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11 *and Natural Resources Defense Council*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF ALAMEDA

14 THE ATHLETICS INVESTMENT GROUP
15 LLC,

16 Petitioner,

17 v.

18 CALIFORNIA DEPARTMENT OF TOXIC
19 SUBSTANCES CONTROL, a public agency
of the State of California; MEREDITH
20 WILLIAMS, in her official capacity as the
Director of the California Department of
21 Toxic Substances Control,

22 Respondents.

23
24 _____
25 SCHNITZER STEEL INDUSTRIES, INC.,

26 Real Party in Interest
27
28 _____

Case No. RG20069917

ASSIGNED FOR ALL PURPOSES TO
JUDGE PAUL D. HERBERT
DEPARTMENT 20

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

Hearing Date: January 22, 2021

Hearing Time: 9:00 a.m.

Dept.: 20

Judge: Hon. Paul D. Herbert

Action Filed: August 5, 2020

Trial Date: Not yet set

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

APPLICATION TO FILE..... 5

STATEMENT OF INTEREST AS AMICI CURIAE 5

STATEMENT OF LEAVE TO FILE 6

BRIEF OF AMICI CURIAE..... 8

INTRODUCTION..... 8

ARGUMENT 9

 I. Toxic pollution from metal shredding facilities endangers
 people and environments across California 9

 a) Noxious discharge from metal shredding facilities
 pollutes California’s air, water, and soil, and can
 cause serious illness 9

 b) Metal shredders disproportionately harm
 environmental justice communities..... 12

 II. DTSC’s interpretation of SB 1249 perpetuates the exact
 harms the California Legislature sought to remedy 16

CONCLUSION 18

PROOF OF SERVICE 19

SERVICE LIST..... 20

TABLE OF AUTHORITIES

CASES

1
2
3 *Granberry v. Islay Invs.*,
161 Cal. App. 3d 382 (Ct. App. 1984) 16
4 *Jackpot Harvesting Co. v. Superior Ct.*,
26 Cal. App. 5th 125 (Ct. App. 2018) 16
5
6 *Sierra Club v. Superior Ct.*,
57 Cal. 4th 157 (2013) 16

STATUTES AND LEGISLATIVE HISTORY

7
8 Cal. Gov’t Code § 65040 12
9 Senate Bill 1249 17
10 Sen. Comm. on Env’tl Quality, April 29, 2014 Analysis
11 of SB 1249 7 (2013–2014 Reg. Sess.) 17

DTSC SOURCES

12
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14 Facilities and Metal Shredder Wastes (Jan. 2018) 9-12, 14, 15, 17
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16 DTSC, *SB 1249* 16

OTHER GOVERNMENTAL SOURCES

17
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Copper (Sept. 2004) 11
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Zinc (Aug. 2005) 12
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65 Fact Sheet 11
26 Ctrs. for Disease Control & Prevention, *Health Problems Caused*
27 *by Lead* 11
28

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1		
2	Cal. Env't'l Just. All., <i>CalEnviroscreen: A Critical Tool for Achieving Environmental Justice in California</i> (2018).....	13
3	C. Arden Pope, et. al., <i>Fine-Particulate Air Pollution and Life Expectancy in the United States</i> , <i>New England J. of Med.</i>	
4	360 (Jan. 22, 2009).....	13
5	Env't'l Just. Health All. et al., <i>Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities</i> (Sept. 2018).....	12
6		
7	Gayle Windham et al., <i>Autism Spectrum Disorders in Relation to Distribution of Hazardous Air Pollutants in the San Francisco Bay Area</i> , 114 <i>Env't'l Health Perspectives</i> 1438 (Sept. 2006)	11
8		
9	Gerdau, <i>Material Safety Data Sheet: ASR [Auto Fluff]</i>	10, 15
10	Kimberly Veklerov, <i>Fire at Oakland recycling plant sends black plume into sky</i> , <i>S.F. Chron.</i> (June 4, 2018), 2018 WLNR 17192131	15
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12	Marianne Lavelle & Marcia Coyle, <i>Unequal Protection: The Racial Divide in Environmental Law</i> , 15 <i>Nat'l L.J.</i> S2 (Sept. 1992).....	13
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14	Nat'l Env't'l Just. Advisory Council, <i>Fish Consumption and Environmental Justice</i> (Nov. 2002)	12
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19		
20	S.F. Baykeeper, <i>Curbing Pollution from an Oakland Auto Shredder</i> (Apr. 16, 2013)	10
21		
22	S.F. Baykeeper, <i>Baykeeper on Patrol: June 2018 Update</i> (June 1, 2018).....	10
23		
24	Tim McLaughlin et al., <i>Special Report: U.S. Air Monitors Routinely Miss Pollution - Even Refinery Explosions</i> , <i>Reuters</i> (Dec. 1, 2020).....	14
25	Vyshal Delahaut et al., <i>Toxicity and bioaccumulation of Cadmium, Copper and Zinc in a direct comparison at equitoxic concentrations in common carp (Cyprinus carpio) juveniles</i> , <i>PLOS One</i> (Apr. 9, 2020).....	12
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APPLICATION TO FILE

