

PETITION FOR VARIANCE
BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT



PETITIONER

Name: *Radius Recycling, Inc. (formerly Schnitzer Steel Industries, Inc.)*

Check One: ☐ Sole Proprietor ☐ Partnership ☒ Corporation
☐ Government ☐ Non-Profit (specify) _____

Mailing Address: *PO Box 747, Oakland, CA 94604-4604*

Phone number: (510) 444-3919

Email Address: mmandler@rdus.com

Name, title, and phone number of person(s) authorized to receive notices (no more than two):

Margaret Rosegay
Partner, Pillsbury Winthrop Shaw Pittman LLP
(415) 279-6310 (mobile)

Mariano Mandler
Vice President, Environmental
Radius Recycling
(510) 444-3919

Briefly describe the type of business or organization/agency activity:

Metal recycling

Are you a Small Business as defined in Health and Safety Code Section 42352.5(b)?

☐ Yes ☒ No

Are you a public agency providing an "essential public service" as defined in Health and Safety Code Section 42352?

☐ Yes ☒ No

VARIANCE REQUEST

Type of Variance Requested:

If you are selecting Interim Variance, you must also select a Short or Regular Variance to follow.

☐ Interim ☒ Short ☐ Regular ☐ Emergency ☐ Product ☐ Group

Good Cause: (Required only for Emergency and Interim Variances Explain why this Petition was not filed in sufficient time to issue the required public notice.)

Not applicable.

OPERATION

Briefly describe the type of equipment or process that is the subject of this variance petition, and why it is necessary to your operation. Attach copies of the Permit(s) to Construct and/or Permit(s) to Operate for the subject equipment. For Title V facilities, attach only the relevant sections of the Facility Permit showing the equipment or process and conditions that are subject to this Petition. You must bring the entire Facility Permit to the hearing:

The Bay Area Air District ("District") Permit to Operate (Facility ID 208) for Radius's Oakland scrap metal recycling facility ("Facility") currently limits the number of ships that may call at the Facility to 26 ships per calendar year. This limit on the number of ships was imposed solely to support an assumption in a 2009 analysis conducted by the District, pursuant to the California Environmental Quality Act ("CEQA"), in connection with a prior permit action, and is not otherwise required pursuant to any District regulation. Since that time, significant new emission controls have been installed at the facility, and the emission calculations associated with the 2009 CEQA process are outdated.

The ships are used to transport finished ferrous metal products to Radius' customers, many of whom are located in foreign countries. The ability to deliver these finished products to customers by ship is essential to the conduct of business by the Oakland Facility. In addition, many of Radius' customers are

municipal and other governmental entities that must identify lawful means of handling very large pieces of scrap metal that are generated during major infrastructural improvement or demolition projects. Radius periodically receives deliveries of these materials (such as damaged or obsolete construction cranes, sunken vessels, bridges, large steel beams, etc.) at the Oakland facility by barge. Radius purchases these materials and provides critical recycling services to these governmental entities. For example, during CalTrans' demolition of the former Oakland Bay Bridge, large pieces of structural steel were transported by barge to the Oakland Facility for recycling. Just last year, Radius recycled a large part of a sunken Navy ship that was removed from the Delta and transported to Oakland by barge. Radius includes these barges as "partial" ships depending on the amount of emissions emitted by the tug boats that move the barge, relative to a ship's emissions (a barge is typically counted as a fraction of a ship, e.g. a third or half, depending on the tug emissions). Accordingly, the total ship count is comprised of a combination of ships and barges, the specific number of which may vary in any given year.

Background

In July 2018, Radius applied for a modification of its Permit to Operate to increase the number of allowable ship calls in Calendar Year 2018 from 26 to 32 per year so that it could continue to operate in compliance with its permit. The need for additional ship calls was based in part on changes in the size or available capacity of ships that were commissioned by its customers to pick up finished metal products at the Oakland Facility and by the need to respond to favorable market conditions allowing the facility to increase receipts and deliveries of heavy melt steel (HMS) and other materials that do not require processing by the shredder.¹ Radius has been waiting over eight years for the District to issue the modified permit which, as of the date of this Petition, remains outstanding for reasons that are wholly outside Radius' reasonable control. Radius' application for the increase in allowable ship calls was determined to be complete on January 31, 2019 pursuant to District Rule 2-1-432. There is no District regulation barring modification of the permit as requested by Radius.

