_1102.pdf) (listing cadmium, zinc, and copper as chemicals that have given rise to at least one health warning against consuming locally caught fish).

to live and work close to dangerous polluting facilities than White people or more affluent communities.<sup>12</sup>

The burdens environmental justice communities face accumulate and magnify community health risks. People in environmental justice communities live closest to pollution sources, exposing them to higher concentrations of pollution than other groups.<sup>13</sup> Living near industrial operations also leaves environmental justice communities most at risk from disasters, such as fires.<sup>14</sup> Despite these heightened risks and exposures, regulators are less likely to enforce environmental laws in communities of color.<sup>15</sup> This enforcement neglect is particularly harmful for environmental justice communities. People living in overburdened environmental justice communities are, on

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<sup>12</sup> See generally Env't'l Just. Health All. et al., *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities* (Sept. 2018), <https://ej4all.org/assets/media/documents/Life%20at%20the%20Fenceline%20-%20English%20-%20Public.pdf>; Sara E. Grineski et al., *Asian Americans and disproportionate exposure to carcinogenic hazardous air pollutants: A national study*, 185 Soc. Sci. & Med. 71 (July 2017), <https://doi.org/10.1016/j.socscimed.2017.05.042>.

<sup>13</sup> See generally Env't'l Just. Health All. et al, *supra* n. 12.

<sup>14</sup> *Id.* at 10, 11.

<sup>15</sup> See generally Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, 15 Nat'l L.J. S2, Sept. 1992, at 1, <https://www.ejnet.org/ej/nlj.pdf>; see also NRDC et al., *Watered Down Justice* 4 (Sept. 2019), <https://on.nrdc.org/37pRrs9>.

average, less able to afford to protect themselves from pollution<sup>16</sup> (for example, by moving away from the facility or buying a water filter). They also have less access to affordable health care, leaving them more susceptible to the effects of pollution.<sup>17</sup> Due to these accumulating burdens, people in environmental justice communities face heightened risks of illness and premature death.<sup>18</sup>

For thirty-five years, Californians living in environmental justice communities near exempt metal shredding facilities have borne the disproportionate burden of DTSC’s inaction on metal shredder waste. DTSC’s own evaluation concluded that the location of metal shredding facilities in environmental justice communities “demonstrates that any release of metal shredder wastes or metal shredder waste [contaminants] would impact populations that are already burdened by other environmental factors,” and that such communities “may exhibit greater sensitivity” to pollution from metal shredding facilities. Final DTSC Report at 73. DTSC also found that three of the six exempt

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<sup>16</sup> See Cal. Env’tl Just. All., *CalEnviroscreen: A Critical Tool for Achieving Environmental Justice in California* 5 (2018), [https://calgreenzones.org/wp-content/uploads/2018/09/CEJA-CES-Report-2018\\_web.pdf](https://calgreenzones.org/wp-content/uploads/2018/09/CEJA-CES-Report-2018_web.pdf). California governments use CalEnviroscreen to quantify community vulnerability to pollution.

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., C. Arden Pope et. al., *Fine-Particulate Air Pollution and Life Expectancy in the United States*, 360 *New Eng. J. of Med.* 376 (Jan. 22, 2009), <https://doi.org/10.1056/NEJMsa0805646>.

metal shredding facilities are “not only located in disadvantaged communities in California, but are among [the communities] most burdened by pollution,” with higher pollution burdens than 86 to 97 percent of communities in California.<sup>19</sup> *Id.*

Beyond the pollution from underregulated shredder waste discussed above, environmental justice communities face additional air quality burdens from metal shredding facilities. All six exempt facilities have permits that allow them to emit air pollution, including fine and coarse particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>, respectively). *Id.* at 24. Some metal shredding facilities also release lead directly to the air. *Id.* Particulate matter can cause grave health problems; PM<sub>2.5</sub> exposure alone contributes to 5,400 premature deaths in California every year<sup>20</sup> and is associated with higher risks of death and hospitalization from COVID-19.<sup>21</sup> And California’s network of air monitors likely

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<sup>19</sup> The remaining facilities are all located in communities that are more polluted than at least 63% of communities in the state. *See id.*

<sup>20</sup> In 2019, the six exempt shredders emitted at least 19 tons of particulate pollution. *See Facility Search Engine*, Cal. Air Res. Bd., *supra* note 5. Particulate pollution damages the cardiovascular system, which can have both immediate and long-term health consequences, especially for children. *Inhalable Particulate Matter and Health (PM<sub>2.5</sub> and PM<sub>10</sub>)*, Cal. Air Res. Bd., <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health> (last visited Jan. 12, 2022).

