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10 STATE WATER RESOURCES CONTROL BOARD  
11 OF THE STATE OF CALIFORNIA

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In the Matter of the Petition of  
SCHNITZER STEEL INDUSTRIES, INC.,  
doing business as SCHNITZER STEEL  
PRODUCTS COMPANY  
For Review of Cleanup and Abatement Order  
No. R2-2013-1001  
California Regional Water Quality Control  
Board, San Francisco Bay Region.

No.

VERIFIED PETITION FOR REVIEW  
AND REQUEST FOR HEARING

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- Exhibit 1 Cleanup and Abatement Order No. R2-2013-1001
- Exhibit 2 Letter dated August 27, 2012 from Regional Board to Petitioner
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1 Schnitzer Steel Industries, Inc., doing business as Schnitzer Steel Products  
2 Company ("Petitioner"), hereby files with the State Water Resources Control Board this  
3 Verified Petition for Review and Request for Hearing. This Petition provides all of the  
4 information required by section 2050 of Title 23 of the California Code of Regulations, and  
5 is filed pursuant to section 13320 of the Water Code, which authorizes any aggrieved  
6 person to petition the State Board to review an action by a Regional Board.

7 1. Petitioner's mailing address is: 1401 Embarcadero West, Oakland,  
8 California 94607. Petitioner's telephone number is (510) 444-3919. Petitioner can be  
9 reached via e-mail at [SSloan@schm.com](mailto:SSloan@schm.com), with a copy to Petitioner's counsel,  
10 [Margaret.Rosegay@pillsburylaw.com](mailto:Margaret.Rosegay@pillsburylaw.com).

11 2. Petitioner requests that the State Board review Cleanup and Abatement  
12 Order No. R2-2013-1001 ("Order"), issued by the Executive Officer of the San Francisco  
13 Bay Regional Water Quality Control Board ("Regional Board"), under authority granted to  
14 him by Water Code section 13223. A copy of the Order is attached hereto as Exhibit 1.

15 3. The Order was signed by the Executive Officer on January 2, 2013. Despite  
16 the submission by Petitioner of extensive comments on the tentative order, Petitioner's  
17 comments were summarily dismissed by "cleanup staff;" no changes were made to the  
18 tentative order in response to Petitioner's comments. The Order was not considered by the  
19 Regional Board at a hearing. For purposes of this Petition, all references to actions by  
20 cleanup staff are deemed to be actions of the Executive Officer, and thus of the Regional  
21 Board itself, since he condoned these actions through his issuance of the Order. Petitioner  
22 also notes that cleanup staff in this case included several members of the State Board's  
23 enforcement staff, as well as certain Regional Board staff. See cover letter from the  
24 Regional Board to Petitioner dated August 27, 2012, attached hereto as Exhibit 2,  
25 identifying members of the "cleanup staff" and "advisory staff." Petitioner assumes that  
26 strict procedural safeguards are in place to prohibit any *ex parte* communication between  
27 any cleanup staff member identified in Exhibit 2, including legal counsel, in the  
28 consideration or disposition of this Petition.



1 In this case, stormwater that falls on the upland portions of the facility is retained  
2 and reused on-site.<sup>2</sup> The only stormwater that discharges to surface waters (the Oakland  
3 Inner Harbor) is water that drips off two over-water structures that are used in shiploading  
4 operations, as described below. The Regional Board staff Response to Comments (“RTC”),  
5 attached as Exhibit 3 hereto, states that “a portion of Schnitzer’s stormwater and non-  
6 stormwater substances remain onsite,” erroneously and unfairly implying that most, or at  
7 least a significant amount, of facility stormwater is discharged off-site. See RTC, p. 6  
8 (emphasis added) (“we do not conclude that the discharge of stormwater and non-  
9 stormwater that are leaving the facility are negligible”). This is simply inaccurate.

10 Petitioner owns and operates a heavy industrial scrap metal recycling facility in  
11 Oakland, California. The facility, which encompasses approximately 26.5 acres, is located  
12 on property which abuts the Oakland Inner Harbor. Petitioner has operated in this location  
13 continuously for over 50 years without any known impacts to water quality, and great effort  
14 has been made over the years to ensure this result. The facility is bordered on the east and  
15 west by property owned by the Port of Oakland and occupied by SSA Terminals (to the  
16 east) and American President Lines (to the west). Embarcadero West is a frontage road that  
17 runs along the northern boundary of the facility, and is the primary means of ingress to and  
18 egress from the facility. The southern boundary of the facility extends for approximately  
19 2,200 feet along the Inner Harbor and consists of a fenced, five- to ten-foot wide concrete  
20 wall that runs the entire length of the shoreline. The elevation of this wall, relative to  
21 facility topography, is such that it contains stormwater that falls directly on the upland  
22 portions of the site, with the exception of a small amount of water that sometimes ponds  
23 immediately along the western boundary of the facility after extremely heavy rain events.  
24 This ponded water does not discharge either directly or indirectly to the bay, and either  
25 evaporates or infiltrates into the ground. A smaller concrete wall runs along a 600-foot  
26 stretch of the western facility boundary, beginning near the shoreline and running

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28 <sup>2</sup> Some portion of the stormwater also evaporates and/or infiltrates into the ground.

1 northward, to provide additional containment along this boundary. Petitioner regularly  
2 inspects these containment structures and makes such repairs as are necessary to ensure  
3 their continuing integrity.

4 Ferrous scrap metal that has been processed by Petitioner through the on-site  
5 shredder is stored outdoors in very large stockpiles at the facility before being loaded into  
6 ships for export to foreign markets. Oversize scrap, known as "heavy melt," is cut into  
7 smaller pieces by hydraulic shear and torch. The metal is loaded into the ship either by a  
8 conveyor that is constructed on a wooden pier that extends out over the water, or is loaded  
9 into mine trucks and hauled over a concrete dock to a skip loader that is lowered by crane  
10 into the hull of the ship. The conveyor pier and pier crane dock are not utilized except  
11 during shiploading operations, which are typically completed over a period of two to seven  
12 days. Under its air quality permit, Petitioner is allowed to load only 26 ships per year, so  
13 usage of these structures is limited. Some, but not all of the stockpiles are located in areas  
14 that are paved with concrete. Given the weight and volume of these materials, there is no  
15 practical means for managing these stockpiles other than outdoor storage. The processed  
16 scrap is moved by grapple, mine trucks and other heavy-duty equipment that must be able  
17 to move freely around the piles. It is not technically or economically feasible to cover the  
18 stockpiles or to protect them from the elements.

19 Due to the smaller volume and weight of the non-ferrous metals, and their  
20 considerably higher economic value, the non-ferrous products (copper, brass, nickel,  
21 stainless steel, aluminum, tin, etc.) and other recyclables that have been separated from the  
22 shredder output are typically stored in or adjacent to the facility's warehouse. These  
23 materials are containerized and transported by truck to various shipping terminals located in  
24 the Port of Oakland.

25 With the minor exception described below, stormwater at the facility is fully  
26 contained on-site and is purposefully accumulated and recycled to the shredder for use as  
27 cooling water. Potable water is also purchased from East Bay Municipal Utilities District  
28 to supplement recycled water supplies (e.g., during the dry season or during periods of low

1 rainfall) and for use in other facility operations that consume water, e.g., dust control, non-  
2 ferrous metal recovery, treatment of shredder residue. In 2008, Petitioner constructed a 1.2  
3 million gallon tank to store stormwater at the facility, greatly reducing the amount of  
4 ponded water that is present at the site following heavy rain events and facilitating reuse of  
5 the water. Stormwater either gravity drains or is pumped into internal drop inlets located  
6 around the facility and from there is pumped to the storage tank or other auxiliary storage  
7 units for reuse. Dust control water that does not evaporate, as well as wash water that is  
8 generated during facility maintenance operations, is also captured by this system of internal  
9 drains and pumped to the 1.2 million gallon tank for reuse as cooling water in the shredder.  
10 Overall, the facility typically consumes in excess of 50,000 gallons of water per day in its  
11 operations, and seeks to offset water purchases to the extent possible by recycling water for  
12 beneficial use. There are no industrial processes at the facility that generate wastewater.

13 There are also no stormwater outfalls at the facility and no drain inlets that connect  
14 to the municipal storm drain system. The only stormwater discharges that occur at the site  
15 occur in the form of drippage off the concrete pier crane dock and the wooden conveyor  
16 pier which are used during shiploading operations. Since neither of these structures is  
17 currently fully contained, there is a potential for process-related pollutants to become  
18 entrained in the stormwater that falls on them and runs off into the bay. Both during and  
19 after shiploading operations, the conveyor and dock are cleaned, and the area is not used  
20 until the next ship arrives.

21 The portions of the facility perimeter that are not bermed (the main entrance and the  
22 entrance to the non-ferrous area) either slope toward the center of the yard and/or have  
23 internal drains that capture the water and recycle it back into yard. These structural Best  
24 Management Practices ("BMPs") prevent sheet flow from the facility onto West  
25 Embarcadero. Although mud can be tracked out of the facility during rain events, this does  
26 not constitute a "point source" discharge. Further, Petitioner has BMPs in place to  
27 minimize trackout from the facility (rumble strips and a heavy-duty commercial wheel  
28 wash station), and there are no storm drains along West Embarcadero that could reasonably

1 be expected to be impacted by dirt or mud that is tracked out by trucks. The closest  
2 municipal storm drain is located near the intersection of West Embarcadero and Market  
3 Street, near the entrance to SSA Terminals. This is a distance of approximately one-quarter  
4 mile, and it is highly unlikely that any appreciable amount of sediment is tracked that far  
5 from the facility. There are also hundreds of trucks unrelated to Petitioner's operations that  
6 enter and leave SSA Terminals on a daily basis and that pass by that storm drain. Further,  
7 as part of its regular BMPs, Petitioner sweeps the entire length of West Embarcadero from  
8 its front gate to Market Street, several times a day, using a dedicated mechanical sweeper.  
9 While the Order states that "Embarcadero West had a layer of sediment and dust on the  
10 road from trucks exiting the Site (Finding 3.b.iii.), Petitioner believes its sweeping program  
11 and other trackout control BMPs are very effective and that the Regional Board's choice of  
12 words unfairly and inaccurately depicts the condition of the roadway.

13 Petitioner acknowledges that miscellaneous debris does tend to collect along the  
14 western boundary of the facility, between the fence and K-rails that have been placed in this  
15 area to provide additional containment. This area is cleaned periodically and, in any event,  
16 material or debris that collects in this area does not and cannot enter the bay, either directly  
17 or indirectly (there are no storm drains or other conveyances in this area either). Thus, of  
18 the various "discharges" described in the Order, only one of them – drippage off the  
19 conveyor pier and dock during shiploading events – represents an actual or potential  
20 discharge to surface waters.

## 21 **GROUND FOR OBJECTION**

22 Petitioner's reasons for believing the Regional Board acted inappropriately are set  
23 forth below.

- 24 a. **The Regional Board abused its discretion by issuing the Order without**  
25 **first pursuing more informal means of enforcement, and by ignoring all**  
26 **proactive actions taken by Petitioner to address concerns that were**  
**raised during the inspections.**

27 The Regional Board conducted a scheduled stormwater inspection at the Oakland  
28 facility on November 22, 2011. The only issue of concern that was raised during the

1 inspection related to trackout at the facility exit. Petitioner promptly and proactively  
2 addressed this concern by installing a large rumble strip to reduce the amount of mud and  
3 dirt adhering to truck tires. The Regional Board did not issue an Inspection Report or any  
4 other documentation of its findings. On March 29, 2012, Regional Board staff conducted  
5 another inspection of the facility, this time unannounced and accompanied by members of  
6 the State Board Enforcement Division, Special Investigations Unit. This inspection was  
7 timed to occur immediately after a heavy rain event, and the yard was very muddy, with  
8 large areas of ponded water. On this occasion, a number of issues were discussed with  
9 Petitioner concerning its stormwater management practices and the potential for process-  
10 related materials to be discharged off-site (although not necessarily to surface waters).  
11 Immediately following the inspection, Petitioner promptly identified and began to  
12 implement a number of corrective actions to address the concerns that had been raised, and  
13 communicated these corrective actions to the staff. The Regional Board did not provide  
14 Petitioner with a written Inspection Report or issue a notice of violation or other  
15 documentation of its findings from the March 29 inspection. The first time that Petitioner  
16 received any written communication regarding the inspection was on July 5, 2012, when  
17 the Regional Board sent a letter to Petitioner describing what it believed to be unauthorized  
18 discharges of process-related materials and revoking the Sampling and Analysis Reduction  
19 Certification that had been granted to Petitioner in 1997 under the Industrial General  
20 Permit. The July 5 letter did not mention the possibility of enforcement action, and  
21 Petitioner reasonably believed that the numerous improvements it had already undertaken  
22 were sufficient to resolve any immediate concerns, and it planned to implement more  
23 extensive improvements following additional design and internal approvals needed for  
24 larger capital projects.

25 Despite these corrective measures (all of which were communicated to staff), and  
26 without any forewarning or opportunity to engage with staff, Petitioner received an e-mail  
27 from the Regional Board on August 27, 2012 with a link to a tentative Cleanup and  
28 Abatement Order that had been posted on its website. An Industrial Storm Water

1 Inspection Report from the March 29, 2012 inspection – which had not previously been  
2 shared with Petitioner – was included as an exhibit to the tentative order. The inspection  
3 report, which is dated April 6, 2012 and evidently prepared almost immediately after the  
4 inspection, identified numerous alleged stormwater violations supported by conclusory, and  
5 in many cases erroneous, explanations. The inspection report also included numerous  
6 photographs that were taken on the day of the inspection, which depict very muddy, wet  
7 conditions and miscellaneous solids on the ground, but which do not show or prove the  
8 existence of any discharges or threatened discharges of stormwater or waste to surface  
9 waters. The tentative order was accompanied by a letter warning Petitioner that prohibitions  
10 on *ex parte* communications were in place and that Petitioner could not discuss the matter  
11 with anyone other than cleanup staff.

12 Prior to August 27, 2012, to the best of Petitioner's knowledge, Petitioner has never  
13 received a notice of violation from the Regional Board for its Oakland facility. Similarly,  
14 the facility has been inspected on an annual (or nearly annual) basis by the Alameda County  
15 Department of Environmental Health Environmental, Stormwater Program, without  
16 issuance of any citations. In fact, the County inspection reports describe the facility as  
17 having no stormwater discharges, i.e., a zero-discharge facility. While Petitioner  
18 recognizes that the Regional Board is not required by law to issue a notice of violation  
19 before taking enforcement action, Petitioner maintains that the Regional Board abused its  
20 discretion by failing to do so under the circumstances of this case. Where, as here, (i) the  
21 Regional Board has been aware of the nature of Petitioner's operations for many years; (ii)  
22 there is no history of noncompliance or recalcitrance by the discharger; (iii) the facility has  
23 historically been considered a zero-discharge facility by both the Regional Board and  
24 Alameda County; (iv) the only discharge to surface water occurs as drippage off the dock  
25 and pier; and (v) there is no evidence whatsoever of any adverse effects to water quality,  
26 the Regional Board should have issued an inspection report and notice of violation, and  
27 engaged with Petitioner on an informal basis before escalating its enforcement response.  
28 In this case, staff's Response to Comments simply states that their failure to timely prepare

1 and provide Petitioner with an inspection report documenting the alleged violations is  
2 excused by the Regional Board's "limited resources." This statement contradicts  
3 Petitioner's previous experience with Regional Board staff at other facilities. The same  
4 Regional Board cleanup staff involved in this matter issued four stormwater notices of  
5 violation to two of Petitioner's other facilities in 2011 and stated in a subsequent meeting  
6 that it is standard Regional Board practice to issue notices of violation "as a means of  
7 communicating inspection findings and concerns to permittees." Even more troubling is  
8 the fact that cleanup staff were fully aware of the corrective measures that had been  
9 implemented or were underway at the facility when they issued the tentative order.  
10 Petitioner made several attempts to meet with staff to discuss the results of the March 29  
11 inspection, and clearly communicated its desire to be in full compliance and to work  
12 cooperatively with staff to resolve any problems. Each of these requests for a meeting was  
13 rejected by staff.

14 b. **The Regional Board abused its discretion by issuing the Order without**  
15 **substantial evidence that Petitioner's operations have caused or**  
16 **reasonably threaten to cause adverse effects on water quality; the**  
**findings in the Order are based on exaggeration, assumption and**  
**speculation, not on facts.**

17 Petitioner adamantly disagrees with the fundamental premises of the Order, namely  
18 that "[p]rocess sediment, industrial wastewater, and shredder fluff from the Site *continue to*  
19 *pollute* waters of the State and United States" (Finding 3; emphasis added), and that  
20 Petitioner *is currently violating* the Industrial General Permit, the federal Clean Water Act,  
21 the Basin Plan, and the requirements of an order issued to the company approximately 25  
22 years ago (SCR Order No. 88-023, dated February 17, 1988). See Findings 3-6; emphasis  
23 added. These findings significantly exaggerate actual circumstances at the facility, and  
24 erroneously conclude that (i) Petitioner's operations have polluted and continue to pollute  
25 waters of the state and United States, including groundwater beneath the facility and the  
26 Oakland Inner Harbor, and (ii) that Petitioner is continuing to violate the law.

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Alleged Stormwater-Related Discharges

The Order alleges that Petitioner is discharging, or threatening to discharge, three categories of “waste”: “process sediment,” “industrial wastewater” and “shredder fluff.” Clarification of these terms is necessary, as they misrepresent the nature of the materials in question and wrongly and unfairly imply that Petitioner is intentionally or negligently discarding process wastes into the Oakland Inner Harbor.

“Process Sediment.” Petitioner conducts scrap metal recycling operations across the entirety of its property. A portion of the site is unpaved, and water is routinely applied to roads and scrap piles to control dust. Water is also added to the shredder for cooling. There is a constant flow of heavy truck traffic around the site, and materials are constantly being moved by heavy equipment from one location to another. During significant rain events, once the 1.2 million gallon stormwater tank is full, excess water ponds in low areas of the facility, sometimes remaining for several days before it can be pumped into the tank as capacity becomes available. During this period, some of the water naturally evaporates or infiltrates into the ground. Scrap metal recycling is a heavy industrial process which often generates mud following wet weather, and there is nothing that Petitioner can do to alter that fundamental fact. The Order inappropriately uses the term “process sediment” to describe this mud and dirt, as if it were a sludge mucked out of the bottom of a process unit and simply cast onto the ground. Petitioner acknowledges that mud and muddy water are susceptible to being splattered or tracked around the facility and onto the dock, but Petitioner continuously implements BMPs to minimize the degree to which this occurs, consistent with the requirements of the Industrial General Permit.<sup>3</sup> Among other things, Petitioner is in the process of installing a custom-built, heavy-duty wheel wash at the

<sup>3</sup> Although the Oakland yard has historically been considered a zero-discharge facility, Petitioner submitted a Notice of Intent and complies with the SWPPP requirements of the Industrial General Permit, consistent with its corporate policies on environmental stewardship. The Regional Board has been aware of the existence of the conveyor pier and pier crane dock for years and, prior to the issuance of the tentative order, has never advised Petitioner that drippage off these structures was regulated under the permit.