Radius understands that this lengthy delay is due to the District's inability to finalize an updated facility-wide emissions inventory that must be provided to the District's CEQA consultant before the CEQA process may be completed. Modification of Radius' Permit to Operate is a discretionary approval, and compliance with CEQA is a necessary predicate for issuance of the modified permit. Radius has provided all required information to the District and has no control over the timing of the District's completion of the necessary calculations.

¹ Annual shredder throughput is limited to 720,000 tons per year. Radius has not applied to increase this limit. There is no limit on the amount of HMS or other heavy gauge metals that may be processed at the facility (e.g., by baling, shearing, torch cutting).

In the past, to address the adverse impacts to its business operations resulting from the delay in approval of the requested modification, the District entered into Compliance and Settlement Agreements with Radius in 2018, 2020 and 2021 which allowed additional ships to call at the Oakland facility in each of those years. Radius timely paid excess emission fees to the District for each of these years and operated in accordance with the terms and conditions of those agreements.

In 2022, when the modification had still not been completed, Radius asked whether the District would enter into another Compliance and Settlement Agreement to allow additional ships to call at the facility in calendar year 2022. Radius was advised that the District was no longer able to utilize that enforcement mechanism to grant temporary relief from the 26-ship limit. As a result, Radius filed an application for an Interim and Short Variance and was granted a short variance by the Hearing Board following a hearing on November 8, 2022. The Hearing Board found that Radius' inability to comply with the annual ship limit in the facility's Permit to Operate was due to circumstances beyond Radius' reasonable control and strongly encouraged District staff to complete the CEQA process without further delay so that the modification could be approved. A copy of the Hearing Board's 2022 order is attached as Exhibit A. Pursuant to the prior Compliance and Settlement Agreements and the short variance, Radius has paid the District a total of \$166,648.44 for the extra ship calls (\$52,750 in penalties required under the agreements and \$113,898.44 in excess emission fees).

It is noted that Radius did not require relief from the ship call limit in calendar years 2019, 2023, 2024 or 2025 due to significant worldwide decline in the global markets for recovered metals, which obviated the need for additional ships in those calendar years. Significant fluctuations in the global metals markets are a recurring economic feature of this industry and are wholly outside Radius' control. However, market conditions have changed in 2026 and Radius anticipates at this time that it will require two additional ships to move its full annual production to market. Each ship is loaded with a combination of Shred (shredded ferrous metal) and HMS and other recovered metals that are not processed through the shredder (e.g., Bonus).

As of the date of this filing, the District still has not completed the necessary emission calculations and the permit modification request, and associated CEQA compliance. The District has confirmed that no further information is needed from Radius but has advised that the permit modification process will not be completed before the end of the year. The District has declined to enter into a Compliance and Settlement Agreement for Calendar Year 2026, necessitating the filing of this Request for Short Variance. Radius does not expect to exceed the 26 ship limit until December 2026 and thus is not seeking an additional

Interim Variance at this time. Radius reserves the right to request interim variance relief if market conditions change such that the permit limit may be exceeded at an earlier point in time.

Radius has no means of rectifying this permitting conundrum. Faced with these extenuating circumstances beyond its reasonable control, and based on current market projections, Radius seeks a Short Variance from the Hearing Board to allow a total of up to two (2) additional ships (or ship equivalents) to call at the Oakland facility in Calendar Year 2026. The 26th ship (or ship equivalent) is currently expected to arrive at the facility in November 2026, after which no further ships or barges will be allowed unless the Hearing Board grants the requested relief. The inability to receive large HMS by barge and to ship finished products to customers will also prevent Radius from accepting other material for recycling due to limitations on the amount of both unprocessed material and finished products that can be stored on site.

REGULATORY REQUIREMENTS

List all District Regulations, rules, and permit conditions that are the subject of this variance request. Identify all applicable subsections:

- *Annual Facility Permit to Operate, Facility ID 208, Condition 27410, Part 8*
- *Rule 2-1-302*
- *Rule 2-1-307*

INFORMATION FOR VARIANCE FINDINGS

Is there a regular maintenance and/or inspection schedule for this equipment?

☐ Yes ☒ No

If yes, how often: _____

Date of last maintenance and/or inspection: *not applicable*

Was there any indication of problems with the subject equipment?

☐ Yes ☒ No

Were you issued any Notice(s) of Violation or Notice(s) to Comply concerning the equipment or activity that are the subject of this variance request within the past year?

☐ Yes ☒ No

If yes, attach a copy of each notice.

