JAN 27 2020

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

ENFORCEMENT AND COMPLIANCE
ASSURANCE DIVISION

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7019 0700 0001 7652 9923

Mr. Scott Sloan
Vice President – Environmental
Schnitzer Steel Industries, Inc.
23711 63rd Ave. SE
Woodinville, WA 98072

Re: Finding and Notice of Violation
Schnitzer Steel Industries, Inc.
Oakland, California

Dear Mr. Sloan:

Enclosed is a copy of the Finding and Notice of Violation ("NOV") that the U.S. Environmental Protection Agency Region 9 ("EPA") is issuing to Schnitzer Steel Industries, Inc. ("Schnitzer"), for violations of the Clean Air Act ("CAA"). Specifically, EPA finds that Schnitzer has violated and continues to violate Title V of the CAA, 42 U.S.C. §§ 7661a-7661f and federally-enforceable requirements in the Bay Area Air Quality Management District ("BAAQMD") portion of the California State Implementation Plan ("SIP") at its facility in Oakland, California.

Sections 113(a)(1), 113(b) and 113(d) of the CAA authorize EPA to issue an order requiring compliance with the requirements of the CAA, issue an administrative penalty order, or commence a civil action seeking an injunction and/or civil penalty. *See* 42 U.S.C. §§ 7413(a), 7413(b), 7413(d). Further, Section 113(c) of the CAA provides for criminal penalties in certain cases. *See* 42 U.S.C. § 7413(c).

Schnitzer may, upon request, confer with EPA. Schnitzer may request a conference with EPA within ten (10) working days of the receipt of this NOV. The conference will afford Schnitzer an opportunity to present information on the specific findings of violation, the nature of the violations, and any efforts Schnitzer may have taken to comply and the steps Schnitzer will take to prevent future violations. In addition, in order to make the conference more productive, we encourage Schnitzer to submit to EPA information responsive to the NOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

If you have any questions pertaining to this NOV, please contact Scott Connolly of the Enforcement and Compliance Assurance Division at (415) 947-4141 or connolly.scott@epa.gov, or have your attorney contact Denise Leong of the Office of Regional Counsel at (415) 972-3409 or leong.denise@epa.gov.

Thank you for your cooperation in this matter.

Sincerely,

Amy C. Miller
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

Enclosure

cc: Pamela Gray, Schnitzer Steel Industries, Inc.
Jeffrey Gove, Bay Area Air Quality Management District
Todd Sax, California Air Resources Board

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:	)	
	)	
Schnitzer Steel Industries, Inc.	)	**FINDING AND NOTICE OF VIOLATION**
	)	
Oakland, California	)	
	)	**R9-CAA-20-1004**
Proceedings Pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1)	)	

FINDING AND NOTICE OF VIOLATION

This Finding and Notice of Violation ("NOV") is issued pursuant to Section 113(a) of the Clean Air Act 42 U.S.C. § 7401-7671q ("CAA"). Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan ("SIP") of the violations. This NOV is issued to Schnitzer Steel Industries, Inc. ("Schnitzer") for violations of the CAA at its facility located in Oakland, California. Specifically, this NOV alleges violations of the Bay Area Air Quality Managment District ("BAAQMD") portion of the federally enforceable California SIP. This NOV also notifies Schnitzer of violations of the Title V of the CAA. The authority to issue NOVs has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated to the Director of the Enforcement and Compliance Assurance Division for EPA, Region 9.

STATUTORY AND REGULATORY BACKGROUND

Clean Air Act Title V Operating Permit Program Requirements

1. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to the Title V of the Act, it is unlawful for any person to operate a Title V affected source, except in compliance with a permit issued by a permitting authority under Title V of the Act.

2. Under Section 502(b) of the Act, EPA promulgated 40 C.F.R. Part 70, "State Operating Permit Programs," which provides for the establishment of comprehensive state air quality permitting programs consistent with the requirements of Title V of the Act. EPA's Part 70 regulations define the minimum elements required by the Act for state operating permit programs, among other things. *See* 40 C.F.R. § 70.1.

3. Section 502(d) of the Act requires each state to develop, and submit to EPA for approval, a permit program meeting the requirements of Title V of the Act, including the requirements of the Part 70 State Operating Permit Programs regulations.