1
2 Communities for a Better Environment, the Center on Race, Poverty & the Environment,
3 San Francisco Baykeeper, and the Natural Resources Defense Council (Amici) respectfully
4 request leave to file the accompanying brief in support of Petitioner in this proceeding. This
5 proposed amicus brief was drafted by counsel for Amici, and no party or counsel for a party in
6 this proceeding authored the brief in whole or in part, or made any monetary contribution
7 intended to fund its preparation.¹

STATEMENT OF INTEREST AS AMICI CURIAE

8
9
10 Communities for a Better Environment (CBE) is one of the nation’s preeminent
11 environmental justice organizations. CBE builds people’s power in California’s communities of
12 color and low-income communities to achieve environmental health and justice. CBE works to
13 prevent and reduce pollution and to build green, healthy, and sustainable communities and
14 environments. CBE maintains offices in Richmond and Huntington Park.

15
16 The Center on Race, Poverty & the Environment (CRPE) is a national environmental
17 justice organization whose mission is to achieve environmental justice and healthy, sustainable
18 communities through collective action and the law. CRPE fights across California against
19 pollution from toxic industrial activity and advocates for a just, state-wide policy to responsibly
20 handle waste while protecting civil rights and encouraging healthy communities. CRPE has
21 offices in Emeryville and in Delano.

22
23 Since 1989, San Francisco Baykeeper (Baykeeper) has been defending San Francisco
24 Bay by holding polluters and government agencies accountable for the health of our wildlife and
25 communities, and has a longstanding interest in protecting the Bay from pollution. Core to
26

27
28 ¹ Amici submit this brief for the Court’s consideration two weeks in advance of the January
22, 2020, scheduled hearing on the parties’ demurrers and motion for judgment.

1 Baykeeper’s mission are the organization’s long-standing campaigns to challenge activities that
2 harm the Bay, including pollution from metal shredders and other industrial sites. Baykeeper has,
3 for over a decade, documented the pollution that Schnitzer Steel’s metal shredding facility has
4 released into the Bay. Baykeeper has over 5,000 members and supporters and has its office in
5 Oakland, a mile and a quarter from Schnitzer’s metal shredding facility.

6 The Natural Resources Defense Council (NRDC) is a national, not-for-profit
7 environmental and public health membership organization that works to ensure the rights of all
8 people to clean air, clean water, and healthy communities. NRDC is committed to advancing
9 environmental justice and seeks to break down the patterns of disproportionate environmental
10 burdens borne by people of color and others who face social or economic inequities. NRDC has
11 over 77,000 members in California and has offices in San Francisco and Santa Monica.

12 Proposed Amici supported the passage of the legislation at issue in this case—the Metal
13 Shredding Facilities Law—because they believed it would force Respondent California
14 Department of Toxic Substances Control (DTSC) to rescind the “f letter” exemptions it had
15 issued to metal shredding facilities and instead establish appropriate protections to keep
16 Californians safe from metal shredding facility pollution. Proposed Amici continue to believe
17 that it is critical for DTSC to protect communities across California from metal shredder
18 pollution. This case represents an important step towards such protection.