Have you received any complaints from the public regarding the operation of the subject equipment or activity within the last six months?

☐ Yes ☒ No

If yes, be prepared to present detailed testimony about the nature of these complaints at the hearing.

Has this matter been the subject of previous variance requests? Yes.

If yes, provide date of hearing, type of variance, and Hearing Board decision:

Hearing date: November 8, 2022

Hearing Board decision: Short-term variance granted

Explain why it is beyond your reasonable control to comply with the regulations and permit conditions that will be the subject of this variance:

As discussed above, the need for additional ships is attributable at this time to improved conditions in the international and domestic markets resulting in an increased need to receive deliveries of HMS and Bonus at the facility by barge and the transport finished metal products from the facility . Although Schnitzer (now Radius) timely submitted an application to modify its permit in July 2018 as a means of remaining in compliance, the District has been unable to complete the CEQA process, thereby unfairly and severely compromising Radius' ability to conduct lawful operations. The District's lengthy delays in the permitting process are beyond Radius's reasonable control.

In support of its application for variance in 2022, Radius explored whether it could comply with its current limit on ship calls by trucking finished ferrous products to another port facility for export. At the time, Radius estimated that it would require 4,000 truck trips to deliver or divert these materials to another port facility that could accommodate the two additional ships, assuming an alternate facility (or facilities) could be identified that could lawfully receive the additional vessels. The emissions associated with 4,000 truck trips substantially exceed the excess emissions that would be associated with two (2) additional ship calls at the Oakland facility, and the ship emissions would still occur as the vessels would need to enter the Bay and travel to the more distant port (e.g., Port of Stockton or West Sacramento) to be loaded. This scenario is logistically, economically and environmentally infeasible and was not found by the Hearing Board to be a reasonable means of remaining in compliance with the facility's ship call limit. This alternative was not re-evaluated for purposes of the present application, but Radius represents that the outcome of any such analysis would be the same and made even more costly due to the significant increase in the price of diesel fuel due to the war in the Middle East.

If you are seeking a product variance, briefly describe how you attempted to locate, research, or develop a product that is in compliance with District rules and regulations:

Not applicable.

When and how did you first become aware that you are not (or will not be) in compliance with the regulations, rules and/or permit conditions?

Whether additional ship calls (beyond the 26 allowed under the permit condition) are needed in any particular year is significantly dependent on market conditions (both domestic and international) that are beyond Radius' control. Radius carefully monitors these market conditions and repeatedly updates its forecasts on the amount of finished material that it expects to be able to produce and move to market. Market conditions have improved over the latter half of the year, and

Radius' is now forecasting that it may need two (2) more ships (or ship equivalents) before the end of Calendar Year 2026. Radius is limiting this variance request to just two additional ships as it does not have a reasonable basis for expecting that more than two extra ships will be needed before the end of the year. The ship count will reset on January 1, 2027, and Radius is hopeful that the necessary emission calculations and CEQA analysis will be completed and the permit modification approved in 2027, obviating the need for any further variance relief.

List the date(s) and action(s) you have taken since that time to achieve compliance:

Radius has responded promptly to all District information requests associated with the permitting and CEQA processes. Radius has confirmed, as recently as March 12, 2026, that the District does not need any additional information from Radius to complete its analysis of the ship call increase permit application. There is nothing that Radius can do to control international and domestic metals markets, and Radius cannot reasonably be expected to curtail operations in the circumstances. Short of ceasing operations once the 26th ship has been loaded or barge has been received, an increase in the allowable number of ship calls is the only feasible compliance strategy.

What would be the harm to your business, agency or organization if the variance is not granted?

Economic losses: *Est. \$60 million*

Number of employees laid off, if any: *17-66, depending on the circumstances*

Provide detailed information regarding economic losses, if any (anticipated business closure, breach of contracts, hardship on customers, employees or the public, and/or similar impacts):

Failure to grant the requested relief will cause Radius to breach contractual obligations to customers, including governmental entities, due to the inability to receive deliveries of HMS and Bonus by barge and the inability to deliver finished ferrous products of all types, resulting in severe economic hardship and other losses to Radius including contractual damages and financial penalties. Production levels at customer locations would also be adversely affected due to lack of raw material needed for manufacturing steel and smelting of other metals. Businesses, government entities and consumers that rely on Radius to purchase their scrap metal would also be adversely affected and forced to find alternate outlets for their scrap (by law, recyclable scrap metal cannot be disposed of in California landfills; see Public Resources Code § 42170). If Radius were forced to suspend operations due to the inability to accept further receipts or make any further shipments in Calendar Year 2026, economic losses to Radius are

estimated to exceed \$60 million. While Radius would seek to avoid having to lay off any employees, it would likely be forced by economic realities to take that draconian step.