1 entrance to the dock (this needs to be able to accommodate the huge mine trucks that travel  
2 on the dock), and is making structural improvements to the existing containment system at  
3 the dock. In addition, Petitioner recently completed construction of a second wheel wash at  
4 the facility exit to minimize trackout onto West Embarcadero (despite the fact there are no  
5 storm drains along the frontage road). Petitioner is not aware of any provision of the Clean  
6 Water Act or the Water Code that classifies vehicle trackout as an unlawful “discharge”  
7 where there is no reasonable prospect that it might reach surface waters. Petitioner also  
8 submits that its BMPs meet the BAT/BCT standards of the Industrial General Permit, and  
9 that complete elimination of trackout — without regard to cost or the inherent nature of  
10 Petitioner’s business — is not required by the Clean Water Act or the Water Code.

11 “Industrial Wastewater.” Similarly, the Order inappropriately describes stormwater  
12 and potable water that is used for dust control and for cooling as “industrial wastewater  
13 discharges” despite the fact it is not wastewater and is not discharged to surface waters.  
14 See Finding 3.b. The presence of ponded stormwater on the site (with or without a visible  
15 sheen) is not a “discharge,” nor is the application of potable water to the ground for dust  
16 control purposes. See Finding 3.b.i. Similarly, the Regional Board’s observation of wet  
17 debris and mud “between K-rails and chain link fences on the western perimeter of the Site,  
18 where it is likely to have discharged off-site” (see Finding 3.b.ii.), omits the necessary  
19 reference to surface waters. This omission is significant and is consistent with the fact that  
20 there are no discharges to surface waters from this area. The Regional Board also alleges  
21 that “process sediment and/or other sediments and water tracked out by vehicles onto  
22 Embarcadero West are being deposited where they will discharge off-site, likely  
23 compounded by any storm events, and *potentially* discharge into storm drains.” See  
24 Finding 3.b.iii. (emphasis added). Petitioner believes this potential is negligible, and in any  
25 event would not result in an exceedance of a water quality standard or adversely affect  
26 beneficial uses. As discussed above, there are no storm drains along Embarcadero West  
27 before Market Street, and Petitioner sweeps the entire length of Embarcadero Street several  
28 times a day, making it extremely unlikely (and impossible to prove) that track-out from the

1 facility enters the storm drain at Market Street. Moreover, any negligible discharges from  
2 the Petitioner's facility would be impossible to distinguish from other nearby sources of  
3 stormwater pollutants, especially given the significant volume of heavy truck traffic at the  
4 intersection of Embarcadero Street and Market Street associated with activities at SSA  
5 Terminals.

6        "Shredder Fluff." The last category of alleged discharges applies to "shredder  
7 fluff." See Finding 3.c. Shredder residue (also known as "fluff") is a byproduct of the  
8 metal shredding operation. Following removal of all economically recoverable ferrous and  
9 non-ferrous metals, the remaining material (consisting of glass, fibers, rubber, foam,  
10 plastics, road dirt and other of miscellaneous debris) is treated to chemically stabilize trace  
11 heavy metals. Treated shredder residue is classified by the Department of Toxic Substances  
12 Control as a nonhazardous waste, and is stockpiled at the facility pending shipment to local  
13 landfills for use as alternative daily cover. Beneficial use of the material for this purpose is  
14 in accordance with Waste Discharge Requirements and Solid Waste Disposal Permits  
15 obtained by the landfill operators.

16        The material that Regional Board staff observed at SSA Terminals is not treated  
17 shredder residue, but rather is light fibrous material consisting of fabric remnants that is  
18 liberated during non-ferrous metal recovery activities conducted on the eastern side of the  
19 facility, adjacent to SSA Terminals. Petitioner acknowledges that this light fibrous material  
20 is subject to dispersal by the wind, and it has implemented numerous measures to eliminate  
21 or minimize such occurrences.<sup>4</sup> These efforts are ongoing. Petitioner is also working  
22 cooperatively with SSA Terminals to remove material that has accumulated in inaccessible  
23 areas, and conducts periodic sweeping at the terminal to prevent future build-up. While  
24 windblown dispersal of this material onto neighboring property does not constitute a "point  
25 source" discharge to surface waters, Petitioner acknowledges the need to better control this

26 \_\_\_\_\_  
27 <sup>4</sup> Windblown dispersal of light fibrous material and other particulates associated with metal  
28 recycling operations is being addressed by new regulations that are expected to be  
adopted by the Bay Area Air Quality Management District in the near future.

1 material and is working to effectively mitigate the conditions at SSA Terminals, as  
2 described in the Order.

3 Petitioner also disputes that “[a]dditional accumulated shredder fluff” was observed  
4 throughout the Port of Oakland’s paved lot and on APL Limited’s property, both west of  
5 the Site.” Finding 3.c. (emphasis added). While Petitioner was not present when State  
6 Board enforcement staff video-taped conditions on the Port of Oakland and APL properties,  
7 and cleanup staff have been unable to provide Petitioner with a copy of the video tape that  
8 purports to document the alleged conditions, Petitioner is highly skeptical that shredder  
9 fluff was observed “throughout” this area for two reasons: the prevailing wind direction is  
10 from the west to the east, and there are no sources of fluff on the western side of  
11 Petitioner’s facility, nearest to the Port of Oakland and APL properties.<sup>5</sup> While stray bits of  
12 light fibrous material can be seen on the ground in this area of the facility, it is certainly not  
13 present “throughout” the area such that it might also be expected “throughout” the adjacent  
14 Port and APL properties. And, if light fibrous material were blowing all the way across the  
15 yard from the non-ferrous area located on the eastern side of the facility, or if it were  
16 blowing from piles of shredder aggregate or shredder residue that are stored in the central  
17 area of the facility (which piles have a high moisture content and are not susceptible to  
18 dispersion by wind), it would be widely observed on Schnitzer’s side of the fence as well.  
19 The fact that light fibrous material is not found in the western area of the facility casts  
20 significant doubt on the accuracy of Finding 3.c. Petitioner thus asserts that the conclusion  
21 in the Order – that “[t]hese wastes have been deposited where they are susceptible to  
22 stormwater washing them into storm drains or directly into the Oakland Estuary and Inner  
23 Harbor” – is not supported by substantial evidence.

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25 <sup>5</sup> Petitioner requested an opportunity to view the video recording taken by State Board  
26 enforcement staff on April 10, 2012 on Port and APL property, but was informed that  
27 technical difficulties prevented the disk from being copied. Petitioner was advised by  
28 cleanup staff that the Regional Board’s “evidence” from the video is set forth in  
Attachment B to the Order (see Exhibit 1), suggesting there is nothing else of probative  
value to the Regional Board on the video. Needless to say, the lack of probative  
evidence of “discharges” is very probative from Petitioner’s perspective.

1 Based on all of the arguments presented above, Petitioner disputes that it has  
2 violated the Industrial General Permit, the Clean Water Act, or the Basin Plan, and  
3 maintains that the Regional Board's conclusions to the contrary are not supported by the  
4 evidence and are thus arbitrary, capricious and an abuse of discretion.

5 Alleged Discharges to Groundwater

6 Petitioner has conducted groundwater monitoring at the facility for over 20 years, in  
7 accordance with a monitoring plan approved by the Regional Board. Over this entire  
8 period, no evidence of groundwater impacts has been identified. This fact is acknowledged  
9 in the Order. See Finding 4.a. ("No PCBs have been detected and the metal detections have  
10 been below levels of concern"). A summary of monitoring results collected since 1992 is  
11 attached as Exhibit 4. The Order arbitrarily dismisses this substantial body of monitoring  
12 data (most of which is non-detect), claiming "the wells are considered sentinel wells, just  
13 inside the shoreline concrete cap. Their results do not necessarily reflect groundwater  
14 conditions closer to the areas where waste discharges have been observed by Water Board  
15 staff." Finding 4.a. This conclusion ignores the fact that the facility is only 26 acres in size  
16 and has been in operation for over 50 years – if the facility were adversely affecting  
17 groundwater, evidence of that would surely have been observed in the downgradient wells  
18 by now.

19 Further, Petitioner has no idea what "waste discharges" the Regional Board is  
20 referring to in this sentence, and can only surmise this is a reference to the general  
21 appearance of the yard. The alleged stormwater discharges described in Finding 3 have  
22 little, if any, bearing on groundwater conditions at the site. Petitioner stipulates that its yard  
23 is often very muddy and, to those unfamiliar with operations of this nature, it no doubt  
24 appears disorganized and messy. In fact, Petitioner's operations are highly organized, and  
25 while Regional Board staff might describe Petitioner's housekeeping practices as "bad"  
26 (see Inspection Report, p. 9-13), site conditions have never been shown to pose a threat to  
27 water quality. In a later finding, the Order declares that, "[g]iven the Regional Board's past  
28

1 experience with groundwater pollution cases of this type, it is unlikely that background,  
2 levels of water quality can be restored.” Finding 10 (emphasis added). Putting aside the  
3 issue of cleanup levels, the only actual evidence available to the Regional Board supports  
4 the opposite conclusion – that groundwater beneath the site is not polluted.

5         Petitioner believes that Regional Board cleanup staff have displayed a persistent  
6 bias against the company from the outset, having decided to issue a cleanup and abatement  
7 order without regard to any input from Petitioner and even without regard to  
8 incontrovertible facts. The Regional Board’s cavalier reference to “groundwater pollution  
9 cases of this type” is symptomatic of this bias. Other examples of staff’s negative attitude  
10 toward Petitioner can be seen in their responses to Petitioner’s comments on the tentative  
11 order. Petitioner’s detailed and thoughtful comments are inappropriately paraphrased in  
12 offhand and dismissive ways, putting words in Petitioner’s mouth in a very inappropriate  
13 manner. For example, in trying to summarize Petitioner’s legal concerns about the  
14 stormwater allegations in the tentative order, staff wrote:

15         “we [meaning Petitioner] are a Zero Discharge facility because we do not  
16 have any storm drains connected to the MS4 onsite or on the roads near our  
17 site. We don’t really agree with the Water Board in considering the other  
18 discharge pathways to be “discharges”, but we are willing to go along with  
19 that pretense moving forward. Our willingness to go along with that  
20 pretense that we have “discharges” *may* be conditioned upon the Water  
21 Board agreeing to forgo the CAO and work cooperatively with us within the  
22 context of the Industrial Stormwater Permit.”<sup>5</sup>

23 RTC, p. 5-6 (Comment 3) (emphasis in original). Petitioner did not use the word  
24 “pretense” in its comments and said nothing to suggest that it held this view. Nor did  
25 Petitioner condition its desire to work cooperatively with the Regional Board on the  
26 Board’s willingness to forego the CAO. Petitioner’s comment was simply intended to  
27 insure that it did not waive any legal defenses, should it become necessary to seek review of  
28 the Order. Petitioner has now come to that point and maintains as a matter of law that there

1 is no actionable "discharge" under the Industrial General Permit unless it is shown that  
2 pollutants are, or could reasonably be, conveyed by a point source conveyance into waters  
3 of the United States. With very minor exception, the Order fails to make this showing. By  
4 way of further example, Petitioner informed the Regional Board in its comments on the  
5 tentative order that it would be willing to conduct further groundwater characterization,  
6 either voluntarily or under a Section 13267 Letter, and that issuance of a cleanup and  
7 abatement order was unnecessary to obtain additional information about subsurface  
8 conditions at the site. Petitioner's proposal was ignored, along with 20-plus years of  
9 groundwater monitoring data.

10           c;     Petitioner complied fully with all requirements of SCR Order No. 88-  
11                    023, and the Regional Board's allegations that Petitioner's operations  
12                    have resulted in violations of that prior order are not supported by  
                    evidence.

13           SCR Order No. 88-023 was issued to Petitioner 25 years ago in response to the  
14 disposal of soils from the Oakland facility at the Berkeley Landfill. These soils were found  
15 to contain PCBs and were subsequently removed and disposed of by Petitioner at an  
16 alternative authorized location. That circumstance led to a further investigation at the  
17 facility to determine whether other soils might pose a threat to water quality. At the time  
18 the order was issued, the area where the soils had been excavated had already been capped  
19 with concrete. Following a site investigation conducted under the auspices of the then-  
20 Department of Health Services and the Regional Board, no further soil remediation was  
21 required. However, Order No. 88-023 required maintenance of the cap and installation of  
22 groundwater monitoring wells, as described above, as a means of providing early warning  
23 of changing circumstances. In addition, the concrete perimeter wall was constructed to  
24 provide containment of soils and stormwater along the facility's waterfront. Groundwater  
25 monitoring conducted over the ensuing years has confirmed that groundwater underlying  
26 the facility is not adversely affecting the bay. Regular monitoring reports have been  
27 submitted to the Regional Board, and no citations or indications of Board dissatisfaction  
28

1 have ever been communicated to Petitioner over the many years that have passed since the  
2 order was issued.

3 As described in the Order, SCR Order No. 88-023 prohibited (1) the discharge of  
4 pollutants in any manner that degrades water quality or adversely affects beneficial uses;<sup>6</sup>  
5 (2) migration of pollutants through subsurface transport into deeper water bearing zones;  
6 and (3) lateral migration of pollutants through subsurface transport to the Inner Harbor.  
7 However, contrary to what is stated in the current Order, there is no evidence that any  
8 discharges that violate any of these prohibitions are occurring, or that the SCR was ever  
9 intended to address alleged off-site discharges of “process sediment, industrial wastewater,  
10 and shredder fluff” in the first place. See Finding 4.a. The sole focus of the 1988 order was  
11 on potentially contaminated soils at the facility. The Regional Board’s inclusion of alleged  
12 violations of the 1988 order to attempt to bulk up its case against Petitioner is without  
13 factual justification, inappropriate and an abuse of discretion.

14 d. **The Regional Board’s indications that site groundwater (which it**  
15 **presumes to be polluted) may need to be cleaned up to background**  
16 **levels, or to meet drinking water standards, and that site soils may need**  
**to be cleaned up to meet unrestricted use standards, are technically**  
**indefensible.**

17 As noted above, the only actual evidence of subsurface conditions at the facility is  
18 the groundwater monitoring data that have been collected over the past 20-plus years and  
19 that do not reveal any level of concern of any constituent. Nevertheless, there are multiple  
20 indications in the Order that reflect the Regional Board’s unreasonable and unrealistic  
21 expectations of Petitioner and signal to Petitioner that it cannot rely on staff to interpret the  
22 Order in a manner that is reasonable and compatible with the basic elements of Petitioner’s  
23 operations. Bearing in mind that Petitioner’s operations are, of necessity, conducted almost  
24 entirely outdoors and involve the intake, shredding, shearing, baling, hauling, stockpiling,  
25 loading and unloading of millions of pounds of scrap metal per year by heavy-duty trucks  
26

27

28 <sup>6</sup>This is a general prohibition that is routinely included in Board orders.

1 and other extremely large pieces of equipment, the following provisions of the Order  
2 clearly justify Petitioner's concern in this regard:

- 3 • Finding 8 states that a deed restriction may be needed, "depending on  
4 the scope of the proposed cleanup action for areas of the Site that do  
5 not meet unrestricted use standards."
- 6 • Finding 10 states that "[g]iven the Regional Board's past experience  
7 with groundwater pollution cases of this type, it is unlikely that  
8 background levels of water quality can be restored."
- 9 • Finding 12 states that "[t]he standing water on the Site that has been in  
10 contact with the shredding and recycling processes indicates that heavy  
11 metals and other pollutants have likely leached into the groundwater  
12 below."
- 13 • Finding 16 states that "based on the above findings, the Discharger  
14 has created and threatened to create a condition of pollution (Water  
15 Code section 13304). The discharged wastes have likely resulted in  
16 unnecessary and avoidable adverse impacts to beneficial uses of waters  
17 of the state and United States . . ."
- 18 • Task B.2 requires Petitioner "to identify all pollution sources on the  
19 Site" and that the sampling must "define the lateral and vertical extent  
20 of pollution."
- 21 • Task B.2 further states: "[i]t is imperative that sampling takes place  
22 prior to altering conditions at the Site."
- 23 • Task B.3 requires submittal of a technical report that "shall describe  
24 the vertical and lateral extent of pollution in soil and groundwater  
25 beneath the Site down to concentrations at or below typical cleanup  
26 standards for soil and groundwater" and a groundwater monitoring  
27 program "to recurringly assess the status and migration of pollution."

- 1           • Task B.5 suggests that soil vapor and groundwater extraction are  
2           necessary as interim corrective actions.
- 3           • Task 6.a. states that Petitioner must take steps to prevent materials and  
4           wastes from being moved around the Site.
- 5           • Task 6.a. further states that Petitioner must implement “procedures  
6           designed to sequester pollutants within the shredder waste, bulk  
7           metals, non-ferrous metals, and ferrous metals recycled materials  
8           processes.
- 9           • Task 6.b. states that Petitioner must implement “watertight measures if  
10          the Site is to continue to manage stormwater by complete containment  
11          and treatment.”
- 12          • Task 6.d. states that Petitioner shall “minimize onsite truck traffic  
13          contact with contaminated sediments and standing water.”

14 The collective effect of these requirements – especially if literally interpreted and enforced  
15 by cleanup staff who wrote them and who remain responsible for overseeing Petitioner’s  
16 compliance with them – threaten to force Petitioner out of business or impose major  
17 operational changes that would be extremely costly and infeasible, without commensurate  
18 environmental justification or benefit. At the very least, literal enforcement of the Order  
19 could require Petitioner to substantially suspend operations for a significant period of time,

20       This is not hyperbole. For example, Petitioner cannot conduct its operations without  
21 being able to move scrap metal, shredder residue and other materials around the facility as  
22 necessary to carry out its operations. Petitioner cannot “sequester” pollutants – which are  
23 none other than the metals it seeks to recover – and, in any event, does not understand what  
24 the Regional Board intends by such a vague and ambiguous requirement. Petitioner cannot  
25 minimize onsite truck contact between “contaminated sediments” (i.e., mud) and standing  
26 water without making major changes to the facility such as installation of a more extensive  
27 drainage and water handling system, sacrificing necessary operating space for the  
28 construction of additional water storage tanks, and expanding paved areas of the site. And,

1 while Petitioner is already evaluating ways of improving containment of the conveyor pier  
2 and pier crane dock, it cannot guarantee these structures will ever be "watertight." These  
3 types of improvements would cost many millions of dollars and would have to be  
4 implemented over a number of years.

5 Further, Petitioner does not understand what is meant by the requirement to identify  
6 "all pollution sources" at the site, within the context of Petitioner's operations, including  
7 "pathways of airborne dispersion and deposition" of shredder waste and/or fluff. See Task  
8 B.2., Table 1 Sampling Plan. While Petitioner recognizes the need to control and prevent  
9 off-site airborne dispersal of process-related materials, the imposition of air sampling  
10 requirements is inappropriate under the Industrial General Permit.<sup>7</sup> Further, all of the scrap  
11 materials handled by Petitioner and all of its operations are at least potential pollution  
12 sources, and sampling of site soils will obviously reveal heavy metals and other constituents  
13 associated with the operations that are conducted in the yard. Given the inherent nature of  
14 Petitioner's operations, and the fact that groundwater at the downgradient boundary of the  
15 facility is not contaminated after 50 years of continuous operations, there is no technical  
16 justification for requiring Petitioner to carry out the exhaustive and unnecessary sampling  
17 program described in Task B.2.

