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Superior Court of California,
County of Alameda

11/03/2023 at 12:42:32 PM

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF ALAMEDA**

16 THE ATHLETICS INVESTMENT
GROUP LLC,

17
18 Petitioner,

19 v.

20 CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL, a public
21 agency of the State of California

22 Respondent.
23

24 SCHNITZER STEEL INDUSTRIES, INC.,

25 Real Party in Interest
26

Case No. RG20069917

**27 BRIEF AS AMICI CURIAE
IN SUPPORT OF PETITIONER**

Hearing Date: November 14, 2023

Hearing Time: 10:00 a.m.

Dept.: 14

Judge: Hon. Michael Markman

28 Trial Date: Not yet set

Action Filed: August 5, 2020

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1 **INTRODUCTION**

2 The principal question in this case is whether Senate Bill 1249, the Metal Shredding
3 Facilities Law, required the California Department of Toxic Substances Control (DTSC) to
4 complete the regulatory actions it found necessary to bring metal shredders into full compliance
5 with the Hazardous Waste Control Law (HWCL) by 2018. Such regulatory actions include
6 requiring certain operators of metal shredding facilities to obtain permits under the HWCL for
7 the generation and management of untreated metal shredder waste. In this brief, Amici address
8 the real-world consequences of metal shredding facility pollution: the spread of toxic
9 contaminants into the air, water, and soil of some of California’s most vulnerable communities.
10 This contamination occurs not only during recurring fires at these facilities, which have sent
11 thick black plumes of smoke and burning chemical smells into the air, but even through day-to-
12 day operation of these facilities. Amici believe an appreciation of these harms is critical to
13 understanding the Legislature’s intent when it passed SB 1249.

14 For decades, DTSC has allowed metal shredding facilities in California to generate and
15 handle waste that qualifies as hazardous without adherence to California hazardous waste laws.
16 Today, non-compliant metal shredding facilities continue to generate and handle hazardous
17 waste without an HWCL permit, even though these facilities were targeted by SB 1249 due to
18 the ongoing environmental and health harms they presented to nearby communities. DTSC itself
19 has found that these metal shredding facilities—by failing to properly contain the hazardous
20 waste their operations generate—have released harmful pollutants, such as cadmium and lead,
21 into California’s air, water, and soil.

22 Metal shredder pollution moves from the environment into people’s bodies, where it
23 causes both acute and long-lasting harm. DTSC acknowledges that metal shredder residue
24 contains pollutants, including heavy metals like lead, that can cause irreversible health impacts.
25 And DTSC admits that these burdens are not distributed evenly among Californians: metal
26 shredding facilities are located in some of the most pollution-burdened and vulnerable
27 communities in the state.

1 DTSC claims that SB 1249 imposes no legal duty for this Court to enforce. But DTSC
2 ignores SB 1249’s clear mandate to apply the HWCL against metal shredders. The Court should
3 not adopt an interpretation that, like DTSC’s, misreads the plain text of the HWCL and is
4 divorced from legislative intent. The Legislature directed DTSC to take regulatory action to
5 bring metal shredders into compliance with the HWCL. Therefore, any reasonable interpretation
6 of the law should require DTSC to ensure metal shredders fully comply with the HWCL’s
7 protective requirements regarding generation and management of hazardous waste. DTSC’s
8 interpretation of SB 1249 fails that basic test.

9 For the sake of communities facing metal shredding facility pollution across California,
10 and to effectuate the Legislature’s intent, the Court should deny the demurrers.

11 ARGUMENT

12 I. Toxic metal shredder pollution endangers people and environments across California

13 The Schnitzer facility—like the other five metal shredding facilities across the state
14 targeted by SB 1249—generates hazardous waste, which must be regulated under the HWCL.
15 DTSC, Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (2021
16 DTSC Evaluation) pp. 33-40, tbl. 10, p. 41. (Petitioner’s Request for Jud. Notice in Support of
17 Opposition to Respondent and Real Party’s Demurrers, Ex. A); (Health & Saf. Code § 25101).
18 DTSC does not dispute that it must enforce the HWCL against Schnitzer. (2021 DTSC Evaluation,
19 at 19.) And DTSC concedes metal shredding facilities like Schnitzer’s “pose a risk to nearby
20 communities.” (*Id.* at 85.) Yet DTSC has not required Schnitzer or the other metal shredders to
21 fully comply with the HWCL. Instead, DTSC allows Schnitzer to generate, store, and process
22 untreated hazardous waste without a permit or other authorization. As a result, metal shredder
23 pollution has endangered people and the environment across California.

