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**Gavin Newsom**  
Governor

# 5-DAY PUBLIC NOTICE AND COMMENT PERIOD

## REGULATION OF METAL SHREDDER AGGREGATE

Department of Toxic Substances Control Reference Number: R-2021-11E

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control ("DTSC") proposes to adopt emergency regulations to define the term "metal shredder aggregate" in title 22, California Code of Regulations, sections 66260.10 and 66273.9,<sup>1</sup> and to exclude "metal shredder aggregate" from the California definition of scrap metal.

### FINDING OF EMERGENCY

The August 2021 finalization of DTSC's analysis of the metal shredder industry ("Final Report"), along with several recent findings and occurrences, led DTSC to conclude that the current regulatory system has created an unforeseen emergency necessitating immediate action to avoid serious and imminent harm to the public peace, health, safety, and general welfare. The Final Report was prepared after the 2018 publication of an earlier draft report. DTSC's process for finalizing the report involved reviewing and addressing public comments, holding discussions with members of the regulated community and other stakeholders, and evaluating numerous enforcement cases and extensive violations at California metal shredding facilities.

DTSC's Final Report led to several conclusions about the metal shredder industry in California. Based on testing of the nonrecyclable component of metal shredder aggregate conducted at California metal shredding facilities,<sup>2</sup> DTSC has concluded that the metal shredder aggregate which emerges from the shredder (e.g., hammer mill) contains a large volume of non-Resource Conservation and Recovery Act (RCRA) hazardous waste including, but not limited to, fine powders of lead, copper, and zinc. DTSC has found that metal shredding facilities generate and manage a large volume of a mixed wastestream (i.e., metal shredder aggregate) composed of recoverable scrap metal and non-RCRA hazardous waste, which is subject to regulation under the Hazardous Waste Control Law (Health & Saf. Code, §§ 25100, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 22, div. 4.5) (collectively, "HWCL"). The Final Report further concludes that the point of generation of this hazardous waste is at the shredder itself, and that all activity downstream of the hammer mill constitutes hazardous waste management. Further, the Final Report identified numerous incidents at various California metal shredding facilities indicating ongoing significant risks to human health and safety and the environment. These risks include fires and resultant smoke inhalation, explosions, contamination of soil and storm water, and offsite migration and deposition of hazardous waste and/or hazardous waste constituents into heavily trafficked areas.

DTSC has identified a lack of clarity in the existing HWCL pertaining to the regulatory classification of metal shredder aggregate. In order to allow these facilities to continue to operate and contribute to the overall scrap metal recycling industry in California, adoption of an emergency rulemaking is necessary to resolve this lack of clarity in applicable regulations and to provide a pathway for metal shredding to occur in an environmentally- and health-protective manner. Failure to immediately rectify the existing lack of clarity in the regulations will result in continuation of the ongoing environmental and public health impacts. That failure likewise would leave

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

<sup>2</sup> There are nine metal shredding facilities in California. "Metal shredding facility" is defined in Health and Safety Code section 25150.82(b).

metal shredding facilities, which may be able to modify their operations to ensure environmental and health protectiveness, with no legal pathway to continue to operate. DTSC has a statutory obligation under the HWCL to regulate the management of hazardous waste to protect against hazards to the public health and the environment. Immediate adoption of the proposed emergency rulemaking is the only timely option to mitigate the existing environmental and public health impacts associated with metal shredding activities, avoid and prevent future harmful events such as fires, explosions, and the release of hazardous waste (which DTSC's Final Report has determined are a certainty under the current regulatory system and which recent investigations have confirmed are continuing to occur), and provide a pathway for metal shredders to operate in an environmentally- and health-protective manner.

## **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 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 25150.82 provides the State definition of "metal shredding facility."

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

### **Sections Affected**

DTSC proposes to amend California Code of Regulations, title 22, sections 66260.10 and 66273.9.