<sup>21</sup> *See, e.g.,* Sultan Ayoub Meo et al., *Effect of Environmental Pollutants PM<sub>2.5</sub>, CO, NO<sub>2</sub>, and O<sub>3</sub> on the Incidence and Mortality of SARS-CoV-2 Infection in Five Regions of the USA*, 18 *Int’l J. Env’t Rsch. & Pub. Health* 7810, 1 (July 2021), <https://doi.org/10.3390/ijerph18157810> (concluding that “the (continued...)”).

underestimates the amount of PM<sub>2.5</sub> and other air pollutants released from metal shredding facilities.<sup>22</sup>

Environmental justice communities near metal shredding facilities also face the risk of catastrophic fires, which not only degrade air quality, but put lives and property in immediate peril. Dust from shredder residue piles is a fire hazard.<sup>23</sup> DTSC allows metal shredding facilities to leave the shredder residue, other waste, and piles of scrap metal in enormous, exposed piles with negligible fire controls. As a result, metal shredding facilities have become accidents waiting to happen. And numerous accidents *have* happened. DTSC found that between 2007 and 2020, four of the six exempt metal shredding facilities had fires, and some had multiple fires. Fires have erupted in piles of sorted and unsorted scrap metal, Final DTSC Report at 48, metal shredder aggregate, *id.* at 51, and chemically treated residue, *id.* at 67. Some fires resulted in shelter-in-place orders for nearby residents, *see id.* at 48, and all emitted unknown

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number of [COVID-19] cases and deaths increased significantly along with increasing levels of PM<sub>2.5</sub> . . .”); Benjamin Bowe et al., *Ambient fine particulate matter air pollution and the risk of hospitalization among COVID-19 positive individuals: Cohort study*, 154 *Env’t Int’l* 106564, 1 (Sept. 2021), <https://doi.org/10.1016/j.envint.2021.106564> (finding that PM<sub>2.5</sub> is associated with higher hospitalization risk for COVID-19 patients).

<sup>22</sup> See Tim McLaughlin et al., *Special Report: U.S. air monitors routinely miss pollution - even refinery explosions*, Reuters (Dec. 1, 2020), <http://reut.rs/2WiE4ns>.

<sup>23</sup> Gerdau, *supra* note 8, at 1 (“Generation of large quantities of airborne dusts and particulates may produce a fire hazard.”).

amounts of hazardous materials into the air. At one facility, a pile of metal shredder aggregate (a mix of shredded metal and shredder residue, *see id.* at 3) left sitting in the sun in a pile thirty feet high—and nearly the size of a football field—ignited, sending black smoke high into the sky visible for twenty-five miles, and requiring more than thirty firefighters to respond.<sup>24</sup> *See id.* at 51. That facility was Schnitzer:



*Figure 2: 2018 fire at Schnitzer Steel.*<sup>25</sup>

Another facility, which also kept scrap metal in a thirty-foot-high exposed heap, had back-to-back fires in 2013, prompting emergency alerts instructing residents to stay indoors. *Id.* at 48.

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<sup>24</sup> Kimberly Veklerov, *Fire at Oakland recycling plant sends black plume into sky*, S.F. Chron. (updated June 4, 2018 at 11:17 a.m.), 2018 WLNR 17192131.

<sup>25</sup> Peter Hegarty, *Fire Breaks out at Schnitzer Steel in Oakland*, E. Bay Times (updated June 4, 2018 at 4:58 a.m.), <http://bayareane.ws/2Kw3Vpc>.

So long as metal shredding facilities remain poorly regulated, the fear, uncertainty, and health impacts of similar industrial disasters will remain a reality for nearby communities.

**II. Schnitzer’s interpretation of SB 1249 would perpetuate the exact harms the California Legislature sought to remedy**

The judiciary’s “fundamental task” in statutory interpretation “is to determine the Legislature’s intent so as to effectuate the law’s purpose.” *Sierra Club v. Superior Ct.*, 57 Cal. 4th 158, 165 (2013) (quoting *Coal. of Concerned Comtys., Inc. v. City of Los Angeles*, 34 Cal. 4th 733, 737 (2004)). The first step of statutory interpretation is examining the statute’s plain language. If that language is clear, courts follow the plain meaning “unless a literal interpretation would result in absurd consequences the Legislature did not intend.” *Id.* at 165-66 (quoting *Coal. of Concerned Comtys.*, 34 Cal. 4th at 737). When the statute’s plain meaning and the “manifest purposes of the statute in light of its legislative history” conflict, courts construe the statute to give effect to legislative intent. *See Granberry v. Islay Invs.*, 161 Cal. App. 3d 382, 388 (Ct. App. 1984); *accord Jackpot Harvesting Co. v. Superior Ct.*, 26 Cal. App. 5th 125, 140-41 (Ct. App. 2018). And if statutory language would permit more than one plausible interpretation, courts may consider the statute’s purpose, legislative history, and public policy to determine the best interpretation. *Jackpot Harvesting Co.*, 26 Cal. App. 5th at 140.