24 A. Noxious discharge from metal shredding facilities pollutes California’s air, 25 water, and soil

26 At each step of the metal shredding process, facilities like Schnitzer’s generate or handle
27 hazardous wastes. The facilities first shred feedstock like cars and appliances through a hammer
28

1 mill, creating a mixture of metals and waste residue called “metal shredder aggregate.” (2021
2 DTSC Evaluation, *supra*, at 33.) Metal shredder aggregate is hazardous waste and includes fine
3 powders of lead, copper, and zinc. (*Id.* at 34.) The facilities then separate usable metals from the
4 metal shredder aggregate. The remaining non-recyclable material—an accumulation of shredded
5 plastics, foams, and textiles—is called “metal shredder residue.” (*Ibid.*) Metal shredder residue is
6 hazardous because it can contain myriad pollutants, including heavy metals such as lead, zinc,
7 copper, and cadmium.¹ (*Id.* at 34.) Metal shredding facilities then “treat” the residue with
8 silicates and cement to reduce the solubility of the lead, copper, and zinc. (*Ibid.*) But even
9 chemically treated metal shredder residue can still exceed regulatory thresholds for both total and
10 soluble metals. (*Id.* at 34-38, 42.)

11 Given that DTSC allows the metal shredding facilities targeted by SB 1249 to accumulate
12 and store hazardous metal shredder waste without adequate controls, it is unsurprising that they
13 have polluted surrounding communities with dangerous contaminants. (See 2021 DTSC
14 Evaluation, *supra*, at 46-47.) DTSC recognizes that metal shredders have contaminated
15 surrounding soil and groundwater with lead, zinc, copper, and cadmium. (*Id.* at 45-46.) Fires in
16 the metal shredding machinery or piles of metal feedstock have caused the release of particulate
17 matter and volatile organic compounds. (*Id.* at 46-47.) Even in the absence of fire, air pollution
18 from metal shredding facilities can include toxic substances like lead. (See *id.* at 26.)

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24 ¹ Amici focus on the most common heavy metal pollutants that metal shredders release. In
25 2021, however, metal shredders released at least 25 different toxic pollutants into the
26 environment, including methylene chloride, toluene, and trichlorofluoromethane, and known
27 carcinogens benzene and polychlorinated biphenyls. (See Cal. Air Res. Bd., *Facility Search
Engine* <<http://bit.ly/3419RbN>> [as of Oct. 23, 2023].) Schnitzer’s facility exceeds California’s
28 high priority enforcement threshold because it emits high levels of cancer-causing pollutants in
the Bay Area air district. (See *Ibid.*) (Schnitzer Steel Products Company facility details).

1 **B. Toxic metal shredder pollution can cause serious illness**

2 As metal shredder pollution moves from the environment into people’s bodies through
3 ingestion of contaminated soil or inhalation of contaminated shredder dust,² it can cause both
4 acute and long-lasting harm. Metal shredding facilities contaminate communities with cadmium,
5 copper, and zinc, each of which threatens human and environmental health. Cadmium irritates the
6 lungs, damages the kidneys, and “is known to cause cancer, developmental and reproductive
7 harm.”³ Because cadmium binds to organic matter, it can move from contaminated soil into plants,
8 tainting food. (See 2021 DTSC Evaluation, *supra*, at 62.) Copper exposure at high levels can
9 cause kidney damage, liver damage, and death. (*Id.* at 60.) Zinc, too, threatens human health: it
10 can cause anemia and changes in cholesterol levels. (*Ibid.*) In large amounts, it can also cause
11 infertility in animals.⁴