21 **STATEMENT OF LEAVE TO FILE**


22 Proposed Amici advocate on behalf of communities that suffer the burdens of pollution
23 from metal shredding facilities for which respondent DTSC has granted “f letter” exemptions.
24 Petitioner in this case challenges the same regulatory exemption as to the metal shredding facility
25 located in Oakland, owned by Real Party in Interest Schnitzer Steel. Proposed Amici are familiar
26 with how DTSC’s refusal to effectively regulate metal shredding facility pollution has threatened
27
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1 public health both in Oakland and around California. Although Petitioner seeks a writ of
2 mandate that would revoke only Schnitzer Steel's letter, the Court's interpretation of the Metal
3 Shredding Facilities Law will have implications throughout the state, including for Proposed
4 Amici and the people and communities they represent. Proposed Amici believe their direct
5 knowledge of and experience with metal shredding facility pollution will help put the issues in
6 this case in proper perspective and aid the Court in considering the pending motions. Proposed
7 Amici therefore respectfully request permission to file the attached amicus brief.
8


9 Dated: January 8, 2021

Respectfully submitted,

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By: 

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BRIEF OF AMICI CURIAE

INTRODUCTION

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2
3 The principal question in this case is whether Senate Bill 1249, the Metal Shredding
4 Facilities Law enacted in 2014, required the California Department of Toxics Substances Control
5 (DTSC) by a date certain to rescind regulatory exemptions and impose more protective
6 hazardous waste regulations on metal shredding facilities, either by applying existing hazardous
7 waste laws or by adopting new waste management standards for those facilities. In this brief,
8 Amici address the real-world consequences of metal shredding facility pollution: the spread of
9 harmful contaminants, such as cadmium and lead, into the air, water, and soil of some of
10 California’s most vulnerable communities. Amici believe an appreciation of these harms is
11 critical to understanding the Legislature’s intent when it passed SB 1249.
12

13 Since 1986, DTSC has allowed metal shredding facilities in California to generate waste
14 that qualifies as hazardous, but, under the “f letter” exemption mechanism, dispose of that waste
15 without adherence to California hazardous waste laws. Today, six metal shredding facilities
16 operate under f letter exemptions. DTSC itself has concluded that these six metal shredding
17 facilities—by failing to properly contain the hazardous waste their operations generate—have
18 released toxic pollutants into California’s air, water, and soil.
19

20 Metal shredding facility pollution moves from the environment into people’s bodies,
21 where it causes both acute and long-lasting harm. DTSC acknowledges that metal shredder
22 residue contains pollutants, including heavy metals like lead, that can cause irreversible health
23 impacts. And DTSC admits that these burdens are not distributed evenly among Californians:
24 exempt metal shredding facilities are in some of the most pollution-burdened and vulnerable
25 communities in the state. These are the communities that are least able to bear additional health
26 and environmental harms.
27
28

1 DTSC also acknowledges that the Legislature intended that DTSC rescind the f letter
2 exemptions. But DTSC’s interpretation of SB 1249 would allow the agency to delay rescission—
3 and thus more robust protections for public health and the environment—indefinitely. The Court
4 should not adopt an interpretation that, like DTSC’s, would result in absurd consequences at
5 odds with legislative intent. As the Legislature intended DTSC to take regulatory action, any
6 reasonable interpretation of the law should require DTSC to act.

7
8 For the sake of communities facing the impacts of metal shredding facility pollution
9 across California, and to effect the Legislature’s intent, the Court should grant the petition.

10 ARGUMENT

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

13 A. Noxious discharge from metal shredding facilities pollutes California’s air, 14 water, and soil, and can cause serious illness

15 “[E]ither not regulated adequately or entirely unregulated.” These are DTSC’s own words
16 to describe waste management practices at exempt metal shredding facilities in California.
17 DTSC, Draft Evaluation and Analysis of Metal Shredding Facilities and Metal Shredder Wastes
18 (2018 DTSC Evaluation) 67 (Jan. 2018) (Pet. Supp. Request for Judicial Notice, Ex. 18). DTSC
19 has granted six metal shredding facilities “f letters:” special exemptions from hazardous waste
20 regulation. This is despite the fact that these metal shredding facilities produce hazardous waste,
21 despite DTSC’s finding that “the most appropriate level of regulation” for these facilities “is a
22 hazardous waste permit,” *id.* at 112, and despite DTSC’s conclusion that the facilities are not
23 adequately regulated to protect public health and the environment, *id.* at 67.

