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THE ATHLETICS INVESTMENT GROUP LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF ALAMEDA

15 THE ATHLETICS INVESTMENT GROUP
16 LLC,

17 Petitioner,

18 v.

19 CALIFORNIA DEPARTMENT OF TOXIC
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 SCHNITZER STEEL INDUSTRIES, INC.

24 Real Party in Interest

ENDORSED
FILED
ALAMEDA COUNTY

APR 18 2022

CLERK OF THE SUPERIOR COURT
By JUANITA MOORE
Deputy

Case No. RG20069917

ASSIGNED FOR ALL PURPOSES TO
JUDGE PAUL D. HERBERT

PDH
**[PROPOSED] ORDER GRANTING
PETITIONER'S MOTION TO ENFORCE**

Dept.: 302
Judge: Hon. Paul D. Herbert

Date Filed: August 5, 2020
Trial Date: None Set

28 *PDH*
[PROPOSED] ORDER GRANTING PETITIONER'S MOTION TO ENFORCE
Case No. RG20069917

1 Petitioner the Athletics Investment Group LLC (“the Athletics”) moves to enforce this
2 Court’s April 16, 2021 Peremptory Writ of Mandate (“Writ”) directed at Respondents the
3 California Department of Toxic Substances Control and its Director, Dr. Meredith Williams
4 (together, “DTSC”). The Writ is currently in effect pursuant to this Court’s August 10, 2021
5 order (“1110b Order”) directing that the appeal filed by Real Party in Interest Schnitzer Steel Inc.
6 (“Schnitzer”) not act as a stay of the writ pending appeal. For the reasons set forth below, the
7 motion is **GRANTED**.

8 **I. FACTUAL AND PROCEDURAL BACKGROUND**

9 This Court issued orders on March 23, 2021, and April 16, 2021. Those orders are
10 incorporated as though set forth fully herein. The most pertinent facts are recited here.

11 DTSC enforces the Hazardous Waste Control Law (“HWCL”). Among other
12 requirements, the HWCL establishes criteria for identifying, packaging, and labeling hazardous
13 wastes; prescribes management controls for such wastes; and imposes permit requirements for
14 treatment, storage, disposal, and transportation of such wastes.

15 Schnitzer operates a metal shredding facility in West Oakland. The Schnitzer facility
16 generates waste that is “hazardous” because it contains certain toxins in concentrations that
17 exceed California regulatory thresholds.

18 The Athletics operate a business in West Oakland. They maintain two buildings within
19 one mile of Schnitzer’s facility. The Athletics are also assessing whether to build a Major League
20 Baseball ballpark adjacent to Schnitzer’s facility.

21 In the 1980s, DTSC issued Schnitzer two “conditional nonhazardous waste
22 classifications,” which are called “f letters.” The f letters authorized Schnitzer to manage and
23 dispose of waste known as “chemically treated metal shredder waste” as though it were
24 nonhazardous, even though DTSC and Schnitzer acknowledge that, both then and now,
25 Schnitzer’s treated metal shredder waste is California hazardous waste. The f letters and DTSC’s
26 associated “Official Policy and Procedure 88-6” (“OPP 88-6”), which DTSC issued in the 1980s
27 along with the f letters, also allowed Schnitzer to generate, manage, and treat untreated “metal
28 shredder waste” as though it were nonhazardous waste. Because of the f letters and OPP 88-6,

1 Schnitzer and other metal shredders who received f letters could operate without obtaining a
2 hazardous waste permit or complying with the HWCL's substantive requirements, which are
3 designed to protect the public and the environment from risks associated with hazardous waste.
4 For example, Schnitzer was allowed to store and transport metal shredder waste without
5 complying with containerization and reporting requirements, and to dispose of metal shredder
6 waste in Class III landfills, rather than in Class I landfills. Class III landfills are ordinary
7 municipal landfills. Class I landfills accept hazardous waste.