4. BAAQMD adopted Regulation 2, Rule 6 ("Major Facility Review") to meet the requirements of Title V of the Act, and 40 C.F.R. Part 70. EPA granted interim approval

of Regulation 2, Rule 6 on June 23, 1995 and full approval on December 7, 2001. *See* 60 Fed. Reg. 32,606 and 66 Fed. Reg. 63,503.

5. The San Francisco Bay Area, including Alameda County, is designated as nonattainment and classified as "marginal" for both the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards. *See* 40 C.F.R. § 81.305. Therefore, all sources in Alameda County with a potential to emit ("PTE") volatile organic compounds ("VOCs") or oxides of nitrogen above 100 tons per year are considered major stationary sources and required to obtain major source operating permits. 40 C.F.R. § 70.2.

6. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements, as defined in 40 C.F.R. § 70.2.

7. 40 C.F.R. § 70.7(b) provides, in part, that no part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program except in compliance with a permit issued under a Part 70 program.

Bay Area Air Quality Management District Compiled Rules and Regulations

8. Section 110(a)(1) of the CAA requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans, or SIPs.

9. EPA has approved Regulation 1 ("General Provisions"), Rule 200 as amended on September 5, 1979, into the BAAQMD portion of the California SIP. *See* 46 Fed. Reg. 43,968 (Sep. 2, 1981).

   a. BAAQMD Section 1-215 as approved into the California SIP defines "facility" as: any property, real or personal, which may incorporate one or more plants all being operated or maintained by a person as part of an identifiable business on contiguous or adjacent property, and shall include, but not be limited to manufacturing plants, refineries, power generating plants, ore processing plants, construction material processing plants, automobile assembly plants, foundries and waste processing sites.

   b. BAAQMD Section 1-221 as approved into the California SIP defines "person" as: any natural person, corporation, government agency, public officer, association, joint venture, partnership or any combination of such or such entities as are included in Section 39047, California Health and Safety Code.

10. EPA has approved Regulation 2 ("Permits"), Rule 1, as amended on November 3, 1993, into the BAAQMD portion of the California SIP. *See* 64 Fed. Reg. 3,850 (Jan. 26, 1999).

    a. BAAQMD Section 2-1-214 as approved into the California SIP defines "federally enforceable" as: all limitations and conditions that are enforceable by the Administrator of the U. S. EPA, including but not limited to (i) requirements developed pursuant to 40 CFR Parts 60 (NSPS), 61 (NESHAPS), 63 (HAP), 70 (State

Operating Permit Programs) and 72 (Permits Regulation, Acid Rain); (ii) requirements contained in the State Implementation Plan (SIP) that are applicable to the District; (iii) District regulations approved pursuant to 40 CFR Part 51, Subpart I (NSR); (iv) requirements in any operating permit issued under an EPA-approved program that is a part of the SIP and expressly requires adherence to any permit issued under such program, including requirements of any District permit condition (excluding conditions that are not enforceable by the Administrator of the U.S. EPA); and (v) requirements in federal consent decrees that are enforceable by the Administrator of the U.S. EPA.

b. BAAQMD Section 2-1-217 defines "potential to emit" as: the maximum capacity of a source or facility to emit a pollutant based on its physical and operational design. Any physical or operational limitation on the capacity of the source or facility to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a part of its design only if the limitation, or the effect it would have on emissions, is enforceable by the District or EPA (or both). A source or facility that exceeds an enforceable limitation is considered to have a potential to emit that is unconstrained by any such exceeded limit.

c. BAAQMD Section 2-1-302 requires a person to obtain written authorization in the form of a permit to operate from the Air Pollution Control Officer ("APCO") before using or operating any article, machine, equipment or other contrivance, the use of which may cause, reduce or control the emission of air contaminants. In addition to securing a permit to operate, Section 2-1-302 requires any major facility to also comply with Regulation 2, Rule 6 - Major Facility Review.

d. BAAQMD Section 2-6-212.1 defines "major facility," for the purposes of Regulation 2, Rule 6, as a facility that has the potential to emit 100 tons per year or more of any regulated air pollutant, as defined in Section 2-6-222. For fugitive emissions of regulated air pollutants, only the fugitive emissions from facility categories listed in 40 C.F.R § 70.2 "Definitions - Major source (2)" shall be included in determining whether the facility is a major facility. Once any facility is determined to be a major facility, all fugitive emissions from the facility shall be included in calculating the facility's emissions.