24
25 When metal shredding facilities process cars and other appliances, the leftover material
26 that cannot be recycled—such as shredded plastics, foams, and textiles—accumulates into a
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1 “light fibrous material” known as “auto fluff.” Auto fluff can contain myriad pollutants,
2 including heavy metals such as lead, zinc, copper, and cadmium.² *Id.* at 11, 66-67.

3 Given that DTSC allows the exempt metal shredding facilities to accumulate and store
4 their hazardous waste without adequate controls, it is unsurprising that all six metal shredding
5 facilities have polluted surrounding communities with dangerous contaminants. *See, e.g., id.* at
6 56, 57, 63. Rain falling on exposed piles of auto fluff has washed heavy metals into the soil and
7 surrounding waterways. Indeed, DTSC recognizes that some exempt metal shredders have
8 “routine[ly] exceed[ed]” state limits on lead in stormwater discharges, *id.* at 57, violated state
9 and federal clean water standards, *id.*, and contaminated surrounding soil with lead, zinc, copper,
10 and cadmium, *id.* at 63. Exposed auto fluff has also blown offsite, spreading contamination to the
11 soil and water where it lands.³ *Id.* at 55, 57.

12
13 As metal shredder pollution moves from the environment into people’s bodies through
14 ingestion of contaminated soil or inhalation of contaminated shredder dust,⁴ it can cause both
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16

17 ² Amici focus on the most common heavy metal pollutants that metal shredders release. In
18 2018, however, metal shredders released at least twenty-three different pollutants into the
19 environment, including methylene chloride, ammonia, and trichlorofluoromethane, and known
20 carcinogens benzene and polychlorinated biphenyls. *See Facility Search Engine*, Cal. Air Res.
21 Bd., <http://bit.ly/34I9RbN> (last visited Jan. 5, 2021) (search for each exempt metal shredder
22 facility by facility name, click “submit,” then click on facility name to show pollutant details;
data for Ecology Auto Parts in Colton not available). Schnitzer’s facility exceeds California’s
high priority enforcement threshold because it emits high levels of cancer-causing pollutants in
the Bay Area air district. *See id.* (Schnitzer Steel Products Company facility details).

23 ³ Amicus curiae San Francisco Baykeeper has documented auto fluff pollutants blowing into
24 the Bay from Schnitzer Steel since 2012. *See* S.F. Baykeeper, Comment Letter on San Francisco
25 Bay Regional Water Board Tentative Cleanup and Abatement Order for Schnitzer Steel Products
26 Company 2, 3 (Oct. 19, 2012), <https://bit.ly/2WkWX99>; *see also Curbing Pollution from an
Oakland Auto Shredder*, S.F. Baykeeper (Apr. 16, 2013), <http://bit.ly/2KGh9zD>; *Baykeeper on
Patrol: June 2018 Update*, S.F. Baykeeper (June 1, 2018), <http://bit.ly/3oYS0PE> (both updating
the public on San Francisco Baykeeper’s efforts to monitor and reduce pollution from Schnitzer
Steel).

27 ⁴ Gerdau, *Material Safety Data Sheet: ASR [Auto Fluff] 1*, <https://bit.ly/3mJtelg> (last visited
28 Jan 5, 2021) (discussing possible pathways for auto fluff to make its way into the body).