12 Metal shredders also release lead—a pernicious pollutant for which there is no known
13 safe level of exposure.⁵ People can inhale airborne lead particles. Lead particles also end up in
14 soil where children play, and then clings to fingers, toys, or other objects children put in their
15 mouths.⁶ When a person is exposed to lead, she absorbs it in her bones, blood, and tissues. (2021
16 DTSC Evaluation, *supra*, at 60.) In adults, lead exposure can cause abdominal pain, weakness,
17 and memory loss. (*Ibid.*) Prolonged lead exposure can cause changes in personality and can
18 increase risks of heart disease, kidney disease, and infertility. (*Ibid.*) A pregnant person will pass
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21 ² Gerdau, *Material Safety Data Sheet: ASR 1 [Auto Shredder Residue]* (Feb. 15, 2012)
22 <<https://bit.ly/3mJtelg>> (as of Nov. 1, 2023) (discussing possible pathways for metal shredder
residue to make its way into the body).

23 ³ Cal. Office of Environmental Health Hazard Assessment, *Cadmium Fact Sheet* (Jan. 16,
2014) <<https://bit.ly/3SinClr>> (as of Oct. 11, 2023).

24 ⁴ Agency for Toxic Substances & Disease Registry, *ToxFAQs: Zinc 1* (Aug. 2005),
<<https://bit.ly/34qJQb2>> (as of Oct. 31, 2023).

25 ⁵ World Health Org., *Lead Poisoning* (Aug. 11, 2023) <<https://bit.ly/3tNG6A0>> (as of Oct.
26 31, 2023).

27 ⁶ Centers for Disease Control, *Lead in Soil* <<https://bit.ly/46Dq9L8>> (as of Oct. 11, 2023);
28 Washington State Department of Health, *Common Sources of Lead Poisoning*,
<<https://bit.ly/3tIZgH8>> (as of Nov. 1, 2023).

1 lead through the placenta to the fetus, which can cause miscarriage and stillbirth. (*Ibid.*) Lead
2 poisoning is particularly dangerous for infants and children, whose small bodies absorb more
3 lead in proportion to their size. (See *ibid.*) Childhood lead exposure can cause reduced cognitive
4 abilities, behavioral issues, anemia, and even death. (*Ibid.*) Lead does not break down over time,
5 so lead released today can endanger people for years or decades to come.⁷

6 **C. Metal shredders disproportionately harm environmental justice communities**

7 Pollution from metal shredders disproportionately endangers low-income Black and
8 Latine communities. California strives for environmental justice, defined as “the deterrence,
9 reduction, and elimination of pollution burdens for populations and communities experiencing
10 the adverse effects of that pollution,” and the elimination of disproportionate pollution effects on
11 burdened communities. (Gov. Code § 65040.12(e)(2)(B).) Despite this goal, people who are
12 Black, Latine, or living at or near the poverty line are more likely to live and work close to
13 dangerous polluting facilities than white or more affluent people.⁸

14 The burdens environmental justice communities face accumulate and magnify each other.
15 People in these communities live closest to pollution sources, exposing them to higher
16 concentrations of pollution than other communities.⁹ Living near industrial operations also leaves
17 environmental justice communities most at risk from industrial upsets and disasters, such as
18 fires.¹⁰ Despite these heightened risks and exposures, regulators are less likely to enforce
19 environmental laws in communities of color.¹¹ This enforcement neglect is particularly harmful

21 ⁷ EPA, *Children’s Health Month: Preventing Lead Exposure for Children Before it Occurs*
22 (Oct. 18, 2021) <<https://bit.ly/46HRFqZ>> (as of Oct. 31, 2023).

23 ⁸ See generally Environmental Justice Health Alliance et al., *Life at the Fenceline:*
24 *Understanding Cumulative Health Hazards in Environmental Justice Communities* (Sept. 2018)
<<https://bit.ly/3Men4ZK>> (as of Oct. 31, 2023).

25 ⁹ *Ibid.*

26 ¹⁰ *Id.* at 9-11.

27 ¹¹ See Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in*
28 *Environmental Law* (Sept. 1992) 15 Nat’l L.J. S2 at 1 <<https://www.ejnet.org/ej/nlj.pdf>> (as of
Oct. 31, 2023); see also NRDC et al., *Watered Down Justice 4* (Sept. 2019)
<<https://on.nrdc.org/37pRrs9>> (as of Oct. 31, 2023).