### **Background and Effect of the Regulatory Action**

#### ***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. 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 intended 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 the 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. Additionally, a comprehensive review of possible regulatory pathways and approaches that could achieve the required level of environmental protection was also undertaken, including but not limited to, assessment of various forms of DTSC authorizations, adoption of federal definitions and regulations, and statutory changes. Due to the complexity of this issue and the potential impact to both the metal shredding industry (*i.e.*, with an excessive and/or reactionary response) and affected communities (*i.e.*, with an insufficient level of protection), this process of further review and analysis was necessary. 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. These conclusions reached following this thorough evaluation process now compel DTSC to promulgate the emergency rulemaking necessary to regulate metal shredding facilities and wastes to protect human health and safety and the environment.

### ***Key Risks Associated with Metal Shredding Facility Activity***

The hazardous waste component of metal shredder aggregate includes, among other constituents, lead, copper, and zinc. The harmful effects of these contaminants on humans, particularly children, and the environment are well-documented, and are summarized in the Final Report. Lead is a well-known neurotoxin with particularly potent effects on fetuses and children. Among other effects, lead can cause demineralization of bones, and in high concentrations may cause abdominal pain, fatigue, memory loss, anemia, kidney, and brain damage. Copper poisoning can cause hepatic and renal damage and even death. Copper binds to particles suspended in water, leading to persistent soil and groundwater contamination, and adversely affects aquatic species survival, growth, reproduction, blood chemistry, and brain function. Zinc, a strong aquatic pollutant which is highly toxic to fish, can in humans cause stomach cramps, anemia, aberrant changes in cholesterol levels, and breathing problems that mimic acute respiratory distress syndrome.

Under Health and Safety Code section 58009, DTSC has the authority to initiate and enforce corrective action measures requiring hazardous waste generators, transporters, and disposal facilities to take actions to protect and preserve public health, safety, and the environment. DTSC has initiated numerous corrective actions and enforcement measures against metal shredding facilities in California over decades to address illegal releases of hazardous waste, inadequate containment, failure to prevent fires, and recordkeeping violations, among other concerns. The most recent such corrective action was initiated by DTSC in September 2021 against SA Terminal Island for illegal disposal of hazardous waste after inspections revealed hazardous metal shredder wastes offsite on the pavement, in pavement cracks, and inside and over storm drains. Other regulatory agencies, such as local air and water quality districts, Certified Unified Program Agencies, and U.S. EPA have investigated metal shredding facilities and also found violations of laws they administer requiring corrective action, fines, and orders for compliance. Following these violations and enforcement orders, the facilities were mandated to install equipment and change operating procedures to prevent reoccurrences. Despite best efforts by DTSC and other regulatory agencies, evidence compiled by DTSC demonstrates that such changes are insufficient to protect human health and safety and the environment from the ongoing offsite releases of hazardous waste into the environment and into communities surrounding these facilities.

Despite the metal shredding industry's investment in capital improvements over a 35-plus year period, resulting in less material being stored onsite and implementation of more safety and environmental controls, DTSC continues to identify violations of the HWCL. For example, in February 2021, a \$4.1 million enforcement settlement was reached with Schnitzer Steel, requiring the facility to upgrade its metal shredding operations to protect residents and the environment from offsite releases of hazardous wastes. DTSC inspectors visited the facility 30 times during 2021 to assess offsite releases of hazardous waste and hazardous waste constituents, in addition to other potential violations. DTSC inspectors identified and documented light fibrous material ("LFM"), a waste product and component of the metal shredding process, offsite during each of those 30 inspections. From January 8 through August 27, 2021, that waste met the criteria for hazardous waste in 100% of cases where the LFM was sampled and analyzed. DTSC inspectors also visited Sims Metal Management in Redwood City, California, on April 30, June 1, June 23, and August 10, 2021, and similarly found offsite releases of LFM into the surrounding community during each inspection. DTSC collected samples of LFM

during each inspection of Sims Metal Management and each sample qualified as hazardous waste. DTSC has issued two summaries of violations to Sims in 2021, the first in April and the second in August.

