

THE FLANIGAN FIRM



April 15, 2024

The Honorable Mia Bonta
California State Assembly
1021 O Street, Suite 5620
Sacramento, CA 95814

Re: AB 2851, Bonta – **Oppose Unless Amended**

Dear Assembly Member Bonta:

This letter is submitted on behalf of our client, The West Coast Chapter of the Institute of Scrap Recycling Industries, Inc. (“ISRI”), in connection with AB 2851 that would require the establishment of fence line monitoring requirements for metal shredding facilities. Our earlier letter to you dated April 1, 2024 expressed a number of concerns with the bill and ISRI’s opposition to the bill unless amended. Recent amendments to the bill have resolved certain of the concerns raised in our prior correspondence, and we are hopeful that further amendments will be made to address our remaining concerns.

We wish to underscore that ISRI members that operate metal shredding facilities are not opposed to conducting fence line monitoring for potential air pollutants and do not dispute the right of neighboring communities to information indicating actual human health threats or exceedance of a promulgated air quality standards obtained through these monitoring programs. But it is equally important that (i) these programs be overseen by agencies with appropriate technical expertise and experience; (ii) the information be collected according to accepted scientific protocols and methodologies; and (iii) the monitoring results be accurately interpreted according to officially promulgated ambient air quality standards and accepted thresholds pertaining to human health risk. Community notifications made on the basis of speculative, inaccurate, incomplete or misinterpreted information do not serve the public interest.

Metal shredding facilities serve an essential function in society and are subject to numerous rules and regulations, and permitting requirements, of local air pollution control and air quality management districts and many other regulatory agencies, all of which are designed to assure that these facilities do not adversely affect the communities where they operate.

We believe that appropriate monitoring will demonstrate that emissions associated with metal shredding facilities do not pose a significant threat to human health or the environment. The results from properly designed and administered programs may also be useful to air districts in fulfilling their obligations under current law to evaluate health risks associated with existing industrial facilities generally.

Further, the health and safety of the hundreds of employees who work in these facilities is monitored on a regular basis in accordance with OSHA requirements. To the best of our knowledge, there is no history of illness or other adverse effects resulting from this occupational exposure. Many of these employees have worked at the facilities for decades.

It has also been suggested that fence line monitoring will help to prevent fires at metal shredding facilities and that fire prevention is one of the justifications for this bill. The notion that fence line monitoring will prevent fires at metal shredding facilities is simply incorrect and unsupported by any empirical data. The metal shredding industry works extremely hard to prevent fires at its facilities, and each facility has developed and implemented comprehensive fire prevention, detection, and response programs. But the potential causes of fire are wholly unrelated to particulate emissions from metal shredding operations, and it is important that the Legislature's understanding and expectations relating to AB 2851 are accurate.

The following issues still need to be addressed before ISRI can remove its opposition to AB 2851:

- The bill, as amended, still inappropriately places the primary responsibility for development of fence line monitoring programs with the Department of Toxic Substances Control, in consultation with local air pollution control and air quality management districts. Subdivision (a) should be amended to reverse this order, placing primary responsibility for development and oversight of these programs with the local air pollution control and air quality management districts, in consultation with DTSC. Air districts have the necessary expertise and experience relating to these monitoring systems, allowing for more timely, accurate and efficient achievement of the bill's objectives, which should be focused on the potential air quality impacts of metal shredding facilities. These programs can be administered by existing air district staff, eliminating the need to duplicate that same air quality expertise within DTSC.
- To this end, the bill should be placed in the California Clean Air Act, in the section of the Health & Safety Code that sets forth the authority and duties of local air pollution control and air quality management districts.
- Authority for enforcement of the monitoring requirements should also reside with the local air pollution control and air quality management districts, rather than DTSC.
- The constituents for which monitoring is required should be left to the expertise and discretion of local air pollution control and air quality management districts, rather than be specified in the bill. As a general matter, monitoring should be limited to respirable particles (PM10 and smaller) as relevant to evaluation of potential health impacts.
- References to monitoring for Light Fibrous Material (LFM) should be removed from the bill. There are no known monitoring techniques that are applicable to LFM. Ambient air monitoring devices are not capable of monitoring materials that have a particle size exceeding 30 microns (Total Suspended Particulate or TSP). LFM exceeds TSP by orders of magnitude and cannot be collected by any known monitoring device. LFM is

not respirable and does not present a human health risk through the inhalation route of exposure.

