

Memorandum of Understanding between the U.S. Environmental Protection Agency Region 9, the California Environmental Protection Agency, the California State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the California Department of Toxic Substances Control, the West Oakland Environmental Indicators Project and Radius Recycling Inc. (formerly known as Schnitzer Steel) regarding metal recycling operations in West Oakland.

I. Background

On August 9, 2023, a fire started at the Radius Recycling facility (formerly known as Schnitzer Steel and hereinafter referred to as Radius), a metal shredding facility in Oakland, California. The West Oakland Environmental Indicators Project (WOEIP), a resident-led community-based environmental justice organization and a United States Environmental Protection Agency grantee, has long engaged in advocacy on behalf of the community regarding this facility.

In response to the fire, an inter-agency “Rapid Response Task Force” (RRTF) was convened in August 2023. The RRTF is comprised of local, state, and federal representatives from the U.S. Environmental Protection Agency Region 9 (U.S. EPA), the California Environmental Protection Agency (CalEPA), the California Air Resources Board, the California Department of Toxic Substances Control (DTSC), the California State Water Resources Control Board and its nine Regional Water Quality Control Boards, the California Attorney General’s Office, the Alameda County Department of Environmental Health (as the Certified Unified Program Agency), the Bay Area Air Quality Management District (BAAQMD), the City of Oakland, and the Alameda County District Attorney’s Office. The RRTF recognized the critical need for implementing the collaborative goals of the September 2021 Memorandum of Understanding (MOU)¹ between the U.S. EPA and CalEPA entitled “*Collaborative Efforts on Enforcement and Compliance Assurance in Overburdened Communities*.” The RRTF has met several times since August 2023 to discuss and address concerns about Radius’ operations and pending permit applications.

WOEIP has extensive experience in “collaborative problem solving” dating back to 2003, when it received a grant from U.S. EPA to engage in collaborative problem solving involving the West Oakland Toxic Reduction Collaborative. WOEIP also has been participating in meetings with the RRTF. While WOEIP believes the commitment and concern being brought to the RRTF by the many agencies and offices involved has been exceptional and impressive, it also believes the process has lacked some essential aspects for truly effective outcomes-driven collaborative problem solving.

¹ calepa.ca.gov/calepa-usepa-region-9-environmental-justice-enforcement-memorandum-of-understanding/

During the meetings with the RRTF, WOEIP made the following requests:

- As appropriate, RRTF agencies should coordinate with each other in their investigations and actions.
- RRTF agencies should address and hold Radius' facility accountable, in accordance with applicable law, to minimize the actual (cumulative) "burden" experienced by the community who live, work, learn, and play near the facility – and not just individual environmental and health stressors.
- RRTF agencies should, to the extent possible and within their legal authorities, exercise their discretion to protect the environment and public health.
- Every agency should commit to assuring that its actions – whether planning, permitting, enforcement or other responsibilities – comply with civil rights laws applicable to the agency for those actions.

U.S. EPA, CalEPA, the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, BAAQMD, DTSC, and Radius intend to work with WOEIP in collaborative problem solving and, in accordance with the authorities listed in Section II below, enter into this Memorandum of Understanding (MOU) to strive to achieve the objective stated in Section III of this MOU.

II. AUTHORITIES

1. U.S. EPA's participation in this MOU is authorized by:

- Sections 104(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1254(a) and (b);
- Sections 103(a) and (g) of the Clean Air Act, 42 U.S.C. §§ 7403(a) and (g);
- Section 305(a) of the Toxic Substances Control Act, 15 U.S.C. § 2665(a);
- Section 104(k)(6) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9604(k)(6);
- Section 8001(a) of the Solid Waste Disposal Act, 42 U.S.C. § 6981(a);
- Section 203(a) of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1443(a);
- Section 1442(a) of the Safe Drinking Water Act, 42 U.S.C. § 300j-1; and
- Sections 6604(b)(5) and (b)(13) of the Pollution Prevention Act, 42 U.S.C. §§ 13103(b)(5) and (13).

2. CalEPA's participation in this MOU is authorized by California Government Code section 12812.2 and Public Resources Code section 71110.

3. The State Water Resources Control Board works in coordination with the nine Regional Water Quality Control Boards (together "Water Boards") to preserve, protect, enhance, and restore water quality. The Water Boards accomplish these objectives in part through

implementation of the Federal Clean Water Act (33 United State Code 1251 et seq) and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq).

4. DTSC's participation in this MOU is authorized by California Health and Safety Code section 25180.2.
5. The BAAQMD's participation in this MOU is authorized by California Health and Safety Code section 40701(f).

