

# MEMORANDUM



To: C&DD Legislative Review Participants

From: Andrew Booker

Date: August 12, 2013

Subject: Ohio EPA Reaction to Legislative Review Discussions Regarding Regulation of C&DD

I'd like to again thank all of the participants who have participated in the Legislative Review discussions about Construction and Demolition Debris (C&DD). As most of you know, the management and regulation of C&DD has been a complicated and sometime contentious issue in Ohio for a number of years. These most recent meetings, while covering some of the same issues that have been discussed in other forums in the past, have been helpful to Ohio EPA in developing a strategy as part of the legislative review process.

This memorandum is intended to articulate DMWM's current thoughts on the issues discussed thus far and to help guide our future discussions towards solutions on the issues.

## Regulating C&DD under the Solid Waste Program

The highest level issue discussed during our meetings has been the concept of regulating C&DD under the existing solid waste program. This concept obviously has strong advocates and opponents, and we weren't able to move toward any level of consensus. As was articulated by several participants during the last meeting, clarification of Ohio EPA's position on this broad issue is necessary for us to move forward productively in any future meetings or discussions.

Ohio EPA continues to believe that the system that we operate under today, in which solid waste is regulated under one set of laws and regulations and C&DD is regulated under a different set of laws and regulations, is extremely complex and leads to inconsistency and inefficiencies. However, given the history and complexity of the issue, the degree to which proponents and opponents of the concept disagree, and the need to move forward with the legislative review process, DMWM will **not** be advocating for a consolidation of the two programs as part of a proposal coming out of the legislative review project.

This is not to say that Ohio EPA doesn't see value in the concept and value in the discussions that we've had on this issue. From our perspective, there continues to be a large number of reasons why consolidation of the C&DD program under the existing solid waste program would be beneficial, including:

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- The federal (US EPA) definition of solid waste includes C&DD, so it would bring Ohio in line with the federal regulatory program;
- C&DD is by its very nature extremely similar to solid waste (i.e. it's a solid, unwanted material), and the majority of issues faced in the C&DD program are very similar, if not identical, to issues faced in the management of solid waste
- Research and experience now indicate that C&DD disposal has potential public health and environmental impacts very similar to solid waste disposal;
- Duplicate regulatory programs in Ohio for the regulation of similar waste materials cause unnecessary complexity and confusion.

However, as indicated earlier, due to the strong concerns of some of the participants regarding this concept, DMWM will not be advocating for consolidation of the regulatory programs as part of the legislative review discussions. (A more detailed list of issues associated with the dual regulatory programs is included at the end of this memo.)

### Regulating C&DD transfer and recycling operations

In contrast to the previous issue, there was a great deal of consensus on this issue. Ohio EPA and health departments have documented a large number of C&DD "transfer" and "recycling" facilities that have resulted, either unintentionally or otherwise, in large accumulations of unmanaged C&DD. These facilities have caused considerable concern to the homeowners and communities where they are located, and often public funds have to be utilized to clean up these sites. There is a clear problem statewide with these facilities, to the detriment of both the communities where they are located and the many legitimate C&DD operators throughout the state that manage C&DD material in a responsible way.

Much work has already been done with the C&DD industry and Ohio EPA in identifying the types of responsible management practices that one would expect at legitimate C&DD recycling facilities. Building upon this work, Ohio EPA will be proposing to establish statutory authority to promulgate rules for oversight of C&DD transfer and recycling facilities. These regulations will build directly from the existing regulations for solid waste transfer facilities and the best management practices for C&DD recycling facilities that have been identified with the C&DD industry. At this point, Ohio EPA believes that these regulations should include (non-exhaustive):

- C&DD Transfer Facilities (adapted from MSW transfer facility requirements)
  - Permits;
  - Licenses;
  - Financial Assurance for closure;
  - Time limits on moving material off-site;

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- Record keeping of incoming and outgoing loads.
- C&DD Recycling Facilities (adapted from the transfer facility requirements and draft C&DD Recycling BMPs)
  - Material acceptance procedures to prevent acceptance of inappropriate materials;
  - Limited and delineated unloading/staging area;
  - Limits on amount of unprocessed materials;
  - Processed material storage standards;
  - Accumulations of processed materials for “emerging markets”
    - Develop a system where facilities have some requirements for movement of processed materials out of the facility on a regular basis;
    - Allow facilities that are trying to develop new markets to accumulate materials for an extended period of time, with an expectation that at some point either a market will be demonstrated or the material will be properly disposed.