In the face of DTSC’s decades of under-regulation and delay, the Legislature passed SB 1249 to address metal shredding facilities’ urgent environmental and public health threats. *See* 2 AA 259 (SB 1249 § 1(b)-(e)) (reviewing, in statutory preamble, DTSC’s multidecade failure to regulate metal shredder waste as hazardous); 4 AA 1014-1018 (DTSC, Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Jan. 2018)). As reported by the Senate Rules Committee, the statute’s author specifically cited metal shredding facilities’ “risk to public health and the environment,” the contamination of nearby communities, and repeated fires as impetuses for the law. 1 AA 184-85 (S. Rules Comm., Analysis: Bill No. SB 1249 (Cal. Aug. 27, 2014)). The author emphasized that, in light of these health and environmental hazards, “[metal shredding] operations are not adequately regulated.” 1 AA. at 184.<sup>26</sup> The statute as a whole—with its date-certain deadline and clear directive to DTSC—underscores the Legislature’s intent that DTSC act decisively to adequately regulate these hazardous facilities.

Schnitzer argues for an absurd interpretation of SB 1249—an interpretation that the Superior Court rejected, that DTSC does not defend on appeal, and that this Court should not accept. Schnitzer argues that the legislature instructed DTSC only to

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<sup>26</sup> When, as in this case, “the author’s statements are part of committee materials — and are therefore relayed not merely as personal views, but instead as part of the Legislature’s consideration of the bill — they can serve as salient reflections of legislative purpose.” *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213, 241 (2021).

study and consider alternative management standards for metal shredder waste, and that DTSC could simply continue with the regulatory status quo if it so chose. *See* Appellant Br. at 28-29; Appellant Reply at 18, 24. In essence, Schnitzer argues that the statute did not mandate any action, save study. Appellant Br. at 31.

The Court should reject Schnitzer’s interpretation, regardless of how the Court resolves the parties’ competing arguments as to the plain meaning of SB 1249. Whether the statute, read in isolation from legislative history, is clear or ambiguous, the Court must ensure that any interpretation does not result in absurd consequences that would undercut legislative intent. Schnitzer’s interpretation fails this basic test. The Legislature intended DTSC to rescind the f letters. Legislative history underscores the urgency behind the bill and the Legislature’s frustration with DTSC’s decades-long failure to properly regulate metal shredding facilities. But Schnitzer’s interpretation would allow the agency to take no regulatory action *at all*, perpetuating the precise harms to environmental justice communities, public health, and the environment that the Legislature sought to remedy. The Court should reject any interpretation—like Schnitzer’s—that leads to such an absurd result.

The Court should also reject Schnitzer’s attempts to dismiss the relevance of the statutory preamble as a mere “left-over vestige” from an earlier version of the bill. The preamble is clear: “[i]t is the intent of the Legislature that the conditional

nonhazardous waste classifications, as documented through the historical ‘f letters,’ be revoked *and* that metal shredding facilities be thoroughly evaluated and regulated to ensure adequate protection of the human health and the environment,” 2 AA 259 (SB 1249 § 1(f)) (emphasis added). Appellant Br. 9 n.6. Schnitzer argues that the Court should consider the preamble surplusage. Not so. “An uncodified section is part of the statutory law.” *Carter v. Cal. Dep’t of Veterans Affs.*, 38 Cal. 4th 914, 925 (2006). While “such statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute.” *Id.* In fact, such statements “are *entitled* to consideration.” *Id.* (emphasis added). Giving the preamble its entitled consideration leaves no space to argue that the Legislature intended anything but the rescission of the f letters by 2018. Because DTSC had a duty to—but did not—rescind the f letter by that date, the Superior Court properly granted the writ of mandate.

### CONCLUSION

Amici ask the Court to affirm the Superior Court’s writ of mandate compelling DTSC to rescind Schnitzer’s f letter and to require Schnitzer to operate the facility in compliance with California hazardous waste law. Such a ruling will be the first step toward adequate regulation of metal shredders across California.

Dated: January 19, 2022

Respectfully submitted,

By:



Lauren P. Phillips



Jaclyn H. Prange

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Communities for a Better  
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Race, Poverty & the  
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Baykeeper, the Sierra Club,  
and the Natural Resources  
Defense Council*

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**WORD COUNT CERTIFICATE**

Pursuant to California Rule of Court 8.204(c)(1), I certify that the foregoing contains 3,794 words (excluding the cover, the tables, signature blocks, and this certificate). In preparing this certificate, I have relied on the word count of the computer program used to prepare the brief.

Executed on January 19, 2022, in Brooklyn, New York.