Can you curtail or terminate any operations in lieu of seeking a variance?

☐ Yes (provide brief explanation)

☒ No, doing so would impose severe economic hardship and other losses to Radius and its customers

Will any emissions occurring during the variance period result in odor, dust or smoke?

No.

If yes, identify the type and amount of these emissions; what you can do to monitor and mitigate those emissions; and, the likely impact on the surrounding community.

Not applicable.

Will any emissions occurring during the variance period result in excess opacity (total opacity above 20%)?

No.

If yes, identify the type and amount of these emissions; the likely duration of the excess opacity during the variance period; and, what you can do to monitor and mitigate those emissions.

Not applicable.

Estimate all other excess emissions that will occur on a daily basis during the variance period. Excess emissions are those that exceed rule and permit condition limits.

Insert chart with columns for:

Pollutant

Total Estimated Excess Emissions (lbs/day)

Reduction Due to Mitigation (lbs/day)

Net Emissions after Mitigation (lbs/day)

Calculations of excess emissions per ship or barge call are based on a detailed methodology approved by District staff for use in the Compliance and Settlement Agreements for increased ship calls. The methodology is based on the

calculations used in the 2009 CEQA analysis that are identified as the basis for the permit limit of 26 ships per year. The calculations used to determine the excess emissions associated with each additional ship calls are set forth in Exhibit B, which addresses several ship-related issues.).

Show calculations used to estimate quantities of excess emissions or explain why there will be no excess emissions:

Please see Exhibit B.

Briefly describe the measures that will be taken to mitigate excess emissions to the maximum extent feasible during the variance period, or explain why mitigation measures are not feasible:

Reducing throughput at the facility is not an option, as even the reduced volume of material processed would still need to be shipped offsite. The only options are (1) suspension of operations at the facility until the modified permit allowing additional ship calls is issued or until January 1, 2027, whichever occurs first, or (2) shipment of shred, Heavy Melt Steel and Bonus offsite by truck to another port (e.g., Stockton or West Sacramento). Even under the latter scenario, Radius would still be barred from receiving deliveries of HMS and other large scrap by barge.

Continued use of ships and barges as necessary to the facility's recycling operations is the only feasible mitigation measure short of suspending operations at the facility. Suspension of operations would require local companies who need outlets for their scrap metal to transport their material by truck or barge to more distant locations (potentially out of state). The only other metal shredding facility in northern California is much smaller than the Radius facility and cannot handle the additional volume of material that would need to be diverted from the Oakland facility.

How do you plan to monitor or quantify emissions levels from the equipment or operations during the variance period?

The District requires Radius to keep records of all ship calls in a District-approved log; Radius maintains that log and will continue to do so during the variance period. This information will be used to calculate emissions associated with additional ship calls based on a District-approved methodology.

Will you provide information regarding emissions during the variance period in a manner and frequency as requested by the District?

☒ **X** **Yes** ☐ **No**

COMPLIANCE

How do you intend to achieve compliance with the regulations and permit conditions that are the subject of the variance? Briefly describe any necessary process changes; equipment to be installed; or modifications to equipment or your facility. Identify whether authority to construct or a permit amendment will be necessary. Include dates by which you estimate actions will be completed and an estimate of total costs.

Radius will timely respond to all requests for information from the District to support completion of the CEQA process for the pending permit application.

List any operating conditions or increments of progress, if any, that you propose to include in the variance order. If the variance is to extend beyond one year, you must propose increments of progress:

Not applicable.

State the date you are requesting the variance to begin: *November 15, 2026*

State the date on which you will achieve final compliance: *January 1, 2027*

List the names of any District staff with whom you or any of your staff or representatives have had contact concerning this variance petition or any related Notice of Violation or Notice to Comply. Include name, title and phone number:

Davis Zhu

Marcia Raymond

If this Petition was completed by someone other than the petitioner, provide their name and title:

The following verification must be signed by the owner, manager, director, or other responsible party of the plant, business, factory, agency or organization requesting the variance:

I, the undersigned, hereby declare under penalty of perjury, under the laws of the State of California, that I have read the foregoing Petition, including attachments, and that their contents are true and correct.

