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

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In the Matter of the Application of)	Docket No.: 3737
SCHNITZER STEEL INDUSTRIES, INC.)	ORDER GRANTING SHORT-TERM
For Interim and Short-Term Variance from)	VARIANCE
Regulation 2, Rule 1, Section 302 and)	
Section 307 and Permit Condition #)	
27410(8))	

FILED
NOV 16 2022
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

Findings and Decision of the Hearing Board

The above-entitled matter, being an Application for Interim and Short-Term Variance from the provisions of Regulation 2, Rule 1, Sections 302 and 307, of the Bay Area Air Quality Management District (District) and from Permit Condition #27410(8) of Authority to Construct Application # 30009 and Permit to Operate No. A0208, was filed on October 7, 2022. The matter was heard, in a combined hearing, on November 8, 2022, pursuant to notice and in accordance with the provisions of Health and Safety Code Sections 40824 and 40825. The Applicant, Schnitzer Steel Industries, Inc., was represented by Margaret Rosegay of Pillsbury Winthrop Shaw Pittman LLP. Respondent, Air Pollution Control Officer (APCO) of the Bay Area Air Quality Management District, was represented by Marcia Raymond, Assistant Counsel at the District.

THE HEARING BOARD STATES as the reasons for its decision and FINDS as to those matters in which findings are required.

Nature of Business and Location of Facility

The Applicant owns and operates a metal shredding and recycling facility located at 1101

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.
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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.
14

15
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.
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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.

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.

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.**

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.

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

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

25 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.
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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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Order

THEREFORE, good cause appearing, THE HEARING BOARD ORDERS as follows:

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.

2. The Variance granted herein is subject to the following conditions:

- 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.

Motion to Adopt Findings of Fact and Conclusions

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
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12 
13 Valerie J. Armento, Esq., Chair

11/16/2022
Date

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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

FILED
NOV 16 2022
HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

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