- The bill should be amended to require that any fence line monitoring program incorporate specific protocols for ensuring that only emissions attributable to metal shredding facilities are considered for their potential impact on ambient air quality or human health. For example, the fence line monitoring conducted by DTSC at the Oakland facility reports both “background” and “fenceline” measurements, but does not calculate emissions attributable to operations at the Oakland facility itself. *LFM Sampling and Air Monitoring Study, Data Summary* (DTSC, August 2023). Prior air quality studies conducted by the Delta Group at other locations have suffered from the same deficiency, leading DTSC to disregard the results of those studies because they improperly attributed pollution from unrelated sources to metal shredding facilities.
- The bill should be amended to clarify the specific criteria that would be used to assess the significance of the monitoring results from a human health standpoint. Promulgated state and national ambient air quality standards represent the most obvious framework for evaluation of monitoring results, specifically those for PM10, PM2.5 and lead – constituents for which standards have been developed. There are no promulgated ambient air quality standards for zinc, cadmium or nickel, which are specified in the bill.
 - When evaluating monitoring data, it is not appropriate to compare individual results, or even results over a period of a week or month, to ambient air quality standards which are not based on instantaneous concentrations that may be detected in the air. For example, the NAAQS for lead is 0.15 ug/m³ on a rolling 3-month average basis. In its study of emissions from the Oakland facility, DTSC’s August 2023 report does not specify the monitoring frequency except to indicate that samples were collected “approximately once a week”, suggesting that a standard 1-in-6-day schedule was followed. The monitoring was conducted from June 2021 through May 2023, a total of 24 months, which means a total of 121 samples should have been collected. EPA requires a minimum collection rate of 75% of the samples each month, which would mean that at least 3 samples should have been collected and reported valid results in each month. Figure 1 in the DTSC report presents data suggesting that this data completeness criterion was not met during several months.
 - Figure 1 in the DTSC report also inappropriately compares individual test results with the NAAQS. As noted above, the correct comparison is based on the average of three valid monthly averages. There is not sufficient information in the DTSC report to calculate the correct monthly averages and properly compare the values with the NAAQS. It should be noted that in 2016 DTSC conducted ambient air quality monitoring at three metal shredding facilities as part of its industry evaluation under SB 1249 and did not identify any concentrations of lead at levels that posed a threat to human health.

- The bill should be amended to remove references to “potential” adverse impacts. Community notification should be made only if an actual human health threat or exceedance of a promulgated air quality standard has been identified and confirmed to be attributable to emissions from a metal shredding facility.
- The development and implementation of fence line monitoring programs is a cost that will be borne by the metal shredding facilities. The bill should be amended to delete subdivision (e) which would give DTSC the authority to seek reimbursement of its regulatory costs under Health and Safety Code § 25150.84(a). Section 25150.84 relates to fees applicable to oversight of hazardous waste management activities at metal shredding facilities and does not reach ambient air quality monitoring that is the subject of AB 2851. All metal shredding facilities are already permitted by local air pollution control or air quality management districts and pay annual permit fees to the agencies. Any additional regulatory costs associated with implementation of fence line monitoring programs should be recouped through adjustment of annual air quality permit fees.

We appreciate the opportunity to provide these additional comments and would be happy to meet with your staff to discuss these concerns in more detail.

Sincerely,



Ryan Flanigan
Partner, The Flanigan Firm

Cc: The Members and consultants of the Assembly Natural Resources Committee