1 because people living in overburdened environmental justice communities are less able to afford
2 to protect themselves from pollution (for example, by moving away from the facility or buying a
3 water filter).¹² They also have less access to affordable health care, leaving them more
4 susceptible to the effects of pollution.¹³ Due to these accumulating burdens, people in
5 environmental justice communities face heightened risks of illnesses such as asthma, stroke, and
6 heart disease, and premature death.¹⁴

7 For decades, Californians living in environmental justice communities near metal
8 shredding facilities have borne the disproportionate burden of DTSC’s inaction. DTSC knows
9 this. DTSC has concluded that the location of metal shredding facilities in environmental justice
10 communities “demonstrates that any release of metal shredder wastes or metal shredder waste
11 constituents would impact populations that are already burdened by other environmental
12 factors,” and that such communities “may exhibit greater sensitivity” to pollution from metal
13 shredder facilities. (See 2021 DTSC Evaluation, *supra*, at 73.) In its report prepared pursuant to
14 the HWCL, DTSC also found that three of the six metal shredding facilities evaluated are “not
15 only located in disadvantaged communities . . . but are [located] among those [communities]
16 most burdened by pollution” in California.¹⁵ (*Ibid.*) The remaining facilities are all located in
17 communities that are more polluted than most other communities of the state. (See *id.* at 74 tbl.
18 14.)

19 These communities, in fact, face additional pollution burdens from metal shredding
20 facilities beyond the pollution from underregulated shredder waste discussed *supra* pages 6-7.

22 ¹² Cal. Environmental Justice Alliance, *CalEnviroscreen: A Critical Tool for Achieving*
23 *Environmental Justice in California* 5 (2018) <<https://bit.ly/3amjgDF>> (as of Oct. 31, 2023).
California governments use CalEnviroscreen to quantify community vulnerability to pollution.

24 ¹³ *Ibid.*

25 ¹⁴ See e.g., C. Arden Pope, et. al., *Fine-Particulate Air Pollution and Life Expectancy in the*
26 *United States*, (Jan. 22, 2009) *New Eng. J. of Med.* 360, 376-386, DOI:
10.1056/NEJMsa0805646.

27 ¹⁵ The six metal shredders DTSC evaluated under SB 1249 are located in Oakland, Redwood
28 City, Bakersfield, Terminal Island (in the Port of Los Angeles), Anaheim, and Colton. (2021
DTSC Evaluation, *supra*, at 14.)

1 Metal shredding facilities also emit fine and coarse particulate matter (PM_{2.5} and PM₁₀,
2 respectively) into the air. (2021 DTSC Evaluation, *supra*, at 23.) Particulate matter emitted from
3 metal shredders can cause grave health problems. PM_{2.5} damages the respiratory and
4 cardiovascular system, which can have both immediate and long-term health consequences,
5 especially for children and older adults with existing lung or heart conditions.¹⁶ PM_{2.5} exposure
6 alone contributes to 5,400 premature deaths in California every year.¹⁷ And California’s network
7 of air monitors likely underestimates the amount of PM_{2.5} and other air pollutants released from
8 metal shredder facilities.¹⁸

9 Environmental justice communities near metal shredding facilities also face the risk of
10 catastrophic fires, which not only degrade air quality, but also put lives and property in
11 immediate peril. Metal shredder waste is combustible in large quantities,¹⁹ and DTSC has
12 acknowledged fires stemming from metal shredder waste in treatment equipment or stored in
13 piles are reasonably foreseeable. (2021 DTSC Evaluation, *supra*, at 67-68.) Yet DTSC allows
14 metal shredder facilities to leave metal shredder aggregate in enormous, exposed piles with
15 negligible fire controls. (See 2021 DTSC Evaluation, *supra*, at 42.) Metal shredding facilities
16 have thus become disasters waiting to happen. And numerous disasters *have* happened. DTSC
17 found that four of the six metal shredding facilities targeted by SB 1249 have had fires on their
18 properties, with a total of seven known fires between 2007 and 2020. (See 2021 DTSC
19 Evaluation, *supra*, at 46.) Metal shredder facility fires are severe enough that local district
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23 ¹⁶ Cal. Air Res. Bd., *Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀)*
24 <<http://bit.ly/3oWHWGx>> (as of Oct. 31, 2023).