18 In its written comments, Petitioner proposed to install additional groundwater  
19 monitoring wells in other locations on the property to obtain additional information about  
20 subsurface conditions at the site, and indicated that it would be willing to conduct site  
21 assessment activities, as appropriate, based on the results of that monitoring. If  
22 groundwater in other areas of the site were also shown to be unaffected by operations on the  
23 surface (as Petitioner believes to be the case), then, Petitioner argued, there would be no  
24 reason to require soils characterization, sampling of ponded water that is recycled and  
25

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26 <sup>7</sup> The requirement to sample "pathways of airborne dispersion and deposition" was not  
27 included in the tentative order, but was added to the final Order based on comments  
28 submitted by Baykeeper on October 19, 2013. Petitioner submitted a subsequent letter to  
the Regional Board on November 15, 2012, setting forth the specific grounds for its  
objection to the proposed air sampling requirement.

1 reused on-site, or sampling of the myriad other potential "pollution sources" at the facility.  
2 Like the rest of Petitioner's comments, this proposal was ignored. Even more troubling to  
3 Petitioner are the suggestions in the Order that the Regional Board believes groundwater  
4 beneath at least a portion of the site (if it is contaminated) should be cleaned up to drinking  
5 water standards, when there is no plausible scenario under which any of the groundwater  
6 beneath the facility would be used for that purpose. Despite the lingering MUN designation  
7 for some of the groundwater beneath the facility, it is common knowledge that groundwater  
8 along the periphery of the Bay, in what is known as the East Bay Plain Groundwater Basin  
9 (Basin Plan, Ch.2), is not a source of drinking water. Even more far-fetched is the  
10 statement that Petitioner must consider the need for soil vapor and groundwater extraction  
11 on an interim basis, as part of an Interim Corrective Action Plan. Petitioner's operations do  
12 not involve the use of volatile organics, all incoming end-of-life vehicles have been drained  
13 of all automotive fluids, including fuels, before they are accepted at the facility, and in any  
14 event these proposed corrective action methods are not feasible given hydrogeologic  
15 conditions at the facility. The equipment at the site uses heavy hydraulic oils and lubricants  
16 that do not contain volatile constituents; there are no indoor operations that would justify a  
17 need for soil vapor extraction even if VOCs were detected in soil gas; and the fine grained  
18 sediments and shallow groundwater depth at the facility are not conducive to either  
19 groundwater extraction or soil vapor extraction. These provisions of the Order reveal a  
20 profound misunderstanding of Petitioner's operations and other site-specific considerations  
21 that should have been taken into account. The Regional Board's failure to do so constitutes  
22 a significant abuse of discretion.

23 One other provision is particularly unreasonable and wholly unwarranted from an  
24 environmental perspective. Task B.2 unlawfully and inappropriately imposes a *de facto*  
25 injunction against Petitioner by dictating that "[i]t is imperative that sampling takes place  
26 prior to altering conditions at the Site." Petitioner cannot reasonably be expected to comply  
27 with this grossly vague and overbroad mandate. The process of preparing a Sampling Plan  
28 that is acceptable to the Executive Officer could take several months even under the best of

1 circumstances, followed by up to six months to implement the Plan and prepare the  
2 required report, again subject to approval by the Executive Officer. Petitioner's operations  
3 are extremely dynamic and site conditions change on a daily basis. Massive quantities of  
4 scrap metal and other materials are constantly being moved around the facility and  
5 processed, routine maintenance and repairs must be conducted, treated residue must be  
6 transported off-site, water must be recycled, BMPs must be implemented, and so on and so  
7 forth. The only way to maintain the *status quo* is to shut down and suffer irreparable harm  
8 as a consequence:

9 Overall, the requirements discussed above are so lacking in foundation, so  
10 unreasonable, or so incompatible with the manner in which Petitioner conducts its  
11 operations as to be patently arbitrary and capricious and an abuse of discretion. Looking at  
12 the cumulative effect of these requirements, the Regional Board has clearly "thrown the  
13 book" at Petitioner without adequate factual basis and without regard to technical and  
14 economic feasibility or other equitable considerations:

- 15 e. **The Regional Board abused its discretion by ignoring all of the**  
16 **corrective actions and other measures proactively undertaken by**  
17 **Petitioner, in some cases prior to issuance of the tentative order, and**  
**mandating their implementation as part of the Order.**

18 Following the March 29, 2012 inspection, Petitioner moved quickly to identify and  
19 implement corrective actions to address each of the major issues raised during the  
20 inspection. These corrective actions included each of the areas listed in Task B.4. of the  
21 Order and many more, including: (i) thorough cleaning of the conveyor pier and pier crane  
22 dock, including capture and off-site disposal of all wash water; (ii) installation of new,  
23 specially fabricated heavy-duty wheel washes at the entrance to the dock and at the facility  
24 exit to reduce trackout; (iii) installation of an engineered containment system along the  
25 edges of the dock; (iv) improved containment of the conveyor pier; (v) installation of  
26 additional covered area where maintenance activities are conducted; (vi) relocation of torch  
27 cutting operations to a contained, paved area of the facility; (vii) installation of a new  
28 concrete containment wall extending 600 feet along the western boundary of the facility

1 and cleanup of miscellaneous debris along the fence line; (viii) increased cleaning and  
2 sweeping of Embarcadero West with a second, dedicated mechanical sweeper rented  
3 specifically for this purpose; and (ix) installation of a trench drain at the entrance to the  
4 non-ferrous metals area to prevent sheetflow out of this area. Petitioner is also evaluating  
5 ways that it can better control wind dispersion of the light fibrous material produced by  
6 non-ferrous metal recovery operations, and is working cooperatively with SSA Terminals  
7 and the Port of Oakland to ensure that existing accumulations of the material are removed.  
8 Petitioner is currently conducting regular sweeping at SSA Terminals using a mechanical  
9 sweeper and will continue this BMP as needed. Petitioner informed the Regional Board in  
10 writing on several occasions of its plans and progress, and these activities were discussed at  
11 length during a meeting with staff on September 14, 2012, shortly after issuance of the  
12 tentative order (this was the only occasion when staff agreed to meet or talk with  
13 Petitioner). Petitioner provided a further progress report on its efforts as part of its  
14 comments on the tentative order. The Regional Board has never provided any feedback to  
15 Petitioner on any of these efforts, and cautioned in the Response to Comments that  
16 Petitioner is essentially proceeding at its own risk to implement these improvements  
17 without first having conducted the extensive site investigation required by the Order. This  
18 response is confusing, given that – as staff is aware – the corrective measures undertaken by  
19 Petitioner are in no way dependent on characterization of “the overall extent of its potential  
20 pollution pathways.” RTC, p. 8 (Comment 6). Accordingly, the Regional Board’s inclusion  
21 of Task 4 (Interim Corrective Action Plan) in the Order, despite Petitioner’s completion of  
22 each of these tasks, is an abuse of discretion.

23 Similarly, Task B.6. of the Order requires Petitioner to submit a BMP Plan  
24 acceptable to the Executive Officer by February 15, 2013 addressing specific areas of  
25 concern. As the Regional Board was informed on numerous occasions, Petitioner has  
26 already targeted these areas for improvement and began implementing enhanced BMPs  
27 shortly after the March 29, 2012 inspection. These BMPs are also described in the updated  
28 SWPPP submitted to the Regional Board on November 30, 2012, prior to issuance of the

1 Order. See Exhibit 5. Petitioner has not received any feedback on the updated SWPPP,  
2 despite the fact that it was entirely re-written and updated by Terraphase Engineering, Inc.  
3 (a QSP) in accordance with current SWPPP practice. As part of the update, Petitioner  
4 proactively instructed Terraphase to prepare the two technical and monitoring reports  
5 described in Task C of the tentative order, and to include them in a technical appendix to  
6 the SWPPP. See Exhibit 5, Appendix B. Despite this submittal, Task B.8 of the Order  
7 requires Petitioner to submit an updated SWPPP by February 15, 2013, and to submit the  
8 two technical reports by March 1, 2013, ignoring the fact that all of these documents have  
9 already been submitted and are awaiting review by staff. Petitioner objects to being  
10 ordered to do things it has already done. This is symptomatic of staff's dismissive attitude  
11 towards Petitioner, and exposes Petitioner to claims that it violated the Order, and thus to  
12 further enforcement, if the submittals are ultimately determined not "acceptable to the  
13 Executive Officer."

14 5. Petitioner is aggrieved by the Regional Board's action for all of the  
15 following reasons:

16 (a) the Order includes numerous findings that are not based on  
17 substantial evidence, thereby subjecting Petitioner to requirements that are  
18 arbitrary and capricious and an abuse of discretion;

19 (b) the Order is premised on certain errors of law, thereby  
20 wrongfully concluding that Petitioner is in violation of the Industrial General  
21 Permit, the Clean Water Act and the Basin Plan;

22 (c) the Order misconstrues the purpose of former Site Cleanup  
23 Requirements Order No. 88-023, thereby wrongfully concluding that Petitioner  
24 violated the requirements of that order;

25 (d) the Order imposes many requirements on Petitioner that are  
26 unnecessary, unduly burdensome or restrictive, and incompatible with  
27 Petitioner's lawful operations; and  
28

1 (e) the Order imposes certain requirements that exceed the scope  
2 of the Regional Board's authority as they have no reasonable relationship to  
3 discharges of waste that cause or threaten to cause adverse effects on water  
4 quality.

5 6. Petitioner's request for relief is set forth at the end of the petition.

6 7. Petitioner's statement of points and authorities in support of the legal issues  
7 raised by this Petition commences below. The Petition raises substantial issues of fact and  
8 law that are appropriate for review by the State Board, specifically:

9 (a) whether Petitioner's facility is properly characterized as a  
10 "zero-discharge facility" for purposes of the Industrial General Permit;

11 (b) whether the off-site tracking or dispersal of pollutants is an  
12 unlawful "discharge" under the Industrial General Permit and the Clean  
13 Water Act where there is no reasonable likelihood that pollutants are or  
14 might be conveyed into waters of the United States through a point source;  
15 and

16 (c) whether there is substantial evidence that Petitioner's  
17 operations have caused "pollution" of the waters of the state, as that term is  
18 defined in Water Code section 13050.

19 8. A copy of this Petition was sent by Federal Express to the Regional Board  
20 on February 1, 2013, to the attention of Mr. Bruce Wolfe, Executive Officer.

21 9. Petitioner met with cleanup staff assigned to this matter on September 14,  
22 2012, and submitted extensive written comments on the tentative order on October 1, 2012  
23 and October 19, 2012 (at the last minute, and without prior notice to Petitioner, the  
24 Regional Board extended the comment period from October 1 to October 19, 2012 at the  
25 request of San Francisco Baykeeper). Petitioner also submitted a letter to the cleanup staff  
26 on November 15, 2012 responding to comments submitted by members of the public.  
27 Petitioner's comment letters addressed each of the substantive issues and objections raised  
28 in this Petition. Copies of Petitioner's comment letters are attached as Exhibits 6, 7 and 8.

1 A copy of Petitioner's September 14, 2012 PowerPoint presentation to cleanup staff  
2 focusing on all of the corrective actions undertaken by Petitioner, is attached as Exhibit 9.  
3 The cleanup staff made no changes to the tentative order based on Petitioner's comments  
4 and submitted the mostly unchanged order to the Executive Officer for signature. Petitioner  
5 had no opportunity to raise its objections before the Regional Board as no hearing was  
6 scheduled, and prohibitions on *ex parte* communications barred any discussion with the  
7 Executive Officer.

8 10. Petitioner requests a hearing to address the contentions herein and reserves  
9 the right to present additional evidence. See 23 Cal. Code Regs., § 2050.6.

10 **STATEMENT OF POINTS AND AUTHORITIES**

11 **A. Petitioner's Facility Is a Zero-Discharge Facility.**

12 In response to Petitioner's comments regarding the alleged "discharges" from its  
13 facility, and whether such "discharges" support the conclusion that Petitioner is in violation  
14 of the Industrial General Permit and the Clean Water Act, the Regional Board's Response  
15 to Comments states as follows:

16 Schnitzer has fundamentally misinterpreted the definition of stormwater  
17 discharge: the existence of storm drains on or near the Facility is not a  
18 necessary element for determining whether there has been a stormwater  
19 discharge. Overland sheet flow is also a conveyance mechanism for  
20 stormwater runoff, as are the other conveyances documented by Water  
21 Board staff in the Tentative Order and attached inspection report. Schnitzer  
22 is not a "zero discharge facility."

23 RTC, p. 6 (Comment 3).

24 "Zero-discharge facility" is a regulatory term of art that is used under the NPDES  
25 permit program to signify that a facility does not have any point source discharges of  
26 pollutants to waters of the United States. See, e.g., July 16, 2012 Draft Industrial General  
27 Permit, Fact Sheet, p. 14, at Footnote 7:

28

1 To avoid discharging without a permit, violating the CWA, and facing  
2 possible enforcement action, Dischargers should be certain that no discharge  
3 of storm water to waters of the United States could occur under any  
4 circumstances. Such Dischargers should contact the Regional Water Board  
5 with any zero discharge exemption questions.

6 (Emphasis added.) Thus, the very permit that Petitioner is alleged to be violating expressly  
7 provides that a “zero discharge” facility is one from which no discharge of storm water to  
8 waters of the United States could occur under any circumstances. “Zero discharge” does  
9 not mean that a facility has eliminated discharges that are not subject to the Clean Water  
10 Act in the first instance. The draft Fact Sheet for the renewal Industrial General Permit  
11 specifically lists the types of discharges that are not covered by the General Permit  
12 including, “[d]ischarges that do not enter waters of the United States. These include . . .  
13 [d]ischarges to evaporation ponds, discharges to percolation ponds, and/or any other  
14 methods used to retain and prevent industrial storm water discharges from entering waters  
15 of the United States.” Draft Fact Sheet, at p. 14.; *see also*, Fact Sheet for current Industrial  
16 General Permit, pgs. V-VI, ¶ 4.b.

17 In this case, there is no dispute that stormwater that falls on the upland portions of  
18 Petitioner’s facility is retained on-site, including a small area that straddles the facility’s  
19 western boundary. The water either evaporates or infiltrates or is used for cooling in the  
20 shredder; it is not discharged to the Oakland Inner Harbor. Indeed there are no stormwater  
21 outfalls at the facility, and no storm drains in any area where water tends to accumulate  
22 after heavy rain events.

23 As indicated in its comments on the tentative order, there are *de minimis*  
24 discharges of stormwater that occur in the form of runoff or drippage from the over-water  
25 structures at the facility, i.e., the conveyor pier and the pier crane dock. Petitioner cannot  
26 estimate the amount of runoff from these structures, but believes it to be negligible  
27 compared to the amount of water that falls on the upland portions of the facility.  
28 Historically, these structures were not viewed as “conveyances” (point sources) under the

1 Clean Water Act by the Regional Board, leading to the facility's recognized status as a  
2 "zero discharger." This long-standing interpretation apparently changed in late 2011  
3 following an action taken by EPA, under CWA section 309, involving runoff and alleged  
4 discharges from a shiploading conveyor at another Bay Area scrap metal recycling  
5 facility. Even if the State Board were to conclude that the facility may no longer be  
6 classified as a zero-discharge facility due to *de minimis* discharges off the conveyor and  
7 dock,<sup>8</sup> the loss of such status has nothing to do with the other types of "discharges"  
8 identified in the Order that do not enter waters of the United States, as discussed below.

9 B. The Dispersal of Pollutants, Whether On-Site or Off-Site, Is Not an  
10 Unlawful "Discharge" Under the Industrial General Permit or the  
11 Clean Water Act If There Is No Reasonable Likelihood that Pollutants  
Will or May Be Conveyed Into Waters of the United States by a "Point  
Source."

12 The other "discharges" identified in the Order – standing water in the yard that is in  
13 contact with scrap, product and waste piles and debris; trackout onto Embarcadero West;  
14 wet debris and sediment between the K-rails and chain link fence on the western perimeter;  
15 and shredder fluff in upland areas remote from any storm drains – are not NPDES-regulated  
16 discharges because these materials cannot, under any plausible scenario, reach waters of the  
17 United States. Thus, contrary to what is argued by cleanup staff, the presence of storm  
18 drains is *essential* to a finding of "stormwater discharge" in circumstances where, as here, it  
19 can be demonstrated that the material cannot reach surface waters by any other means.

20 The Regional Board's assertion that overland sheet flow is a form of "conveyance"  
21 under the Clean Water Act is also contrary to well-settled law. Absent some form of  
22 human intervention that channels or directs stormwater runoff to waters of the United  
23 States, there is no "point source" discharge as required by both the Clean Water Act and  
24 the NPDES permit program. Under CWA section 502,  
25  
26

27 <sup>8</sup> Efforts are now underway to improve containment at both the conveyor pier and dock in  
28 order to prevent or minimize exposure of stormwater to pollutants, consistent with the  
requirements of the Industrial General Permit.

1 The term “point source” means any discernible, confined and discrete  
2 conveyance, including but not limited to any pipe, ditch, channel, tunnel,  
3 conduit, well, discrete fissure, container, rolling stock, concentrated animal  
4 feeding operation, or vessel or other floating craft, from which pollutants are  
5 or may be discharged. This term does not include agricultural stormwater  
6 discharges and return flows from irrigated agriculture.

7 33 U.S.C. § 1362 (14). Similarly, the NPDES regulations define “discharge of a pollutant”  
8 as the “addition of any pollutant or combination of pollutants to waters of the United States  
9 from any point source.” 40 C.F.R. § 122.2(a). There are four essential elements to this  
10 definition, all of which must be present before the NPDES requirements of the CWA are  
11 triggered, whether under an individual permit or a general permit. If any one of these  
12 elements is missing, the discharge is not subject to regulation under the NPDES program.  
13 Thus, if pollutants can never reach waters of the United States, there obviously is no  
14 addition of any pollutant, and thus no activity that is subject to regulation under the NPDES  
15 program. Similarly, if pollutants enter surface waters through a mechanism other than a  
16 “point source,” the discharge is classified as a “nonpoint source” discharge and is outside  
17 the scope of the Industrial General Permit.

18 There is a long line of cases supporting this conclusion:

- 19 • N.W. Envtl. Def. Ctr. v. Brown, 640 F.3d 1063 (9th Cir. 2011)<sup>9</sup>  
20 “Stormwater that is not collected or channeled and then discharged, but  
21 rather runs off and dissipates in a natural and unimpeded manner, is not  
22 a discharge from a point source as defined by § 502(14).” *Id.* at 1070–  
23 71.
- 24 • Greater Yellowstone Coal. v. Lewis, 628 F.3d 1143 (9th Cir. 2010)

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26  
27 <sup>9</sup> Certiorari granted by *Decker v. Northwest Environmental Defense Center*, 133 S.Ct. 22,  
28 183 L.Ed.2d 673 (Jun 25, 2012) and *Georgia-Pacific West, Inc. v. Northwest  
Environmental Defense Center*, 133 S.Ct. 23 (Jun 25, 2012).