Of the six<sup>3</sup> California metal shredding facilities analyzed in DTSC's Final Report, Schnitzer and Sims are responsible for over 50% of all metal shredder aggregate generated, and nearly 60% of all metal shredder waste landfilled in California. Schnitzer Steel is 0.35 miles from a hospital, 0.12 miles from a school, 0.39 miles from a day care center, and 0.23 miles from residential homes. Sims Metal Management is located directly adjacent to commercial salt evaporation ponds, Redwood Creek, and the Bair Island State Marine Park and Ecological Reserve. There are residential homes 0.73 miles from Sims, and hospitals, schools, and day care centers less than two miles from the facility.

Ongoing risks to human health and safety and the environment include fires and resultant smoke inhalation, explosions, contamination of soil and storm water, and offsite migration and deposition of hazardous waste and/or hazardous waste constituents into heavily trafficked areas. Compounding the severity of these ongoing risks, a number of the metal shredding facilities are located in proximity to residential areas, hospitals, schools, and daycare centers, increasing the probability that the harmful effects of these risks will be borne by children, pregnant mothers, the elderly, and those already suffering with pre-existing health conditions. These same facilities also are located in environmental justice communities, which have historically borne an unacceptably high pollution burden relative to others in the State. Taken on their own, and especially in the context of the Final Report, the results of DTSC's efforts to verify industry's claims of facility improvements negating the need for regulation under the HWCL are clear. DTSC now has determined that the steps taken by industry are inadequate and the current regulatory language does not provide adequate clarity to allow DTSC to exercise its regulatory authority to protect human health and safety and the environment.

### ***Regulatory Status of Metal Shredder Aggregate***

DTSC recently concluded, simultaneous with the publication of the Final Report, that the applicability of the scrap metal definition to metal shredder aggregate has resulted in a situation in which it is unclear how metal shredder aggregate is regulated in California, leading to the environmental and public health impacts described above. DTSC has determined that metal shredder aggregate is a hazardous waste and not a scrap metal, and that metal shredding facilities conduct treatment activities on metal shredder aggregate to reclaim recoverable ferrous and nonferrous metals. DTSC's conclusions regarding the regulatory classification of metal shredder aggregate are a result of evaluating the activities conducted at the facilities, assessing applicable federal and California laws and regulations, and considering the merits of industry's claims regarding the classification of this waste stream in the context of recent, ongoing releases at these facilities despite industry attempts to limit those releases. Under these circumstances, there no longer is ambiguity about the insufficient clarity of the current regulations under existing law and factual circumstances.

### ***Ongoing Litigation***

On November 26, 2019, a civil complaint was filed in Sacramento Superior Court ("ISRI Matter") by a trade group (the Institute of Scrap Recycling Industries ("ISRI")) representing metal recyclers and several companies operating metal shredding facilities in the State. The complaint seeks a judicial declaration that the operation of a metal shredder (e.g., a hammer mill or other shredding device) does not require authorization from DTSC, and that processing of aggregate to remove ferrous and non-ferrous metal does not constitute hazardous waste treatment. Additionally, the complaint also seeks a judicial declaration that several materials of the metal shredding process, including but not limited to metal shredder aggregate, are scrap metal exempt from regulation as hazardous waste. Because the plaintiffs include many of the larger metal shredding facilities in the State as well as the metal recycling trade organization (*i.e.*, ISRI), the pending ISRI Matter demonstrates an urgent need for clarification of the appropriate regulation of metal shredding facilities and metal shredder aggregate to address the aforementioned environmental and public health impacts, and further underscores the lack of clarity in the regulation of certain activities at metal shredding facilities.

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<sup>3</sup> There are a total of nine metal shredding facilities in California. The Final Report only analyzed those which possess a nonhazardous waste classification allowing them to dispose of their metal shredder wastes as nonhazardous in California.