25 ¹⁷ *Ibid.* In 2021, the six shredders emitted 5.4 tons of PM_{2.5} pollution. See Cal. Air Res. Bd.,
26 Facility Search Engine <<http://bit.ly/34I9RbN>> (as of Oct. 11, 2023).

27 ¹⁸ Tim McLaughlin et al., *Special Report: U.S. Air Monitors Routinely Miss Pollution -*
Even Refinery Explosions, Reuters (Dec. 1, 2020) <<http://reut.rs/2WiE4ns>> (as of Nov. 1, 2023).

28 ¹⁹ Gerda, *supra* note 2, at 1.

1 attorneys have brought enforcement actions or begun investigations related to them.²⁰ And only a
2 few months ago, a pile of scrap metal at Schnitzer’s facility in West Oakland ignited, sending
3 thick black plumes of smoke into the air as the fire burned for four hours. The fire took more
4 than 20 firefighters, three fire engines, and two fireboats to tame.²¹ It prompted the Bay Area Air
5 Quality Management District to issue an air quality advisory for the East Bay, with smoke being
6 detected as far east as Livermore and as far south as San Jose.²²



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18 Figure 1: August 9, 2023 fire at Schnitzer Steel²³

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22 ²⁰ 2021 DTSC Evaluation, *supra*, at 46-47; Megan Fan Munce, *Alameda County DA*
23 *investigating fire at Oakland metal recycling plant*, S.F. Chronicle (Aug. 22, 2023)
<<https://bit.ly/3Q8kJkb>> (as of Nov. 1, 2023).

24 ²¹ Lakshmi Sarah and Attila Pelit, *Alameda County DA’s Office Wants Your Help*
25 *Investigating Schnitzer Steel Fire*, KQED (Aug. 22, 2023) <<https://bit.ly/3QcY0DN>> (as of Nov.
1, 2023).

26 ²² Andrea Nakano, *Schnitzer Steel has history of fires at Oakland scrap yard; Paid to settle*
27 *environmental claims*, CBS Bay Area (Aug. 10, 2023) <<https://bit.ly/3QvALWX>> (as of Nov. 1,
2023).

28 ²³ Photo taken by drone operated by San Francisco Baykeeper investigator.

1 Similar fires burned at Schnitzer’s facility in 2020,²⁴ 2018,²⁵ 2010,²⁶ and 2009.²⁷ Unfortunately,
2 the fear, uncertainty, and health impacts of industrial disasters like these fires will remain a
3 reality for environmental justice communities near these metal shredder facilities until DTSC
4 takes measures it has previously identified as necessary for compliance with the HWCL. These
5 measures include requiring metal shredders to have a permit for generating metal shredder
6 aggregate and to utilize more robust practices for managing waste piles. (See 2021 DTSC
7 Evaluation, *supra*, at 42, 65; *see also* Cal. Code Regs., tit. 22, § 66264.251 (design and operating
8 requirements for hazardous waste piles).)

9 **II. DTSC’s interpretation of SB 1249 perpetuates the exact harms the California**
10 **Legislature sought to remedy**

11 The judiciary’s role in statutory interpretation is to effectuate the Legislature’s intent. The
12 first step of statutory interpretation is examining the statute’s plain language. If that language is
13 clear, courts follow the plain meaning “unless a literal interpretation would result in absurd
14 consequences the Legislature did not intend.” (*Sierra Club v. Superior Court* (2013) 57 Cal. 4th
15 157, 165-66; *accord Cahill Construction Co. v. Superior Court* (2021) 66 Cal. App. 5th 777,
16 785.) If the statutory language has more than one reasonable interpretation, the court may
17 consider the statute’s purpose, legislative history, and public policy, and may examine wider
18 historical circumstances of a law’s enactment to ascertain legislative intent. (*Cahill Construction*,
19 *supra*, at p. 785.) Above all, the court’s “fundamental task . . . is to determine the Legislature’s
20 intent so as to effectuate the law’s purpose.” (*Sierra Club, supra*, at p. 165.)