1 The text of § 401 [of the CWA] and construing case law are clear that  
2 some type of collection or channeling is required to classify an activity  
3 as a point source. *Id.* at 1153 (“Stormwater that is not collected or  
4 channeled and then discharged . . . is not a discharge from a point  
5 source.”) (citation omitted).

6 • *Trustees for Alaska v. E.P.A.*, 749 F.2d 549 (9th Cir. 1984)

7 “ . . . [P]oint and nonpoint sources are not distinguished by the kind of  
8 pollution they create or by the activity causing the pollution, but rather  
9 by whether the pollution reaches the water through a confined,  
10 discrete conveyance.” *Id.* at 558, citing with approval and adopting  
11 analysis of *United States v. Earth Sciences, Inc.*, 599 F.2d 368 (10th  
12 Cir. 1979) (emphasis added). “When evaluating what constitutes a point  
13 source in the mining context specifically, Congress intended “runoff  
14 caused primarily by rainfall around activities that employ or create  
15 pollutants” to be a “nonpoint source.” *Ibid.*

16 • *Env't. Def. Ctr., Inc. v. E.P.A.*, 344 F.3d 832 (9th Cir. 2003)

17 “Diffuse runoff, such as rainwater that is not channeled through a point  
18 source, is considered nonpoint source pollution and is not subject to  
19 federal regulation.” *Id.* at 841, 842 n. 8.

20 • *Waterkeeper Alliance, Inc. v. E.P.A.*, 399 F.3d 486 (9th Cir. 2005)

21 “To be sure, the [CWA] does generally contemplate that discharges be  
22 ‘channelized’ in order to fall within the EPA’s regulatory jurisdiction;  
23 that is why the term ‘point source’ is defined as ‘discrete, discernable,  
24 conveyances.’” *Id.* at 510.

25 • *Appalachian Power Co. v. Train*, 545 F.2d 1351 (4th Cir. 1976)

26 “Broad though [the definition of point source] may be, we are of the  
27 opinion that it does not include unchanneled and uncollected surface  
28 waters.” *Id.* at 1373.

1 • Shanty Town Assocs. LP v. E.P.A., 843 F.2d 782 (4th Cir.1988).

2 The definition of a point source “excludes unchanneled and  
3 uncollected surface runoff, which is referred to as ‘nonpoint source’  
4 pollution.” *Id.* at 785, n. 2.

5 In sum, there is simply no doubt that the “discharges” identified in the Order, with the  
6 exception of drippage from the pier and dock, are not regulated under the Industrial General  
7 Permit.

8 **C. Petitioner’s Operations Have Not Polluted the Waters of the State.**

9 The Order finds that “[p]rocess sediment, wastewater, and shredder fluff from the  
10 Site continue to *pollute* waters of the State and United States” (Finding 3), and that “[t]he  
11 discharged wastes have likely resulted in unnecessary and avoidable adverse impacts to  
12 beneficial uses.” Finding 16. Building on this hypothesis, the Order concludes that  
13 “directives [are] needed to investigate, cleanup and abate existing impacts and future  
14 impacts to the Oakland Estuary and Inner Harbor.” *Id.* However, neither of these findings,  
15 nor any other provision of the Order, recites any evidence of actual pollution or adverse  
16 impacts to beneficial uses. Nor does the Order contain substantial evidence of any  
17 threatened harm to beneficial uses. Given the *de minimis* nature of the discharges to  
18 surface waters that are occurring in this case (i.e., drippage off the conveyor pier and dock),  
19 the mere allegation that a discharge has occurred is not sufficient to prove that the discharge  
20 has resulted in pollution or adverse effects to beneficial uses, as those terms are used in the  
21 Water Code.

22 The Water Code provides in pertinent part:

23 “Any person . . . who has caused or permitted, causes or permits . . . any  
24 waste to be discharged or deposited where it is . . . discharged into the waters  
25 of the state and creates . . . a condition of pollution . . . shall upon order of  
26 the regional board, clean up the waste or abate the effects of the waste . . .”

27 Water Code, § 13304(a) (emphasis added). Thus, the Regional Board must establish two  
28 conditions before liability may be imposed on Petitioner: first, there must be a discernible

1 discharge into waters of the state; and, second, the discharge must create a condition of  
2 pollution or nuisance. See *In the Matter of the Petition of Lake Arrowhead Community*  
3 *Services District*, Order No. WQ 88-10. Under Water Code section 13050(l),

4 (1) "Pollution" means an alteration of the quality of the waters of the state by  
5 waste to a degree which *unreasonably* affects either of the following;

- 6 (A) The waters for beneficial uses.
- 7 (B) Facilities which serve these beneficial uses.

8 (2) "Pollution" may include "contamination."

9 (Emphasis added.) "Contamination" means "an impairment of the quality of the waters of  
10 the state by waste to a degree which creates a hazard to the public health through poisoning  
11 or through the spread of disease." Water Code, § 13050(k). Similarly, under section  
12 13050(m), "nuisance" conditions are limited to public nuisance (as distinct from private  
13 nuisances) and must involve circumstances that are injurious to health, indecent or  
14 offensive to the senses, or obstruct the free use of property.

15 Here, as in the *Arrowhead* case, there is no evidence that any waste discharged by  
16 Petitioner has affected waters of the state or adversely affected any beneficial uses, let alone  
17 that any such effect is significant or unreasonable. See Water Code, § 13241 (the  
18 Legislature has "recognized that it may be possible for the quality of water to be changed to  
19 some degree without unreasonably affecting beneficial uses"). Accordingly, issuance of a  
20 cleanup and abatement order is inappropriate since the record does not support a finding  
21 that Petitioner "polluted" waters of the State.

22  
23 **REQUEST FOR RELIEF**

24 For the reasons set forth above, Petitioner respectfully requests that the State Board  
25 grant Petitioner the following relief:

- 26 A. With the exception of the provision of the Order revoking  
27 SCR Order No. 88-023, revoke the Order in its entirety and direct the  
28 Regional Board to work with Petitioner to resolve all stormwater-related

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concerns under the iterative process outlined in the Industrial General Permit.

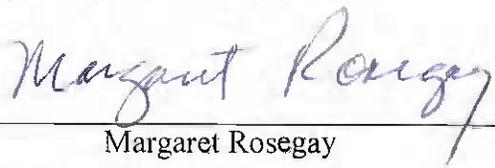
B. Direct the Regional Board to promptly review and provide Petitioner with substantive feedback on its SWPPP, as submitted to the Regional Board on November 30, 2012.

C. To the extent that the State Board determines that further subsurface investigation of Petitioner's facility is warranted under the facts and circumstances presented, direct the Regional Board to issue a request for technical reports under Water Code section 13267.

D. Such other relief as the State Board may deem just and proper.

Dated: February 1, 2013.

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By   
Margaret Rosegay

Attorneys for Petitioner  
SCHNITZER STEEL INDUSTRIES, INC.

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VERIFICATION

I, SCOTT B. SLOAN, am National Director – Environmental for Schnitzer Steel MRB and have responsibility for environmental permitting and regulatory compliance activities at the Oakland facility, including activities relating to storm water management. I have read the foregoing Verified Petition for Review and Request for Hearing and believe that the statements made therein are true and correct. If called as a witness to testify with respect to the matters stated therein, I could and would competently do so under oath.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed in Oakland, California, on February 1, 2013.



Scott B. Sloan

# **EXHIBIT 1**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**CLEANUP AND ABATEMENT ORDER NO. R2-2013-1001  
AND RESCISSION OF ORDER NO. 88-023**

**SCHNITZER STEEL INDUSTRIES, INCORPORATED  
ALSO KNOWN AS SCHNITZER STEEL PRODUCTS COMPANY**

FOR THE PROPERTY LOCATED AT:  
1101 EMBARCADERO WEST, OAKLAND,  
ALAMEDA COUNTY

AND FOR THE WATERS OF THE STATE LOCATED AT:  
THE OAKLAND ESTUARY AND INNER HARBOR OF THE  
SAN FRANCISCO BAY, ALAMEDA COUNTY

This Order is issued to SCHNITZER STEEL INDUSTRIES, INC., also known as SCHNITZER STEEL PRODUCTS COMPANY, (hereafter "Discharger"), based on provisions of California Water Code sections 13304 and 13267, which authorize the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") or its delegate, the Executive Officer, to issue a Cleanup and Abatement Order ("Order") where a discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and United States, and to require a discharger to submit technical and monitoring reports.

- 1. Purpose of Order:** This Order requires the cleanup and abatement of wastes, including process sediment, industrial process wastewater, and metal shredding by-products that the Discharger has discharged into the estuary and waterway areas of the Oakland Estuary and Inner Harbor of the San Francisco Bay. This Order also requires the Discharger to implement best management practices ("BMPs") to prevent future discharges and to submit technical and monitoring reports for use in determining the extent of necessary cleanup and abatement and the success of measures preventing additional discharges. The Discharger is currently violating Site Cleanup Requirement ("SCR") Order No. 88-023 issued by the Regional Water Board, the Industrial Storm Water General Permit Order 97-03-DWQ National Pollutant Discharge Elimination System General Permit No. CAS000001 ("Industrial General Permit") issued by the State Water Resources Control Board ("State Water Board"), the Water Quality Control Plan for the San Francisco Bay Basin ("Basin Plan"), and the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.; "Clean Water Act"). The requirements of this Order supersede those of Order No. 88-023, except for the purpose of enforcing violations of Order No. 88-023. Nothing in this Order shall be construed as a bar to the Regional Water Board and/or the State Water Board taking appropriate enforcement action for violations of Order No. 88-023.

**Site Locations and Descriptions:** The Discharger at 1101 Embarcadero West, Oakland (the "Site"), operates a scrap metal recovery, shredding and recycling business. According to the Discharger's 2005 Storm Water Pollution Prevention Plan ("SWPPP"), at any one time the amount of metal products on the ground is estimated to be between 70,000 to 80,000 tons and the amount of treated shredder residue is estimated to be 350 tons. Industrial activities at the Site include receiving metals, storing metals for processing by shredder, shear or torch cutting, separating ferrous and non-ferrous metals, removing and treating auto shredder residue (also referred to as shredder fluff), and loading separated metals for transport for sale. Shredder fluff is treated with cement and silicate prior to disposal.

Cleanup of shredder waste and heavy metal residue is needed at the Site and neighboring properties to protect water quality. The Site is bounded to the south by the Oakland Inner Harbor, to the west by American President Lines Limited ("APL Limited") and the Port of Oakland, to the north by the Union Pacific Railroad, and to the east by SSA Terminals. Schnitzer occupies 26.5 acres of flat lying land adjacent to the Oakland Inner Harbor, which is a water of the State and United States. The Site is situated within a mixed commercial/industrial area. The areas requiring cleanup include the conveyor loading system and pier crane dock on the Site, surfaces near and/or above the Oakland Estuary and Inner Harbor, including docks, along Embarcadero West from the Site to Market Street, including contaminated soil on SSA Terminals' property, and shredder fluff on the neighboring properties of SSA Terminals, Port of Oakland, and APL Limited.

2. **Responsible Party:** The Discharger is the responsible party to clean up the Site and neighboring properties because wastes, including process sediment, industrial wastewater, and shredder fluff entering the waters of the State and United States originate from the Discharger's metal shredding business at the Site.
3. **Basis of Order:** Process sediment, industrial wastewater, and shredder fluff from the Site continue to pollute waters of the State and United States. The Discharger has permit coverage under the Industrial General Permit. Permit compliance inspections by State Water Board and Regional Water Board staff (collectively Water Board staff unless otherwise specified) have revealed that the Discharger has failed to contain process sediment, industrial wastewater, and/or shredder fluff. (See Attachment A, March 29, 2012 Inspection Report for more information.)
  - a. **Process Sediment Discharges:** The Discharger is causing process sediment and other sediments to be deposited into the Oakland Estuary and Inner Harbor of the San Francisco Bay from the Site's ship loading conveyor belt and pier crane dock.
    - i. The ship loading conveyor transports product from the Site onto docked ships and is sprayed with water for dust control while it is moving to the ship. The dock underneath, various rubber mats, and sweeping practices are not fully containing the process wastewater, process sediment, or other sediments from discharging into waters below. Water Board staff observed process

sediment and/or sediment on the wooden dock beyond the containment lip edge, and there were visible gaps between the wood slats in the dock. The surface is not sufficiently watertight to capture process sediment or dust control process water runoff during conveyor operation in "dry weather" conditions. Stormwater flows would increase the discharges.

- ii. The pier crane dock bridge is used for vehicles to transport materials to the crane to load ships. Water Board staff observed that the paved bridge with wood borders and rubber molding at the edges fail to fully contain process sediment and dust. Process sediment was outside of the roadway containment border, and on the riprap and bridge foundation, on the sides of the bridge railing, on lower bridge supports, and on pipes running the length of the bridge. The process sediment is deposited where it probably will be directly discharged, and the discharge is likely compounded by stormwater washing it off into the waters below.
- ib. Industrial Wastewater Discharges: Stormwater and facility process water are effectively comingled at the Site, as all onsite water (including potable water used in cooling and dust control) has the potential to contact industrial product, waste, and equipment, becoming contaminated with any pollutants and wastes associated with these materials.
- i. Standing water was in contact with scrap, product and waste piles and errant debris throughout the Site. Various sheens were seen on the standing water, indicating the presence of pollutants.
  - ii. Wet shredder debris and process sediment were observed between K-rails and chain link fences on the western perimeter of the Site, where it is likely to have discharged offsite, and is not prevented from discharging offsite in the future.
  - iii. Trucks entering the main entrance gate drive through unpaved muddy areas with standing water that is in contact with scrap, product, and waste piles. Trucks directed to dry areas generate fugitive dust. Water Board staff observed the access road leading from the Site exit to Embarcadero West had wet sediment tracks from outgoing truck traffic, beyond installed rumble strips. Embarcadero West had a layer of sediment and dust on the road from trucks exiting the Site. The Discharger's street-sweeping is not sufficient to remove the track-out and dust deposited on the street and at the adjacent SSA Terminals property. Process sediment and/or other sediments and water tracked out by vehicles onto Embarcadero West are being deposited where they will discharge offsite, likely compounded by any storm events, and potentially discharge into storm drains.
- c. Shredder Fluff Discharges: A byproduct of the metal shredding operations is shredder waste or "shredder fluff." Shredder fluff consists of glass, fiber, rubber, automobile fluids, dirt and plastics found in automobiles and household

appliances that remain after the recyclable metals have been removed. Shredder fluff has been found to contain lead, copper, zinc, cadmium, and polychlorinated bisphenyls.<sup>1</sup> On April 10, 2012, State Water Board staff saw a large amount of accumulated shredder fluff on the adjacent SSA Terminals' property east of the Site that looked identical to the shredder fluff on the Site. Shredder fluff was found adjacent to two storm drains on SSA Terminals' property and was likely discharging or had the potential to discharge into these drains. Additional accumulated shredder fluff was observed throughout the Port of Oakland's paved lot and on APL Limited's property, both west of the Site. These wastes have been deposited where they are susceptible to stormwater washing them into storm drains or directly into the Oakland Estuary and Inner Harbor. (See Attachment B, April 10, 2012 Video Surveillance Summary.)

4. **Regulatory Status:** The Site is regulated by SCR Order No. 88-023 and the Industrial General Permit. The Industrial General Permit provides waste discharge requirements for stormwater discharges associated with industrial activities.
  - a. **SCR Order No. 88-023:** The Discharger and the Site are subject to SCR Order No. 88-023 adopted by the Regional Water Board on February 17, 1988. SCR Order No. 88-023 was issued to prevent polluted soil from migrating to the Oakland Inner Harbor, tributary to Central San Francisco Bay, and to cleanup and abate the soil and groundwater pollution at the Site. SCR Order No. 88-023 prohibits 1) the discharge of pollutants in any manner that will degrade the water quality or adversely affect the beneficial uses of the waters of the State, 2) the migration of pollutants through subsurface transport to deeper water bearing zones, and 3) the lateral migration of pollutants through subsurface transport to the Inner Harbor that will degrade water quality or adversely affect its beneficial uses. SCR Order No. 88-023 also required the Discharger to install four groundwater monitoring wells inland of the concrete cap at the Site and screened in the top five feet of the first water bearing zone. The Discharger was to sample the wells quarterly for heavy metals and PCBs. The Regional Water Board approved sampling reductions from quarterly, to semi-annually, and then to annually, in 1994 and 1998, respectively. The latest sampling occurred in July 2011. No PCBs have been detected and the metal detections have been below levels of concern. The four groundwater wells at the Site are considered sentinel wells, just inside the shoreline concrete cap. Their results do not necessarily reflect the groundwater conditions closer to the areas where waste discharges have been observed by Water Board staff.
  - b. **Industrial General Permit Coverage:** The Discharger has had Industrial General Permit coverage since May 9, 1997. Section A.1. of the Industrial General Permit prohibits discharges of material other than stormwater either directly or indirectly to waters of the United States. On November 17, 1997, Regional Water Board staff approved a sampling and analysis reduction. The Discharger was only required to sample the first storm event of the 1998-1999

<sup>1</sup> [http://www.dtsc.ca.gov/HazardousWaste/upload/IFWMP\\_REP\\_ASW\\_draft.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/IFWMP_REP_ASW_draft.pdf)

and 2000-2001 rainy seasons. The Discharger has re-certified its Sampling and Analysis Reduction as part of its Annual Report each year since.

- c. **Violations:** The Discharger is violating SCR Order No. 88-023 and the Industrial General Permit by discharging wastes, including process sediment, industrial wastewater, and shredder fluff, offsite to where it has discharged and/or potentially will discharge to waters of the State and United States.
- 5. Federal Clean Water Act:** The Clean Water Act requires any person who discharges any pollutant into a water of the United States to have a National Pollutant Discharge Elimination System ("NPDES") permit. The purpose of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.
- a. **Violations:** The Discharger is violating Clean Water Act section 301 because it has discharged and/or is likely to discharge process sediment, industrial wastewater, and shredder fluff into the waters of the State and United States without complying with the NPDES program. (See 33 U.S.C. 1311.)
- 6. Basin Plan:** The Basin Plan is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Board, Office of Administrative Law and U.S. EPA, where required.
- a. The potential beneficial uses of groundwater underlying and adjacent to the site include:
    - i. Municipal and domestic water supply<sup>2</sup>
    - ii. Industrial process water supply
    - iii. Industrial service water supply
    - iv. Agricultural water supply
    - v. Freshwater replenishment to surface waters
  - b. The existing and potential beneficial uses of Central San Francisco Bay include:
    - i. Industrial process supply or service supply
    - ii. Water contact and non-contact recreation
    - iii. Ocean, commercial, and sport fishing
    - iv. Wildlife habitat
    - v. Cold freshwater and warm freshwater habitat
    - vi. Fish migration and spawning

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<sup>2</sup> Only applies to the northern half of the Site based on monitoring well data. Conductivity values at MW-1 and MW-2 (in the southern half) are high enough to meet exclusion criterion in the Basin Plan for drinking water beneficial use. Conductivity values at MW-3 and MW-4 (in the northern half) meet the conductivity criterion to be suitable for drinking water beneficial use. At present, there is no known use of groundwater underlying the Site for the above purposes.