## **Benefits of the Proposed Regulatory Action**

The proposed emergency rulemaking will ensure protection of public health and the environment by addressing the lack of clarity among the regulated community under the existing State regulations as they apply to metal shredding facilities and metal shredder aggregate. Previous safety and environmental incidents have been addressed by DTSC via facility-specific enforcement actions; however, in light of DTSC's new understanding of the inability of facility improvements to adequately mitigate environmental and public health concerns, these piecemeal, reactive actions have been shown to be insufficient in addressing the newly-recognized, systemic problems associated with metal shredding facilities and metal shredder aggregate. The proposed regulatory amendments will clearly define metal shredder aggregate and clarify that metal shredder aggregate is not a scrap metal and so cannot be made exempt from regulation under the HWCL. This action will provide clarity to both the regulated community and regulatory agencies as to the appropriate management of metal shredder aggregate, encourage metal shredding facilities to seek authorization so that they may continue to operate in an environmentally- and health-protective manner, and prevent ongoing releases of hazardous wastes to protect public health and safety and the environment. If the proposed emergency rulemaking is approved, metal shredder aggregate will be unambiguously excluded from the definition of scrap metal. The regulations relevant to metal shredding facilities will be clear that the activities conducted to recover ferrous and non-ferrous metals from metal shredder aggregate represent hazardous waste treatment activity requiring DTSC authorization.

Following the approval of the proposed emergency rulemaking, under the HWCL, metal shredding facilities will be required to obtain interim status authorization to continue operating through the permit application process. This authorization includes regulatory requirements intended to ensure that facilities operate in a manner that is protective of human health and the environment during the permit application review. If issued, permits will then include specific requirements based on the hazardous waste management activities for each individual facility. In addition to the proactive environmental- and health-protective measures that are required by a permit, the permitted metal shredding facilities also will be required to have financial assurance. This assurance, which may take the form of bonds, letters of credit, insurance, corporate guarantees, or alternative financial mechanisms, will pay for facility closure, post closure (maintenance and monitoring), third party liability, and corrective action (clean-ups) at the facilities. This additional benefit will ensure that any future incidents of environmental harm or impact will be resolved without financial burdens on California communities and/or taxpayers.

## **Related State Laws and Regulations**

### ***Definition of "Scrap Metal" in sections 66260.10 and 66273.9***

Existing law in sections 66260.10 and 66273.9, provides the current State definition of "scrap metal." (The "scrap metal" definition found in section 66260.10 is repeated verbatim in section 66273.9. All subsequent analysis and description of the current and proposed "scrap metal" definition identified in section 66260.10 are equivalently applicable to section 66273.9.)

Existing law in sections 66260.10 and 66273.9, provides exclusions to the State definition of "scrap metal" in subsection (b). Addition of the newly defined "metal shredder aggregate" as the eighth exclusion in this subsection is necessary to clarify that metal shredder aggregate is not scrap metal and is not included in the definition of "scrap metal."

### ***Definition of "Auto Shredder Waste" in section 66268.29(b)***

Existing law in section 66268.29(b) provides the current State definition of "auto shredder waste" for the purposes of article 2, chapter 18. Auto shredder waste is defined as "the hazardous waste generated from the shredding of metallic materials including, but not limited to automobiles and appliances." This definition represents the nonrecyclable, hazardous waste component of metal shredder aggregate. This existing regulation is being referenced in the new definition of metal shredder aggregate.

### ***Definition of "Metal Shredding Facility" in Health and Safety Code section 25150.82***

Existing law in Health and Safety Code section 25150.82 (b), provides the current State definition of "metal shredding facility," which "means an operation that uses a shredding technique to process end-of-life vehicles,

appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. "Metal shredding facility" does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations." This definition is being preserved and utilized in the proposed definition of metal shredder aggregate.

### **Comparable Federal Regulation or Statute**

In 1985, U.S. EPA published a final rule that clarified the extent of U.S. EPA's jurisdiction over hazardous waste recycling activities and to set forth a regulatory regime for recycling activities subject to U.S. EPA's jurisdiction. This clarification resulted in changes to the Definition of Solid Waste to exclude certain hazardous secondary materials from regulation under RCRA. In its revision, U.S. EPA added a new definition of scrap metal, indicating the need for scrap metal to be regulated differently within the broader category of solid waste. Scrap metal was, and continues to be, defined as "bits or pieces of metal that are discarded after consumer use or that result from metal processing operations. Examples are scrap automobiles and scrap radiators (commonly referred to as post-consumer scrap) and scrap turnings and scrap fines (commonly referred to as obsolete scrap)." At that time, U.S. EPA first codified the materials which may be considered scrap metal, the types of materials which did not meet that definition, and also first acknowledged the possibility that scrap metal meeting the criteria for classification as a hazardous waste may qualify for certain regulatory exemptions when recycled. U.S. EPA indicated that hazardous scrap metal being recycled may be exempt from federal hazardous waste regulations, in contrast to other metal-containing wastes which were not exempt. This recycling exemption was subject to further study by U.S. EPA.