8 In 2014, the Legislature enacted, and the Governor signed, SB 1249 (Hill), which in
9 relevant part codified section 25150.82 of the Health and Safety Code. The pre-judgment
10 proceedings in this Court centered on the correct construction of that statute. As the Court's
11 March 23, 2021, and April 16, 2021 Orders explain, section 25150.82 required DTSC, no later
12 than January 1, 2018, to rescind Schnitzer's f letter and either adopt alternative management
13 standards, which would serve as an industry-specific alternative to the HWCL, or to apply the
14 substantive provisions of the HWCL to metal shredders. DTSC did not undertake either action by
15 that deadline. Section 25150.82 only authorized DTSC to adopt alternative management
16 standards until January 1, 2018. That deadline having passed (now by several years), the Court
17 determined that DTSC had a present ministerial duty to rescind the f letter and apply the
18 substantive regulations of the HWCL to Schnitzer's metal shredder waste, and, accordingly, the
19 Court granted the Writ.

20 The Writ provides that DTSC must: "(1) Rescind Schnitzer Steel Industries Inc.'s
21 conditional nonhazardous waste classification ('f letter'), which was issued pursuant to
22 subdivision (f) of section 66260.200 of Title 22 of the California Code of Regulations; [and] (2)
23 Regulate Schnitzer Steel's metal shredder waste pursuant to the requirements of the Hazardous
24 Waste Control Law." The Writ specified that DTSC had 30 days to comply with the Writ, then
25 an additional 15 days to file a return specifying the steps it had taken to comply.

26 Schnitzer appealed. The Athletics filed a motion pursuant to section 1110b of the Code of
27 Civil Procedure requesting that the Court lift the stay pending appeal because the operation of the
28 stay would cause irreparable damage to the Athletics' business. The Court considered the

1 evidence presented and determined that the Athletics met that standard and issued the 1110b
2 Order directing that the automatic stay pending appeal be lifted. Schnitzer sought supersedeas
3 relief in the Court of Appeal.¹ The Court of Appeal denied relief on October 29, 2021, at which
4 point the 1110b Order was final.²

5 DTSC filed a return (“Return”) on December 13, 2021. The Return states that DTSC
6 rescinded Schnitzer’s f letter on November 29, 2021. The Return states:

7 Schnitzer’s f letter remains, as of the date of this Return, rescinded and inoperative.
8 With its f letter rescinded, Schnitzer’s metal shredder waste (also known as “metal
9 shredder residue”), whether treated other otherwise, is subject to all requirements of
10 the Hazardous Waste Control Law and its implementing regulations in California
11 Code of Regulations, title 22, section 66260.1 et seq. (collectively, “HWCL”) that
are applicable to metal shredding facilities that do not have f letters. It is DTSC’s
understanding that DTSC has complied in full with the Writ by rescinding
Schnitzer’s f letter and by regulating Schnitzer’s metal shredder residue pursuant to
all applicable provisions of the HWCL.

12 Return at 2. DTSC then “brought to the Court’s attention” four other “regulatory actions
13 concerning metal shredding facilities:” *Id.*

- 14 1. Emergency regulations excluding chemically treated metal shredder residue from
15 regulation as hazardous waste for purposes of transportation and disposal, listed at title
16 22, Cal. Code of Regulations, division 4.5, sections 66260.10 and 66261.1. (*See*
17 Return at 3-6; DTSC’s 12/13/21 Req. J. Not., Exs. B & C.) While these emergency
18 regulations relate to both transportation and disposal of chemically treated metal
19 shredder residue, this Order refers to these as “the Disposal Regulation” for ease of
20 reading.
- 21 2. An emergency regulation, listed at title 22, Cal. Code of Regulations, section 66260.10
22 and 66273.9, clarifying that metal shredder aggregate is not scrap metal and is subject
23 to regulation under the HWCL. (*See* Return at 7-8; DTSC’s 12/13/21 Req. J. Not.,
24 Exs. E & F.) This Order refers to these as the “Aggregate Regulation.”
- 25 3. Rescission of OPP 88-6 (*See* Return at 8; DTSC’s 12/13/21 Req. J. Not., Ex. G.)

26
27 ¹ This Court stayed operation of its 1110b Order until the Court of Appeal resolved Schnitzer’s
supersedeas motion.

28 ² Schnitzer also petitioned the Supreme Court for review of the Court of Appeal’s denial of
supersedeas relief. The Supreme Court denied review.