- vii. Navigation
- viii. Estuarine habitat
- ix. Shellfish harvesting
- x. Preservation of rare and endangered species.

7. **Basin Plan Discharge Prohibitions:** The Basin Plan designates beneficial uses and water quality objectives for waters of the State and includes programs to achieve water quality objectives.<sup>3</sup> The Basin Plan contains prohibitions on certain discharges to waters with beneficial uses:

- a. **Discharge Prohibition 6<sup>4</sup>:** Prohibits all conservative toxics and deleterious substances to waters of the Basin above those levels that can be achieved by a program acceptable to the Regional Water Board. The process sediment, industrial wastewater, and shredder fluff are potentially deleterious, possibly toxic, materials since they likely contain heavy metals (e.g., lead, copper, zinc, and cadmium) from the metal products and processes conducted on the Site.
- b. **Discharge Prohibition 7:** Prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they could contact or where they would eventually be transported to surface waters, including flood plain areas. The discharged process sediment and shredder fluff are a solid waste in that they are associated with human habitation from manufacturing/processing operations in accordance with California Water Code section 13050(d).
- c. **Violations:** The Discharger is violating these Basin Plan Prohibitions, and/or continues to threaten to violate these Prohibitions, by discharging process sediment, industrial wastewater, and shredder fluff into the Oakland Estuary and Inner Harbor. The wastes may contain heavy metals that negatively impact the waters' beneficial uses.

8. **Recordation of Deed Restrictions:** SCR Order No. 88-023 stated that the Department of Public Health required a deed restriction for the Site in accordance with California Health and Safety Code, section 25221.1. The deed restriction is to ensure that a concrete cap is not disturbed or removed and that human health and the environment are protected. The deed restriction may need to be amended as appropriate, depending on the scope of proposed cleanup action for areas of the Site that do not meet unrestricted use standards. This Order requires the Discharger to submit a deed restriction amendment for the Regional Water Board's Executive Officer's review and approval after an acceptable remedy has been successfully completed pursuant to this Order.

9. **Other Regional Water Board Policies:** Regional Water Board Resolution No. 88-160 allows discharges of extracted, treated groundwater from site cleanups to

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<sup>3</sup> The Basin Plan may be found at [www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml)

<sup>4</sup> See Basin Plan Table 4-1 for a list of the prohibitions.

surface waters only if it has been demonstrated that neither reclamation nor discharge to the sanitary sewer is technically and economically feasible.

Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high total dissolved solids, low yield, or naturally-high contaminant levels.

- 10. State Water Board Policies:** State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and requires attainment of background levels of water quality or the highest level of water quality that is reasonable if background levels of water quality cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. Given the Regional Water Board's past experience with groundwater pollution cases of this type, it is unlikely that background levels of water quality can be restored. This initial conclusion will be verified when a remedial action plan is prepared. This Order and its requirements are consistent with Resolution No. 68-16.

State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304," applies to this discharge. This Order and its requirements are consistent with the provisions of Resolution No. 92-49, as amended.

- 11. Need for Technical and Monitoring Reports:** This Order requires the Discharger to submit various technical and monitoring reports pursuant to Water Code section 13267. The required reports are necessary to determine the extent of contaminants that have discharged from the Site to waters of the State or to areas where stormwater likely carried, or threatens to carry, the contaminants to waters of the State and United States. Process water and/or sediment from metal shredding and recycling activities is known to often carry heavy metal pollutants that may harm the beneficial uses of waters or even cause harm to human life. Therefore, the burden on the Discharger, including costs, to produce these required technical and monitoring reports is outweighed by the Regional Water Board's need for them to determine compliance with the above-mentioned laws and regulations to protect the water quality of State and United States waters.

- 12. Remedial Investigation:** Observations from the inspections described above include evidence of past and present discharges of waste, which is potentially polluted, if not hazardous, to waters of the State. The information required by this Order is needed for the Discharger and the Regional Water Board to determine appropriate cleanup methods for the Site that will not cause any additional unauthorized discharges of potentially polluted and/or hazardous waste. The standing water on the Site that has been in contact with the shredding and recycling

processes indicates that the heavy metals and other pollutants have likely leached into the groundwater below.

- 13. Preliminary Cleanup Goals:** The Discharger will need to make assumptions about future cleanup standards for soil and groundwater in order to determine the necessary extent of remedial investigation, interim remedial actions, and the draft remedial action plan. Pending the establishment of site-specific cleanup standards, the following preliminary cleanup goals should be used for these purposes:
- a. Groundwater: Applicable screening levels such as the Regional Water Board's Environmental Screening Levels (ESLs) document. Groundwater screening levels should incorporate at least the following exposure pathways: groundwater ingestion and vapor intrusion to indoor air. For groundwater ingestion, use applicable water quality objectives (e.g., lower of primary and secondary maximum contaminant levels) or, in the absence of a chemical-specific objective, equivalent drinking water levels based on toxicity and taste and odor concerns.
  - b. Soil: Applicable screening levels such as the Regional Water Board's ESLs document. Soil screening levels are intended to address a full range of exposure pathways, including direct exposure, nuisance, and leaching to groundwater. For purposes of this subsection, the Discharger should assume that groundwater is a potential source of drinking water.
  - c. Soil gas: Applicable screening levels such as the Regional Water Board's ESLs document. Soil gas screening levels are intended to address the vapor intrusion to indoor air pathway.
- 14. Notification:** The Regional Water Board has notified the Discharger and all interested agencies and persons of its intent under California Water Code section 13304 to prescribe site cleanup requirements for the discharge and has provided them with an opportunity to submit their written comments.
- 15. CEQA:** This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act ("CEQA") according to Guidelines section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations. This Order requires the submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in potentially significant physical impacts to the environment that must be evaluated under CEQA. The Discharger must have the appropriate lead agency address CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.
- 16. Summary:** Based on the above findings, the Discharger has caused or permitted waste to be discharged, or deposited where it can be and has been discharged, and/or has threatened to discharge waste into waters of the State and the United States, and has created and threatened to create a condition of pollution (Water

Code section 13304). The discharged wastes have likely resulted in unnecessary and avoidable adverse impacts to beneficial uses of waters of the State and United States in violation of SCR Order No. 88-023, the Industrial General Permit, the Clean Water Act, and the Basin Plan. This Order, therefore, contains directives needed to investigate, cleanup and abate existing and future impacts to the Oakland Estuary and Inner Harbor.

**IT IS HEREBY ORDERED**, pursuant to California Water Code sections 13304 and 13267 that the Discharger, or their agents, successors, or assigns, shall clean up and abate the effects described in the above findings as follows:

**A. Prohibitions**

1. Discharging any pollutant, including process sediment, industrial wastewater, and shredder fluff, in violation of this Order is prohibited.
2. Discharging any pollutant, including process sediment, industrial wastewater, and shredder fluff, in violation of the Industrial General Permit is prohibited.
3. Discharging any pollutant, including process sediment, industrial wastewater, and shredder fluff, without complying with the NPDES permit program is prohibited.
4. Discharging any wastes, including solid wastes such as process sediment and shredder fluff, that will degrade, or threaten to degrade, water quality or adversely affect, or threaten to affect beneficial uses of the waters in violation of the Basin Plan is prohibited.

**B. Tasks**

**1. List of Potential Pollutants**

~~COMPLIANCE DATE:~~ January 18, 2013

Submit a list acceptable to the Executive Officer of potential contaminants and/or pollutants that may come into contact with any of the process water, soil, groundwater and/or stormwater on the Site. The list shall include, but not be limited to, any contaminants that the Discharger treats in its waste prior to hauling it offsite. This technical report is necessary to identify what contaminants to sample for in the following required sampling plan.

**2. Source Identification and Site Investigation**

~~COMPLIANCE DATE:~~ February 15, 2013

Submit a sampling plan acceptable to the Executive Officer to identify all pollution sources on the Site, including waste transport and storage areas, sumps, underground tanks, utility lines, and related facilities. The sampling plan shall specify approach, methods and a proposed time schedule.

Sample results that indicate pollution shall be followed up with subsequent sampling to define the lateral and vertical extent of pollution. It is imperative that sampling takes place prior to altering conditions at the Site. Sampling shall include, but is not limited, to the following description in Table 1,

**Table 1. Sampling Plan**

<b>Sample</b>
Soil, process sediment, dust and other sediments at: <ul style="list-style-type: none"><li>- Conveyor Loading System and ground beneath it</li><li>- Pier Crane Dock and ground beneath and around it</li><li>- Track out sediment at and near Embarcadero West</li><li>- Track out sediment on SSA Terminals' property</li></ul>
Industrial process and wastewater, stormwater, and/or groundwater at: <ul style="list-style-type: none"><li>- The holding tank prior to use in the shredder</li><li>- Standing stormwater onsite</li><li>- Standing water onsite--regardless of origin, but taking into account all types</li><li>- Water used to spray metal products immediately prior to loading onto ships</li><li>- Water that runs off of the Conveyor Loading System and the Pier Crane Dock after metal products are sprayed</li><li>- Any stormwater outfalls</li><li>- Storm drain on Embarcadero West</li></ul>
Shredder waste and/or fluff at: <ul style="list-style-type: none"><li>- The shredder</li><li>- SSA Terminals, Port of Oakland, and APL Limited</li><li>- Locations where this material is stored onsite</li><li>- Pathways of airborne dispersion and deposition</li></ul>

**3. Completion of Identification and Investigation of Pollution Sources**

COMPLIANCE DATE: 6 months from the date the Sampling Plan required by Task B.2 is approved by the Executive Officer

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in Tasks B.1 and B.2 including results of analyses for all potential pollutants in sampled soils, sediments, waters, and wastes. The report shall describe the vertical and lateral extent of pollution in soil and groundwater beneath the Site down to concentrations at or below typical cleanup standards for soil and groundwater. The report shall also include a proposed Groundwater Monitoring Program to recurrently assess the status and migration of pollution.

#### 4. Interim Corrective Action Plan

COMPLIANCE DATE: 30 days after requested by the Executive Officer

Submit an Interim Corrective Action Plan to clean up the soil and groundwater on the Site and process sediment, industrial wastewater, and shredder fluff on the Site, on Embarcadero West, and on neighboring properties. Work may be phased to allow the investigation to proceed efficiently. Any method of cleanup used shall prevent any unauthorized discharge or threatened discharge, from entering into the Oakland Estuary and Inner Harbor, storm drains, any waters of the State, or discharging offsite. The Interim Corrective Action Plan shall include work plans and time schedules to clean up each of the areas as described below:

- a. Conveyor Loading System: Clean up the process sediment, dust and other sediments on the conveyor belt loading system and related affected areas. Areas to be cleaned include, but are not limited to, the conveyor belt itself, the metal structure supporting the belt, the surrounding dock/wooden areas, the landing, and the surrounding rip rap areas.
- b. Pier Crane Dock: Clean up the process sediment, dust and other sediments on the pier crane dock and related affected areas. Areas include, but are not limited to, all surfaces such as the bridge and its sides, rails, pipes, fire hose box, the surrounding dock/wooden areas, and the surrounding ground below. Cleanup shall also include any truck track out in the roads and areas in the approach to the dock.
- c. Track Out Along Embarcadero West: Clean up Embarcadero West from the Site to Market Street, and the neighboring property, SSA Terminals. Cleanup shall include removing the process sediment, dust and other sediments on the street, along the road shoulder, and caught behind the cyclone fences and abutments along Embarcadero West caused by trucks entering and exiting the Site.
- d. Shredder Fluff at Neighboring Properties: Clean up all shredder fluff in addition to cleaning up the process sediment, dust and other sediments from the Site that have migrated to neighboring properties. Cleanup shall include removing all shredder sediment and debris from the neighboring properties of SSA Terminals, the Port of Oakland, and APL Limited.
- e. Waste Shredder Fluff: All shredder fluff that is waste and not intended for further processing shall be visually monitored and managed onsite and during transportation to a permitted landfill to prevent airborne, wind, or water migration.

#### 5. Completion of Interim Corrective Action Plan

COMPLIANCE DATE: 6 months from the date the Interim Corrective Action Plan required by Task B.4 is approved by the Executive Officer

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in Task B.4. For ongoing tasks, such as soil vapor or groundwater extraction, the report shall document startup as opposed to completion.

**6. Best Management Practices (“BMPs”) Plan for Stormwater and Authorized Non-Stormwater Discharges**

COMPLIANCE DATE: February 15, 2013

Submit a BMPs Plan acceptable to the Executive Officer to reduce or prevent pollutants associated with industrial activity in stormwater discharges and authorized non-stormwater discharges through implementation of best available technology (BAT) for toxic and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants. The BMPs Plan shall include engineering design standards, dimensions, and rated effectiveness and proposed schedules for installation and ongoing maintenance and update.

Areas needing BMPs and types of BMPs include, but are not limited to, the following:

- a. Site-Wide: Preventing materials, wastes, and associated pollutants from moving around the Site will significantly reduce pollutant discharges into State and United States waters. BMPs shall include procedures designed to sequester pollutants within the shredder waste, bulk metals, non-ferrous metals, and ferrous metals recycled material processes, and reducing their exposure to conveyance methods to waters.
- b. Site Boundaries: Berms and grading presently employed for containment at the Site's boundaries are insufficient to claim full containment and allow debris and water to discharge. BMPs shall include watertight measures if the Site is to continue to manage stormwater by complete containment and treatment.
- c. Conveyor Loading System and Pier Crane Dock and Bridge: Rubber mats and molding, sweeping practices, and raised edges on the docks are not sufficiently preventing process sediment and other sediments from dropping into the water below. There is no containment for the water that is sprayed onto product for dust control and cooling. BMPs shall include capturing process sediment, any additional sediments, and process water from entering into waters below, and water tight measures to ensure full process water and storm water containment.
- d. Exit onto Embarcadero West: Presently, truck traffic on the Site is routed through unpaved areas with standing water that has been in contact with product and waste piles. The trucks then track out the sediment that likely contains pollutants onto Embarcadero West. The rumble strips in place near the exit are not sufficient to prevent discharge of sediment from the Site. Current street sweeping of Embarcadero West is not preventing the

contaminated sediment from entering the neighboring SSA Terminal property or discharging into offsite stormwater systems. BMPs shall minimize onsite truck traffic contact with contaminated sediments and standing water and include measures to further reduce truck track out off of the Site.

**7. Install, Maintain and Update BMPs**

COMPLIANCE DATE: Commencing immediately upon the Executive Officer's approval of the BMPs Plan required by Task B.6

Install, maintain, and update BMPs identified in the Task B.6 BMPs Plan.

**8. Update and Maintain Stormwater Pollution Prevention Plan (SWPPP)**

COMPLIANCE DATE: February 15, 2013

Continually update and maintain a SWPPP to include all of the BMPs identified, installed, and implemented in accordance with Tasks B.6 and B.7. Also include in the SWPPP the exact business name, property owner, and current contact person. The Industrial General Permit requires operators to develop and implement a SWPPP identifying measures to prevent discharges and reach BAT/BCT standards. (See Industrial General Permit para.10.)

**C. Technical and Monitoring Reports**

**1. Onsite Water Recycling System and Stormwater Controls**

COMPLIANCE DATE: March 1, 2013

Submit a technical report acceptable to the Executive Officer that describes and evaluates the onsite water recycling system. This report is required because process and stormwater are essentially commingling on the Site and has, or threatens to discharge offsite to or near the Oakland Estuary and Inner Harbor.

The report shall include the following:

- a. An updated map;
- b. Description of how process water is routed throughout the Site in a manner that prevents infiltration/deposition of contaminated process water and sediments to underlying soils and aquifers and an assessment, including measurements, of the effectiveness of preventive measures;
- c. An updated standard operating procedure for the stormwater recycling system that accounts for how much water is used, what kinds of treatment occurs, and what happens to the residual sludge;
- d. Identification of the source of water in spray trucks and in any additional dust control measures implemented on the pier crane and conveyors docks,

including description of any containment and/or disposal measures used when spraying water;

- e. Verification if and where there are connections to a stormwater outfall; and
- f. An updated standard operating procedure for management of the onsite stormwater as it ponds that includes a description of when and how pumps are used to prevent flooding of onsite water; and, if using a clarifier, description of standard operations and maintenance.

## 2. Storage Piles and Controls

COMPLIANCE DATE: March 1, 2013

Submit a technical report acceptable to the Executive Officer that identifies how the storage piles are managed and controlled. The storage piles include shredder waste(s), sorted product, incoming scrap, and other types of piles. This report is required because water on the Site is likely washing pollutants off of these piles and into the water recycling system and/or being discharged offsite.

The report shall describe if the piles are treated with water, what type of water, and whether or how the water is contained. The report shall also describe procedures for how to fight fires that start in the piles and provisions for containment and/or treatment of water or chemicals used in fire suppression.

## D. Provisions

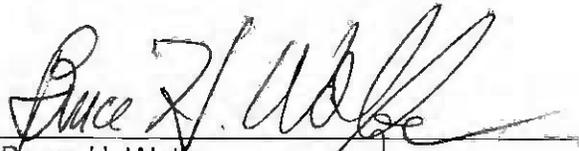
1. **Cost Recovery:** The Discharger is and shall be liable, pursuant to California Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, review of reports and correspondence submitted pursuant to this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Discharger, interested members of the public, and other regulatory agencies.
2. **Contractor/Consultant Qualifications:** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals.

3. **Report Any Changes in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Site's ownership or occupancy associated with this Order. This report shall be filed with the Regional Water Board within 30 days following a change in Site occupancy or ownership.
4. **Document Distribution:** The Discharger shall provide electronic or hard copies of all correspondence, technical reports, and other documents pertaining to compliance with this Order upon request within two weeks of the established directive deadline to the following recipients. Correspondence, technical reports, and other documents pertaining to groundwater shall be electronically submitted to the Geotracker database system. The Executive Officer may modify this distribution list as needed.
  - a. SSA Terminals
  - b. Port of Oakland
  - c. APL Limited
  - d. Alameda County
  - e. California Department of Toxic Substances Control
  - f. California Environmental Protection Agency
  - g. California Department of Fish and Game
  - h. U.S. Environmental Protection Agency
  - i. U.S. Army Corps of Engineers
  - j. U.S. Fish and Wildlife Service
5. **Delayed Compliance:** The Discharger shall notify the Executive Officer if it is delayed, interrupted or prevented from meeting any of the compliance dates specified in this Order or a key milestone in its approved Corrective Action Plans. The Discharger may request in writing an extension for compliance dates, stating the basis for its request and what new compliance dates it is requesting. The Regional Water Board has the authority to revise this Order.
6. **Enforcement:** If the Discharger fails to comply with the provisions of this Order, the Regional Water Board or the State Water Board may pursue further enforcement action. The Regional Water Board may refer this matter to the California Attorney General for judicial enforcement, and either the Regional Water Board or the State Water Board may issue a complaint for administrative civil liability or any take any other applicable enforcement action. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$10,000 per violation per day, pursuant to California Water Code sections 13350, 13385, and/or 13268. The Regional Water Board and the State Water Board reserve their rights to take any enforcement actions authorized by law.
7. **No Nuisance:** The storage, handling, treatment, or disposal of polluted soil or groundwater shall not create a nuisance as defined in California Water Code section 13050(m).