22 ²⁴ Lauren Hernández, *Blaze at metals recycling facility under control, Oakland fire says*, S.F.
23 Chronicle (June 17, 2020) <<https://bit.ly/3FwzPLA>> (as of Nov. 1, 2023).

24 ²⁵ The facility had at least four fires in 2018 alone. Amended Petn. For Writ of Mandate ¶ 53
25 (citing Oakland Fire Department Incident Report No. 2018-0008289 (Jan. 31, 2018); Oakland
26 Fire Department Incident Report No. 2018-0018039 (March 10, 2018); Oakland Fire Department
27 Incident Report No. 2018-0018338 (March 11, 2018); Oakland Fire Department Incident Report
28 No. 2018-0039820 (June 2, 2018)).

²⁶ Andrea Nakano, *supra* note 22.

²⁷ *Ibid.*

1 Under SB 1249, DTSC “must promptly study the hazardous waste problems associated
2 with metal shredding, so that adequate information informs its regulatory actions, and then must
3 bring the activities of the metal shredders into full compliance with the HWCL.” (*Athletics*
4 *Investment Group LLC v. DTSC* (2022) 83 Cal.App.5th 953, 973.) Specifically, SB 1249
5 required DTSC to conduct an evaluation and then either issue alternative regulations or apply the
6 existing provisions of the HWCL to metal shredders, and to do so by January 1, 2018. (SB 1249
7 § 3; Health & Saf. Code § 25150.82, subs. (a), (c), (k).) DTSC declined to issue alternative
8 regulations, so the full force of the HWCL applies to metal shredders.

9 Under the HWCL and its implementing regulations, a facility that “accept[s], treat[s],
10 store[s], or dispose[s]” of hazardous waste requires a “hazardous waste facilities permit or other
11 grant of authorization” from DTSC to conduct these activities. (Health & Saf. Code § 25201,
12 subd. (a); Cal. Code Regs., tit 22, § 66260.10.) DTSC determined that metal shredder aggregate
13 and metal shredder residue “must both be managed as hazardous waste, and because metal
14 shredding facilities are engaged in treatment activities on the aggregate and residue, a form of
15 authorization is required for these hazardous waste treatment activities.” (2021 DTSC
16 Evaluation, *supra*, at 84.)

17 But DTSC now argues for an absurd interpretation of SB 1249 that the Court should
18 reject. DTSC contends that there is no statutory basis nor deadline for requiring Schnitzer to seek
19 a hazardous waste facility permit under the HWCL. (DTSC Demurrer to First Amended Petn.
20 For Writ of Mandate at 19.) DTSC fails, however, to explain how, without a permit for *all* of its
21 hazardous waste operations, Schnitzer can be in *full compliance* with the HWCL. DTSC still has
22 not taken—nearly six years after the 2018 deadline—the “subsequent regulatory action” needed
23 to bring Schnitzer into compliance with the HWCL.

24 The fact that DTSC has regulated *some* of Schnitzer’s hazardous waste practices under
25 the HWCL does not satisfy SB 1249’s requirement for full compliance with the HWCL. DTSC
26 acknowledges Schnitzer’s facility is operating under an interim status authorization that governs
27 only the final treatment and temporary storage of metal shredder residue. (DTSC Demurrer to
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1 First Amended Petn. For Writ of Mandate at 24.) But treated metal shredder residue is only part
2 of Schnitzer’s hazardous waste problem. Before treatment, Schnitzer shreds cars and other large
3 appliances, creating metal shredder aggregate (itself hazardous waste) and then removes usable
4 metals, leaving untreated metal shredder residue (still hazardous waste).²⁸ (*Supra* pages 6-7.)
5 Much of the risk to the community surrounding Schnitzer—including from fires—comes not
6 from the treated waste, but from Schnitzer’s handling of the untreated metal shredder aggregate
7 and residue. (See 2021 DTSC Evaluation, *supra*, at 59, 62-68.) Yet DTSC has not required an
8 HWCL permit or any other authorization from Schnitzer for its management and storage of
9 untreated metal shredder waste.

