



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Metal Processing Operations/California Hazardous Waste Control Law: West Coast Chapter-Institute of Scrap Recycling Industries Judicial Challenge to DTSC Jurisdiction

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The West Coast Chapter of the Institute of Scrap Recycling Industries, Inc., and several scrap facilities (collectively “Scrap Facilities”) filed a November 26th Complaint for Declaratory and Injunctive Relief (“Complaint”) against the California Department of Toxic Substances Control (“Department”) regarding an interpretation of that state agency that affects metal processing operations.

The Scrap Facilities challenge the Department’s utilization of the Hazardous Waste Control Law (“Law”) to require that such facilities obtain hazardous waste facility permits for metal processing operations conducted at metal shredding facilities.

The West Coast Chapter of the Institute of Scrap Recycling Industries, Inc. describes itself as a local chapter of the Institute of Scrap Recycling Industries, Inc., which is a national, not-for-profit trade association that represents over 1,000 recycling companies nationwide engaged in the handling, processing, shipping and recycling of valuable scrap metal commodities.

The Complaint describes “metal processing operations” as:

- the reduction in size of scrap metal through the use of an electric hammermill or other shredding device (“shredding”)
- the subsequent separation, sorting and removal of ferrous and non-ferrous metal commodities from the shredded material exiting the hammermill or shredding device
- the related receipt, stockpiling and handling of raw material feedstocks, intermediates and finished metal products

Referenced facilities are argued to fall outside of the scope of the Department’s jurisdiction under the Law.

The Complaint alleges that the Department is attempting to:

. . . regulate metal processing operations as “treatment” of “hazardous waste” contrary to applicable laws, regulations and long-standing DTSC policy and practice.

The ramifications alleged to flow from the Department's interpretation are stated to include:

- Loss of significant scrap metal recycling capacity in the State of California
- Disruption in an industry that provides critical infrastructural services to Californians
- Unlawful interference and impairment of scrap facilities legitimate business operations

The Scrap Facilities arguments for the Department's absence of regulatory authority include the proposition that metal processing conducted for the purpose of separating and removing valuable ferrous and non-ferrous metals from exempt scrap metal does not involve any form of waste management. The Department's jurisdiction is stated to be limited to facilities that treat, store, or dispose of hazardous waste.

An injunction is sought preventing the Department from requiring the scrap industries to apply for hazardous waste treatment permits and bar related enforcement actions predicated upon their metal processing operations being subject to hazardous waste treatment permit requirements.

A copy of the Complaint can be downloaded [here](#).