1 4. Issuance of "Call-In Letters" to nine metal shredders, including Schnitzer, explaining
2 that "to continue conducting metal shredding activities and treating (including sorting)
3 or storing metal shredder waste, Schnitzer Steel, Oakland must submit a Permit
4 Application for a Hazardous Waste Facility Permit (Permit) to DTSC or obtain
5 another form of authorization from DTSC." (See Return at 8, DTSC's 12/13/21 Req.
6 J. Not., Ex. H.)

7 The motion to enforce challenges the application of the Disposal Regulation to Schnitzer.
8 The Disposal Regulation and the related notice of proposed action are attached to this Order as an
9 Appendix.

10 **II. THE DISPOSAL REGULATION AND THE PARTIES' POSITIONS**

11 Relevant here, the Disposal Regulation amends section 66260.10 to include this
12 definition:

13 "Chemically treated metal shredder residue", or "CTMSR", for the purposes of
14 section 66261.4 of chapter 11, means auto shredder waste, as defined in subsection
15 (b) of section 66268.29 of chapter 18, that has undergone a process of ferrous and
non-ferrous scrap metal removal and been treated via a waste stabilization process,
as defined in this section.

16 The Disposal Regulation also adds subdivision (b)(6) to section 66261.4. It reads:

17 (b) Wastes which are not hazardous wastes. The following wastes are not
18 hazardous wastes:

19 ...

20 (6) Chemically treated metal shredder residue (CTMSR) is not hazardous waste for
21 the purposes of offsite transportation and disposal, provided all of the following
conditions are met:

22 (A) The CTMSR is generated by a metal shredding facility, as defined in
23 subsection (b) of section 25150.82 of the Health and Safety Code, that is
authorized by the Department to conduct a waste stabilization process as defined
in section 66260.10 of chapter 10 of this division;

24 (B) The CTMSR has been treated with 0.7 gallons per ton of silicate solution and
25 8.5% by weight of cement;

26 (C) The CTMSR does not meet the definition of a RCRA hazardous waste, as
defined in section 66261.100 of chapter 11 of this division;

27 (D) CTMSR must not exceed the thresholds as identified in Table III in section
28 66261.24(a)(2)(B) of chapter 11 of this division;

1 (E) Each metal shredding facility shall maintain records to demonstrate that the
2 CTMSR meets the conditions required by paragraphs (A), (B), (C), and (D).

3 (F) CTMSR may not be disposed of at any location other than a composite-lined
4 portion of a solid waste landfill unit that meets all requirements applicable to
5 disposal of municipal solid waste in California after October 9, 1993, or that is
6 regulated by waste discharge requirements issued pursuant to division 7
7 (commencing with section 13000) of the Water Code for discharges of designated
8 waste, as defined in section 13173 of the Water Code, and that allow for the
9 discharge of CTMSR. The discharge of CTMSR includes its use as alternative
10 daily cover or for other beneficial reuse pursuant to section 41781.3 of the Public
11 Resources Code and the regulations adopted to implement that section.

12 (G) CTMSR shall be contained during shipment and transport in a manner that
13 prevents release into the environment. If a container is used, such a container shall
14 prevent, under reasonably foreseeable conditions, leakage, spillage, or damage that
15 could cause leakage. The transporter of CTMSR is prohibited from transporting
16 CTMSR to a place other than a landfill approved to receive CTMSR. If an
17 unauthorized release of CTMSR occurs while the CTMSR is being transported,
18 then the transporter of CTMSR shall:

19 1. Immediately contain all releases to the environment of CTMSR and residues
20 from CTMSR; and

21 2. determine whether any material resulting from such a release is a hazardous
22 waste, and, if so, shall manage the hazardous waste in compliance with all
23 applicable requirements of this division. The transporter of CTMSR is
24 considered the generator of any hazardous waste resulting from such a release,
25 and such transporter is subject to the requirements of chapter 12 of this division.

26 (H) Each shipment of CTMSR is to be accompanied by a shipping document,
27 which shall be provided to the Department upon request, containing all of the
28 following information:

(I) The authorized metal shredding facility shall retain on-site a copy of all
documentation produced pursuant to this subsection for at least three years from
the date that the CTMSR that is the subject of such documentation was generated.
The three-year record retention period is automatically extended during the course
of any unresolved enforcement action regarding CTMSR management activity or
as requested by the Department.