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

U.S. EPA does not regulate metal shredder aggregate as a hazardous waste because the nonrecyclable component of the mixed wastestream does not exhibit a characteristic of a hazardous waste under the federal hazardous waste criteria. However, under its own regulations and interpretive letters, U.S. EPA does not consider metal shredder aggregate to be a scrap metal. In a 2017 response to a question regarding the regulatory status of scrap tantalum anodes, wire, pellets, pins, and powders, U.S. EPA excluded non-agglomerated tantalum powders from the definition of scrap metal because "powder, conversely, does not have a physical form similar to scrap metal and can be dispersed into the environment during subsequent handling [... and] if the tantalum powder exhibits a hazardous waste characteristic [...] it would be considered a hazardous waste even when sent for recycling." Similar to the tantalum powders described, metal shredder aggregate does not have a physical form similar to scrap metal and can be dispersed into the environment. Further, in a 1992 letter regarding the regulatory status of printed circuit boards, U.S. EPA stated that "spent circuit board processing [...] may generate materials in a form which allows the dispersion of hazardous constituents during subsequent handling. Therefore, some of these materials may not meet the definition of, nor the intent of, the scrap metal definition (***analogous to the fluff generated from the shredding of scrap automobiles*** [emphasis added]). Thus, at this point, the processed material may no longer be exempt from regulation as scrap metal, and could be subject to regulation as a spent material [...], a by-product [...], or a sludge." The processing (*i.e.*, shredding) stage represented by the metal shredding hammer mill similarly generates a material, namely metal shredder aggregate, which allows for dispersion of hazardous constituents during subsequent handling and processing to retrieve ferrous and non-ferrous scrap metal.

California is authorized under RCRA to promulgate hazardous waste regulations which are more stringent or broader in scope than federal hazardous waste laws. Based on this authority, as well as the existing federal regulatory interpretation described above, the proposed regulatory revision will not conflict with, or modify, any federal law.

## **DOCUMENTS RELIED ON**

This regulation proposal relied upon the following documents:

1. DTSC Summary of Violations to SA Terminal Island, September 30, 2021.
2. DTSC Summary of Violations to Sims Metal Management, August 19, 2021.
3. Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Final Report), August 9, 2021.
4. DTSC Summary of Violations to Sims Metal Management, April 30, 2021.
5. Complaint for Declaratory and Injunctive Relief, *West Coast Chapter, Institute of Scrap Recycling Industries Inc vs. California Department of Toxic Substances Control* (Super. Ct. Sacramento County, 2019, No. 34-2019-00269900-CU-MC-GDS).
6. Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes (Draft Report), January 25, 2018.
7. RCRA Online # 14888, Letter to Mr. Chris Bryant, Barnes Johnson, Office of Resource Conservation and Recovery, February 24, 2017.
8. Land Disposal Restrictions – Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, 62 Fed. Reg. 25998 (May 12, 1997).
9. RCRA Online # 11689, Regulatory Status of Printed Circuit Boards, Sylvia K. Lowrance, Office of Solid Waste and Emergency Response, August 26, 1992.
10. Hazardous Waste Management System; Definition of Solid Waste, 50 Fed. Reg. 614 (Jan. 4, 1985).

## **OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE**

### **California Environmental Quality Act (CEQA) Compliance**

Pursuant to 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 a significant environmental effect. 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, peer review is not required because the proposed regulations do not establish a regulatory level, standard, or other requirement subject to scientific peer review.

### **LOCAL MANDATE**

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

## **FISCAL IMPACT STATEMENT**

### **Local Agencies and School Districts**

DTSC has made a determination that adoption of these regulations will not impose any new costs to any local agency or school district subject to State reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code, or other nondiscretionary costs or savings to local agencies or school districts.

