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WEST COAST CHAPTER, INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.;
10 ECOLOGY RECYCLING SERVICES, LLC; SA RECYCLING, LLC;
SCHNITZER STEEL INDUSTRIES, INC.; SIMS GROUP USA CORPORATION
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SACRAMENTO**
14

15 WEST COAST CHAPTER, INSTITUTE OF)
16 SCRAP RECYCLING INDUSTRIES, INC.;)
ECOLOGY RECYCLING SERVICES, LLC;)
17 SA RECYCLING, LLC; SCHNITZER)
STEEL INDUSTRIES, INC.; and SIMS)
18 GROUP USA CORPORATION,)

19 Plaintiffs,)

20 vs.)

21 CALIFORNIA DEPARTMENT OF TOXIC)
22 SUBSTANCES CONTROL; MEREDITH)
WILLIAMS, in her capacity as Acting)
23 Director of the Department of Toxic)
Substances Control; and DOES 1 through)
24 100, inclusive,)
25 Defendants.)

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[Code Civ. Proc., §§ 526, 1060; Hazardous
Waste Control Law, Health & Saf. Code, Div.
20, Chapter 6.5]

By FAX

FILED
Superior Court Of California,
Sacramento
11/26/2019
skhorn1
by _____, Deputy
Case Number:
34-2019-00269900

1 **INTRODUCTION**

2 1. Plaintiffs seek a declaration that the Hazardous Waste Control Law (Health & Saf.
3 Code, §§ 25100, *et seq.*) (“HWCL”) does not authorize the California Department of Toxic
4 Substances Control (“Defendant” or “DTSC”)¹ to require Plaintiffs to obtain hazardous waste
5 treatment facility permits for metal processing operations conducted at metal shredding facilities
6 in California, or to regulate such metal processing operations as hazardous waste management
7 activity. As used in this Complaint, “metal processing operations” refers to (i) the reduction in
8 size of scrap metal through the use of an electric hammermill or other shredding device
9 (“shredding”); (ii) the subsequent separation, sorting and removal of ferrous and non-ferrous
10 metal commodities from the shredded material exiting the hammermill or shredding device; and
11 (iii) the related receipt, stockpiling and handling of raw material feedstocks, intermediates and
12 finished metal products. None of these operations falls within the scope of Defendant’s
13 jurisdiction under the HWCL.²

14 2. For the first time in over 35 years, Defendant has embarked on a plan to regulate
15 metal processing operations as “treatment” of “hazardous waste” contrary to applicable laws,
16 regulations and long-standing DTSC policy and practice. Under its so-called “Path Forward,”
17 DTSC seeks to accomplish this wholesale reversal of position and to impose a new regulatory
18 regime on Plaintiffs, without the benefit of any authorizing legislation and without complying
19 with the rulemaking requirements of the Administrative Procedure Act. If Defendant’s plan is
20 allowed to come to fruition, it will result in the loss of significant scrap metal recycling capacity
21 in the state, causing enormous disruption in an industry that provides critical infrastructural
22 services to Californians and unlawfully interfering with and impairing Plaintiffs’ legitimate
23 business operations. Therefore, Plaintiffs ask the Court to disallow the imposition of unlawful
24 hazardous waste treatment permit requirements and related regulatory controls on metal

25 _____
26 ¹ All references to “Defendant” or “DTSC” include Meredith Williams, Acting DTSC Director.

27 ² As discussed elsewhere in the Complaint, Plaintiffs do not contest Defendant’s authority to
28 regulate metal shredder residue, the waste that remains after completion of all metal processing
operations.

1 processing operations, which are contrary to the provisions of the HWCL and in violation of
2 Plaintiffs' rights to due process of law.

3 3. Plaintiff West Coast Chapter is a local chapter of the Institute of Scrap Recycling
4 Industries, Inc. ("ISRI"), a national, not-for-profit trade association that represents over 1,000
5 recycling companies nationwide engaged in the handling, processing, shipping and recycling of
6 valuable scrap metal commodities. Plaintiffs Ecology Recycling Services, LLC ("Ecology"), SA
7 Recycling, LLC ("SA Recycling"), Schnitzer Steel Industries, Inc. ("Schnitzer Steel") and Sims
8 Group USA Corporation ("Sims") (collectively, "Plaintiffs") are each members of the West Coast
9 Chapter of ISRI.

10 4. Ecology, SA Recycling, Schnitzer Steel and Sims each own and operate metal
11 shredding and processing facilities in California that recycle valuable ferrous and non-ferrous
12 metals from the vast quantities of scrap metal generated by California residents and businesses on
13 a day-in, day-out basis. Plaintiffs' facilities represent the bulk of the state's scrap metal
14 processing capacity and are essential to the safe and environmentally responsible recycling of
15 literally millions of end-of-life vehicles, household appliances and other metal-containing items.

16 5. By law, scrap metal cannot be disposed of in California landfills and must
17 therefore be recycled.³ In the absence of a viable metal recycling industry in the state, the
18 negative consequences to the environment would be legion. The 1.5 million or more cars that
19 reach the end of their useful lives each year in California would have to be transported hundreds
20 of miles to neighboring states to be recycled or be shipped out of the country. Transport of these
21 vehicles would place thousands of additional trucks on the highways every year, increasing the
22 risk of accidents, fossil fuel usage, greenhouse gas and diesel particulate emissions, and
23 costs/inconvenience to the consumer. It is inevitable that vehicles would be abandoned in alleys,
24 yards, vacant lots, or along roadsides or improperly and dangerously loaded into shipping
25 containers and sent overseas with myriad unintended consequences. With the loss of available
26 recycling outlets, routine collection and recycling of household appliances and other forms of

27 ³ Pub. Res. Code, §§ 42160, *et seq.*

1 “light iron” would also be disrupted,⁴ causing these materials to accumulate in huge quantities,
2 creating urban and rural blight and potential threats to human health, safety and the environment.
3 Local governments would face increased costs in order to address these risks and burdens.
4 Defendant’s *ultra vires* actions threaten the economic viability of this critical industry, to the
5 significant detriment of Plaintiffs and all Californians, including the thousands of people who
6 make their livelihoods in this industry.