(J) The metal shredding facility shall either deliver in person or send to the
Department by certified mail, return receipt requested, a copy of any relevant
document identified in paragraph (I) of this subsection upon receipt of a request
from the Department, at the following address: Department of Toxic Substances
Control, P.O. Box 806, Sacramento, CA 95812-0806, with the words "Attention:
CTMSR Annual Reporting" prominently displayed on the front of the envelope.
The Department shall specify in its request all of the following: the identities of
the documents for which copies are required; the place where those copies shall be
delivered or sent; and the date by which those copies shall be submitted.

After DTSC filed the Return, the Athletics filed a motion to enforce, challenging the
application of the Disposal Regulation to Schnitzer as a violation of the Writ. The Athletics argue
that the Disposal Regulation allows Schnitzer to continue transporting and disposing of its

1 CTMSR as though it is nonhazardous and, thus, is tantamount to the f letter that this Court
2 ordered DTSC to rescind. The Athletics argue that the Disposal Regulation permits Schnitzer to
3 continue to transport and to dispose of CTMSR using the same practices that it had in place while
4 the f letter was operative, and that this is not regulation pursuant to the HWCL, as is required
5 under SB 1249 and mandated by the Writ. The Athletics cite the legislative intent behind section
6 25150.82, which was to effectuate change in metal shredders' management practices. The
7 Athletics point out that section 25150.82 requires that the "disposal of treated metal shredder
8 waste shall be regulated pursuant to [the HWCL] and the regulations adopted pursuant to [the
9 HWCL], unless alternative management standards are adopted by [DTSC] pursuant to this
10 section." § 25150.82(k)(1). The Athletics argue that because DTSC indisputably did not (and
11 cannot now) adopt alternative management standards, DTSC must apply the substantive
12 protections of the HWCL to Schnitzer's metal shredder waste.

13 DTSC and Schnitzer respond that application of the Disposal Regulation to Schnitzer is
14 not inconsistent with the Writ. They argue that section 25150.82 authorizes DTSC to regulate
15 metal shredder waste pursuant to the HWCL "and the regulations adopted pursuant to" it. DTSC
16 argues that section 25150, which generally permits DTSC to adopt regulations under the HWCL,
17 grants statutory authority to DTSC to adopt the Disposal Regulation. DTSC and Schnitzer cite
18 the distinction between the facility-specific f letters and the generally applicable nature of the
19 Disposal Regulation to support its position, arguing that the f letter was not a "regulation" and the
20 Disposal Regulation is a regulation subject to rulemaking. In effect, DTSC and Schnitzer argue
21 that a regulation *excluding* CTMSR as hazardous waste subject to the HWCL for purposes of
22 transportation and disposal is nonetheless regulation of CTMSR pursuant to the HWCL. DTSC
23 also cites other actions it has recently taken, including the Aggregate Regulation, as evidence that
24 it is regulating metal shredders pursuant to the HWCL.

25 **III. DISCUSSION**

26 DTSC's application of the Disposal Regulation to Schnitzer, so as to exclude Schnitzer's
27 CTMSR from the substantive requirements of the HWCL for purposes of transportation and
28 disposal, violates the Writ and the underlying duties imposed on DTSC under Section 25150.82.

1 As the Court previously held in granting the Writ, subdivision (j)(1) of section 25150.82
2 requires DTSC to rescind the “f letters” and regulate the disposal of metal shredder waste
3 pursuant to the HWCL and the regulations adopted under the HWCL if DTSC did not adopt
4 “alternative management standards” by the January 1, 2018 deadline prescribed by our
5 Legislature. It is undisputed that DTSC did not issue alternative management standards by
6 January 1, 2018. Instead, on January 1, 2018, DTSC issued a “draft analysis” concluding that it
7 could not adopt alternative standards because such standards could not protect humans and the
8 environment as well as the HWCL would if applied to metal shredders. (Pet. Supp. RJN, Ex. 18
9 at 113.) Because DTSC did not and could not issue alternative management standards,
10 subdivision (j)(1) requires DTSC to regulate treated shredder waste pursuant to “to this chapter
11 and the regulations adopted pursuant to this chapter.” As this Court has previously explained, this
12 command means that DTSC is required to regulate Schnitzer by applying the HWCL, not, as
13 Responding Parties contend, continuing to exclude Schnitzer’s metal shredder waste from
14 regulation under the HWCL’s requirements.