1 acute and long-lasting harm. Lead pollution is a classic, and tragic, example. There is no known
2 safe level of lead exposure. When a person is exposed to lead, she absorbs it in her bones, blood,
3 and tissues. *Id.* at 72. In adults, lead exposure can cause abdominal pain, loss of appetite, and
4 weakness.⁵ Prolonged lead exposure can cause depression, and can increase risks of heart
5 disease, kidney disease, and infertility.⁶ A pregnant person will pass lead through the placenta to
6 the fetus, which can cause miscarriage and stillbirth.⁷ Lead poisoning is particularly dangerous
7 for infants and children, whose small bodies absorb more lead in proportion to their size;
8 childhood lead exposure can cause reduced cognitive abilities, anemia, and even death.⁸

10 Metal shredding facilities also contaminate communities with cadmium, copper, and zinc,
11 each of which presents additional threats to human and environmental health. Cadmium irritates
12 the lungs, can damage the kidneys, and “is known to cause cancer, [and] developmental and
13 reproductive harm.”⁹ A study of San Francisco Bay Area children also found exposure to
14 airborne cadmium linked to autism.¹⁰ Because cadmium binds to organic matter, it can also move
15 from contaminated soil into plants, tainting food. *See* 2018 DTSC Evaluation at 72. Copper
16 exposure at high levels can cause kidney damage, liver damage, and death.¹¹ Zinc, too, threatens
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20 ⁵ Ctrs. for Disease Control & Prevention, *Health Problems Caused by Lead* (last visited Jan.
21 5, 2021), <http://bit.ly/2WqHLY3>; Agency for Toxic Substances & Disease Registry, *ToxFAQs:*
22 *Lead 1* (Aug. 2020) <https://bit.ly/2J5nC72>.

23 ⁶ *Ctrs. for Disease Control & Prevention, supra* n.5.

24 ⁷ *Id.*

25 ⁸ DTSC, *Lead in Jewelry*, <http://bit.ly/3mAwlM2> (last visited Jan. 5, 2021).

26 ⁹ Cal. Off. Env't'l Health Hazard Assessment, *Cadmium Proposition 65 Fact Sheet 2*,
27 <https://bit.ly/38annjm> (last visited Jan. 5, 2021).

28 ¹⁰ *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't'l Health*
Perspectives 1438 (Sept. 2006), <https://bit.ly/3pSzPM3>.

¹¹ Agency for Toxic Substances & Disease Registry, *ToxFAQs: Copper 1* (Sept. 2004),
<https://bit.ly/3nsPMHY>.

1 human health: in people, it can cause anemia and changes in cholesterol levels.¹² In large
2 amounts, it can cause infertility in animals.¹³ In aquatic ecosystems, copper accumulates in
3 animals that feed by filtration, such as mussels and oysters, *id.* at 73, and fish can absorb zinc
4 through their gills.¹⁴ When other animals, including people, consume seafood or freshwater fish
5 with high levels of metal contamination, those metals accumulate in their bodies.¹⁵

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

7 Toxic pollution from metal shredders disproportionately endangers low-income Black
8 and Latinx communities. California purports to strive for environmental justice, defined as “[t]he
9 deterrence, reduction, and elimination of pollution burdens for populations and communities
10 experiencing the adverse effects of that pollution,” and the elimination of “disproportionate[]”
11 pollution effects on burdened communities. Cal. Gov’t Code § 65040.12(e)(2)(B). Despite this
12 goal, Black people, Latinx people, Indigenous peoples, and people living at or near the poverty
13 line are more likely to live and work close to dangerous polluting facilities than White people or
14 more affluent communities.¹⁶

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17 The burdens environmental justice communities face accumulate and magnify each other.
18 People in environmental justice communities live closest to pollution sources, exposing them to
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21 ¹² Agency for Toxic Substances & Disease Registry, *ToxFAQs: Zinc 1* (Aug. 2005)
<https://bit.ly/34qJQb2>.

22 ¹³ *Id.*

23 ¹⁴ Vyshal Delahaut et al., *Toxicity and bioaccumulation of Cadmium, Copper and Zinc in a*
direct comparison at equitoxic concentrations in common carp (Cyprinus carpio) juveniles,
24 *PLOS One* (Apr. 9, 2020), <https://doi.org/10.1371/journal.pone.0220485>.

25 ¹⁵ See Nat’l Env’tl Just. Advisory Council, *Fish Consumption and Environmental Justice* 64
n.182 (Nov. 2002), <https://bit.ly/3pIa nbY> (listing cadmium, zinc, and copper as chemicals that
26 have given rise to at least one health warning against consuming locally caught fish).