### C&DD “Fines”, “Pulverized Debris”, etc.

A significant amount of time was spent during one of the meetings discussing C&DD “fines” or “pulverized debris” (small materials that are produced during the processing of C&DD). Ohio EPA believes that this material should be regulated as a solid waste, but we want to explore ways to create flexibility in the managing the material. The concepts that we would like to explore include regulating the material as solid waste, but:

- Allowing the material to be disposed of at a C&DD facilities under certain circumstances (i.e. when it is produced on-site, and maybe other scenarios);
- Applying C&DD fees to disposal of the materials under certain circumstances.
- Creating operational standards for accepting the material (applicable to both C&DD and solid waste disposal sites), that include (non-exhaustive):
  - An odor monitoring and contingency plan;
  - A prohibition on the recirculation of leachate;
  - Liners, leachate collection, and groundwater monitoring.

Ohio EPA has committed to researching the safe management and use of this material, including examining the system in plan in Florida for the use of C&DD fines.

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### C&DD Recycling Goals

Ohio EPA believes that statewide recycling goals should be established for C&DD (similar to goals established for solid waste). These goals would not necessarily become objectives for SWMDs to achieve.

- Establish a statewide C&DD recycling goal of 50% - 75%?

### Open Dumping

Unfortunately, the open dumping of both solid waste and C&DD continues to be a problem throughout significant portions of Ohio (the distinction between the two waste streams is almost irrelevant when it comes to this issue). Ohio EPA is exploring a number of options and initiatives related to this issue as part of the legislative review of the scrap tire program and the general “facility oversight” system in Ohio. While those review projects are still ongoing, one concept has been raised repeatedly and will be part of one of the proposals coming out (whether it is the facility oversight, C&DD, or some other proposal):

- Registration of solid waste and C&DD haulers, at either the state or local level

Currently, haulers of certain waste streams such as scrap tires must be registered, but most solid waste haulers are not subject to registration. There are numerous benefits registering solid waste and C&DD haulers

- Knowledge of who is legitimately hauling waste within a region (for SWMDs, local HDs, and Ohio EPA);
- Outreach and education
  - Many of the solid waste and C&DD regulations apply to the types of materials that can be accepted at certain facilities, yet the haulers themselves are often outside of the normal focus of compliance outreach and education;
- Tracking open dumping
  - Knowledge of legitimate haulers is critical to preventing open dumping;
- Integrity of the overall system
  - Much of the system is built on generators putting the proper material in the proper container, and facilities that receive the material having proper knowledge and screening procedures to assure that they are only receiving what they are authorized to receive. The haulers, who are obviously a critical link between the two entities, are left out of the oversight system. This doesn't make sense;
- Fairness to the facilities accepting the material
  - If inappropriate material is received and disposed in a disposal facility, the facility is held accountable even if they have done everything possible to educate users of the facility (haulers) of the restrictions on what they can receive. It is an “end of pipe” focus on responsibility. All of the handlers of the material should be held accountable within the system.

### C&DD Fees

- There is an extremely complex system when it comes to C&DD fees. C&DD fees are initially remitted to the licensing authority, which can be either the local health department or Ohio EPA. Once received, the fees are then distributed to a number of other entities. In the case when the health department is the licensing

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authority, portions of the fee are distributed by the HD to Ohio EPA and usually the local municipality and county where the facility is located (they have the option of appropriating a portion of the fee). Of the money received by Ohio EPA from the HD, some is transferred to (technically, deposited on behalf of) the Ohio Department of Natural Resources (ODNR). If Ohio EPA is the licensing authority, the fees are paid by the facility to Ohio EPA, and Ohio EPA then distributes a portion of the fee to ODNR, the local municipality and county (usually – again, they have an option to appropriate a portion of the fee).

State solid waste fees are remitted directly to Ohio EPA from all licensed MSW landfills and transfer facilities, regardless of whether or not the local health department is the licensing authority. A portion of this fee is also transferred from Ohio EPA to ODNR.

As a result of this system, in some cases an MSW facility has to send a monthly check to Ohio EPA for the solid waste fees and a check to the local health department for the C&DD fees.

As you can imagine, this complex system causes a great deal of confusion. In addition, whenever there is a problem in payment, it is extremely complicated to “undo” the chain of payments and transfers that have been made.

Given that Ohio EPA has an existing statewide payment and tracking system that is designed to accept payments from all parts of the state electronically, and that Ohio EPA is ultimately part of the payment system regardless of which entity originally accepts the check from the C&DD facility, it would be much more efficient if Ohio EPA accepted payments from all licensed C&DD facilities, just as we currently do for all solid waste facilities. From there, Ohio EPA will make the appropriate allocations and payments to the various entities involved.

### Market Development

- Shingles has been identified as one priority material for market development. Are there others?

### Focus of Future Meetings

We intend to use this memo as the basis for future discussions. We also believe that we can use the existing transfer facility rules and draft BMPs as a starting point to develop more detailed requirements for C&DD transfer and recycling facilities. As a result, we shouldn't need to spend a lot of additional time discussing those issues further until we have had a chance to put some of those ideas into a more detailed draft document. Accordingly, upcoming meetings will likely initially focus on issues associated with C&DD fines, recycling goals, open dumping, fees, and market development.