15 Like Responding Parties’ earlier “exemption-is-regulation” argument, their new argument
16 cannot be squared with the text and structure of section 25150.82 or the Legislature’s express
17 intent memorialized in SB 1249 § 1(f). For example, their view that SB 1249 allows DTSC to
18 maintain the status quo would render the mandatory terms “shall” in subdivision (j)(1) and the
19 first sentence of subdivision (k) requiring DTSC to take “regulatory action” meaningless or
20 superfluous, as no action would be required. Subdivision (k) provides that DTSC “shall complete
21 the analysis described in paragraph (1) of subdivision (c) and subsequent regulatory action before
22 January 1, 2018.” The term “shall complete” applies both to the “analysis” and the “subsequent
23 regulatory action.” As to that “subsequent regulatory action,” the Legislature provided DTSC
24 two choices: either adopt alternative management standards; or else rescind the f letter and apply
25 the HWCL. In either scenario, “[a]ll hazardous waste classifications and policies, procedures, or
26 guidance issued by the department before January 1, 2014, governing or related to the generation,
27 treatment, and management of metal shredder waste or treated metal shredder waste shall be
28 inoperative and have no further effect on January 1, 2018.” § 25150.82(k). The policy targeted

1 by this provision is OPP 88-6, which applied to facilities with f letters and which further
2 exempted metal shredders from substantive regulation in their management, storage, and
3 treatment of metal shredder waste. RPI 9/25/21 Req. J. Not., Ex. B. By mandating OPP 88-6
4 have no further effect upon rescission of the f letters, the Legislature further demonstrated its
5 intent that substantive HWCL regulation be applied to metal shredder waste, not that metal
6 shredder waste would continue to be excluded from the HWCL regulation.

7 Responding Parties' view also conflicts with section 25150.82's command that DTSC
8 could only adopt alternative management standards if they were at least as protective as the
9 HWCL requirements they would replace. This provision would make no sense if SB 1249 allows
10 the "f letters" to remain in place (leaving Schnitzer's waste classified as nonhazardous) even if
11 DTSC was unable to make the showing called for in this subdivision. Their view that subdivision
12 (j)(1) allows DTSC to adopt a status quo exemption from regulation under the HWCL also cannot
13 be reconciled with the Legislature's statement of intent:

14 It is the intent of the Legislature that the conditional nonhazardous waste
15 classifications, as documented through the historical 'f letters,' be revoked and that
16 metal shredding facilities be thoroughly evaluated and regulated to ensure adequate
protection of the human health and the environment.

17 SB 1249 § 1(f). Replacing the f letter exclusion from regulation with another exclusion fulfills
18 neither the Legislature's intent to end the exclusions documented in the f letters, nor its intent that
19 metal shredding facilities be thoroughly regulated.

20 Accordingly, the Court again holds that section 25150.82 means that DTSC is required to
21 regulate Schnitzer by applying the HWCL, not, as Responding Parties contend, by exempting
22 Schnitzer's metal shredder waste from regulation as hazardous waste under the HWCL. Whether
23 it is through site-specific action (the f letter) or an industry-wide regulation (the Disposal
24 Regulation), reclassification of metal shredder waste as nonhazardous does not comply with
25 subdivision (j)(1)'s command that CTMSR "be regulated" pursuant to the HWCL.

26 Even if there could be said to be any tension between SB 1249 and provisions of the
27 HWCL that generally authorize DTSC to issue regulations, if "conflicting statutes cannot be
28 reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over

1 more general ones.” *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal. 4th 301, 310; Civ. Proc.
2 Code § 1859 (“In the construction of a statute [,] when a general and particular provision are
3 inconsistent, the latter is paramount to the former.”). Here, Section 25150.82 (which relates to metal
4 shredders) is more specific than sections 25150 and 58012 (which don’t specifically address metal
5 shredders). And section 25150.82 was enacted after both section 25150 and 58012. The Legislature
6 enacted SB 1249 for the purpose of forcing DTSC to change how it regulated the metal shredding
7 industry. DTSC cannot rely on earlier-enacted, general grants of authority to issue regulations to
8 subvert the specific intent undergirding SB 1249—that DTSC issue alternative management standards
9 that are at least as protective as the HWCL by January 1, 2018, or apply the HWCL to metal shredder
10 waste beginning on that date.