7 6. Plaintiffs (or their predecessors) have operated metal shredding and recycling
8 facilities under a regulatory framework that has been in place in California since the mid-1980’s.
9 Under this framework, and consistent with the HWCL, the Department’s authority has been
10 limited to regulation of metal shredder residue (“MSR”), the waste that remains after all ferrous
11 and non-ferrous metal processing operations have been completed.⁵ This long-standing
12 regulatory framework is based on three fundamental principles: (1) DTSC has no jurisdiction
13 under the HWCL over materials that are not “wastes;” (2) DTSC’s recognition of and adherence
14 to the scrap metal exemption contained in the state hazardous waste regulations and the
15 application of that exemption during metal processing and recycling operations (see, 22 CCR,
16 §§ 66260.10; 66261.6(a)(3)(B)); and (3) DTSC’s own formal determination that the materials
17 being processed by metal shredding facilities are not subject to regulation under the HWCL until
18 after they have been “exhausted,” *i.e.*, after all ferrous and non-ferrous metals that can be
19 removed have been removed from the material produced by the shredder. DTSC Official
20 Policy/Procedure #88-6, Auto Shredder Waste Policy and Procedures (Nov. 1988). OPP #88-6 is
21
22

23 ⁴ “Light iron” is an industry term that applies to the myriad lighter forms of scrap metal that are
24 processed by metal shredders.

25 ⁵ Plaintiffs also do not contest Defendant’s authority to exercise enforcement authority over other
26 materials that may escape from metal processing operations and, as a practical matter, are
27 “abandoned.” The fact that Defendant may take enforcement action in response to alleged
28 unlawful disposal of hazardous waste at a metal shredding facility does not mean that
Defendant may lawfully require hazardous waste treatment permits for metal processing
operations.

1 declarative of existing law and cannot be ignored or rescinded except in compliance with law.⁶
2 These principles, together with the administrative classification of treated metal shredder residue
3 as a nonhazardous waste,⁷ have sustained the industry over the past 35-plus years and have
4 allowed metal shredding facilities to beneficially recycle over a hundred million tons of metal in
5 an economically sustainable manner.

6 7. DTSC is now set to launch a wholly new, vastly expanded and costly regulatory
7 regime on Plaintiffs' facilities without any authority under HWCL or its implementing
8 regulations in Title 22 of the California Code of Regulations. Defendant contends, without any
9 legal basis, that DTSC has always had jurisdiction over Plaintiffs' metal processing operations
10 under existing law and that DTSC may require Plaintiffs to apply for and obtain hazardous waste
11 treatment permits for such metal processing operations without need for any change in the law or
12 other due process.

13 8. Defendant's unilateral "repeal" of the existing regulatory framework, and
14 imposition of new "underground" permit and related requirements on metal processing
15 operations, is unlawful. Defendant has offered no valid legal authority to support this new
16 regulatory regime and has failed to proceed according to law.

17 ⁶ Plaintiffs assert that Defendant's actions violate the Administrative Procedure Act, the
18 California Environmental Quality Act, and various other provisions of law. Consistent with the
19 California Code of Civil Procedure and judicial decisions applicable to splitting causes of
20 action, Plaintiffs expressly reserve these and all other potential claims against Defendant arising
21 out of its unlawful attempt to regulate metal processing operations. At this juncture, Plaintiffs
22 are only seeking a determination by the Court that DTSC has no authority under the HWCL to
23 require Plaintiffs to obtain hazardous waste treatment permits for their metal processing
24 operations or to subject such operations to the hazardous waste management regulations.

25 ⁷ Plaintiffs' claims relating to DTSC's separate but related proposed revisions to the regulatory
26 status of treated metal shredder residue are not yet ripe, as DTSC has stated it intends to address
27 this issue through formal rulemaking. To date, Defendant has published a "discussion draft" of
28 the regulations but has not issued proposed regulations as required by the Administrative
Procedure Act. Significantly, Defendant's discussion draft regulations relating to treated
residue would condition the contemplated exclusion on the metal shredding facility's receipt of
a permit or other form of authorization from DTSC for its metal processing operations. See,
discussion draft, 22 CCR § 66261.4(i)(1) at [https://dtsc.ca.gov/wp-
content/uploads/sites/31/2018/07/Text-Conditional-Exclusion-for-CTMSR_5-17-18.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Text-Conditional-Exclusion-for-CTMSR_5-17-18.pdf).
Plaintiffs have objected to Defendant's back-door attempt to impose this unlawful permit
requirement on their metal processing operations. Plaintiffs hereby reserve all claims and
defenses relating to any final agency action that addresses the current status of treated metal
shredder residue or imposes other requirements on Plaintiffs' metal processing operations.

1 9. Defendant has ignored the significant adverse environmental and economic effects
2 and other unintended consequences that will result from the imposition of this unlawful
3 regulatory regime on Plaintiffs' facilities, as well as the irreparable harm that will be suffered by
4 Plaintiffs and the many thousands of businesses and individuals (including householders) who
5 depend on the essential services provided by Plaintiffs.

6 10. Plaintiffs seek a judicial declaration that DTSC does not have authority to require
7 Plaintiffs to obtain hazardous waste treatment permits for their metal processing operations or to
8 otherwise regulate those operations as hazardous waste management activity. Metal processing
9 operations are conducted for the purpose of separating and removing valuable ferrous and non-
10 ferrous metals from exempt scrap metal and do not involve any form of waste management.
11 DTSC's jurisdiction under the hazardous waste permitting program is limited to facilities that
12 treat, store or dispose of hazardous waste and does not extend to Plaintiffs' metal processing
13 operations that do not involve treatment, storage or disposal of hazardous waste. For avoidance
14 of doubt, Plaintiffs also seek a judicial declaration that DTSC does not have jurisdiction over the
15 feedstocks utilized by Plaintiffs in their operations, or over any intermediate or final metal
16 products handled or produced by Plaintiffs' operations.

17 11. Plaintiffs also seek an injunction to prevent DTSC from requiring Plaintiffs to
18 apply for hazardous waste treatment permits and to bar DTSC from taking enforcement action of
19 any kind against Plaintiffs which action is predicated upon or presumes that Plaintiffs' metal
20 processing operations are subject to hazardous waste treatment permit requirements. An
21 injunction is needed to avoid the irreparable harm that would result if Plaintiffs' metal processing
22 operations were unlawfully reclassified as hazardous waste treatment operations.

