

THURSDAY, AUGUST 20, 2020

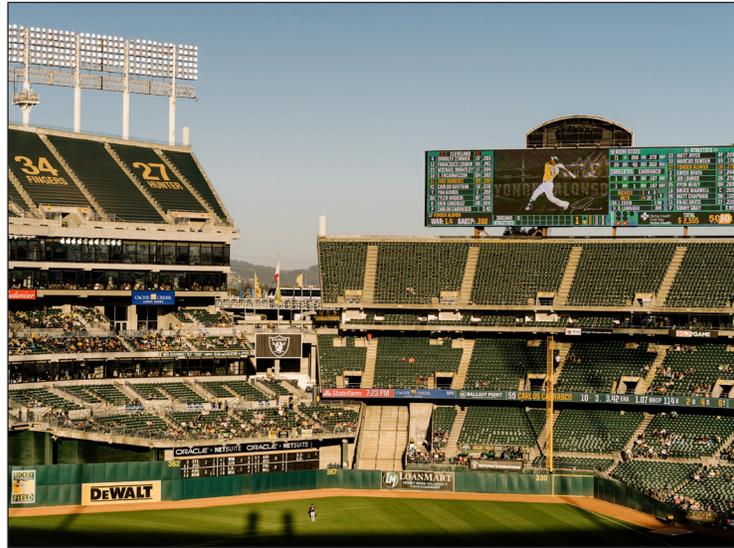
PERSPECTIVE

Next up for the Oakland A's new stadium plan: another lawsuit

By Darrin Gambelin

While some have been enjoying the return of baseball, albeit without fans in the stands, the Oakland A's are moving forward with their game plan for a new stadium in the Port of Oakland. However, relations with their prospective neighbors are off to a rocky start. In March, stadium opponents led off by filing suit against the state and city of Oakland arguing the project is not eligible for an expedited CEQA review and litigation schedule. On Aug. 4, the A's hit back, by filing suit against the California Department of Substances Control in an attempt to force the agency to take action against a neighbor of the stadium project and co-plaintiff in the March lawsuit, Schnitzer Steel. Citing Schnitzer Steel's poor environmental record, the A's argue that DTSC is required to regulate the facility under the state's hazardous waste control law. With no apology for the puns, further play by play on these contests are provided below.

The A's proposed a new stadium and related development at the Howard Terminal, located in the Port of Oakland and the city of Oakland issued the notice of preparation of the environmental impact report in November 2018. In addition to the 35,000-seat baseball stadium,



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The Oakland A's play at their current stadium, the Oakland-Alameda County Coliseum, July 14, 2017. The A's are moving forward with a plan for a new stadium in the Port of Oakland at the Howard Terminal.

um, the project would include a hotel, residential, office space, commercial and a performance center. The A's hope to begin playing at the stadium by 2023. The Howard Terminal was historically used as a maritime container terminal but is currently occupied by short-term tenants and used primarily for truck and container storage. The Schnitzer Steel facility is located directly to the west of the proposed project.

Schnitzer Steel and a group of shipping and trucking trade groups opposed to the Howard Terminal project filed their suit (*Pacific Merchant Shipping Association et al. v. Newsom et al.*) against the state and city of Oakland in Alameda Superior Court. Their pitch to the court is that the project is ineligible

for expedited CEQA review under Assembly Bill 734.

AB 734, adopted in 2018, provides that, should the governor find the Howard Terminal project will meet certain criteria, including creating living wage jobs and mitigating greenhouse gas emissions, it will qualify for an expedited review of the draft environmental impact report and set a 270-day deadline for resolution of any court challenge of the report or project approvals. Schnitzer Steel and the stadium opponents assert in their lawsuit, however, that AB 734 has expired because the governor failed to certify the Howard Terminal project by the statutory deadline of Dec. 31, 2019. While this deadline does not appear in the text of AB 734,

the stadium opponents argue the deadline is imposed on AB 734 by another, earlier enacted, CEQA fast-track bill, AB 900.