Dated: 10/15/26, at (location) Oakland, CA.

Print name: Mariano Mandler

Signature: *Mariano Mandler*

Title: Vice President-Environmental

Exhibit A – 2022 Hearing Board Order

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Docket No.: 3737

**ORDER GRANTING SHORT-TERM
VARIANCE**

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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1 Embarcadero West, Oakland, Californian. The facility is located on the Oakland Inner Harbor, in
2 the Port of Oakland area. The Applicant purchases end-of-life vehicles, household appliances and
3 other forms of scrap metal from myriad sources throughout California and processes the material
4 using a variety of technologies to produce finished ferrous (iron-containing) and non-ferrous metal
5 (copper, aluminum, zinc, etc.) commodities that are traded on the global metals market. Ferrous
6 metals produced by the facility are loaded onto ocean-going vessels that berth at the Applicant's
7 dock, which is the only feasible means of delivering these products to the Applicant's overseas
8 customers.
9

10 Activity Subject to the Variance Petition

11 Condition #27410(8) of Applicant's Authority to Construct and Permit to Operate limits the
12 number of ships that may call at the facility to 26 per year. The processed scrap metal produced at
13 the facility is sold to customers that operate steel mills throughout the world, including Asia. The
14 Applicant was able to comply with the ship call limit until 2018 when it became apparent that the
15 amount of metal it was able to deliver per ship load had declined by approximately 15% due to draft
16 limitations at the destination ports utilized by its customers and, in some cases, by the ability to
17 load only partial loads on a given vessel due to commitments made by the vessel owner to third
18 parties. To address this issue, in July of 2018, the Applicant submitted an application to the District
19 to increase the number of allowable ship calls from 26 to 32 ships per year so that it would be
20 assured a sufficient number of ships to fulfill its contractual commitments to foreign customers.
21 For the reasons set forth below, the Applicant's 2018 permit application remains pending. The
22 Applicant seeks a variance to increase the facility's ship call limit from 26 to 32 for the remainder
23 of calendar year 2022.
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26 Summary

27 The District is the sole agency that has authority over the number of ships that may call at
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1 Applicant's facility. The modification of Applicant's Permit to Operate is a discretionary approval
2 subject to the requirements of the California Environmental Quality Act ("CEQA"). As the sole
3 permitting authority, the District is the lead agency under CEQA and must complete an
4 environmental review of the project before it may act on the Applicant's application to modify its
5 Permit to Operate. This environmental review includes the completion of a cumulative impacts
6 analysis that evaluates the potential impacts of the project (the six additional ship calls requested
7 by Applicant) along with the impacts of other similar projects in the area, including projects outside
8 the control of the District. Due to limitations on staff resources and other permitting priorities,
9 including the issuance of permits for installation of advanced emission control systems at
10 Applicant's facility, the District has been unable to complete the CEQA process that is a condition
11 precedent to modification of Applicant's Permit to Operate. Consequently, Applicant's application
12 to modify its permit is still pending, and the Applicant remains subject to the existing permit
13 condition limiting the number of ship calls to 26 per year.
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16 In prior years, the District entered into Compliance and Settlement Agreements (CSA) that
17 allowed Applicant to bring in up to six additional ships, subject to the payment of excess emission
18 fees for each additional ship. CSAs were entered into for each of 2018, 2020 and 2021 (due to
19 market conditions, no extra ships were required in 2019). In August 2022, the Applicant determined
20 that it would likely need additional ships in 2022 and asked the District to renew the 2021 CSA for
21 an additional year. The District declined to renew the CSA, preferring that the matter be decided
22 by the Hearing Board.
23

24 As of the date of hearing, the 26th ship had been loaded and departed Applicant's facility.
25 Accordingly, the Applicant would be unable to make any further shipments in 2022, and would be
26 forced to significantly curtail operations, unless the application for variance is granted. Although
27 the Applicant requested both interim and short-term relief, Applicant cancelled the ship that was
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1 scheduled to arrive at the facility on November 1, 2022, the date this matter was originally
2 scheduled to be heard by the Hearing Board (the hearing was rescheduled to November 8, 2022 due
3 to the unavailability of the District's witness). Because the next ship is not scheduled to arrive at
4 the facility until later in the month, the Applicant no longer requires interim relief.