23 **JURISDICTION AND VENUE**

24 12. This Court has jurisdiction over the matters alleged in this complaint pursuant to
25 the California Constitution, Article VI, § 10, Code of Civil Procedure §§ 88, 526 and 1060.

26 13. Venue in this Court is proper under Code of Civil Procedure § 393(b) because both
27 Defendant and the Attorney General maintain offices in Sacramento.

1 **PARTIES**

2 14. Plaintiff West Coast Chapter is a local chapter of ISRI, a members-based national
3 trade association representing over 1,000 companies engaged in the handling, processing,
4 shipping and recycling of valuable scrap metal commodities. ISRI members pay dues and are
5 actively involved in the activities of the association, including this action. Ecology, SA
6 Recycling, Schnitzer Steel and Sims are each members of the West Coast Chapter.

7 15. Plaintiff Ecology is a privately-owned limited liability company organized under
8 the laws of the state of California and registered to do business in California. Ecology owns and
9 operates a metal shredding and recycling facility in Colton, California, and is engaged in, and
10 intends to continue to engage in, the lawful operation of the facility.

11 16. Plaintiff SA Recycling is a privately-owned limited liability company organized
12 under the laws of the state of Delaware and registered to do business in California. SA Recycling
13 owns and operates metal shredding and recycling facilities in Los Angeles (Terminal Island),
14 Anaheim, and Bakersfield, California, and is engaged in, and intends to continue to engage in, the
15 lawful operation of these facilities.

16 17. Plaintiff Schnitzer Steel is a publicly traded company organized under the laws of
17 the state of Oregon and registered to do business in California. Schnitzer Steel owns and operates
18 a metal shredding and recycling facility in Oakland, California, and is engaged in, and intends to
19 continue to engage in, the lawful operation of the facility.

20 18. Plaintiff Sims d/b/a Sims Metal Management is a subsidiary of a publicly traded
21 company, and is organized under the laws of the state of Delaware and registered to do business
22 in California. Sims owns and operates a metal shredding and recycling facility in Redwood City,
23 California, and is engaged in, and intends to continue to engage in, the lawful operation of the
24 facility.

25 19. Defendant DTSC is an agency of the State of California, organized and existing
26 under and pursuant to Health and Safety Code, section 58000 *et seq.* DTSC is authorized to
27 administer and enforce California's Hazardous Waste Control Law (Health & Saf. Code, §§ 5100
28

1 *et seq.*) and its implementing regulations (22 CCR, §§ 66260.1 *et seq.*) (“Title 22”) but may not
2 do so in an unlawful manner.

3 20. Defendant Meredith Williams is sued in her official capacity as the Acting
4 Director of the Department of Toxic Substances Control. The Director serves as the chief
5 executive of DTSC and is ultimately responsible for the decisions made by DTSC concerning its
6 implementation of applicable laws and regulations. Ms. Williams was selected to serve as Acting
7 Director of DTSC by the California Secretary of Environmental Protection on January 9, 2019.

8 21. DOES 1 through 100, inclusive are the partners, agents, employees or principals of
9 the named Defendants and other State agencies, and of each other whose true names and
10 capacities are currently unknown to Plaintiffs; the named defendants and DOES 1 through 100,
11 inclusive, performed the acts and conduct herein alleged, aided and abetted the performance
12 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct;
13 and therefore, DOES 1 through 100, inclusive, are liable to Plaintiffs to the extent of the liability
14 of the named Defendants. Plaintiffs will seek leave of the Court to amend its Complaint to reflect
15 the true names and capacities of the Defendants designated herein as DOES when such identities
16 and capacities become known.

17 22. Plaintiffs are informed and believe, and on that basis allege, that at all times
18 mentioned herein, each and every Defendant was acting as an agent and/or employee of each of
19 the other Defendants, and at all relevant times mentioned was acting within the course and scope
20 of said agency and/or employment with the full knowledge, permission, and consent of each of
21 the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged
22 herein were made known to, and ratified by, each of the other Defendants.

23 **STANDING**

24 23. ISRI is a members-based national trade association that is actively engaged with
25 federal and state legislative and regulatory matters affecting the scrap metal recycling industry.
26 ISRI’s members, including the individual Plaintiffs in this action, are engaged in the handling,
27 processing, shipping, and sale of valuable recycled scrap metal commodities to customers around
28

1 the world. ISRI comments extensively on matters affecting the regulatory status of scrap metal
2 processing operations and was instrumental in the adoption of a federal regulation excluding all
3 processed scrap metal from the federal definition of “solid waste” under the Resource
4 Conservation and Recovery Act, 49 USC §§ 6901, *et seq.* (“RCRA”), the federal counterpart to
5 the definition of “waste” under the HWCL.⁸ Through its advocacy efforts, and in order to
6 promote commerce in recycled scrap metal, ISRI seeks to maintain consistency among federal
7 and state laws affecting scrap metal operations. ISRI, through its West Coast Chapter, has
8 associational standing to represent the interests of its members in this action because ISRI’s
9 members would otherwise have standing to sue in their own right; the interest ISRI seeks to
10 protect in filing this lawsuit are germane to ISRI’s purpose; and neither the declaratory nor
11 injunctive relief sought herein would necessarily require the participation of individual members
12 in the lawsuit. Individual Plaintiffs Ecology, SA Recycling, Schnitzer Steel and Sims are
13 members of ISRI.

14 24. Individual Plaintiffs each own and operate metal shredding and processing
15 facilities in California, and are engaged in related activities associated with the purchase,
16 collection, sorting, transportation, and recycling of end-of-life vehicles, household appliances and
17 other forms of scrap metal. Imposition of Defendant’s new, unlawful regulatory regime on
18 Plaintiffs’ facilities would significantly disrupt their metal shredding and processing operations,
19 increase operating costs to the point their operations would be rendered uneconomical, cause
20 some or all of the facilities to be non-conforming land uses, and effectively foreclose safe and
21 cost-effective means of recycling the vast quantities of scrap metal generated in California on a
22 daily basis. Further, Defendant’s actions will stigmatize a legitimate industrial activity and
23 impede the sale of valuable metals by characterizing them as the products of a hazardous waste
24 treatment process.

25 25. In October 2019 Defendant initiated an enforcement action against Plaintiff SA
26 Recycling, through issuance of a draft Corrective Action Consent Agreement (“CACA”). The

27 _____
28 ⁸ See, 40 CFR § 261.4(a)(13).