### **Costs or Savings to Any State Agency**

DTSC has made a determination that the proposed regulations will have no impact on State revenue or costs based on the assumption that implementing this definition of “metal shredder aggregate” and clarifying revision to the State definition of scrap metal will simply serve as part of the State’s normal workload. The proposed regulations on their own do not have a fiscal impact to DTSC; however, any subsequent regulatory action by DTSC to require metal shredding facilities to seek DTSC authorization to operate may result in State workload increases related to metal shredding facility regulation. These State costs are estimated to amount to approximately \$ 4 million per year.

### **Federal Funding to the State**

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

## **COMMENT PERIOD**

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 October 14, 2021. Comments on a proposed emergency rulemaking action must be submitted in writing directly to OAL within five calendar days from when 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:

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

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

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

## REGULATORY TEXT

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

### Amend § 66260.10 Definitions.

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

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"Mercury-containing motor vehicle light switch" means any light switch found in the hood or in the trunk lid of a motor vehicle, if the light switch contains mercury.

"Metal shredder aggregate" means the mixture generated by metal shredding facilities (as defined in Health and Safety Code section 25150.82(b)) that comprises recoverable ferrous and non-ferrous metals and other material known as auto shredder waste, as defined in section 66268.29(b) of this division, for purposes of article 2, chapter 18. Auto shredder waste may also be referred to by terms including, but not limited to, the following: metal shredder residue, metal shredder waste, light fibrous material, or fluff.

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

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

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

- (1) manufactured, solid metal objects and products;
- (2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings;
- (3) solid metal residues of metal production; or
- (4) printed circuit boards that are recycled [except for printed circuit boards referenced in subsec. (b)(7) of this section].

(b) "Scrap metal" excludes all of the following:

- (1) lead-acid storage batteries, waste elemental mercury, and water-reactive metals such as sodium, potassium and lithium;
- (2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion;

- (3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department;
- (4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division;
- (5) any metal contaminated with an oil that is a hazardous waste and that is free-flowing;
- (6) sludges, fine powders, semi-solids and liquid solutions that are hazardous wastes; ~~and~~
- (7) any printed circuit board that has been removed from a universal waste electronic device or PV module by a universal waste handler as a result of the handler's conduct of activities authorized by sections 66273.71, 66273.72, and/or 66273.73 of chapter 23 of this division and is subject to management as a hazardous waste pursuant to sections 66273.71, 66273.72 and/or 66273.73-; and
- (8) metal shredder aggregate.

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

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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, 25150.82, 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 § 66273.9 Definitions.**

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

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"Mercury-containing motor vehicle light switch" means any light switch found in the hood or in the trunk lid of a motor vehicle, if the light switch contains mercury.

"Metal shredder aggregate" means the mixture generated by metal shredding facilities (as defined in Health and Safety Code section 25150.82(b)) that comprises recoverable ferrous and non-ferrous metals and other material known as auto shredder waste, as defined in section 66268.29(b) of this division, for purposes of article 2, chapter 18. Auto shredder waste may also be referred to by terms including, but not limited to, the following: metal shredder residue, metal shredder waste, light fibrous material, or fluff.

"Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

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"PV system" see "photovoltaic system."

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

- (1) manufactured, solid metal objects and products;
- (2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings;

(3) solid metal residues of metal production; or

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

(b) "Scrap metal" excludes all of the following:

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

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

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

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

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

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

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

(8) metal shredder aggregate.

"Solar cell" see "photovoltaic cell."

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Note: Authority cited: Sections 25141, 25141.5, 25150, 25214.6, 25150.6, 25201, 25214.9, 25219.1, 25259 and 58012, Health and Safety Code; and Section 42475, Public Resources Code. Reference: Sections 25141, 25141.5, 25150, 25150.82, 25159.5, 25201, 25212, 25214.6, 25214.9, 25219, 25219.1, 25219.2 and 25259, Health and Safety Code; and 40 CFR Sections 261.4, 261.5 and 273.9.