Regulating C&DD under the Solid Waste Program

Earlier in this document it was suggested that there a large number of reasons why consolidation of the C&DD program under the existing solid waste program would be beneficial, and a short list of those reasons was provided. For purposes of documentation, the following expands that list and provides additional detail:

- The federal (US EPA) definition of solid waste includes C&DD, so it would bring Ohio in line with the federal regulatory program;
- Many other states regulate C&DD as solid waste or as a class of waste that is regulated under their solid waste programs;
- C&DD is by its very nature extremely similar to solid waste (i.e. it's a solid, unwanted material), and the majority of issues faced in the C&DD program are very similar, if not identical, to issues faced in the management of solid waste. Some of these issues have essentially been resolved for years in the solid waste program. A few of the many shared or parallel issues include:
  - Consolidation and transfer of loads (i.e. transfer facilities)
  - Open dumping
  - Recycling
  - Need for goals, measurement, documentation, and reporting.
- Research and experience now indicates that C&DD disposal has potential public health and environmental impacts very similar to solid waste disposal
  - Potential groundwater contamination
    - Ohio EPA's 2009 C&DD leachate study documented a wide variety of parameters that exceeded health based standards and surface water quality standards;
    - Ohio EPA's 2011 Hydrogeologic Evaluation study indicated that of the 47 C&DD facilities that had substantially complete data sets, 30 (64%) had an indication of an impact to ground water. The study concluded that locating a C&DD facility in a non-sensitive hydrogeologic setting with significant separation between the debris and ground water and use of engineering controls significantly reduces the probability of impacts to ground water;
    - The potential for the production of hydrogen sulfide from C&DD disposal is widely documented and recognized. Ohio has experienced significant H<sub>2</sub>S problems at both C&DD and solid waste landfills.
  - Fire

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- Prevention of fire continues to be an important issue at both C&DD and solid waste facilities;
- Odors and gas management
  - While MSW landfill gas management is generally focused on the production of methane, and problematic gas issues at C&DD facilities are usually the result of the production of H<sub>2</sub>S, both types of facilities can have significant challenges with gas production and management, and both types of facilities can have significant negative impacts due to off-site odors.
- Relatively recent statutory changes will require new C&DD facilities to have design and engineering similar to solid waste landfills. The evolution towards common standards makes sense given the similarities in the two materials and the potential environmental impacts of disposal of the materials.
- Duplicate regulatory programs in Ohio for the regulation of similar waste materials causes a great deal of complexity and confusion:
  - All types of C&DD can also be disposed in MSW landfills.
    - Generally, solid waste cannot be disposed in C&DD landfills. However, a few limited types of solid waste can be disposed of in C&DD landfills (i.e. incidental packaging, tree stumps, asbestos in some circumstances)
  - Generally, solid waste is subject to solid waste disposal fees and C&DD is subject to C&DD disposal fees
    - However, some types of solid waste is subject to C&DD disposal fees (some types of asbestos)
    - C&DD, depending on how it's managed, is sometimes subject to solid waste fees (if it is consolidated with solid waste at a transfer facility)
    - State solid waste disposal fees are collected at both MSW landfills and MSW transfer facilities. C&DD disposal fees are collected only at C&DD and MSW landfills (not MSW transfer facilities). Yet a significant amount of C&DD is transferred through MSW transfer facilities. This inconsistency causes confusion and complication when it comes to assessing fees correctly.
  - Solid waste is defined by its characteristics (a solid material that has been discarded and/or is unwanted). C&DD is defined by its point of origin (generated by construction and demolition activities). As a result, a cabinet that is removed from a building is considered C&DD. The same cabinet, if it is disposed by the manufacturer because it's defective, is considered solid waste.

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- Because we have two separate regulatory programs, Ohio EPA has to evaluate and maintain two separate lists of health departments that act as licensing authorities for each of the two programs.
- A great deal of all C&DD disposed in Ohio is already disposed in solid waste landfills. In 2011, about 25% of C&DD was disposed in MSW facilities, and in 2012 about 28% was disposed in MSW facilities. This is consistent with previous years.
- It should also be noted that the concept of regulating C&DD under the solid waste program does not necessarily mean regulating it as solid waste. Several states have “classes” of waste streams and “classes” of disposal facilities, similar to how Ohio EPA regulates residual waste facilities. C&DD could be regulated under the solid waste program as a subset of solid waste, with regulations tailored to the waste stream where appropriate.
- Given the similarity in the material itself and the commonalities in how it is managed, having two separate programs, with sometimes identical, sometimes similar, and sometimes distinctly different regulations results in an unnecessarily complex and confusing system in Ohio.