1 CACA describes SA’s metal shredding facility on Terminal Island as a “hazardous waste facility”
2 and alleges that SA has treated, stored and/or disposed of hazardous waste without a permit or
3 other form of authorization from the Department since 1962. The CACA imposes a number of
4 obligations on SA Recycling that are applicable only to hazardous waste facilities. See,
5 Paragraph 27 below. Plaintiffs Ecology, Schnitzer Steel and Sims are informed and believe, and
6 on that basis allege, that Defendant can be expected to initiate comparable enforcement actions
7 against them as well. Plaintiffs would be adversely and directly affected, and irreparably injured,
8 if the Court does not grant the relief sought by Plaintiffs in this action. As a result of Defendant’s
9 actions complained of herein, each individual Plaintiff has standing to sue.

10 **RIPENESS**

11 26. This action is ripe for judicial review. Defendant has stated in writing, including
12 (i) in formal enforcement documents and related official correspondence, (ii) in a written draft
13 report prepared pursuant to Health and Safety Code, section 25150.82, and (iii) in numerous
14 regulatory development documents posted on DTSC’s website, that scrap metal shredding
15 facilities, including scrap metal processing operations conducted by such facilities, are hazardous
16 waste treatment facilities within the Department’s jurisdiction. Defendant further contends it may
17 regulate Plaintiffs’ raw material and finished product stockpiles through the imposition of
18 conditions in such hazardous waste treatment permits. Plaintiffs anticipate they could be required
19 to submit applications for hazardous waste treatment permits at any time, and/or be served with
20 unilateral enforcement orders ordering them to comply with the HWCL and implementing
21 regulations, as applied to their metal processing operations.

22 27. Evidence of this concern is reflected in the October 28, 2019 draft CACA issued
23 by Defendant to Plaintiff SA Recycling (see Paragraph 25 above), which claims that SA’s metal
24 shredding facility on Terminal Island has been operating as a “hazardous waste facility” *since*
25 *1962*, ten years prior to the enactment of the earliest version of the HWCL. The CACA identifies
26 all of the primary metal processing areas and equipment at the facility as “solid waste
27 management units” (“SWMUs”) and outlines comprehensive remedial investigation and cleanup
28

1 (corrective action) requirements which Defendant asserts are applicable to each SWMU.
2 Defendant asserts that “[j]urisdiction exists pursuant to Health and Safety Code, sections 25187
3 and 25200.14, which authorize DTSC to issue an order to require corrective action when DTSC
4 determines that “there is or may be a release of hazardous waste or hazardous constituents into
5 the environment from a hazardous waste facility.” None of SA Recycling’s metal shredding
6 facilities, including the Terminal Island Facility, is a “hazardous waste facility,” and the facility-
7 wide corrective action requirements imposed in the CACA have no application to Plaintiff’s
8 metal processing operations.⁹ SA Recycling expects that comparable actions will be taken
9 against its metal shredding facilities in Bakersfield and Anaheim.

10 28. Plaintiffs Ecology, Schnitzer Steel and Sims are informed and believe, and on that
11 basis allege, that Defendant is likely to issue comparable draft CACAs to their metal shredding
12 facilities.¹⁰ All Plaintiffs are informed and believe, and on that basis allege, that Defendant is
13 likely issue unilateral enforcement orders to any facility that refuses to enter voluntarily into a
14 CACA.

15 29. Defendant maintains (incorrectly) that it is not required to obtain new statutory
16 authority or engage in formal rulemaking in order to establish that the materials undergoing scrap
17 metal processing are subject to regulation as “hazardous waste” or that scrap metal processing
18 operations constitute “treatment” of hazardous waste subject to DTSC’s permit requirements.
19 Defendant’s position is belied by the fact that it has never before required Plaintiffs to obtain
20 hazardous waste treatment permits for metal processing operations, and indeed its official policy,
21 which is declarative of existing law, specifies to the contrary.

22 30. DTSC’s articulation of its “Path Forward” requiring Plaintiffs to apply for
23 hazardous waste treatment facility permits for their metal processing operations, and its assertion

24 ⁹ Plaintiffs do not dispute Defendant’s right to exercise its enforcement authority under Health
25 and Safety Code section 25187 in response to a violation of the HWCL or implementing
26 regulations. However, this authority cannot be used to impose permit or permit-dependent
requirements on Plaintiffs’ operations that go beyond the scope of the law.

27 ¹⁰ Defendant has issued a draft CACA to one of Plaintiffs’ feeder yards in Fresno, where shredder
28 feedstock is collected before being transported to the metal shredding facility. Feeder yards are
not hazardous waste facilities.

1 that this new regulatory regime may lawfully be imposed on Plaintiffs without need for any
2 additional statutory or regulatory authority, constitute “final agency action” that is subject to
3 judicial review. Plaintiffs seek to avert this unlawful assertion of authority over their operations
4 and should not be required to wait until DTSC specifies a date by which permit applications must
5 be submitted or issues unilateral enforcement orders to Plaintiffs for operating hazardous waste
6 treatment facilities without a permit or other form of authorization from the Department.

7 **FACTUAL BACKGROUND**

8 Overview of the Metal Shredding Industry

9 31. Every year, the state of California generates over 1.5 million end-of life vehicles
10 and millions of tons of other types of scrap metal. All of this material is valuable and serves as
11 raw material for the manufacture of new metal products. Scrap metal exists in an extraordinary
12 variety of forms, ranging from cars, buses, railcars, trailers, metal shipping containers, metal
13 turnings and stampings from metal fabrication operations, large and small household appliances,
14 used process equipment and machinery, steel girders and beams, metal furniture, water heaters,
15 pipes and plumbing fixtures, metal siding, bicycles, old tools, chain link fencing, roofing and
16 building materials, wire, and many thousands of other items.

17 32. Current California law (Pub. Res. Code, §§ 42160, *et seq.*) prohibits the disposal
18 of recyclable scrap metal in California landfills, necessitating that the state support a viable scrap
19 metal recycling industry to process these ubiquitous, valuable materials.