11 DTSC and Schnitzer also argue that the Disposal Regulation is appropriately applied to
12 Schnitzer because it went through the emergency rulemaking process. But neither DTSC nor
13 Schnitzer explains why this makes a difference. While the f letters did not go through the same
14 process, the fact that DTSC subjected the Disposal Regulation to rulemaking does not make them
15 compliant with the requirements of section 25150.82, as this Court has construed the statute. Nor
16 is there any evidence that the Office of Administrative Law reviewed the emergency rules for
17 compliance with section 25150.82. More importantly, even if OAL had undertaken such a
18 review, it is the role of courts generally (as interpreters of statutes) and this Court specifically (as
19 the court that issued the Writ) to assess whether a particular regulation complies with a statutory
20 obligation and a Writ mandating compliance with that obligation. As the Court explains above,
21 the Disposal Regulation does not comply with DTSC’s obligations under section 25150.82, at
22 least with respect to Schnitzer.

23 DTSC’s reliance on the Aggregate Regulation is misplaced. The Aggregate Regulation is
24 not before the Court. The Athletics’ motion to enforce targets the application of the Disposal
25 Regulation to Schnitzer. As such, the Court does not assess whether, or the extent to which, the
26 Aggregate Regulation bears on DTSC’s compliance with the Writ, nor does the Court consider
27 DTSC’s application of the Disposal Regulation to any emitter other than Schnitzer. However, the
28 Court reaffirms its holding in its previous orders that SB 1249 is clearly concerned with more than

1 disposal of shredder waste. Schnitzer's argument to the contrary cannot be squared with numerous
2 provisions of SB 1249 that are broader than the subject matter of disposal, including:

- 3 • Subdivision (a) states that "this section is intended to address . . . the *generation and*
4 *management* of wastes generated by metal shredding facilities."
- 5 • Subdivision (c) authorizes "regulations establishing *management* standards for metal
6 shredding facilities for hazardous waste management activities."
- 7 • And, as noted, subdivision (k) provides that all prior policies "governing or related to
8 the *generation, treatment, and management* of metal shredder waste or treated metal
9 shredder waste" are rendered inoperative upon rescission of the f letters or issuance of
10 alternative management standards.

11 As these provisions make clear, the Legislature was concerned with both "metal shredder waste"
12 and "treated metal shredder waste," including with the generation, treatment, management, and
13 transportation of those wastes. This encompasses numerous metal shredding activities that, as the
14 evidence in the record in this proceeding shows, result in the release of hazardous metal shredder
15 waste, including but not limited to "light fibrous material," into communities surrounding
16 Schnitzer's metal shredding facility. And as these provisions make clear, upon rescission of the f
17 letter, OPP 88-6 is rendered inoperative by operation of law, and thus Schnitzer will need to
18 obtain authorization (i.e. a hazardous waste facility permit) from DTSC for its management,
19 treatment, storage, transportation, and disposal of metal shredder waste. *Id.*³

20 The Disposal Regulation, which governs a different portion of the shredding process than
21 does the Aggregate Regulation, is at issue here and relates to how Schnitzer transports and
22 disposes of its metal shredder waste. The term "disposal" is found in subdivision (j)(1), evincing
23 clear legislative intent to alter the manner in which DTSC regulates the disposal of metal shredder
24 waste. The term "disposal" is also found in the f letters, which the Legislature sought to rescind.
25 SB 1249 § 1(f). The f letters and OPP 88-6 permitted metal shredders to transport their CTMSR
26

27 ³ See also 2018 Evaluation at 49 ("Unless specifically excluded or exempted from regulation,
28 treatment, storage, and disposal of hazardous wastes can only be performed at a facility that has a
hazardous waste permit Apart from the 'f letters' and OPP 88-6, none of the metal shredding
facilities have . . . authorization for the treatment, storage, or disposal of hazardous waste.").

1 as though it was nonhazardous. Put differently, disposal and transportation clearly fall within the
2 ambit of SB 1249. Regulations about upstream processes cannot validate the shortcomings of
3 application of the Disposal Regulation to Schnitzer’s metal shredder waste.