27 ¹⁶ See generally Env’tl Just. Health All. et al., *Life at the Fenceline: Understanding*
Cumulative Health Hazards in Environmental Justice Communities (Sept. 2018),
28 <https://bit.ly/3ajtLI6>.

1 higher concentrations of pollution than other communities.¹⁷ Living near industrial operations
2 also leaves environmental justice communities most at risk from industrial upsets and disasters,
3 such as fires.¹⁸ Despite these heightened risks and exposures, regulators are less likely to enforce
4 environmental laws in communities of color.¹⁹ This enforcement neglect is particularly harmful
5 for environmental justice communities. People living in overburdened environmental justice
6 communities are less able to afford to protect themselves from pollution (for example, by
7 moving away from the facility, buying a water filter, or installing an air purifier).²⁰ They also
8 have less access to affordable health care, leaving them more susceptible to the effects of
9 pollution.²¹ Due to these accumulating burdens, people in environmental justice communities
10 face heightened risks of illness and premature death.²²

12 For the past thirty-four years, Californians living in environmental justice communities
13 near the exempt metal shredding facilities have borne the disproportionate burden of DTSC's
14 inaction. DTSC knows this. DTSC has concluded that the location of metal shredding facilities in
15 environmental justice communities "demonstrates that any release of metal shredder wastes or
16 metal shredder waste [contaminants] would impact populations that are already burdened by
17 other environmental factors," and that such communities "may exhibit greater sensitivity" to

21 ¹⁷ *Id.*

22 ¹⁸ *Id.* at 10, 11.

23 ¹⁹ See generally Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide*
24 *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>.

25 ²⁰ Cal. Env't'l Just. All., *CalEnviroscreen: A Critical Tool for Achieving Environmental*
26 *Justice in California* 5 (2018), <https://bit.ly/3amjgDF>. California governments use
CalEnviroscreen to quantify community vulnerability to pollution.

27 ²¹ *Id.*

28 ²² See, e.g., C. Arden Pope, et. al., *Fine-Particulate Air Pollution and Life Expectancy in the*
United States, *New Eng. J. of Med.* 360, 376-86 (Jan. 22, 2009), <https://bit.ly/35fTL3x>.

1 pollution from metal shredding facilities.²³ 2018 DTSC Evaluation at 85. DTSC’s own analysis
2 found that three of the six exempt metal shredding facilities are “not only located in
3 disadvantaged communities . . . but are among [the communities] most burdened by pollution” in
4 California. *Id.* The remaining facilities are all located in communities that are more polluted than
5 most other communities in the state. *See id.*

6 Beyond the pollution from underregulated shredder waste discussed *supra* at 10-12,
7 environmental justice communities face additional pollution burdens from metal shredding
8 facilities. All six exempt facilities have permits that allow them to emit air pollution, including
9 fine and coarse particulate matter (PM2.5 and PM10, respectively). 2018 DTSC Evaluation at
10 34. Particulate matter can cause grave health problems; PM2.5 exposure alone contributes to
11 5,400 premature deaths in California every year²⁴ and is correlated to deaths from COVID-19.²⁵
12 And California’s network of air monitors likely underestimates the amount of PM2.5 and other
13 air pollutants released from metal shredding facilities.²⁶ Moreover, air pollution from metal
14 shredding facilities includes air toxics, like lead. *Id.* at 33.
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20 ²³ The six exempt metal shredders are located in Oakland, Redwood City, Bakersfield,
21 Terminal Island (in the Port of Los Angeles), Anaheim, and Colton. 2018 DTSC Evaluation at
22 23.

23 ²⁴ In 2018, the six shredders emitted at least 4.8 tons of particulate pollution. *See Facility*
24 *Search Engine*, Cal. Air Res. Bd., *supra* n.2. Particulate pollution damages the cardiovascular
25 system, which can have both immediate and long-term health consequences, especially for
26 children. *Inhalable Particulate Matter and Health (PM2.5 and PM10)*, Cal. Air Res. Bd.,
27 <http://bit.ly/3oWHWGX> (last visited Jan. 5, 2021).