20 33. Metal shredding and recycling facilities process an endless flow of scrap metal
21 using a variety of different processing operations, including metal shredding and metal
22 separation/removal processes. The shredding process reduces scrap metal to a size and form from
23 which ferrous and non-ferrous metals can be separated and removed from accompanying non-
24 metallic materials. Upon completion of processing, the metals are sold as commodities on the
25 open market and are used in the manufacture of steel and various metal alloys. Collectively,
26 Plaintiffs’ facilities shred over two million tons of scrap metal on an annual basis, yielding over a
27 million tons of ferrous and non-ferrous metals from their metal processing operations.

1 engineering firms, accounting and other professional service firms, assayers and analytical
2 laboratories, employment agencies, electricians and plumbers, facility maintenance services,
3 construction contractors, environmental consultants and many others. The number of supplier
4 and induced jobs attributable to scrap metal recycling in California is estimated to exceed 17,000.
5 The direct economic output of the scrap metal recycling industry in California is currently
6 estimated at \$2 Billion annually, including \$795 Million paid in federal, state and local taxes.
7 When supplier and other induced impacts are taken into consideration, the economic impact more
8 than doubles to \$5.4 Billion annually. The shut-down or curtailment of metal shredding
9 operations in the state would have significant adverse effects throughout many sectors of the
10 economy.

11 37. The recycling and beneficial use of scrap metal reduces the need to mine virgin
12 ores, saves large amounts of energy, and provides tangible benefits to public health, safety and
13 the environment by ensuring that scrap metal is managed safely and in an environmentally
14 responsible manner. Plaintiffs' facilities also allow the millions of tons of scrap metal that are
15 produced annually in California to be managed in the state, without placing a burden on
16 neighboring states. Though not at issue in this case, Plaintiffs employ other recycling techniques
17 (e.g., baling and shearing) to process other types and grades of scrap metal that cannot be, or that
18 do not need to be, processed by a shredder. If Plaintiffs' metal shredding facilities were no longer
19 economical, these ancillary scrap metal recycling operations that are conducted at shredding
20 facilities would also likely be suspended or interrupted, with attendant adverse consequences.

21 Description of the Shredding Process

22 38. Shredders are large electric hammermills or similar devices that utilize a shredding
23 technique to reduce scrap metal to fist-sized and smaller pieces that can be processed by
24 "downstream" separation equipment. The shredding process is strictly physical in nature and
25 does not involve the use or addition of any hazardous materials. Incoming scrap metal (shredder
26 feedstock) is staged in piles near the shredder and is placed onto an infeed conveyor by a large
27 grapple. The material enters the shredder where it is pulverized into a highly heterogeneous

1 mixture of ferrous metal (i.e., metal containing iron), non-ferrous metals (e.g., copper, aluminum
2 and zinc), and nonmetallic materials that are naturally present in the feedstock (e.g., shredded
3 upholstery, cloth, carpet, rubber, glass, vinyl, and plastic). This mixture, referred to as “shredder
4 output,” exits the shredder and is conveyed to a large rotating drum magnet that removes the
5 ferrous metal. The ferrous metal is conveyed by stacking conveyor into large stockpiles, where it
6 is stored pending sale and shipment off-site, typically by ocean-going ships. Plaintiffs’ facilities
7 have been in operation since before Defendant existed as an agency, and Defendant has not, since
8 its inception, ever attempted to regulate the removal of ferrous metal from the mixture of material
9 exiting the shredder as treatment of a hazardous waste.

10 39. The mixture that remains after ferrous metal has been removed is known in the
11 industry as “aggregate” or “non-ferrous raw.” This material—which still contains all of the
12 valuable non-ferrous metals—is conveyed by conveyor or other heavy equipment to a
13 downstream non-ferrous metal separation plant where it is processed by a variety of sophisticated,
14 proprietary technologies that mechanically separate the non-ferrous metals into a range of
15 different metal commodities, depending on the type, grade and size of the metal. Most non-
16 ferrous metal separation plants are co-located at metal shredding facilities. Where shredding and
17 non-ferrous metal separation operations are conducted in different locations, the aggregate is
18 transported by truck to the non-ferrous plant. Aggregate is an in-process, intermediate material
19 that is the sole feedstock to the downstream non-ferrous metal separation plant. This material is
20 not a waste. Defendant has not, since its inception, ever attempted to regulate the removal of
21 non-ferrous metals from aggregate as treatment of a hazardous waste or otherwise subjected this
22 material to regulation as hazardous waste.

23 40. The material that remains after ferrous and non-ferrous metals have been removed
24 is known as metal shredder residue (“MSR”). Defendant has historically taken the position that
25 MSR is not generated until *after* the material has been chemically stabilized and has undergone a
26 final screening step to remove remaining metal. Only at that point is the material considered
27 “exhausted” and thus a waste. In accordance with OPP #88-6, the chemical stabilization of MSR
28

1 has been determined by DTSC to be part of the metal processing operation. As such, Defendant
2 has not previously required Plaintiffs to obtain hazardous waste permits for the MSR treatment
3 process. Plaintiffs do not dispute Defendant’s jurisdiction over MSR at the point this material is
4 designated as a waste.

5 41. Plaintiffs are informed and believe, and on that basis allege, that metal shredding
6 facilities are not regulated as hazardous waste treatment facilities in any other state. Similarly,
7 metal shredding facilities are not federally regulated as hazardous waste treatment facilities under
8 RCRA. Defendant’s *ultra vires* actions will place Plaintiffs at a significant competitive
9 disadvantage relative to out-of-state metal shredding facilities that do not have to bear the
10 economic and regulatory burden of complying with hazardous waste management regulations or
11 the stigma, and associated commercial consequences, of selling products that are viewed by
12 customers as being derived from the treatment of hazardous waste.

13 42. Each of Plaintiffs’ facilities is located in a local industrial zoning district that does
14 not expressly recognize hazardous waste treatment facilities as a permitted land use. Plaintiffs are
15 informed and believe, and on that basis allege, that if their metal processing operations were
16 subject to hazardous waste permit requirements, the facilities’ status under local zoning
17 ordinances or other land use approvals (e.g., leases) would be jeopardized, causing them to be
18 classified as nonpermitted or non-conforming uses. As a consequence, Plaintiffs’ facilities would
19 be subject to significant restrictions on future modifications and expansions, new local permitting
20 requirements, fees and assessments, and possible termination/nonrenewal of their leases and
21 phase-out over time, all of which will interfere severely with Plaintiffs’ ability to conduct their
22 lawful operations.¹¹

23
24
25 ¹¹ Plaintiffs acknowledge that DTSC has authority under the HWCL to require Plaintiffs to obtain
26 a permit or other form of authorization for treatment of metal shredder residue once it is a
27 waste. Significantly, under Health and Safety Code section 25201.3, authorization issued under
28 DTSC’s tiered permitting program, such as a Permit-by-Rule pursuant to Section 67450.1, *et*
seq. of the Title 22 regulations, does not constitute a “land use decision” and thus would not
adversely affect the facilities’ status under local zoning ordinances.