5
6 The Applicant testified that if it were not allowed to have any further ship calls in 2022, it
7 would suffer a loss of revenue of approximately \$80 million. The Applicant testified that it would
8 also be forced to suspend purchases of scrap metal, lay-off or furlough numerous employees, and
9 would be exposed to other adverse consequences, including the risk of contractual damages and
10 loss of customer good will. The Oakland facility is the largest scrap metal shredding and recycling
11 facility in the state, and the Applicant represented that curtailment of its operations for the
12 remainder of the year would also cause major disruption of the state's scrap metal recycling system,
13 likely resulting in large over-accumulations of unprocessed scrap metal in the region, diversion of
14 scrap metal to recycling facilities located elsewhere in the state with attendant diesel particulate
15 emissions and consumption of fossil fuels from the thousands of trucks that would be needed to
16 transport the material, and financial hardship on small local businesses that make a living collecting
17 and selling scrap metal to metal recycling facilities.

18
19 Under the circumstances of this case, absent a variance, the Applicant is unable to comply
20 with the ship call limit except through curtailment of its operations. The District has calculated the
21 excess emissions associated with each additional ship call, and excess emission fees under
22 Regulation 3, neither of which is disputed by the Applicant. While there is nothing that Applicant
23 can do to reduce the excess emissions associated with additional ship calls, the Applicant has
24 achieved major reductions in VOC and particulate emissions from the Oakland facility through the
25 enclosure of its shredder and installation of state-of-the-art emissions controls including two
26 regenerative thermal oxidizers and acid gas scrubbers to control VOCs, and the enclosure of its
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1 Joint Products Plant and capture of particulate emissions by a large baghouse. The Applicant also
2 agreed to reduce the number of trucks that are allowed to visit the facility for the remainder of
3 calendar year 2022 by 7,200. The Applicant represented that the excess ship emissions will not
4 materially change the facility's risk profile under District Rule 11-18, which is well below the
5 significance threshold established under the rule. The District did not dispute this testimony.
6

7 Following are facts and conclusions supporting the findings set forth in California Health
8 and Safety Code Section 42352(a) for the granting of a short-term variance. The Air Pollution
9 Control Officer did not oppose the granting of the short-term variance to the extent that the
10 Applicant was able to meet its burden of proof.

11 **Findings of Fact and Conclusions**

12 **(a)(1) That the Applicant for a variance is, or will be, in violation of Health and Safety Code**
13 **Section 41701 or of any rule, regulation or order of the District.**

14
15 1. The need for a variance exists because the number of annual ship calls allowed
16 under the Applicant's Authority to Construct and Permit to Operate (26 ships) is not sufficient
17 to allow Applicant to deliver its annual production of ferrous metal commodities to overseas
18 customers. Shipment of these commodities by ocean-going vessels that call at Applicant's dock
19 is the only feasible means of delivering these products. As of November 8, 2022, a total of 26
20 ships had already called at the facility. If the Applicant were to bring in any additional ships, it
21 would be in violation of District Regulation 2, Rule 1, Section 302 and 307, and of Permit
22 Condition #27410(8) of Authority to Construct Application # 30009 and Permit to Operate No.
23 A0208. The Applicant cannot fulfill its obligations under existing supply contracts, consistent
24 with the terms of its permits and District regulations, without this variance.
25

26 **(a)(2) That, due to conditions beyond the reasonable control of the Applicant, requiring**
27 **compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B)**
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1 the practical closing and elimination of a lawful business.

2 1. The amount of metal that the Applicant can deliver per ship load has declined by
3 approximately 15% since the ship call limit was first included in Applicant's Permit to Operate in
4 2009. This reduction is attributable to draft limitations at the destination ports utilized by
5 Applicant's customers and, in some cases, by Applicant's ability to load only partial loads on a
6 given vessel. The Applicant testified that these circumstances are beyond its reasonable control.

7
8 2. The Applicant filed an application to modify its Permit to Operate in July 2018 to
9 increase the number of allowable ship calls from 26 to 32 per year. The District, as lead agency
10 under CEQA, cannot act on this application until it has satisfied the requirements of CEQA. The
11 District acknowledged that Applicant's application is complete and that the delay in issuance of the
12 permit modification is due to circumstances beyond the Applicant's reasonable control.

13
14 3. The Applicant has already loaded 26 ships in calendar year 2022. The Applicant
15 represented that if it is unable to bring in any additional ships, it will be forced to curtail operations,
16 leading to approximately \$80 million in lost revenue, employee lay-offs, and disruption of the
17 state's scrap metal recycling system.