10 SB 1249 does not allow DTSC’s patchwork approach to regulation under the HWCL.
11 DTSC has identified no law that would permit Schnitzer’s untreated metal shredder waste to
12 remain unregulated under the HWCL. SB 1249 thus required DTSC to act to ensure Schnitzer
13 “compl[ie]d with the HWCL in full.” (*Athletics, supra*, 83 Cal. App. 5th at p. 959.) The Court
14 must ensure that any interpretation of the statute does not undercut this clear legislative directive.
15 DTSC’s position—that half measures constitute full compliance—fails this basic test.

16 DTSC’s reading of SB 1249 also contravenes stated legislative intent. (See SB 1249 § 1,
17 subd. (f) (stating, in statutory preamble, the Legislature’s intent).) The Legislature passed
18 SB 1249 to address urgent environmental and public health threats from metal shredding
19 facilities in the face of decades of under-regulation and delay by DTSC. (See 2021 DTSC
20 Evaluation, *supra*, at 10-11.) The statute’s author emphasized metal shredding facilities’ “risk to
21 public health and the environment,” the contamination of communities near metal shredding
22 facilities, and repeated fires. (Sen. Comm. on Environmental Quality, April 30, 2014 Analysis of
23 SB 1249 (2013–2014 Reg. Sess.), p. 3.) The author stated that, in light of these health and
24 environmental hazards, “these operations are not adequately regulated.” (*Ibid.*) Through
25

26
27 ²⁸ Even after chemical treatment, metal shredder residue can still exceed regulatory
28 thresholds for both total and soluble metals and be considered hazardous. (*Supra* page 7.)

1 SB 1249, the Legislature intended that metal shredding facilities be “thoroughly evaluated and
2 regulated to ensure adequate protection of human health and the environment.” (SB 1249 § 1,
3 subd. (f).)

4 Yet DTSC has only finished the first step of the job the Legislature gave it. After years of
5 study pursuant to SB 1249, in 2021, DTSC finally finished its “detailed analysis of metal-
6 shredding facilities’ hazardous waste management activities.” (*Athletics, supra*, 83 Cal. App. 5th
7 at p. 972.) And DTSC found current regulations are not enough. In DTSC’s own words:
8 shredders are “the point of generation of hazardous waste” and therefore “various downstream
9 activities performed at the facilities would be subject to the Hazardous Waste Control Law.”
10 (2021 DTSC Evaluation, *supra*, at 1.) Applying the HWCL requires Schnitzer to obtain a permit
11 to generate and manage metal shredder waste. (See 2021 DTSC Evaluation, *supra*, at 84-85.)

12 Legislative history underscores the urgency behind SB 1249 and the Legislature’s
13 frustration with DTSC’s decades-long failure to properly regulate metal shredder facilities.
14 DTSC’s interpretation is more of the same. It would allow the agency to avoid meaningful
15 regulation of metal shredding facilities by pointing to measures that apply only to certain
16 junctures of the metal shredding process. DTSC’s failure to ensure that noxious pollution does
17 not escape from these facilities perpetuates the precise harms to environmental justice
18 communities, public health, and the environment that the Legislature sought to remedy. The
19 Court should reject any interpretation—like DTSC’s—that leads to such an absurd result.


20 21 **CONCLUSION**

22 Amici respectfully request that the Court deny the demurrers. Amici further support the
23 relief Petitioner seeks in this case: an order compelling DTSC to complete the regulatory actions
24 it has determined were required to bring activities of metal shredders into full compliance with
25 the HWCL, including requiring Schnitzer to obtain authorization under the HWCL to generate
26 and manage untreated metal shredder waste. Such a ruling would help realize the Legislature’s
27 vision of meaningful regulation of metal shredders across California.

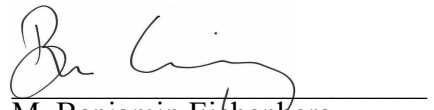
1 Dated: November 3, 2023

Respectfully submitted,

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