1 **EXISTING STATUTORY AND REGULATORY FRAMEWORK**

2 43. Under the HWCL, DTSC’s jurisdiction is limited to “hazardous wastes.” In order
3 to be considered a “hazardous waste,” a material must in the first instance be defined as a
4 “waste.” By law, materials that are not “wastes” cannot be “hazardous waste” and therefore are
5 not subject to regulation by DTSC, regardless of their chemical characteristics.

6 44. Under the HWCL, a “waste” is defined as a “discarded material that is not
7 excluded by this chapter or by regulations adopted pursuant to this chapter.” Health & Saf. Code,
8 § 25124(a). Neither the raw materials (scrap metals) that are introduced into the shredder, nor
9 the heterogeneous mixture that is produced by the metal shredding process to facilitate the
10 separation and removal of valuable ferrous and non-ferrous metal commodities, are discarded
11 materials. The scrap metal feedstock is purchased by Plaintiffs through a network of large and
12 small suppliers who trade in these valuable materials. These materials are collected, sorted and
13 sold to Plaintiffs, for valuable consideration, and are prevented from becoming part of the “rising
14 tide” of waste that is addressed by the laws applicable to solid and hazardous waste. See, *Waste*
15 *Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal. 4th 478.
16 The fact that scrap metal items may have reached the end of their useful lives from the
17 perspective of the original purchaser or user does not mean they have been “discarded” under the
18 HWCL. See also, *West Coast Chapter of the Institute of Scrap Recycling Industries v. Scott*
19 *Smithline, et al.* (Sac. County Sup. Ct. Case No. 34-2019-00257463, ruling dated August 14, 2019
20 [holding that scrap metal is not a “solid waste” under the Integrated Waste Management Act and
21 issuing a preliminary injunction against application of the statute to such materials]).

22 45. Plaintiffs acknowledge that under Health and Safety Code, section 25124(b), the
23 term “discarded material” includes materials that are “recycled, or accumulated, stored, or treated
24 before recycling, except as provided in Section 25143.2.” By its own terms, subdivision (b) of
25 section 25124 must be read in conjunction with subdivision (a) which applies, in the first
26 instance, only to those discarded materials “that [are] not excluded by this this chapter *or by*
27 *regulations adopted pursuant to this chapter.*” Health & Saf. Code, § 25143.2 (Emphasis

1 added.) The regulations adopted by Defendant pursuant to the HWCL expressly provide that
2 scrap metal that is recycled is “not subject to regulation under this division.” 22 CCR,
3 §§ 66260.10, 66261.6(a)(3)(B). Accordingly, the “recycling” prong of the definition of
4 “discarded material” has no application to the scrap metal processed by Plaintiffs’ metal
5 shredding facilities. Scrap metal that is being recycled is exempt from regulation under the
6 HWCL and is not a regulated “recyclable material.” 22 CCR, § 66261.6(a)(3)(B).

7 46. Defendant concedes that the scrap metal introduced *into* Plaintiffs’ metal shredders
8 is exempt from regulation as hazardous waste but claims the metal-rich material *exiting* the
9 shredder is not exempt. This distinction is incongruous and is not supported by any provision of
10 law.

11 47. In fact, other provisions of the HWCL confirm that the shredded materials
12 processed in Plaintiffs’ metal processing operations are not “wastes” but instead fall squarely
13 within a category of useful materials known as “intermediate manufacturing process streams.”
14 Health & Saf. Code, § 25116.5. In short, these are materials that are produced as part of a
15 manufacturing process and that are used on a batch or continuous basis, in either the same or a
16 different manufacturing process, to produce a commercial product. Section 25116.5 was added to
17 the HWCL in 1996 in order to prevent Defendant from inappropriately expanding its hazardous
18 waste permitting authority to include manufacturing operations—the very conduct Defendant is
19 engaged in here. Stats. 1996, c. 579 (A.B. 2088). By law, intermediate manufacturing process
20 streams are not “discarded materials” and thus not “wastes.” Health & Saf. Code, § 25124(c).

21 48. Defendant contends that the metal-rich mixture of materials that are produced by
22 the shredder do not qualify as “intermediate manufacturing process streams” because they are
23 “recyclable materials” which are excluded from the definition of “intermediate manufacturing
24 process stream.” See, Health & Saf. Code, § 25116.5(a)(3). As noted in Paragraph 45, scrap
25 metal that is being recycled is exempt from regulation under the HWCL and is not a regulated
26 “recyclable material.”

1 49. Moreover, the materials processed by Plaintiffs’ metal processing operations do
2 not fall within the statutory definition of “recyclable material,” irrespective of the scrap metal
3 exemption. “Recyclable material” is defined in Section 25120.5 of the Health and Safety Code
4 to mean “a hazardous waste that is capable of being recycled.” (Emphasis added.) The statute
5 provides examples of secondary materials that fall within this definition, namely residues, spent
6 materials, materials that are so contaminated that they can no longer be used for the purpose for
7 which they were originally purchased or manufactured, byproducts and retrograde materials. The
8 metal-rich materials produced by the shredding process bear no similarity to any of these
9 categories of secondary materials.

10 50. Plaintiffs’ position is also confirmed by DTSC Official Policy/Procedure #88-6
11 which expressly provides that the mixture of materials exiting a metal shredder is an in-process
12 material that is not subject to regulation as a “waste” until after the material has been
13 “exhausted.” i.e., all ferrous and non-ferrous metals have been removed. OPP #88-6 is consistent
14 with Health and Safety Code, section 25116.5 and the definition of “intermediate manufacturing
15 process stream.”

16 51. As noted above, Defendant concedes that the scrap metal introduced *into*
17 Plaintiffs’ metal shredders is expressly exempt from regulation as hazardous waste but contends
18 that the material *exiting* the shredder is not exempt. Plaintiffs assert that the scrap metal
19 exemption applies throughout the duration of metal processing operations, and that none of the
20 regulatory exceptions to the scrap metal exemption is applicable in the circumstances.