III. Objective

The parties to this MOU seek continued and expanded collaboration with each other to address, to the extent feasible and within the scope of their respective authorities, impacts caused or posed by metal shredding operations in West Oakland, California. Hereinafter, this collaboration will be referred to as the "Collaborative." The Collaborative will explore how these goals can be achieved through processes available to the parties.

IV. Coordination of Effort

1. U.S. EPA, CalEPA, DTSC, WOEIP, and Radius intend to co-chair this Collaborative. The co-chairs intend to jointly develop the meeting agendas. The co-chairs will strive to schedule and hold regular meetings to discuss the progress made toward achieving this MOU's objective. The co-chairs may also engage additional participants on an as-needed basis to discuss how best to achieve the objective.
2. WOEIP, U.S. EPA, CalEPA, the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, DTSC, BAAQMD, and Radius intend to participate in the Collaborative to advance the principles set forth in Section V below.
3. U.S. EPA intends to provide a third-party facilitator for any meetings of the parties under this MOU subject to the availability of funds.

V. Principles

1. The parties intend to discuss the public health and environmental concerns, as well as the regional benefits of recycling, related to the metal shredding operations covered by this MOU to the extent feasible and within their respective authorities.
2. The parties will make efforts to coordinate their actions and involvement in pursuit of more efficient and effective means of achieving the Collaborative's objective within their respective authorities.

3. The parties recognize the existence of limitations about sharing certain confidential or privileged information, such as enforcement related information.
4. The parties intend to jointly discuss and identify ways to address impacts on the community associated with the metal shredding operations within their respective authorities.
5. The parties will strive to identify and discuss each of their authorities, barriers, and constraints relevant to achieving the Collaborative's objective.
6. The parties intend to consider and, as appropriate, take steps to ensure compliance with the civil rights requirements under both Title VI of the Civil Rights Act of 1964 and California Government Code Section 11135, as applicable to the parties.

VI. LIMITATIONS

1. This MOU is a voluntary agreement, which expresses the good-faith intentions of the participating parties. This MOU is not legally binding, it does not create any contractual rights, legal defenses, or other legal obligations.
2. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any party or persons who are not party to this MOU, against any signatory to this MOU, their officers or employees, or any other person. This MOU does not apply to any person outside of the signatories to this MOU.
3. All aspirational goals or objectives expressed by U.S. EPA, CalEPA, the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, DTSC BAAQMD, and Radius in this MOU are subject to the availability of appropriated or allocated funds and available staff resources. Nothing in this MOU, in and of itself, obligates U.S. EPA, CalEPA, the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, DTSC, BAAQMD, or Radius to expend funds or to enter into any contract, assistance agreement, interagency agreement, incur other financial obligations, or take any action that would be inconsistent with their respective budget priorities. Nothing in this MOU relieves Radius of its obligation to expend funds necessary to comply with all applicable laws and regulations. WOEIP waives any claim for compensation for services rendered to U.S. EPA, CalEPA, the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board, DTSC and/or BAAQMD in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt WOEIP from U.S. EPA, CalEPA, State Water Resources Control Board, San Francisco Bay Regional Water Quality Control Board, DTSC and/or BAAQMD policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds among the

parties to this MOU shall be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

4. Participation in this MOU by any of the parties is not intended to imply any type of endorsement of the other parties to this MOU, nor any sanction of those other parties' programs or actions.

VII. Duration of Agreement, Amendments; Termination

1. This MOU is to take effect upon the last date of all parties' respective signatures and remain in effect for a period of three (3) years.
2. This MOU may be extended or amended, including adding new parties, at any time with the mutual written consent of all of the parties.
3. A party may terminate its participation in this MOU at any time by providing written notice to the other parties at least thirty (30) days in advance of the desired termination date.

Representatives of the parties sign below in recognition of our intention to move forward with these collaborative efforts.

Ms. Margaret Gordon, Co-Executive Director
West Oakland Environmental Indicator Project

Brian Beveridge, Co-Executive Director
West Oakland Environmental Indicator Project

Eric Potashner, Chief Sustainability Officer
Radius Recycling, Inc.

Cheree Peterson, Deputy Regional Administrator
U.S. Environmental Protection Agency Region 9

Yana Garcia, Secretary
California Environmental Protection Agency

Eric Oppenheimer, Executive Director
State Water Resources Control Board

Eileen M. White, P.E., Executive Officer
San Francisco Bay Regional Water Quality Control Board

Katherine Butler, Director
Department of Toxic Substances Control

Philip M. Fine, Ph.D.
Executive Officer / APCO
Bay Area Air Quality Management District