Respectfully submitted,

By:



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Lauren P. Phillips

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# Exhibit 1



## FACILITY DETAILS

### Facility Information

Facility Name : Schnitzer Steel Products Company      Facility ID : 208  
 Street : Adeline St, Foot Of      [SIC Code](#) : 5093  
 City : Oakland      Zip : 94607  
 Phone : (510) 839-4714  
[County](#) : Alameda  
[Air Basin](#) : San Francisco Bay Area  
[District](#) : [Bay Area Aqmd](#)

<a href="#">Facility Prioritization</a>	Inventory Year	Above High Threshold?	<a href="#">District Prioritization Threshold</a>	
			High	Low
<a href="#">Cancer Prioritization</a>	2019	Yes	10	1
<a href="#">Chronic Prioritization</a>	2019	Yes	10	1
<a href="#">Acute Prioritization</a>	2019		10	1

Prioritization scores determine whether a facility must conduct a risk assessment for the "Hot Spots" program. The scores themselves are not an accurate measurement of facility risk.

<a href="#">Health Risk Assessment</a>	Inventory Year	Value	<a href="#">District Notification Level</a>	<a href="#">District RRAP Level</a>
<a href="#">Cancer Risk</a>			10	100
<a href="#">Chronic Hazard Index</a>			>10	none
<a href="#">Acute Hazard Index</a>			>10	none

The facility health risk assessment (HRA) and prioritization score data were collected under the Air Toxic 'Hot Spots' Program. The risk data, submitted to the ARB, may not have been derived from the same toxic emission data that was reported to CEIDARS. Because the facility may have taken action to reduce risks pursuant to the risk assessment, the risk from the facility may have been substantially reduced since the risk assessment was conducted. To determine if more recent data is available, please contact the district.

[Program Status](#) : A

**Emissions Data**

	<b>Pollutant</b>	<b>Emissions</b>	<b>Unit</b>
<b>Data from 2019</b>  <a href="#">Download CSV file</a>	<a href="#">TOG</a>	170.9	Tons/Yr
	<a href="#">ROG</a>	170.9	Tons/Yr
	<a href="#">CO</a>	0	Tons/Yr
	<a href="#">NOX</a>	0	Tons/Yr
	<a href="#">SOX</a>	0	Tons/Yr
	<a href="#">PM</a>	9.6	Tons/Yr
	<a href="#">PM10</a>	6	Tons/Yr
	<a href="#">PM2.5</a>	4.5	Tons/Yr

**TOXIC DATA MAY COME FROM VARIOUS YEARS**

<a href="#">Download CSV file</a>	<a href="#">1,1,1-TCA</a>	114.1	Lbs/Yr
	<a href="#">1,3-Butadiene</a>	40.7	Lbs/Yr
	<a href="#">Acrylonitrile</a>	18.5	Lbs/Yr
	<a href="#">Arsenic</a>	0	Lbs/Yr
	<a href="#">Benzene</a>	1326.5	Lbs/Yr
	<a href="#">Beryllium</a>	0	Lbs/Yr
	<a href="#">Cadmium</a>	1.2	Lbs/Yr
	<a href="#">Copper</a>	18.5	Lbs/Yr
	<a href="#">Cr(VI)</a>	0.4	Lbs/Yr
	<a href="#">EDC</a>	31.6	Lbs/Yr
	<a href="#">Ethyl Benzene</a>	3067	Lbs/Yr
	<a href="#">Hexane</a>	4129.3	Lbs/Yr
	<a href="#">Isopropyl Alcoh</a>	407.2	Lbs/Yr
	<a href="#">Lead</a>	8.5	Lbs/Yr
	<a href="#">MEK</a>	884.4	Lbs/Yr
	<a href="#">Manganese</a>	10.6	Lbs/Yr
	<a href="#">Methanol</a>	941.4	Lbs/Yr
	<a href="#">Methylene Chlor</a>	948.4	Lbs/Yr
	<a href="#">Nickel</a>	3.7	Lbs/Yr
	<a href="#">PCBs</a>	29.7	Lbs/Yr
	<a href="#">Perc</a>	221.8	Lbs/Yr
<a href="#">Propylene</a>	1148.2	Lbs/Yr	
<a href="#">Styrene</a>	475	Lbs/Yr	
<a href="#">Toluene</a>	11482.2	Lbs/Yr	
<a href="#">Vinylid Chlorid</a>	45.9	Lbs/Yr	
<a href="#">Xylenes</a>	15121.7	Lbs/Yr	

The emission inventory data provided here may have been developed over several years and is the most recent information available at ARB for this inventory year. Many facilities are only required to update their toxic emission data if there has been an increase in emissions.

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Therefore, the toxic emission data presented here should generally be viewed as maximum emission values which may have decreased since this information was reported. If you have questions regarding data updates, please contact the local air district. Note: If this facility has diesel-fueled internal combustion engines, then a portion of the PM10 shown is considered to be diesel exhaust PM10.

[\[Start a new search\]](#)

[ARB Homepage](#)

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