21 52. There is no provision of the HWCL or the Title 22 regulations that authorizes
22 DTSC to regulate metal processing operations that utilize exempt scrap metal as feedstock. To
23 the contrary, the scrap metal exemption refers expressly to scrap metal that “is being recycled.”
24 The types of scrap metals processed by Plaintiff’s shredders cannot economically be recycled
25 unless they are first shredded and then processed by the “downstream” metal separation and
26 removal processes employed by Plaintiffs. These processing steps are necessary to produce
27 distinct metal commodities that are traded on the global metals market and used as raw materials
28

1 in other manufacturing processes. Defendant’s assertion that the scrap metal exemption is no
2 longer applicable once the scrap metal has been converted into a form that allows the different
3 types and grades of metal to be sorted and separated is without legal basis and would render the
4 scrap metal exemption meaningless.

5 53. Finally, even if shredder output and aggregate were presumed, initially, to be
6 secondary “recyclable materials” rather than in-process materials, they would nevertheless be
7 excluded from classification as “waste” under Health and Safety Code, section 25143.2. This
8 section of the HWCL provides that recyclable materials “shall be excluded from classification as
9 a waste” if they can be shown to be recycled in certain ways, several of which would encompass
10 Plaintiffs’ metal processing operations. The pertinent exclusions are contained in Section
11 25143.2(d), applicable to materials—such as shredder output and aggregate—that are *not*
12 regulated under RCRA. The prohibition against “prior reclamation” applicable to materials
13 recycled under Section 25143.2(b) is not applicable in the case of non-RCRA materials that
14 qualify for exclusion under subdivision (d).¹²

15 54. Under Health and Safety Code, section 25143.2(d)(1), materials that are recycled
16 and used at the same facility at which the material was generated are excluded from classification
17 as “waste.” The shredder output and aggregate produced at SA Recycling’s, Schnitzer Steel’s
18 and Sims’ facilities are generated and recycled (used) on-site to produce the ferrous and non-
19 ferrous metal commodities sold by Plaintiffs. Both of these in-process streams qualify for
20 exclusion under Section 25143.2(d)(1).

21 55. Plaintiff Ecology recycles its shredder output on-site through ferrous metal
22 removal equipment and is also eligible for exclusion under subsection (d)(1). However, the
23 aggregate that remains after ferrous removal is transported by Ecology to its facility in Arizona
24 for non-ferrous metal processing as thus does not qualify for the on-site recycling exclusion under
25 subsection (d)(1). Defendant has acknowledged in writing that the aggregate produced by

26 ¹² Materials that would be regulated under RCRA (but for the fact they are recycled) are eligible
27 for exclusion only under Section 25143.2(b) and are subject to a prohibition against “prior
28 reclamation.”

1 Plaintiff Ecology is excluded under Health and Safety Code, section 25143.2(d)(4), applicable to
2 materials that are recycled off-site at a location owned by the same company. Ecology maintains
3 that reliance on the exclusion in Section 25143.2(d)(4) is in fact unnecessary, given that aggregate
4 is not a waste in the first instance.

5 56. In addition to the exclusions in Health and Safety code sections 25143.2(d)(1) and
6 (d)(4), shredder output and aggregate produced by all Plaintiffs would be eligible for exclusion
7 under subsections 25143.2(d)(5) and (d)(6), which establish exclusions for materials that are used
8 or reused as ingredients in an industrial process to make a product, and materials that are used or
9 reused as a safe and effective substitute for commercial products, respectively, if the materials
10 were found to be wastes in the first instance. Neither the fact that metals are separated from these
11 in-process materials, nor the fact that some waste remains after metal processing operations are
12 completed, is disqualifying.

13 57. The HWCL specifies a number of conditions that must be met in order to “perfect”
14 these exclusions under Health and Safety Code, section 25143.2(d), all of which can be met by
15 Plaintiffs. Thus, even assuming for sake of argument that shredder output and aggregate can be
16 considered “recyclable materials” in HWCL parlance (which proposition Plaintiffs vigorously
17 dispute), both materials would meet the criteria for exclusion and are not subject to hazardous
18 waste permit requirements.

19 58. In 2014, the state Legislature enacted Senate Bill 1249, effective January 1, 2015
20 (“SB 1249”), directing Defendant DTSC to conduct an evaluation of metal shredding facilities in
21 the state and authorizing DTSC, if appropriate, to adopt regulations establishing alternative
22 management standards for “hazardous waste management activities within the department’s
23 jurisdiction” conducted at metal shredding facilities. Health & Saf. Code, § 25150.82(c). In
24 defining DTSC’s role in the regulation of metal shredding facilities, the Legislature was focused
25 on metal shredder residue, not on metal processing operations lying outside DTSC’s jurisdiction
26 and which are already regulated by numerous other state, regional and local agencies. To the
27

1 extent that Defendant seeks to rely on SB 1249 as authority for regulating metal processing
2 operations as hazardous waste treatment, that reliance is misplaced.

3 59. SB 1249 did not expand the jurisdiction of the DTSC, as set forth in the HWCL.

4 60. SB 1249 did not modify the existing definitions of “waste,” “hazardous waste,”
5 “intermediate manufacturing process stream,” or “recyclable material” contained in the HWCL.

6 61. SB 1249 did not repeal or revise the scrap metal exemption contained in sections
7 66260.10 and 66261.6(a)(3)(B) of the Title 22 regulations.

8 62. SB 1249 did not modify or rescind DTSC Official Policy/Procedure #88-6.

9
10 **FIRST CAUSE OF ACTION**

11 Declaratory Relief (Cal. Code Civ. Proc. § 1060)

12 63. Plaintiffs re-allege and incorporate herein by reference the allegations of all
13 foregoing paragraphs.

14 64. This case presents a justiciable issue in that the Plaintiffs have previously operated
15 and continue to operate scrap metal shredding and processing facilities in accordance with
16 applicable laws and regulations, as interpreted by Defendant over the past 35-plus years.

17 65. Plaintiffs are entitled to a judicial declaration that operation of a metal shredder
18 (hammermill or other shredding device) does not require a permit or other form of authorization
19 from DTSC, and that removal of ferrous and non-ferrous metals from shredder output and
20 aggregate, respectively, does not constitute treatment of hazardous waste subject to a permit or
21 other form of authorization from DTSC.