18 **(a)(3) That the closing or taking would be without a corresponding benefit in reducing air**
19 **contaminants.**

20
21 1. If the Applicant were forced to curtail operations, it would be required to suspend
22 purchases of scrap metal that would ordinarily be processed by the Oakland facility. Due to the
23 disruption in the market, this scrap metal would be transported by diesel truck to recycling facilities
24 located in other parts of the state (most of which are in southern California), resulting in truck
25 emissions that would exceed the excess emissions associated with the six additional ship calls
26 requested under this variance.

27 **(a)(4) That the Applicant for the variance has given consideration to curtailing operations of**
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1 the source in lieu of obtaining a variance.

2 1. In August 2022, the Applicant determined it would need up to six additional ship
3 calls to fulfill its contractual obligations to overseas customers in 2022. Because its 2018 permit
4 application was still pending, the Applicant asked the District to enter into a Compliance and
5 Settlement Agreement for calendar year 2022, as it had done in prior years, to allow an additional
6 six ships to call at the Oakland facility. When the District declined to enter into a new Compliance
7 and Settlement Agreement, the Applicant promptly filed this variance application.

9 2. The Applicant provided evidence demonstrating that the adverse economic and other
10 consequences of curtailing operations would be severe and unavoidable, including a loss of
11 approximately \$80 million in revenue, loss of customer good will, employee lay-offs, and
12 significant disruption of the state's scrap metal recycling system.

14 3. The Applicant explored the possibility of transporting the material to another
15 northern California port for export (e.g., West Sacramento and Stockton) but determined that both
16 locations were infeasible due to lack of necessary infrastructure and other restrictions. The
17 Applicant's witness testified that it would take approximately 2,000 trucks to transport the same
18 amount of scrap metal that can be loaded onto a single ship, and that the truck emissions associated
19 with these additional truck trips to an alternate port would be greater than the excess emissions for
20 six additional ships calling at the Applicant's facility. The District's witness concurred with the
21 Applicant's testimony.

23 4. Further, the Applicant's air quality expert testified that the excess emissions caused
24 by six additional ship calls are less than the diesel truck emissions that would be caused by
25 transporting the displaced scrap metal from the Oakland facility to recycling facilities located in
26 other parts of the state, most notably in southern California.

27 5. Under the circumstances of this case, curtailing operations is not feasible in lieu of
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1 granting a variance. To the contrary, higher emissions would be expected to occur if the variance
2 was not granted.

3 **(a)(5) During the period that the variance is in effect, the Applicant will reduce excess**
4 **emissions to the maximum extent feasible.**

5
6 1. There is nothing the Applicant can do to reduce the excess emissions associated with
7 additional ship calls. However, the Applicant has achieved major reductions in VOC and
8 particulate matter emissions from the Oakland facility over the last several years and has also
9 committed to give up a total of 7,200 truck trips in calendar year 2022 that are otherwise allowed
10 under the facility's Permit to Operate but that are not needed this year. While the reduction in the
11 number of truck trips will not yield actual emission reductions, this reduction maintains emissions
12 parity with the engineering analysis conducted by the District in 2009 when it first imposed the ship
13 call limit.
14

15 2. Based on the testimony of the Applicant's air quality expert, the excess ship
16 emissions will not materially change the facility's risk profile under District Rule 11-18, which is
17 well below the significance threshold established under the rule.

18 **(a)(6) During the period the variance is in effect, the Applicant will monitor or otherwise**
19 **quantify emission levels from the source, if requested to do so by the District, and report these**
20 **emissions levels to the District pursuant to a schedule established by the District.**

21
22 1. The Applicant maintains a log of all ship calls at the facility and will continue to
23 maintain the log during the period of the variance. The Applicant will also quantify the excess
24 emissions associated with each additional ship and report those emissions to the District. The
25 District will use this information to calculate emissions associated with the additional ship calls
26 based on District-approved methodology. The Applicant has agreed to pay excess emission fees in
27 the amount calculated by the District.
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1. The Applicant is granted a Variance from Regulation 2, Rule 1, Sections 302 and 307 and from Condition #27410(8) of Authority to Construct Application # 30009 and Permit to Operate No. A0208. The Variance shall cover the period from November 8, 2022 through December 31, 2022.