11. EPA has approved Regulation 8, Rule 2, "Organic Compounds – Miscellaneous Operations," as amended on June 15, 1994 into the BAAQMD portion of the California SIP. *See* 60 Fed. Reg. 15,062 (Mar. 22, 1995).

a. BAAQMD Section 8-2-101 states that the purpose of this Rule is to reduce emissions of precursor organic compounds from miscellaneous operations.

b. BAAQMD Section 8-2-201 defines "miscellaneous operations" as any operation other than those limited by the other rules of Regulation 8 and the Rules of Regulation 10.

c. BAAQMD Section 8-2-202 defines "total carbon" as organic compounds calculated as total carbon determined by either the total carbon of an individual organic compound equal to the ppm of that compound in an emission multiplied by the number of carbon atoms present in the molecule or the total carbon in an emission of the sum of the total carbon of all of the individual organic compounds present in the effluent. 1,1,1, trichloroethane, methylene chloride, methane and chlorofluorocarbons shall not be included in the calculation of total carbon.

d. BAAQMD Section 8-2-301 states that a person shall not discharge into the atmosphere from any miscellaneous operation an emission containing more than 6.8 kg (15 lbs) per day and containing a concentration of more than 300 ppm total carbon on a dry basis.

e. BAAQMD Section 8-2-601 states that compliance with the standards in 8-2-301 shall be measured by any of the following methods: 1) BAAQMD Manual of Procedures, Volume IV, ST-7, 2) EPA Method 25 or 25A, and that a source shall be considered in violation if the VOC emissions measured by any of the referenced test methods exceed the standards of this rule.

FINDINGS OF FACT

12. Schnitzer owns and operates a metal shredding and recycling facility located at 1101 Embarcadero West, Oakland, California ("Facility") in Alameda County.

13. Schnitzer is a "person' as defined by BAAQMD Section 1-221.

14. Alameda County is part of the San Francisco Bay Area nonattainment area which is classified as "marginal" nonattainment under both the 2008 and 2015 8-Hour Ozone Standard.

15. Schnitzer stores, processes, and recycles ferrous and non-ferrous scrap metals from end-of-life vehicles and post-consumer sheet metal at the Facility.

16. Scrap metal is shredded in a metal shredder, which includes an electric hammermill shredder at the Facility.

17. On or about November 1, 2006, Schnitzer started operation of a new hammermill shredder.

18. On or about April 26, 2007, BAAQMD issued the Facility a permit to operate (not a Major Facility Review permit), which included a throughput limit of 431,471 tons per calendar year applicable to the hammermill shredder.

19. The Facility's current throughput limit for the hammermill shredder is 720,000 tons per calendar year. On or about September 14, 2007, Schnitzer submitted an application to BAAQMD requesting to increase the throughput limit from 431,471 to 720,000 tons per calendar year.

20. On July 23, 2019, EPA Region 9 conducted an unannounced on-site inspection of the Facility. Inspectors from the California Air Resources Board ("CARB") and BAAQMD were also present at the inspection. Schnitzer granted access to the Facility during the inspection and Schnitzer personnel were present to answer questions.

21. During the on-site inspection, EPA inspectors observed various process areas at the Facility, including the hammermill shredder.

22. At the conclusion of the inspection, EPA requested documents that Schnitzer subsequently provided.

23. On or about June 28-29, 2017, October 29-31, 2018, and January 21-23, 2019, Schnitzer conducted emissions testing of the hammermill shredder at the Facility, including testing for precursor organic compounds ("POC" or "VOC"), chromium, particulate matter and metals emissions.

24. Based on the results of the testing conducted on October 29-31, 2018 and January 21-23, 2019, the hammermill shredder at the Facility:

    a. has the potential to emit more than 100 tons per year of VOCs; and

    b. discharges into the atmosphere emissions of more than 6.8 kg per day at a concentration of more than 300 ppm total carbon; and

    c. emits at least 217 pounds per hour of POCs.

25. Since at least April 26, 2007, when Schnitzer was issued a permit to operate that included the hammermill shredder throughput limit of 431,471 tons per year, Schnitzer has had the potential to emit more than 100 tons per calendar year of VOCs.

26. The Facility is a "major source" as defined at 42 U.S.C. § 7661(2) and a "major facility" as defined in BAAQMD Section 2-6-212.

27. By operating as a major source, the Facility is subject to the requirements of the CAA Title V, 42 U.S.C. §§ 7661a-7661f.

