



**West Oakland
Environmental
Indicators
Project**

woeip.org

349 Mandela Parkway
Oakland, CA 94607
(510) 257-5640

Dr. Philip Fine
Executive Officer
Bay Area Quality Management District

Subject: Schnitzer Steel, Environmental Justice and Civil Rights

Dr. Fine:

Over the past few years we have been greatly encouraged to see the District's increasing capacity and actions with regard to environmental justice. This has included your assuming leadership at the Executive Officer following your work at the U.S. Environmental Protection Agency in the areas of environmental justice and civil rights.

It is our understanding that there are at least three permit applications pending at the District regarding the Schnitzer Steel facility in Oakland¹. Our request is that before proposing action on these applications the District considers them not only in the context of environmental regulations and policies, but also in the context of environmental justice and civil rights requirements. In California this would include consideration of both Title VI of the Civil Rights Act and analogous requirements under California Code 11135.

In May of 2021 with regard to a similar facility in Chicago, U.S. EPA Administrator Regan recommended that before issuing a permit for that facility there be:

“...a robust analysis to assess the full environmental justice implications of siting this facility in a community already overburdened by pollution, and then use that analysis to inform any permitting decision.”²

More recently EPA raised Title VI issues regarding a proposed air permit in Ohio:

“...because of the environmental conditions already facing this community, and the potential for additional disproportionate and adverse impacts...this permitting action may

¹ These include AN 29573, AN 30009, AN 30010.

² Letter, US EPA to The Honorable Lori E. Lightfoot, May 7, 2021;

<https://www.epa.gov/system/files/documents/2022-02/letter-to-mayor-lightfoot-5.7.21.pdf>



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raise civil rights concerns. It is important, therefore, that OEPA assess its obligations under civil rights laws and policies.”³

We are aware that the issue of permitting metal recycling operations has been highly contentious and litigious over recent years, both nationally and here in California. It is also our sense, however, that none of these proceedings has squarely addressed the relevance and applicability of civil rights requirements under either Title VI of the 1964 Civil Rights Act or California Code 11135.

Our request is that the District consider these requirements and address them on the record in any proposed actions on the Schnitzer permits. We note that the District itself, incorporating directly language from federal Title VI regulations, prohibits “[u]sing criteria or methods of administering its program that has the effect of discriminating against a user, or potential user, of the program offered by BAAQMD.”⁴

In considering the Schnitzer applications in light of these policies and requirements, there are a number of recent documents which may be of use to the District, including,

- "Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions".⁵
- "Principles for Addressing Environmental Justice in Air Permitting"⁶

³ US EPA Region 5 to Ohio Environmental Protection Agency, September 11, 2023.

<https://www.epa.gov/system/files/documents/2023-10/sobe-thermal-energy-systems-llc-p0132799-permit-comment-letter.pdf>

⁴ <https://www.baaqmd.gov/contact-us/non-discrimination>.

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<https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>

⁶ <https://www.epa.gov/system/files/documents/2022-12/EJ%20in%20Air%20Permitting%20Memo.pdf> and attachment: <https://www.epa.gov/system/files/documents/2022-12/Attachment%20-%20EJ%20in%20Air%20Permitting%20Principles%20.pdf>



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Significantly, these documents also suggest the consideration of alternative sites for the facilities, and include the possibility of denying a permit. The possibility of relocation is reinforced by the requirement in Title VI regulations of the U.S. EPA and other federal agencies to consider potential discriminatory effects due to “siting”.⁷

It should be understood that these civil rights requirements may differ from and go beyond environmental and public health regulatory requirements with regard to both (1) the breadth of discretion available to decision makers and (2) the range of alternatives considered, including consideration of “less discriminatory alternatives”. We would hope that the District, in considering its range of discretion and alternatives for regulating and permitting this source, will include consideration of regulatory approaches not only within the United States, but those beyond the borders in Europe and elsewhere.

To be clear, we are not suggesting an overly complex, long drawn out analytical process be implemented, but rather that the basic logic of environmental justice and civil rights be applied with respect to consideration of the range of available approaches and alternatives, including relocation and permit denial. We are requesting a bias for action, a bias for whatever protective action is needed to bring a halt to these impacts being inflicted on this community.

We look forward to continuing discussion of these concerns and working with you in ensuring that permitting actions with regard to the Schnitzer Steel facility are consistent with both the spirit and letter of this country and state’s civil rights laws.

Respectfully,
Richard Grow, Steering Committee of WOCAP
Brian Beveridge, Co-Director, WOEIP

Cc:
Suma Peesapati
Greg Nudd
M. Bauer

⁷ “A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity.” 40 CFR 7.35(c); <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7/subpart-B/section-7.35>.