Not to be outdone, the Oakland A's filed a petition for writ of mandate of against DTSC, but aimed at Schnitzer Steel. In *The Athletics Investment Group v. DTSC*, the A's ask the court to force DTSC to rescind an exemption Schnitzer Steel relies on so it does not have to manage metal shredder residue generated at its facility under stringent requirements of the hazardous waste control law.

Schnitzer Steel, located adjacent to the proposed stadium project, recycles ferrous (iron-containing) and non-ferrous metals. The facility operates a "mega-shredder," which processes automobiles and appliances to separate recyclable metals from the residue. The metal shredder residue, including glass, fiber, rubber, automobile fluids, dirt and plastic, often contains metals at toxic concentrations that would make it a hazardous waste, regulated by DTSC.

In the lawsuit, the A's allege that Schnitzer Steel's operations have contaminated the soil and groundwater underneath its facility with elevated levels of metals. The A's claim that residue from Schnitzer Steel's metal shredding activities, including chromium, lead, nickel, zinc and copper, pose a risk to the environment

and surrounding communities which includes socioeconomically disadvantaged communities in west Oakland. In addition, the A's cite a series of fires in recent years at the facility including four in 2018 and the most recent in June 2020.

These allegations of environmental harm are a pre-text to the crux of the lawsuit — to squeeze Schnitzer Steel and its lawsuit play against the stadium project or force Schnitzer out of the proposed project neighborhood. The A's claim that DTSC has failed to meet its obligations to regulate waste generated by Schnitzer Steel, as required by Senate Bill 1249, adopted in 2014. In the late 1980s, the Department of Health Services, DTSC's predecessor agency, issued approval letters to metal shredding facilities, including Schnitzer Steel, allowing the facilities to handle and dispose of shredder residue without complying with DTSC's hazardous waste control law if the shredders stabilized the waste to reduce the solubility of metals in the residue. These so-called "f letters" allow the shredding facilities to continue

to dispose of the shredder residue at non-hazardous waste landfills which is typically a significant cost savings over disposal at hazardous waste facilities.

In 2008, DTSC notified Schnitzer Steel and the other metal shredding facilities in the state that it intended to rescind the "f letters" and regulate shredder waste as hazardous waste. DTSC, however, did not follow through with the rescission. In 2011, DTSC requested five metal shredding facilities still operating under "f letters" to conduct a treatability study to reexamine whether the current treatment and disposal of shredder waste was protective of human health and the environment and to identify potential treatment alternatives. As DTSC was working with industry on the treatability study, in 2014, the California Legislature adopted SB 1249 which required DTSC, by January 1, 2018, to complete its study analyzing management of shredder waste. Based on this analysis, SB 1249 then directs DTSC to either rescind the "f letters," requiring handling of shredder waste as hazardous waste, or

adopt regulations implementing alternative management standards that the shredding facilities must abide by.

In January 2018, DTSC issued its draft evaluation of shredder waste concluding that disposal or use of shredder waste at non-hazardous waste landfills was safe. Based on this study, DTSC developed draft regulations that would grant a conditional exclusion from hazardous waste requirements for chemically treated shredder waste. These draft regulations would replace the "f letters" and proscribe treatment and disposal standards for this waste. But DTSC never adopted the regulations.

The A's lawsuit argues that DTSC and Schnitzer Steel have struck out on the hazardous waste control law exemption. The January 1, 2018 deadline found in SB 1249 passed without DTSC adopting regulations regarding shredder waste and, therefore DTSC must rescind the "f letter" issued to Schnitzer Steel and require the facility to comply with all provisions governing the management and disposal of hazardous waste under the

hazardous waste control law.

These lawsuits are in the early innings and it remains to be seen if the court will grant any team relief. However, neither of these lawsuits directly addresses the issue that appears to be the elephant in the room, that a baseball stadium and a metal recycling facility do not appear to make good neighbors and could remain bitter rivals. Even if these suits are resolved, this is likely to be only the first round of litigation over this project. ■

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