28. By operating the Facility as a major facility, Schnitzer is subject to the Major Facility Review requirements of BAAQMD Section 2-1-302, CAA section 502(b) and 40 C.F.R. § 70.7(b).

29. On October 15, 2018, Schnitzer submitted an application for Major Facility Review to BAAQMD.

30. On or about July 3, 2019, Schnitzer submitted applications for an Authority to Construct permit and a Synthetic Minor Operating permit to BAAQMD that propose to install and operate two regenerative thermal oxidizers control devices and two packed bed scrubbers at the Facility to reduce POC emissions and to limit facility-wide emissions to below the threshold for a major facility.

31. To date, Schnitzer has not received a Title V permit from BAAQMD.

32. To date, Schnitzer does not have any emissions control equipment on its shredder or a federally enforceable limit that reduces VOC emissions to below 100 tons per year.

FINDING OF VIOLATION

33. Schnitzer is operating the Facility as a major stationary source with the potential to emit at least 100 tons per year of VOCs but failed to submit a timely application for a Title V permit, in violation of CAA section 502 and 40 C.F.R. § 70.7(b).

34. Schnitzer is operating the Facility as a major facility without undergoing Major Facility Review, in violation of the BAAQMD Section 2-1-302.

35. Schnitzer has failed to prevent discharges into the atmosphere containing more than 6.8 kg per day at a concentration of more than 300 ppm total carbon at the hammermill shredder at the Facility, in violation of BAAQMD Section 8-2-301.

NOTICE OF VIOLATION

36. Notice is given to Schnitzer that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Schnitzer violated CAA section 502, 40 C.F.R. § 70.7(b), and BAAQMD Section 2-1-302, CAA section 110, and BAAQMD Section 8-2-301 in the California SIP, as set forth in the Findings of Violation.

ENFORCEMENT

37. Section 113(a)(1) of the Act and 40 C.F.R. Part 19 provides that, at any time following thirty (30) days after the EPA issues a notice of violation of a requirement or prohibition of an applicable implementation plan or permit, the EPA may:
    - issue an order requiring compliance with the requirement or prohibition;
    - issue an administrative penalty order pursuant to section 113(d) of the Act for civil administrative penalties; or
    - bring a civil action pursuant to section 113(b) of the Act for injunctive relief and/or civil penalties.

    The amount of civil penalties that may be recovered for violations such as those discussed above of the CAA and its implementing regulations is set by statute. *See* 40 C.F.R. Part 19.

    Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than thirty (30) days after the date of issuance of this NOV, section 113(c) of the Act provides for criminal penalties or imprisonment, or both. 42 U.S.C. § 7413(c). Under section 306(a) of the Act (42 U.S.C. § 7606(a)), the regulations promulgated thereunder (2 C.F.R. Part 1532), and Executive Order 11738, persons convicted of an offense under section 113(c) of the Act are disqualified from receiving federal contracts, grants, and loans.

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PENALTY ASSESSMENT CRITERIA

38. Section 113(e)(1) of the Act states that, in determining the amount of any penalty to be assessed, the Administrator shall take into consideration (in addition to such other factors as justice may require) the size of the violator, the economic impact of the penalty on the violator, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

39. Section 113(e)(2) of the Act allows the Administrator to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

40. Schnitzer may, upon request, confer with the EPA. The conference will enable Schnitzer to present evidence bearing on the finding of violation, on the nature of the violations, and on any effort, it may have taken or proposes to take to achieve compliance. Schnitzer has the right to be represented by counsel. A request for a conference with the EPA must be made within ten (10) working days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Denise Leong
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3409
leong.denise@epa.gov

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ENVIRONMENTAL IMPACT OF VIOLATIONS

41. These violations can cause and have caused excess emissions of VOCs.

42. VOCs are photochemical oxidants associated with a number of detrimental health effects, which include birth defects and cancer, as well as environmental and ecological effects. In the presence of sunlight, VOCs are influenced by a variety of meteorological conditions and have the ability to create photochemical smog. VOCs react with oxygen in the air to produce ground-level ozone.

43. Breathing ozone contributes to a variety of health problems including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. Ground-level ozone also can reduce lung function and inflame lung tissue. Repeated exposure may permanently scar lung tissue.

JANUARY 27, 2020
Date

Amy C. Miller
Director
Enforcement and Compliance Assurance Division