8. **Access to Site and Records:** In accordance with California Water Code section 13267(c), the Discharger shall permit the Regional Water Board or its authorized representative:
  - a. Entry upon premises in which any pollution source exists, or may potentially exist, or in which any required records are kept, which are relevant to this Order;
  - b. Access to copy any records required to be kept under the requirements of this Order;
  - c. Inspection of any monitoring or remediation facilities installed in response to this Order; and
  - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the Discharger.
  
9. **Groundwater Monitoring Program:** The Discharger shall comply with the Groundwater Monitoring Program as approved by and as may be amended by the Executive Officer.
  
10. **Lab Qualifications:** All samples shall be analyzed by State-certified laboratories or laboratories accepted by the Regional Water Board using approved U.S. EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed onsite (e.g., temperature).
  
11. **Reporting of Hazardous Substance Release:** If any hazardous substance is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Discharger shall report such discharge to the Regional Water Board by calling (510) 622-2369. A written report shall be filed with the Regional Water Board within five working days. The report shall describe: the nature of the hazardous substance, estimated quantity involved, duration of incident, cause of release, estimated size of affected area, nature of effect, corrective actions taken or planned, schedule of corrective actions planned, and persons/agencies notified.
  
12. **Rescission of Existing Order:** This Order supersedes and rescinds SCR Order No. 88-023.
  
13. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with California Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m. 30 days after the date this Order becomes final (if the thirtieth day falls

on a weekend or state holiday, the petition must be received by the next business day).<sup>5</sup> This Order is effective upon the date of signature.

**14. Periodic Cleanup and Abatement Order Review:** The Regional Water Board may review this Order periodically and may revise it when necessary. The Discharger may request revisions and upon review the Executive Officer may recommend that the Regional Water Board revise these requirements.

  
\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer

January 2, 2013  
Date

Attachment A: March 29, 2012, Inspection Report

Attachment B: April 10, 2012, State Water Board Video Surveillance Summary

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<sup>5</sup> Instructions for petitioning will be provided upon request or you may view them at:  
[www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml)

# Attachment A

State of California – Environmental Protection Agency  
California Regional Water Quality Control Board – San Francisco Bay Region

**INDUSTRIAL STORM WATER INSPECTION REPORT**

**SITE INFORMATION**

2011003365      4/3/92      5093      scrap and waste materials  
WDID NUMBER      NOI PROCESSING DATE      SIC CODE(S)      TYPE(S) OF INDUSTRIAL ACTIVITY

Schnitzer Steel Products Co.      1101 Embarcadero West      Oakland      CA      27  
FACILITY NAME      ADDRESS      CITY      ZIP      FACILITY SIZE

Luc Ong      Reg. Env. Mgr.      444-3919 x 352      long@schn.com  
OWNER OF SITE REPRESENTATIVE PRESENT DURING INSPECTION      TITLE      PHONE NUMBER      EMAIL

**INSPECTION LOGISTICS**

3/29/2012      09:40      13:00      cloudy  
DATE      ARRIVAL TIME      DEPARTURE TIME      WEATHER CONDITIONS

INSPECTION PRE-ANNOUNCED:  YES  NO      PICTURES TAKEN:  YES  NO      SAMPLES COLLECTED:  YES  NO

**PURPOSE OF INSPECTION**

<input type="checkbox"/> ROUTINE COMPLIANCE ASSESSMENT	<input type="checkbox"/> COMPLAINT/REFERRAL FOLLOW-UP
<input type="checkbox"/> NOTICE OF TERMINATION REQUESTED <input type="checkbox"/> Facility Closed (date _____) and completely cleaned <input type="checkbox"/> Light industry (SIC code(s) _____) and no exposure (see checklist in Attachment A). <input type="checkbox"/> No stormwater discharge because site <input type="checkbox"/> drains to sanitary <input type="checkbox"/> drains to treatment pond <input type="checkbox"/> Permit not required for this industry (SIC code(s) _____) <input type="checkbox"/> Regulated by another NPDES permit that covers Stormwater discharge <input type="checkbox"/> New Facility Operator	<input type="checkbox"/> MONITORING REDUCTION REQUESTED: <input type="checkbox"/> No Exposure Certification <input type="checkbox"/> Sampling and Analysis Reduction <input checked="" type="checkbox"/> PREVIOUS INSPECTION/ENFORCEMENT FOLLOW-UP Compliance due date _____ <input type="checkbox"/> OTHER REASON FOR INSPECTION (PLEASE SPECIFY):

**INSPECTOR'S FINDINGS**

<b>Outcome of inspection</b>	NOTES: I confirmed by the site inspection that the violations identified and verbally conveyed to discharger during a 11/22/2011 site inspection continue at the facility.  Prior to the field inspection I met with with Luc Ong and Bruce Rieser (Reg. Env. Dir. For Schnitzer Steel). They indicated that the former on-site manager, Melissa Cohen, is no longer employed by Schnitzer Steel. Mr. Reiser also indicated that Schnitzer is awaiting written notification from the Water Board regarding the violations identified during the previous site inspection.
<input type="checkbox"/> ISSUE NOTICE TO COMPLY	
<input checked="" type="checkbox"/> ISSUE NOTICE OF VIOLATION	
<input type="checkbox"/> APPROVE NOTICE OF TERMINATION	
<input type="checkbox"/> APPROVE MONITORING REDUCTION	
<input type="checkbox"/> SITE IN COMPLIANCE	
<b>Recommendation for follow up or reinspection</b>	Dylan Seidner and Taro Murano of SWRCB Office of Enforcement
<input checked="" type="checkbox"/> REINSPECT ON: date _____ 2-3 months _____	
<input type="checkbox"/> REFER TO LOCAL AGENCY FOR FOLLOW UP	

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**INDUSTRIAL STORM WATER INSPECTION REPORT**

OTHER (describe in notes section)

accompanied me during the inspection. Following the meeting we indicated that we would like to obtain samples of stormwater, process water, sediment, and dust from the site. Mr. Rieser indicated his opposition to this; his position was that we had no authority to obtain such samples.

Cecilio Felix

INSPECTOR NAME

SIGNATURE

4/6/2012

REPORT DATE

State of California – Environmental Protection Agency  
California Regional Water Quality Control Board – San Francisco Bay Region

**INDUSTRIAL STORM WATER INSPECTION REPORT**

WBID: \_\_\_\_\_

Line Number	"V" if in violation	File Review (FR) Questions	(Y/N)	Notes
FR 1	✓	Does the facility have a site map? (Request a copy, if no map, draw one on provided page to be used for the site walk.	Y	See Photo 2
FR 2		Does the site map identify the following:		
FR 3	✓	Drainage paths, storm drains, discharge points	Y	Map indicates no off-site discharges of stormwater; however, 1 identified areas along perimeter and site egress where stormwater flows off-site. See sections below.
FR 4	✓	Impervious areas	Y	Much of the paved areas are worn and broken and thus permeable. Determining the extent and condition of paved areas is difficult due to the accumulation of sediment and storm water.
FR 5	✓	Locations with direct exposure, leaks, or spills	N	Unspecified on map.
FR 6		Industrial activity areas	Y	
FR 7	✓	Additional specific comments regarding the map		Map does not show location of product or waste materials unrelated to auto-shredding, eg. fuels, lubes, solvents, cleaners, general refuse storage, etc.  Map does not clearly show and/or define all stormwater containment and conveyance systems.  Map does not show areas where process water (including fire suppression water) is stored, disposed, applied, and discharged, nor structural controls for containing process water.

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California Regional Water Quality Control Board – San Francisco Bay Region

**INDUSTRIAL STORM WATER INSPECTION REPORT**

WDID: \_\_\_\_\_

Line Number	"V" if in violation	File Review (FR) Questions	(Y/N)	Notes
FR 8		Does the facility have a SWPPP?	Y	See Photo 1
FR 9		Is the SWPPP site-specific and coordinated with the site map?	NE	
FR 10		Does the SWPPP identify the specific members (and responsibilities) of the Pollution Prevention Team?	NE	
FR 11		Does the SWPPP discuss Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges, and Soil Erosion?	NE	
FR 12		<i>Additional specific comments regarding the SWPPP</i>		I performed a cursory review of the SWPPP, which contains the main elements required by the permit.
FR 13	V	Does the facility have readily available monitoring records for the past five years?	N	Only the Dec 2011 and Jan 2012 rain activity reports and the weekly BMP evaluation reports for the prior 4 weeks were included with the SWPPP. See Photo 55.  Mr. Ong indicated that he is still working on 'getting caught up' with record maintenance since taking over the position from Melissa Cohen, who left late November 2011.
FR 14		Spot check the 12 months of monitoring records:		
FR 15	V	Has the discharger visually inspected, quarterly, for unauthorized non-storm water discharges?	N	See FR13 above.

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**INDUSTRIAL STORM WATER INSPECTION REPORT**

WDID: \_\_\_\_\_

Line Number	"V" if in violation	File Review (FR) Questions	(Y/N)	Notes
FR 16	V	Has the discharger visually inspected storm water discharges in <b>one storm event per month</b> during the wet season?	N	See FR13 above.
FR 17		Do the above records indicate person conducting the sampling, date and time, observation and corrective actions if needed?	NA	See FR13 above.
FR 18		Has the discharger collected storm water samples during the first storm event of the year and one other storm event after?	NA	See FR13 above.
FR 19		Which constituents were sampled and analyzed?	NA	See FR13 above.
FR 20		Are any on-site monitoring devices used? If yes,	NA	See FR13 above.
FR 21		➤ For which constituents?	NA	See FR13 above.
FR 22		➤ Does the discharger have calibration and maintenance records for each on-site monitoring device used?	NA	See FR13 above.
FR 23		<i>Additional specific comments regarding the monitoring records</i>		I conveyed to Mr. Ong that the Permit requires that all records be maintained for 5 years in order to establish a compliance record and to obtain data necessary to assess BMP performance and if necessary, BMP modifications.

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**INDUSTRIAL STORM WATER INSPECTION REPORT**

WDID: \_\_\_\_\_

**Site Map** – Remember to take photographs as you walk the site and mark the location on the map: take wide shots that depict general area as well as specific shots of discharges, pollutants, or BMPs. If raining, take shots showing flow of storm water through the site. Also, mark on site map area corresponding to each line completed in the inspection form.

See attached map.

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**INDUSTRIAL STORM WATER INSPECTION REPORT**

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**Prohibited Non-Storm Water Discharges** (\*anything other than fire hydrant flushing; potable water sources; drinking fountain water; atmospheric condensates; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source) *Use additional page(s) as needed.*

Row Number	Mark "V" if in violation	Directly observed prohibited non-storm water discharge (Yes or No)	Evidence present of prohibited non-storm water discharge (Yes or No)	Photo(s) taken (Yes or No)	Location and Description (mark site map with row number)
NS - 1	V	yes	yes	See Photos 44, 46-47	Off-site tracking of sediment out of main truck exit area. Sediment accumulation is highest on eastbound lane of West Embarcadero Ave. Dust becomes airborne as trucks pass over the sediment on road.
NS - 2	V	no	yes	See Photos 46, 52-53	See also DP-1 below. Sediment from the site interior is transported by truck traffic and stormwater flowing to lower elevation areas outside the main truck entrance. Airborne dust necessitates use air filters by personnel.
NS - 3	V	yes	yes	See Photos 49-51	See also DP-2 below. Off-site tracking of sediment out of non-ferrous storage/shipping area. Sediment accumulation is highest on eastbound lane of West Embarcadero Ave. Dust becomes airborne as trucks pass over the sediment on road.
NS - 4	V	yes	yes	See Photos 44-45, 47	Off-site tracking of sediment out of non-ferrous peddler customer entrance. Sediment accumulation is highest on eastbound lane of West Embarcadero Ave. Dust becomes airborne as trucks pass over the sediment on road.

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WDID: \_\_\_\_\_

NS-5	V	yes	yes	See Photos 23-25	Dust and sediment is accumulated on perimeter walkway, which slopes outward toward bay. The dust and sediment is discharged in stormwater runoff to the bay, which is immediately adjacent to the perimeter walkway.
NS-6	V	no	yes	See Photos 25, 57	Dust and sediment is discharged in stormwater to the bay via conduits under the sidewalk which connect the site interior to the bay.
NS-7	V	no	yes	See Photos 13-18	Dust and sediment is discharged from roadway leading to the ship loading area. Excessive dust and sediment on roadway is discharged through opening in curb and into estuary waters below. Airborne dust also discharged into estuary waters, as evidenced by accumulation of dust on side railing and adjacent fence.
NS-8	V	no	yes	See Photos 20-21	Dust and sediment is discharged from the conveyor belt and underlying wooden dock utilized to transport materials to ships. Excessive dust and sediment is discharged from area into estuary waters via wind and stormwater as evidenced by accumulation of dust and sediment throughout the entire conveyance structure, including side railings and adjacent fence.
NS-9	V	no	yes	See Photos 28-30, 32	Process water, which includes recycled stormwater, is utilized for dust control and cooling in the conveyor and auto shredding systems. Process water below shredder system is uncontained.  The process water and shredded materials are discharged from the systems into the immediately adjacent areas, which include traffic lanes and stormwater collection areas. The process water, shredded materials, and associated dust and sediment are tracked off-site by trucks.  No structural controls for preventing stormwater from contacting process water and materials associated with the conveyor and

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NS-10	✓	no	yes	Photo 3	shredder systems, and no controls for containing such waters.
NS-11	✓	yes	yes	Photo 34	Auto-related waste materials discharged beyond containment structure at western site boundary.  Airborne dust generated by trucks in traffic lanes containing excessive accumulations of sediment and dust. Once airborne the dust travels across the site and into off-site areas.
NS-12	✓	no	yes	Photos 38, 40-42	Equipment maintenance areas contain extensive stains; stains appear to be oil and other vehicle and heavy-equipment related fluids.

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**INDUSTRIAL STORM WATER INSPECTION REPORT**

WDID: \_\_\_\_\_

Reduction or Prevention of Pollutants in Storm Water by Achieving "Best Available Technology/Best Conventional Technology";  
**Implementation of adequate SWPPP and BMPs –**

Row Number	Mark "V" if in violation	Pollutant description and location	Isolated from storm water (Y/N)	Captured/contained (Y/N)	Treated and/or routed to sanitary (Y/N)	General House-keeping and Maintenance (Good/Bad)	Photo(s) taken (Y/N)	Industrial Processes (IP)			
								Soil Erosion (SE)	Other (O)	Notes	
DP-1	V	Sediment, dust, auto-related pollutants	N	N	N	Bad	Y				Inadequate street cleaning. More frequent cleaning necessary. See notes and photos in NS-1 above.
DP-2	V	Sediment, dust, auto-related pollutants	N	N	N	Bad	Y				Inadequate off-site tracking controls. More effective controls necessary. See notes and photos in NS-2 above.
DP-3	V	Sediment, dust, auto-related pollutants	N	N	N	Bad	Y				Inadequate street cleaning. More frequent cleaning necessary. See notes and photos in NS-3 above.
DP-4	V	Sediment, dust, auto-related pollutants	N	N	N	Bad	Y				Inadequate street cleaning. More frequent cleaning necessary. See notes in photos in NS-4 above.

In the Row Number Column, please mark the number with one of the following prefixes:  
Material Handling, Storage (MH,S)

Dust and Particulate Generating Activities (D,P)

Soil Erosion (SE)

Other (O)

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INDUSTRIAL STORM WATER INSPECTION REPORT

WDID: \_\_\_\_\_

DP-5	V	Sediment, dust, auto-related pollutants	N	N	N	Bad	Y	Inadequate sweeping. Inadequate containment controls. See notes and photos in NS-5 above.
DP-6	V	Sediment, dust, auto-related pollutants	N	N	Bad	Y	Inadequate exposure and containment controls, inadequate sweeping and housekeeping. See notes and photos in NS-6 above.	
DP-7	V	Sediment, dust, auto-related pollutants	N	N	Bad	Y	Inadequate exposure and containment controls, inadequate sweeping and housekeeping. See notes and photos in NS-7 above.	
DP-8	V	Sediment, dust, auto-related pollutants	N	N	Bad	Y	Inadequate exposure and containment controls, inadequate sweeping and housekeeping. See notes and photos in NS-8 above.	
DP-9	V	Sediment, dust, auto-related pollutants	N	N	Bad	Y	Inadequate controls for isolating stormwater from both process water and from sediment, dust, and auto-related pollutants. Inadequate controls for isolating stormwater from truck traffic. Inadequate controls for minimizing vehicle track-out of pollutants.	