28 ²⁵ Anushka Bhaskar, et al., *Air pollution, SARS-CoV-2 transmission, and COVID-19*
outcomes 11 (Aug. 20, 2020), <https://bit.ly/3pLeAf9> (twelve out of twelve short-term scientific
studies found a statistically significant positive association between PM2.5 exposure and
COVID-19 health outcomes).

²⁶ *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>.

1 Environmental justice communities near metal shredding facilities also face the risk of
2 catastrophic fires, which not only degrade air quality, but put lives and property in immediate
3 peril. Dust from auto fluff piles is a fire hazard.²⁷ In the absence of regulations requiring auto
4 fluff—like other hazardous wastes—to be properly contained and managed, DTSC allows metal
5 shredding facilities to leave the fluff in enormous, exposed piles with negligible fire controls. *See*
6 DTSC Evaluation at 50-52. Metal shredding facilities have thus become accidents waiting to
7 happen. And numerous accidents *have* happened. DTSC found that between 2008 and 2018, four
8 of the six exempt metal shredding facilities had fires, and two had multiple fires. Some fires
9 resulted in shelter-in-place orders for nearby residents, and all emitted unknown amounts of
10 hazardous materials into the air. *See id.* at 57. At one facility, a pile of auto fluff left sitting in the
11 sun—thirty-feet high and the size of half a football field—ignited, sending black smoke high into
12 the sky visible from around the Bay, and requiring more than thirty firefighters to respond.²⁸

14 That facility was Schnitzer:



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23 *Figure 1: 2018 fire at Schnitzer Steel.*²⁹

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25 ²⁷ Gerdau, *supra* n. 4, at 1 (“[g]eneration of large quantities of airborne dusts and particulates may produce a fire hazard”).

26 ²⁸ Kimberly Veklerov, *Fire at Oakland recycling plant sends black plume into sky*, S.F. Chron. (June 4, 2018), 2018 WLNR 17192131.

27 ²⁹ Peter Hegarty, *Fire Breaks Out at Schnitzer Steel in Oakland*, E. Bay Times (updated June
28 4, 2018 at 4:58 a.m.), <http://bayareane.ws/2Kw3Vpc>.

1 Another facility, which also kept scrap metal in a thirty-foot-high exposed heap, had back-to-
2 back fires in 2013, prompting health complaints from community members. *Id.* at 63, 64.

3 Unfortunately, so long as the f letter exemptions remain in place, the fear, uncertainty, and health
4 impacts of similar industrial disasters will remain a reality for people living near these exempt
5 metal shredding facilities.

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

8 The judiciary’s role in statutory interpretation is effecting the Legislature’s intent. The
9 first step of statutory interpretation is examining the statute’s plain language. If that language is
10 clear, courts follow the plain meaning “unless a literal interpretation would result in absurd
11 consequences the Legislature did not intend.” *Sierra Club v. Superior Ct.*, 57 Cal. 4th 158, 165-
12 66 (2013). When the statute’s plain meaning and the “manifest purposes of the statute in light of
13 its legislative history” conflict, courts construe the statute to give effect to legislative intent.
14 *Granberry v. Islay Invs.*, 161 Cal. App. 3d 382, 384 (Ct. App. 1984); accord *Jackpot Harvesting*
15 *Co. v. Superior Ct.*, 26 Cal. App. 5th 125, 139-40 (Ct. App. 2018). And if statutory language
16 would permit more than one plausible interpretation, courts may consider the statute’s purpose,
17 legislative history, and public policy to determine the best interpretation. See *Jackpot Harvesting*
18 *Co.*, 26 Cal. App. 5th at 140. Above all, the court’s “fundamental task . . . is to determine the
19 Legislature’s intent so as to effectuate the law’s purpose.” *Sierra Club*, 57 Cal. 4th at 165.

22 DTSC argues for an absurd interpretation of the Metal Shredders Facilities Law, which
23 the Court should not accept. DTSC has previously admitted that “the legislature passed SB 1249
24 with the intent that the [f letters] be revoked.”³⁰ This is no surprise, given the statutory preamble
25 says precisely that. SB 1249 § 1(f). But in this case, DTSC argues that, to effectuate this intent,
26

27 _____
28 ³⁰ DTSC, *SB 1249*, <https://dtsc.ca.gov/metal-shredders-sb-1249/> (last visited Jan. 5, 2021).