- a) The Applicant shall be allowed no more than six (6) additional ships during the period of the Variance (i.e., a maximum of 32 ship calls).
- b) The Applicant shall record all ship calls on a log and timely report all ship calls to the District, along with the excess ship emissions.
- c) The Applicant shall pay all excess emission fees assessed by the District pursuant to Regulation 3.
- d) The Applicant's annual truck cap in Permit Condition #27410(8) of Authority to Construct Application # 30009 and Permit to Operate No. A0208 shall be reduced by a total of 7,200 truck trips for calendar year 2022 only.

Moved By: Peter Y. Chiu, M.D., P.E.

Seconded by: Barbara Toole O'Neil, MS. QEP

AYES: Peter Y. Chiu, M.D., P.E., Barbara Toole O'Neil, MS. QEP, Catherine Fortney, P.E., and Valerie J. Armento, Esq., Chair.

NOES: None

ABSTAIN: None

NON-PARTICIPATING: Amelia Timbers

1 Motion to Grant Variance

2 Moved By: Barbara Toole O'Neil, MS, QEP

3 Seconded By: Peter Y. Chiu, M.D., P.E.

4 AYES: Peter Y. Chiu, M.D., P.E., Barbara Toole O'Neil, MS, QEP, Catherine Fortney,
5 P.E., and Valerie J. Armento, Esq., Chair.
6

7 NOES: None

8 ABSTAIN: None

9 NON-PARTICIPATING: Amelia Timbers
10
11

12 
13 Valerie J. Armento, Esq., Chair

11/16/2022
Date

BEFORE THE HEARING BOARD
OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

In the Matter of the Application of
SCHNITZER STEEL INDUSTRIES, INC.
For Interim and Short-Term Variances from
Regulation 2, Rule 1, Sections 302 & 307
and
Permit Condition # 27410(8) of ATC Appl.
#30009 and PTO Appl. #A0208

Docket No.: 3737

CERTIFICATE OF SERVICE



STATE OF CALIFORNIA)
City and County of San Francisco) ss.

I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

That I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action; that I served a true copy of the attached **Order Granting Short-Term Variance** on:

Margaret Rosegay, Esq. Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, 22nd Fl. San Francisco, CA 94111-5998 margaret.rosegay@pillsburylaw.com	Ronald E. Van Buskirk, Esq. ronald.vanbuskirk@pillsburylaw.com (via email only)
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by depositing same via email and in the United States certified mail, return receipt requested, on November 16, 2022 and on:

Marcia Raymond, Esq., Assistant Counsel
Bay Area Air Quality Management District
375 Beale Street, 6th Floor
San Francisco, California 94105
mraymond@baaqmd.gov

via email on November 16, 2022

DATED: November 16, 2022


Marcy Hiratzka
Clerk of the Boards

Exhibit B - Calculation of Excess Emissions

OGV Main engines, auxiliary engines, and auxiliary boilers will use 0.1%S distillate fuel by Jan 1, 2012.

1. Appendix D CARB's Emissions Estimation Methodology for Ocean-Going Vessels, Table II-6, for slow engine speed, p. D-15.

2. Appendix D CARB's Emissions Estimation Methodology for Ocean-Going Vessels, Table II-B, for medium engine speed, p. D-16.

3. Auxiliary Boiler Emission Factors from ship emission calculation spreadsheet for Schnitzer Steel, provided by the District on 7/30/2018.

4. Tugboat emissions are taken from the ship emission calculation spreadsheet for Schnitzer Steel, provided by the District on 7/30/2018.

None of the assumptions for the tugboats emission calculations have been changed.

5. Original engine loads are default values in the shipping emission spreadsheet provided by the BAAQMD.

Revised engine loads are estimated based on CARB's Emissions Estimation Methodology for Ocean-Going Vessels, Appendix D, Section 4 Load Factor, p. D-13, and propeller law.

	Annual (tons)							Increment, this ship (tons)						
	CO	NO _x	SO ₂	HC	PM ₁₀	CO ₂	CH ₄	CO	NO _x	SO ₂	HC	PM ₁₀	CO ₂	CH ₄
26 ship calls	1.992	17.294	0.397	0.821	0.400	834.235	0.074							
27 ship calls	2.068	17.950	0.410	0.852	0.414	861.783	0.077	0.076	0.656	0.013	0.031	0.015	27.548	0.003
28 ship calls	2.143	18.606	0.422	0.883	0.429	889.332	0.079	0.076	0.656	0.013	0.031	0.015	27.548	0.003

Excess Emissions (tons)				
CO	NO _x	SO ₂	POC	DPM
Excess Emissions per Ship	0.076	0.656	0.013	0.015