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INDUSTRIAL STORM WATER INSPECTION REPORT

WDID: \_\_\_\_\_

								Inadequate street cleaning. See notes and photos in NS-9 above.
O-10	V	Auto-related pollutants	N	N	N	Bad	yes	Inadequate housekeeping. See notes and photos in NS-10 above.
DP-11	V	Dust, auto-related pollutants	N	N	N	Bad	yes	Inadequate sweeping. Inadequate source control. See notes and photos in NS-11 above.
O-12	V	Auto-related pollutants	N	N	N	Bad	yes	Inadequate housekeeping. Inadequate exposure and containment controls. See notes and photos in NS-12 above.
O-13 All areas of site	V	Sediment, dust, auto-related pollutants	N	N	N	bad	Y See photos 4, 9-11, 13-15, 17, 20-21, 25, 27-28, 31-37	Excessive sediment and dust accumulations throughout the site, especially in established truck traffic lanes. Most of the site is unpaved. Most of the paved areas are broken and uneven. Significant tracking of sediment across the entire site. The very heavy vehicle tracking and the accumulation of sediment and dust renders the sweeping operations

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INDUSTRIAL STORM WATER INSPECTION REPORT

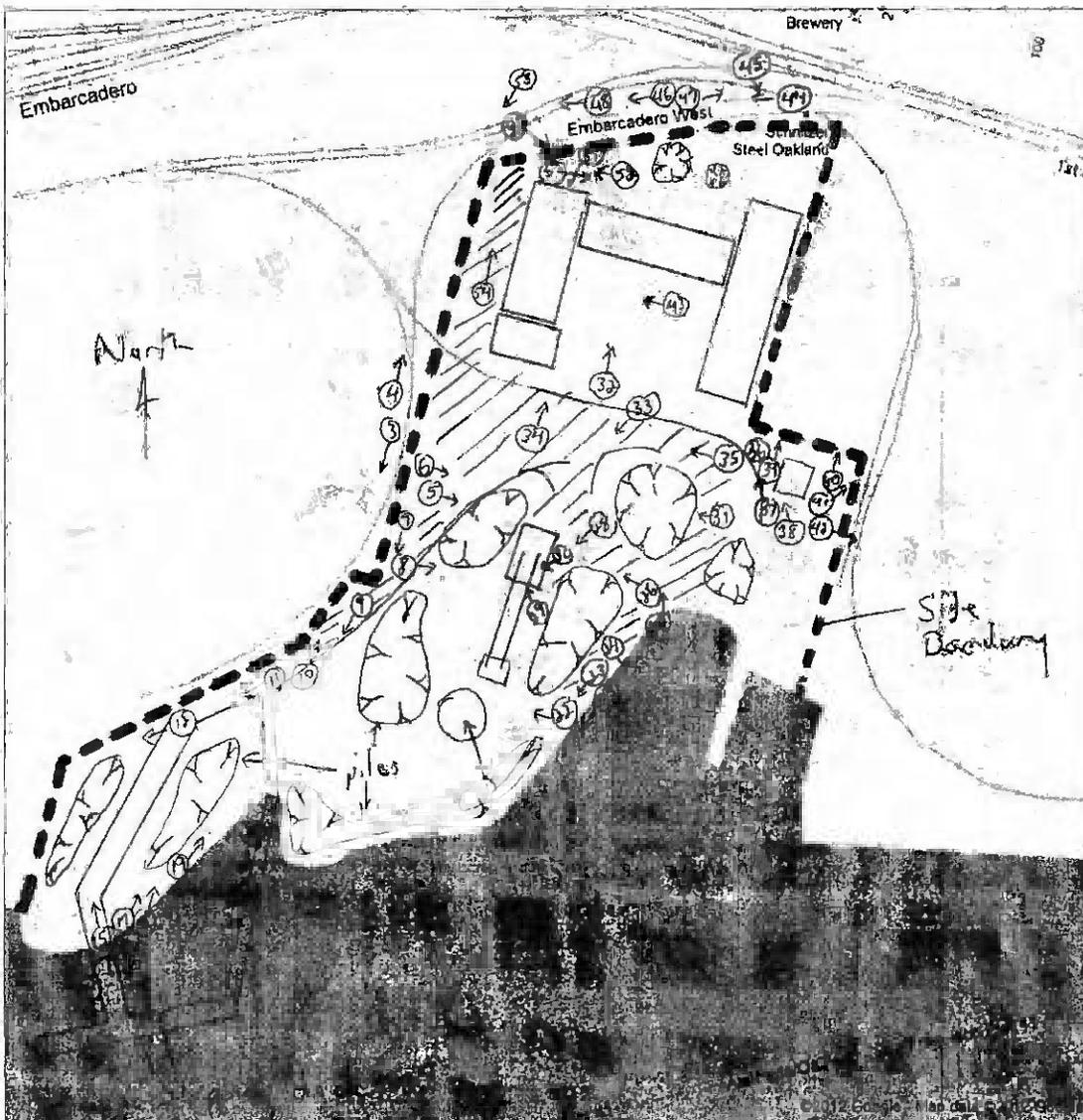
WDID: \_\_\_\_\_

O-13 (cont'd)								ineffective.  Moisture conditioning at traffic routes is ineffective. Extensive dry areas generate airborne dust. Extensive saturated areas generate mud which is tracked off-site
MHS-14	V	Sediment, dust, auto-related pollutants	N	N	N	bad	Yes  See photos 5-8, 26-28	Stormwater collection system does not minimize contact between stormwater, process water, and pollutants. Auto-related material piles and stormwater are co-located.
O-15	V	Auto-related pollutants	N	N	N/A	bad	Yes  See photos 5-8, 26-28, 35-36	Inefficient and ineffective stormwater collection system. Broken and unmaintained paving and sheet flow through/around material piles and truck traffic prevents efficient drainage and prolongs contact with pollutants, and increases potential for off-site tracking of pollutants.  Lack of stormwater collection system maintenance and the lack of effective conveyances reduces site drainage and increases ponding, which also prolongs contact between stormwater and pollutants and increases the potential for off-site tracking of pollutants.