1 the Legislature gave DTSC neither a mandate nor a deadline for action. Resp't Dem. at 11.
2 Instead, DTSC claims that the Legislature only intended that the “f letters’ would *eventually* be
3 rescinded,” *id.* (emphasis added), while identifying no limiting principle for what “eventually”
4 might mean.

5 DTSC’s suggestion that SB 1249 gave it infinite time to decide whether and how to
6 rescind the f letter exemptions contravenes stated legislative intent. The Legislature passed SB
7 1249 to address urgent environmental and public health threats from metal shredding facilities, in
8 the face of decades of under-regulation and delay by DTSC. *See* 2018 DTSC Evaluation at 13-
9 17; SB 1249 § 1(b)-(e) (reviewing, in statutory preamble, DTSC’s multidecade failure to regulate
10 metal shredder waste as hazardous); Pet’r Mem. Supp. Issuance of Writ at 16-22 (detailing the
11 statute’s legislative history). The statute’s author specifically cited metal shredding facilities’
12 “risk to public health and the environment,” the contamination of nearby communities, and
13 repeated fires. Sen. Comm. on Env’tl Quality, April 29, 2014 Analysis of SB 1249 7, 8 (2013–
14 2014 Reg. Sess.). The author emphasized that, in light of these health and environmental
15 hazards, “[metal shredding] operations are not adequately regulated,” *id.* at 7—a conclusion,
16 after years of study, with which DTSC agreed. *See* 2018 DTSC Evaluation at 67-68. The statute
17 as a whole underscores the Legislature’s intent that DTSC act decisively to adequately regulate
18 these long underregulated facilities. *See* Pet’r Reply at 17.

19 The Court should reject DTSC’s argument that the Legislature intended DTSC to revoke
20 the f letter exemptions but provided the agency no mandate or deadline to apply adequate
21 hazardous waste regulations to metal shredding facilities. This is the case regardless of how the
22 Court resolves the parties’ competing arguments as to the plain meaning of SB 1249. Whether
23 the statute, read in isolation from legislative history, is clear or ambiguous, the Court must ensure
24 that any interpretation of the statute does not result in absurd consequences undercutting
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1 legislative intent. DTSC’s interpretation fails this basic test. The Legislature intended DTSC to
2 rescind the f letters. Legislative history underscores the urgency behind the bill and the
3 Legislature’s frustration with DTSC’s decades-long failure to properly regulate metal shredding
4 facilities. But DTSC’s interpretation would allow the agency to do *nothing* at all, perpetuating
5 the precise harms to environmental justice communities, public health, and the environment that
6 the Legislature sought to remedy. The Court should reject any interpretation—like DTSC’s—that
7 leads to such an absurd result.

8
9 **CONCLUSION**

10 Amici support the relief Petitioner seeks in this case: an order compelling DTSC to
11 rescind Schnitzer’s f letter and to require Schnitzer to operate the facility in compliance with
12 California hazardous waste law. Such a ruling will be the first step toward adequate regulation of
13 metal shredders across California.

14
15 Dated: January 8, 2021

Respectfully submitted,

16 JACLYN H. PRANGE
17 NATURAL RESOURCES DEFENSE COUNCIL

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PROOF OF SERVICE

I, Jae-Min Yoo, declare as follows:

I am over the age of eighteen years and am not a party to this action, and my business address is 40 West 20th Street, 11th Floor, New York, NY 10011. I am employed at the Natural Resources Defense Council, which is the office of a member of the California State Bar, at which member's direction this service is made. On January 8, 2021, I served the foregoing:

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

to each of the persons named below at the addresses shown, in the manner described below:

- BY UNITED STATES POSTAL SERVICE EXPRESS MAIL: I enclosed the above-referenced document in a sealed envelope with Express Mail postage paid, addressed to the persons at the addresses as set forth below, and deposited the envelope at a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail.

I also transmitted a courtesy copy of the document via email to each of the persons listed below at the email addresses shown. I certify under penalty of perjury that the foregoing is true and correct, and that this Proof of Service was executed by me on January 8, 2021, in New York, NY.



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