4 Finally, Schnitzer argues that the Disposal Regulation is “lengthy and complex.”
5 Schnitzer never explains why, if true, this observation matters. In any case, the flaw is the
6 Disposal Regulation defines Schnitzer’s treated metal shredder waste as nonhazardous. As
7 described above, the Legislature enacted SB 1249 to effect change, not to perpetuate the status
8 quo. But the Disposal Regulation perpetuates the status quo by purporting to reclassify metal
9 shredder waste as nonhazardous. Furthermore, the Athletics convincingly demonstrate that the
10 Disposal Regulation does not result in any practical changes to the same transportation and
11 disposal practices under the f letter. Indeed, at oral argument, both DTSC and Schnitzer declined
12 to identify specific, substantive ways in which Schnitzer’s practices have changed, even when the
13 Court posed that question directly.

14 In sum, the purpose of section 25150.82 was to require DTSC to regulate metal shredder
15 waste as hazardous waste under the HWCL (absent issuance of alternative management standards
16 that are at least as protective by January 1, 2018). DTSC must do so in regulating Schnitzer, and
17 application of the Disposal Regulation to Schnitzer is insufficient to meet this requirement.

18 **IV. RELIEF**

19 The Court’s Writ remains in full effect, and this Order does not modify it.

20 DTSC has requested that the Court further detail a compliance standard. The judicial
21 branch declares what the law is; the executive branch takes care to enforce the law. While the
22 Court has determined that section 25150.82 requires DTSC to regulate metal shredder waste
23 pursuant to the HWCL, it is the agency’s task to provide that substantive regulation.

24 Nevertheless, there are a few points that may inform DTSC in performing its duty. First,
25 Schnitzer’s f letter has been, and must remain, rescinded. Second, by operation of subdivision (k)
26 of section 25150.82, OPP 88-6 is rendered inoperative because DTSC has rescinded the f letters.
27 Third, so long as Schnitzer’s metal shredder waste meets the toxicity thresholds that establish the
28 criteria for hazardous waste, DTSC must regulate Schnitzer’s metal shredder waste as hazardous

1 waste—*not* reclassify it as nonhazardous waste. DTSC is best positioned to specify the contours
2 of the resulting substantive regulation, but some examples are clear. Hazardous waste must be
3 transported by a hazardous waste transporter. Hazardous waste cannot be disposed of in a Class
4 III landfill. In general, a facility that stores, manages, treats, transports, and/or disposes of
5 hazardous waste needs to be authorized to do so, such as through the issuance of a hazardous
6 waste facility permit. Such a permit may include specific measures developed by DTSC to
7 ensure that the public and environment are protected from metal shredding activities that result in
8 the dispersal of hazardous waste. These are examples of regulation of metal shredder waste
9 pursuant to the HWCL and, as this Court has previously found and DTSC has itself recognized,
10 implementation of such regulation will mitigate the significant risks to surrounding communities
11 caused by Schnitzer's existing hazardous waste practices.

12 **V. CONCLUSION**

13 The Motion to Enforce is **GRANTED**. The Disposal Regulation may not be applied to
14 Schnitzer's operation. DTSC is ordered to come into compliance with the Writ within 30 days of
15 the issuance of this Order. Compliance must not be inconsistent with this Order. DTSC is
16 ordered to file a Supplemental Return within 45 days of this Order.

17 **IT IS SO ORDERED.**

18
19 DATED: 04/18/2022

20 Paul D. Herbert
21 JUDGE OF THE SUPERIOR COURT

22 PAUL D. HERBERT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
2233 Shoreline Drive
Alameda, CA 94501

ENDORSED
FILED
ALAMEDA COUNTY
APR 18 2022

CLERK OF THE SUPERIOR COURT
By JUANITA MOORE
Deputy

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

Case Name – The Athletics Investment Group vs California Department of Toxic Substances
Case No. RG20069917

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the ORDER GRANTING PETITIONER'S MOTION TO ENFORCE entered herein upon each party or counsel of record in the above entitled action, by electronically serving the documents(s) from my place of business, in accordance with standard court practices.

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I declare under penalty of perjury that the same is true and correct. Executed on April 18, 2022.

Chad Finke, Executive Officer, Clerk of the
Superior Court of California, County of Alameda

By Juanita Moore, Deputy Clerk