Address 1101 Embarcadero  
Oakland, CA 94606

Get Google Maps on your phone  
Text the word "GMAPS" to 466453



Schnitzer Steel 1101 Embarcadero Rd, Oakland  
Site Inspection 4/3/12

⊙ Location and direction of photograph

//// Areas of heavy truck traffic

# Attachment B

STORM WATER POLLUTION  
PREVENTION PLAN

Schnitzer Steel Facility  
Oakland, California

WDID # 2 01S003365

*Prepared for*

**Schnitzer Steel Industries, Inc.**  
1101 Embarcadero West  
Oakland, CA 94607

*Prepared by*

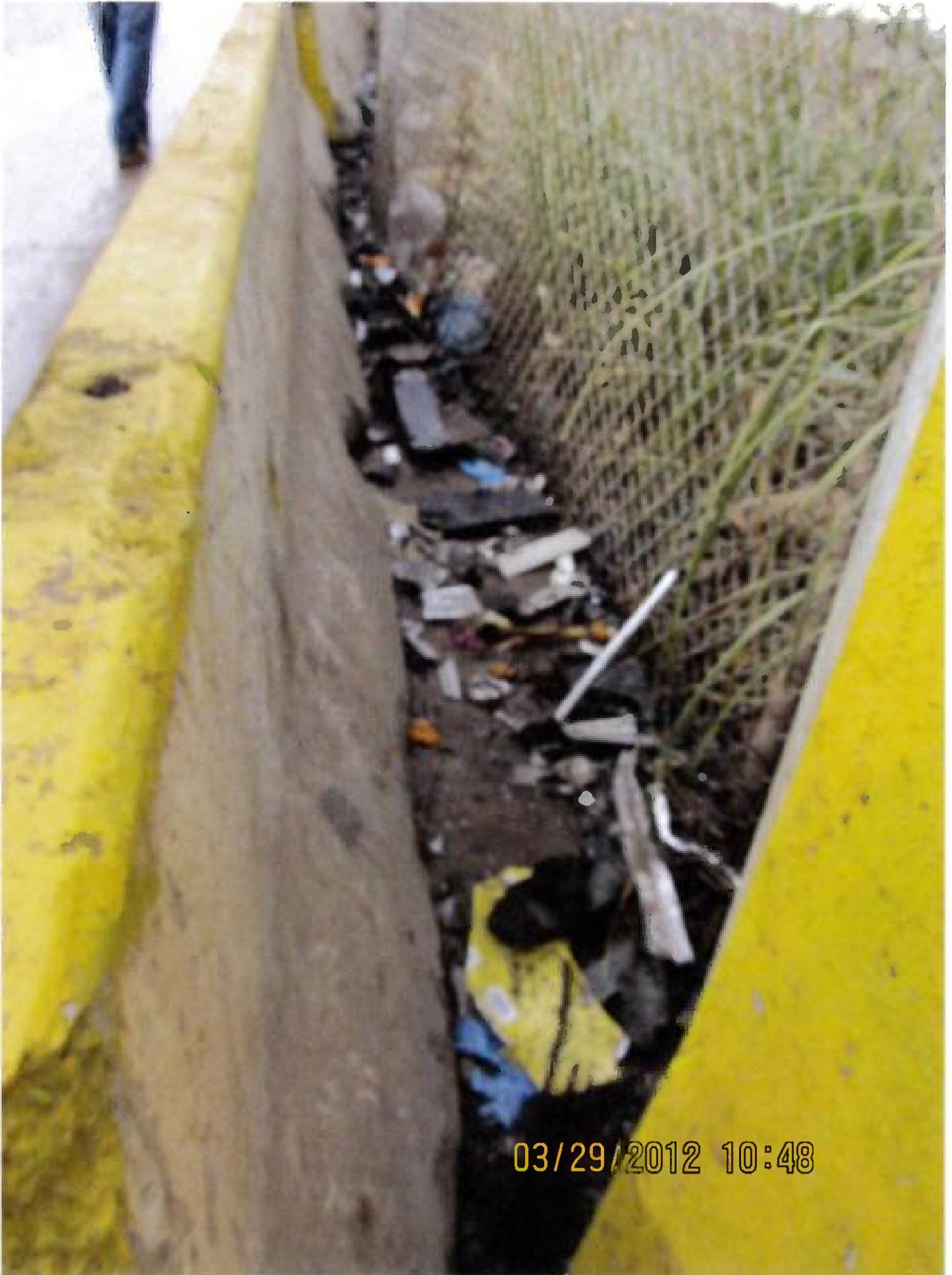


101 2<sup>nd</sup> Street, Suite 300  
San Francisco, CA 94105

August 1, 2011

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03/29/2012 10:51





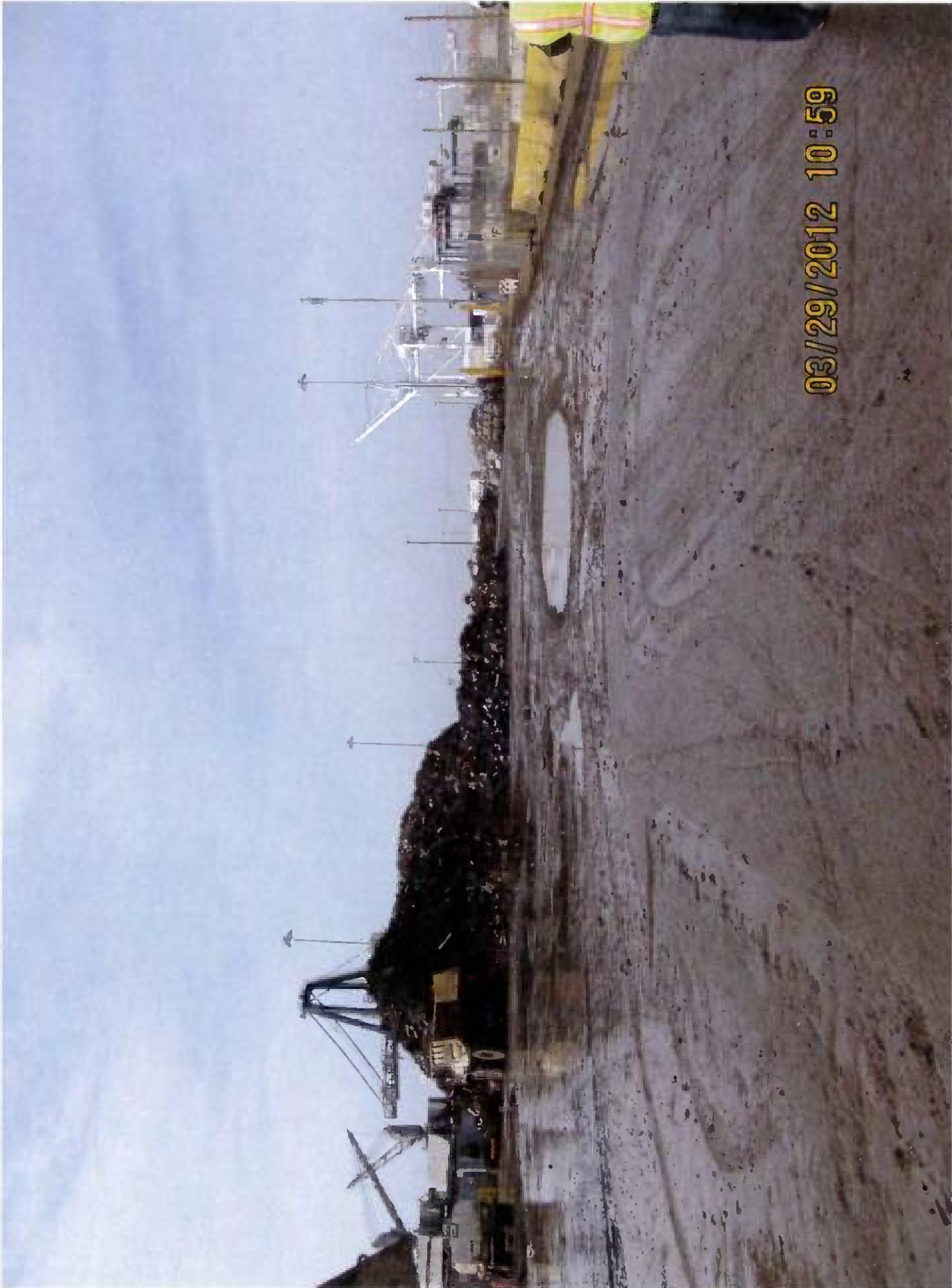




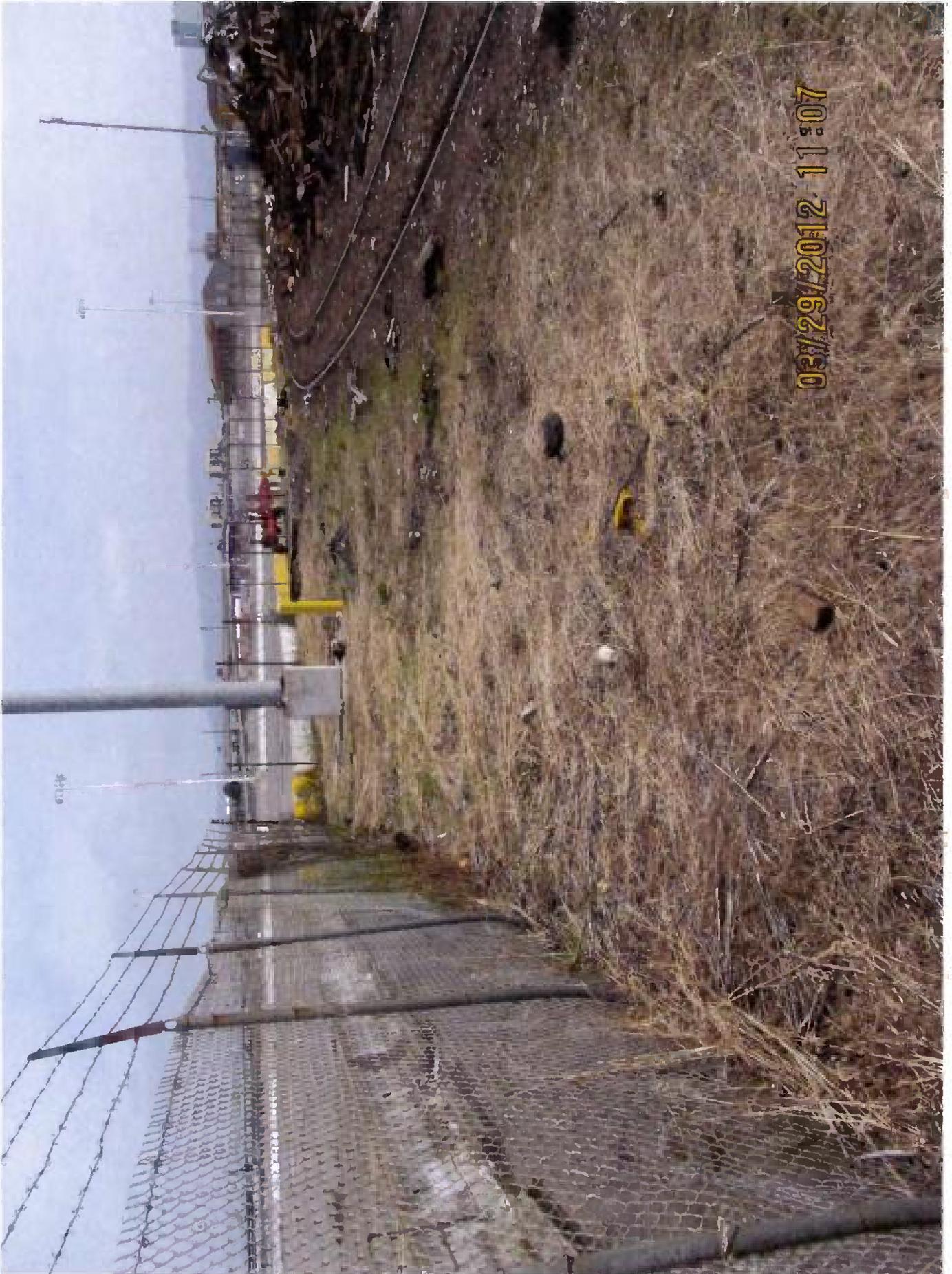




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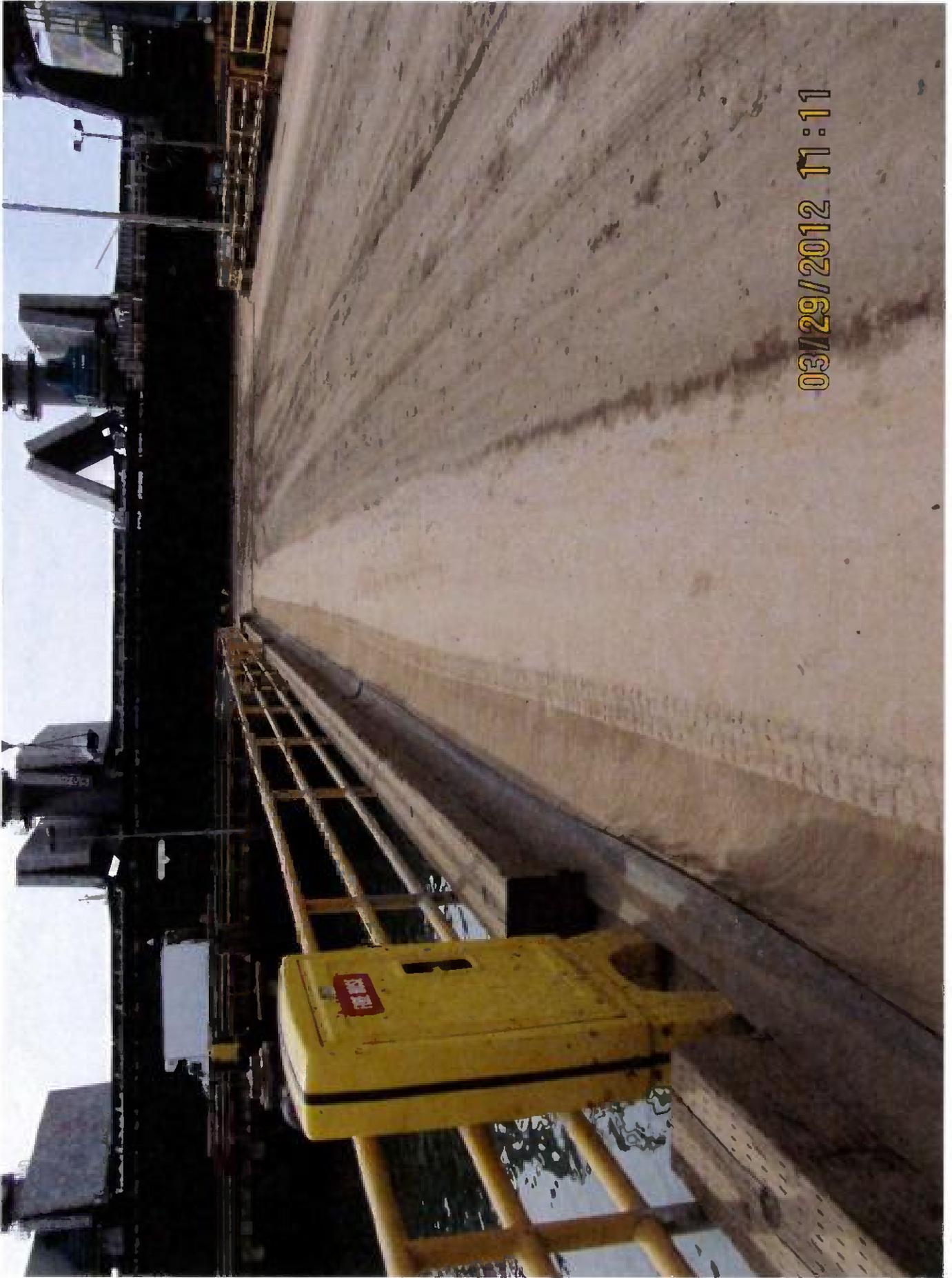
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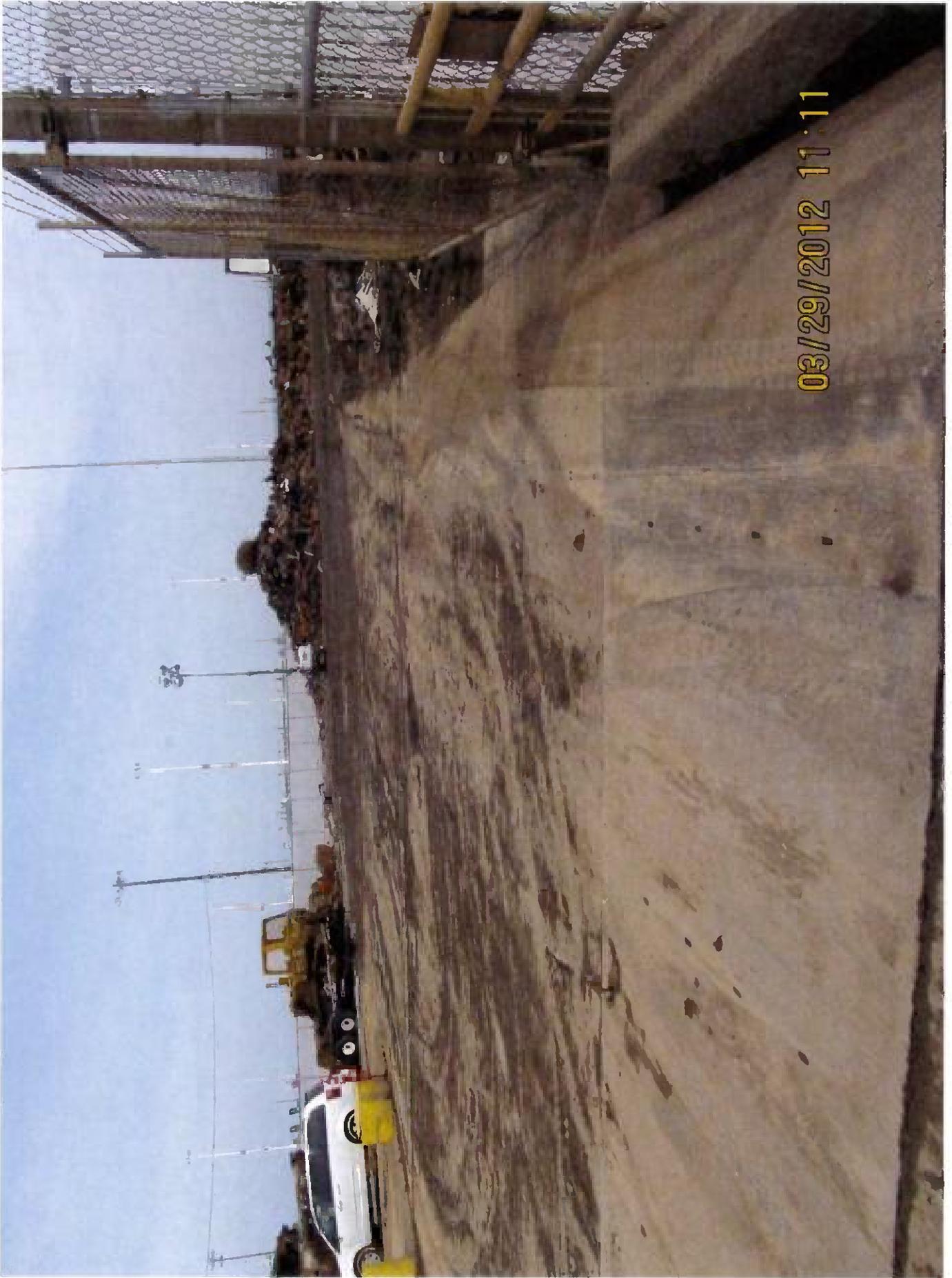
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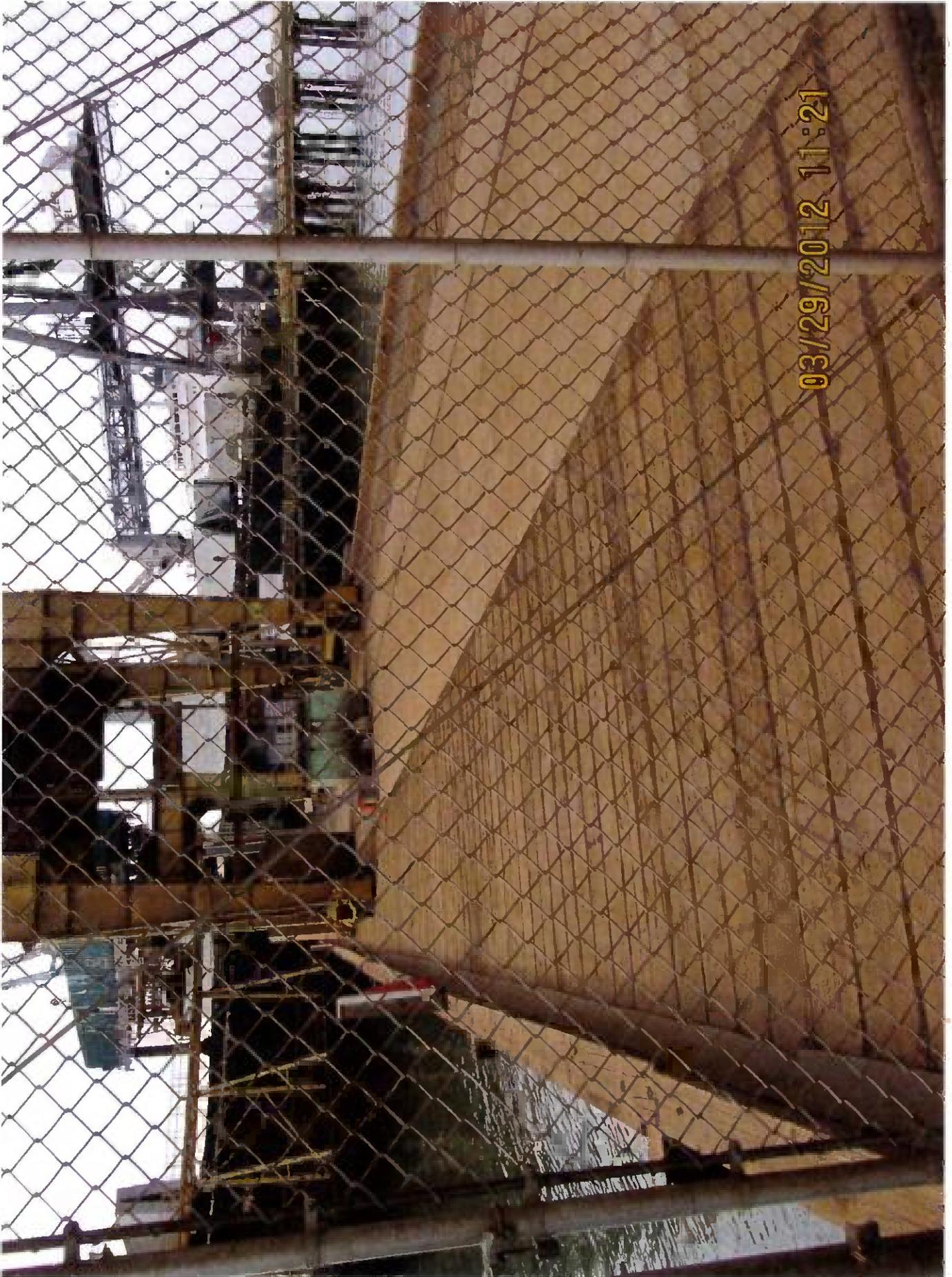


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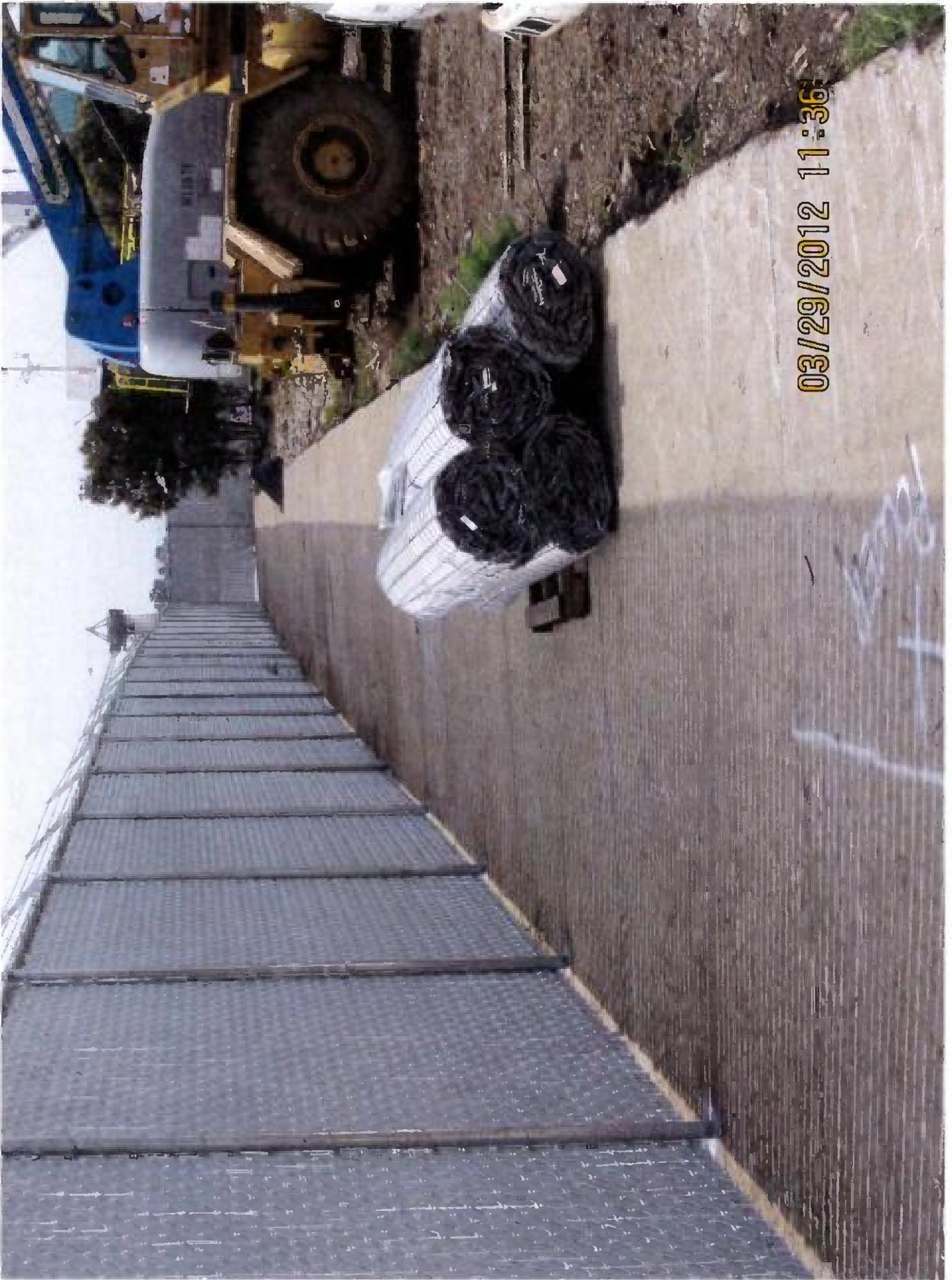
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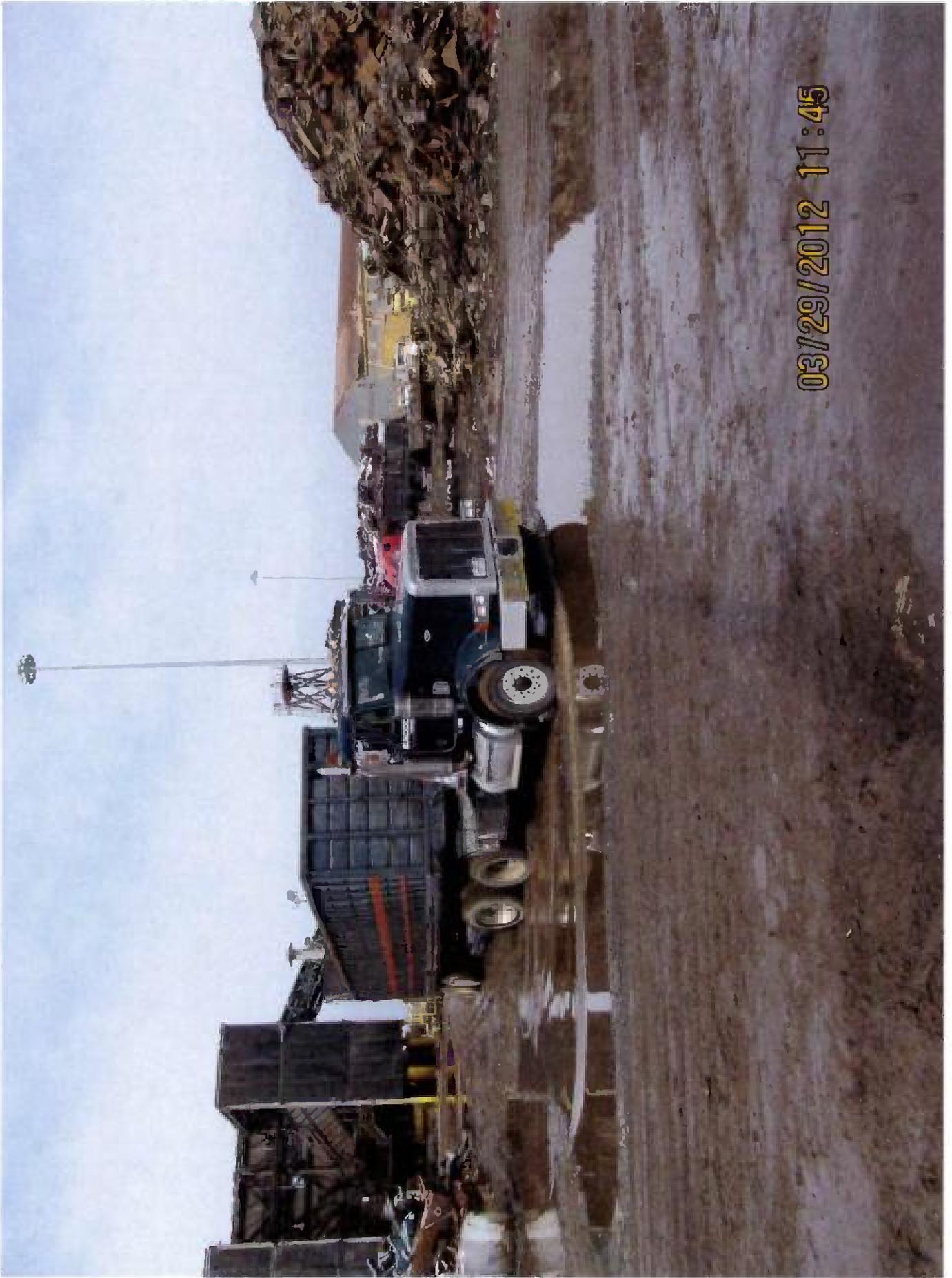
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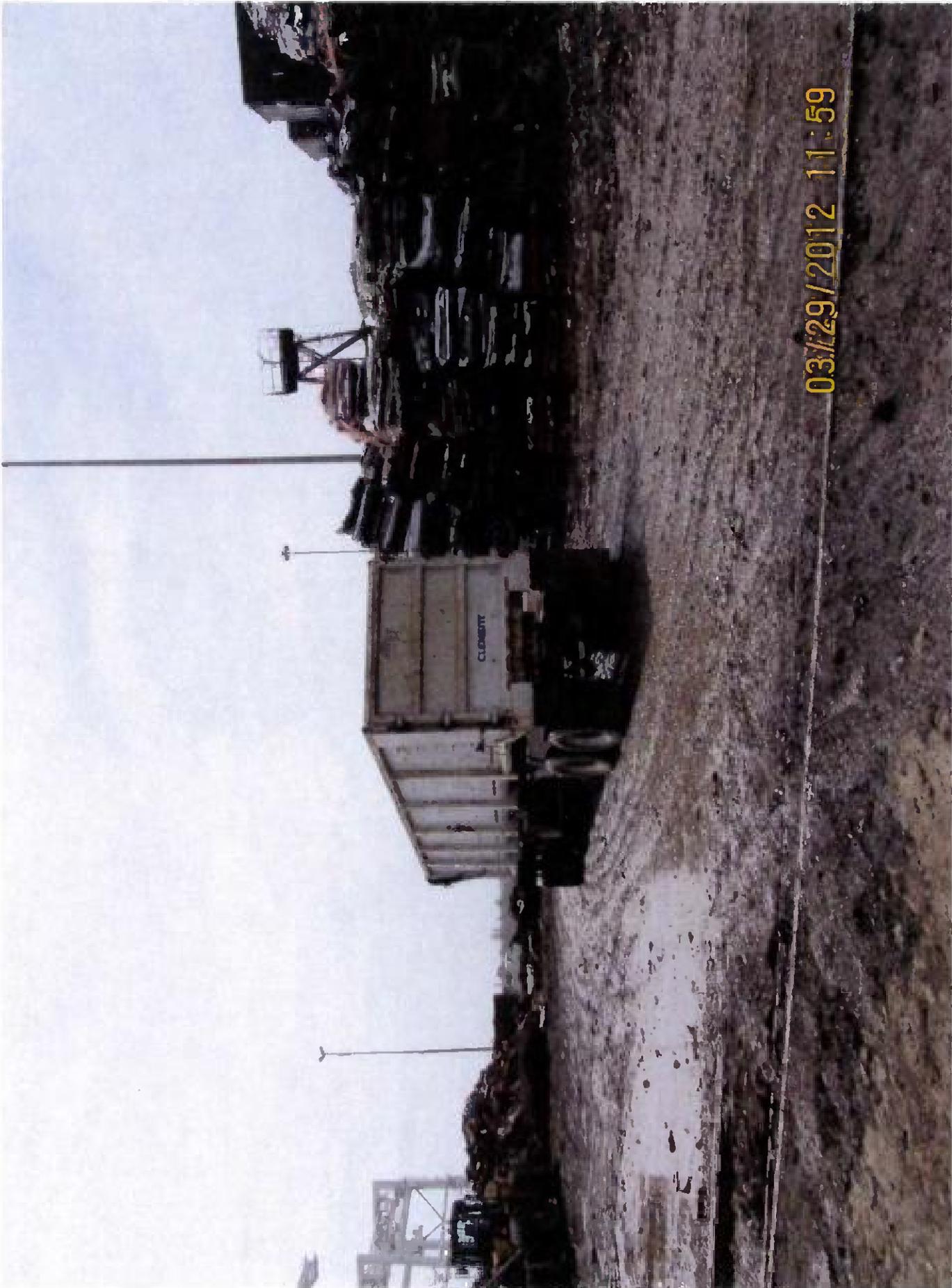
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