22 66. Plaintiffs are entitled to a judicial declaration that scrap metal is exempt from
23 regulation as hazardous waste and that the following materials fall within the scope of the
24 exemption: shredder feedstock, in-process shredder output, in-process aggregate, and the ferrous
25 and non-ferrous metals produced by Plaintiffs’ metal processing operations.

1 Plaintiffs, their customers nor the public should be subjected to the significant environmental and
2 economic impacts that would be caused by disruption of Plaintiffs’ metal recycling operations.

3 72. As a consequence of Defendant’s unlawful reclassification of Plaintiffs’ metal
4 processing facilities as hazardous waste treatment facilities, each of Plaintiffs’ facilities could
5 become a nonpermitted or non-conforming use, subject to significant restrictions on future
6 modifications and expansions, new local permitting requirements, fees and assessments, and
7 possibly phase-out over time, all of which will interfere severely with Plaintiffs’ ability to
8 conduct their lawful operations.

9 73. Even if Plaintiffs were able to overcome the land use hurdles described in
10 Paragraph 72, Plaintiffs are informed and believe, and on that basis allege, that the cost of
11 compliance with hazardous waste permit requirements and related regulations could exceed
12 several hundred thousand dollars per year, per facility. Plaintiffs could also be required to
13 substantially rebuild their facilities, at a cost of millions of dollars, in an effort to comply with
14 hazardous waste regulations. Plaintiffs have no means of passing any of these costs on to their
15 customers. Incurrence of these additional costs would threaten the economic viability of
16 Plaintiffs’ metal shredding facilities and is likely to result in the shut-down and/or out-of-state
17 relocation of one or more of such facilities.

18 74. Shutdown or curtailment of Plaintiffs’ legitimate metal shredding and processing
19 operations would have the undesirable result of encouraging illicit metal recyclers that operate
20 “under the radar” and without regard to applicable environmental laws. By avoiding
21 environmental regulation and the attendant costs of compliance, these facilities undercut
22 legitimate operations by offering higher prices for scrap metal, depriving legitimate recyclers of
23 critical raw materials. Plaintiffs are informed and believe, and on that basis allege, that illicit
24 recyclers operate without storm water permits, air quality permits, hazardous materials business
25 plans or permits, spill response and contingency plans, scrap acceptance policies or other
26 procedures designed to protect the environment and that apply to Plaintiffs’ operations. Plaintiffs
27 are further informed and believe, and on that basis allege, that many of these illicit recyclers

1 simply load vehicles, appliances and other scrap metal into cargo containers for shipment
2 overseas, with minimal or no de-pollution. Undoubtedly, Defendant's proposed action would
3 result in a significant increase in the already large number of illicit operations.

4 75. Plaintiffs and Plaintiffs' members will suffer irreparable harm if Defendant is
5 allowed to implement its unlawful regulatory regime and is not enjoined. This harm would be
6 suffered without any offsetting environmental benefit.

7 76. Plaintiffs have no adequate remedy at law for the injuries alleged herein. Only this
8 Court's exercise of its equitable powers can protect Plaintiffs from sustaining irreparable harm.

9 77. While injunctive relief would prevent irreparable injury to Plaintiffs, any resulting
10 injury to Defendant (if any at all) would be insignificant. Defendant has allowed Plaintiffs to
11 operate their metal shredding facilities without asserting a requirement for hazardous waste
12 treatment permits since the advent of the state's hazardous waste management program and can
13 point to no change in the law that supports a contrary result. Plaintiffs' facilities are already
14 subject to numerous regulatory programs of other state, regional and local agencies, including the
15 local air quality management districts, regional water quality control boards, certified unified
16 program agencies and local fire departments. Plaintiffs work closely with these regulatory
17 agencies to address any concerns that have been raised and are inspected by them on a regular
18 basis. Plaintiffs' facilities are well managed and do not pose a threat to human health, safety or
19 the environment. Ironically, Defendant has acknowledged the continuous improvement of
20 Plaintiffs respective operations over time.

21 78. Plaintiffs do not seek to restrict DTSC's permitting or enforcement authority
22 except with respect to the metal processing operations addressed in this Complaint. Defendant's
23 authority to regulate other aspects of Plaintiffs' operations that are legitimately within its
24 jurisdiction (e.g., the chemical treatment of metal shredder residue) would not be compromised
25 by the Court's granting the requested injunctive relief.

26 79. The public interest would also be served by injunctive relief because unilateral
27 imposition of the new, unlawful regulatory regime crafted by the Defendant, without input from
28

1 Plaintiffs or any other members of the metal shredding industry, would come at a collective cost
2 of thousands of direct and indirect jobs and many millions of dollars in taxes, goods and services
3 to the State and local governments. The resulting loss of jobs would cause extreme financial
4 hardship to the affected individuals and would propagate serious effects throughout the local and
5 state economy. On a statewide basis, total economic losses could exceed hundreds of millions of
6 dollars.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for entry of judgment as follows:

10 80. For a judicial declaration with respect to each of the following:

- 11 a. that operation of a metal shredder (hammermill or other shredding device) does
12 not require a permit or other form of authorization from DTSC;
13 b. that metal processing operations do not constitute treatment of hazardous waste
14 and do not require a permit or other form of authorization from DTSC;
15 c. that the scrap metal exemption set forth in Section 66261.6(a)(3)(B) of Title 22
16 of the California Code of Regulations applies during metal processing
17 operations; and
18 d. that none of the following materials are subject to regulation as hazardous
19 waste: shredder feedstock, shredder output, aggregate, and ferrous and non-
20 ferrous metals that are produced by metal processing operations;

21 81. For an injunction barring Defendant from requiring Plaintiffs to apply for
22 hazardous waste treatment permits for their metal processing operations or otherwise requiring
23 Plaintiffs to comply with hazardous waste regulations with respect to such operations, and barring
24 Defendant from taking enforcement action of any kind against Plaintiffs which presumes that
25 Plaintiffs' metal processing operations are subject to hazardous waste treatment permit
26 requirements;


27 82. For costs of suit;

1 83. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
2 any other applicable law; and

3 84. For such other relief as the Court finds just and proper.
4

5 Dated: November 26, 2019

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GROUP USA CORPORATION