Environmental Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

August 1, 2011

RE: JEFFERSON COUNTY
FAC - C&DD TECHNOLOGIES, LLC
NOTICE OF VIOLATION

Mr. Joseph Scugoza, Operator
Mr. Dennis Ipolito, Supervisor
Mr. Larry Tyson, Supervisor
Mr. Daniel Thorn, Supervisor
C&D Disposal Technologies LLC
3250 County Road 26
P.O. Box 2219
Wintersville, Ohio 43953

Gentlemen:

This notice of violation letter was written in cooperation with the Ohio Attorney General's Office to memorialize my inspections of the C&D Disposal Technologies Landfill on April 11, 12, 17 and May 17 and June 3, 15 and 16, 2011. During my inspections, I observed several violations of law, including violations of licensing, operations, open dumping/illegal disposal and record keeping. Below I have noted the pertinent parts of relevant law associated with these violations. I was accompanied by Carla Gampolo of the Jefferson County Health Department.

Inspection Observations and Violations of Relevant Law:

1. Operating a Facility without a License

Pursuant to ORC 3714.06(A), *"No person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operating license issued by the board of health of the health district in which the facility is located..."*

Pursuant to OAC 3746-5-13, if an owner or operator is denied a license by the licensing authority and appeals such a denial to the Ohio Environmental Review Commission, *"the filing of an appeal does not automatically suspend or stay execution of the action being appealed." If an appellant (owner or operator) has compelling reasons to justify operating under the authority of a denied license then they can apply for a stay and "upon motion by appellant, the commission may suspend or stay such execution pending immediate determination of the appeal..."*

On January 26, 2011, the Jefferson County Board of Health issued a final denial of C&D Disposal's 2010 license, and on February 22, 2011, C&D Disposal appealed the final denial to the Environmental Review Appeals Commission (ERAC). On the dates of inspection relevant to this NOV, I observed construction and demolition debris operations conducted at the C&D Disposal Facility, despite the following facts: 1) the facility's 2011 license application had not been approved; 2) the Jefferson County Board of Health issued a final denial of the facility's 2010 licenses; and 3) the Facility had not received a stay from the ERAC, in violation of OAC 3745-400-04, OAC 3745-400-04(B), and ORC 3714.06(A).

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Furthermore, even if C&D Disposal was attempting to operate under its denied 2010 license without obtaining a stay, despite the express language in OAC 3746-5-13, it would still be in violation of the 4:1 sloping and the leachate collection system requirements of that denied license.

Subsequent to my inspections, on July 7, 2011, the Jefferson County Board of Health issued a final denial of the C&D Disposal's 2011 license application. The Facility must, therefore, pursue the stay of the 2011 license denial or begin mandatory closure in accordance with OAC 3745-400-12(B)(5). Additionally, the facility must cease the placement of waste until it is granted a stay.

Pursuant to OAC 3745-400-11(B)(1), assuming that an owner or operator has a license to operate a C&DD facility, they are required *"to operate the facility in strict compliance with the license, any orders, and other authorizing documents issued in accordance with R.C. Chapter 3714."*

During my inspections, I observed that the slopes at the C&D facility remain above 4:1 in violation of OAC 3745-400-11(B)(1).

Further, I observed that the leachate collection systems still do not operate as required by C&D Disposal's last valid license, which expired on January 31, 2008. Specifically, amongst other 2008 license requirements, the leachate collection systems are required to be 24-hour on-demand systems with dual contained tanks, audible and visible high-level alarms and pump shut offs, in-ground submersible pumps, generators that charge the batteries and power the control panels and pumps and sumps that collect leachate. The dual contained tanks and associated double walled piping have been installed. However, C&D Disposal continues to fail to operate the systems in compliance with the 2008 license or the engineer's certification documents. Specifically, the facility is not using on-demand generators and the generators that are used are not connected to the system and do not appear to be used.

I observed that the control panel displays did not provide read outs of the amount of leachate collected in the sumps and the leachate systems were not being run with on-demand generators as required by the license construction certifications. The systems at the C&D Disposal facility, therefore, continue to not be configured in accordance with the 2008 license requirements, in violation of OAC 3745-400-11(B)(1) and ORC 3714.08(C).

2. Illegal Disposal of C&DD

Pursuant to OAC 3745-400-04, *"Construction and demolition debris shall be disposed of only by the following methods or combination thereof: (1) Disposal in a licensed construction and demolition debris facility. (2) Disposal in a licensed solid waste disposal facility."*

Pursuant to OAC 3745-400-04(B) [emphasis added]: *"No person shall conduct or allow <u>illegal disposal</u> of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."*

"Illegal disposal means the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility... or a solid waste disposal facility..." pursuant to OAC 3745-400-01(S).

Since January 26, 2011, C&D Disposal has been illegally disposing of C&DD in an unlicensed facility, in violation of ORC 3714.06 and OAC 3745-400-04(B).

3. Illegal Placement, Disposal, and Open Dumping of Solid Waste at the Working Face

Pursuant to ORC 3714.021(B), *"The owner or operator of a construction and demolition debris facility... shall attempt to remove all solid wastes from construction and demolition debris prior to the disposal of the construction and demolition debris on the working face of the facility."*

Also pursuant to ORC 3714.021(B), *"The existence of solid wastes on the working face of a construction and demolition debris facility does not constitute a violation."*

However, pursuant to ORC 3714.021(B)(1), the solid waste cannot constitute more than *"two cubic yards per one thousand cubic yards of construction and demolition debris or four cubic yards per one thousand tons of construction and demolition debris disposed"* in the working face based on the amount of waste received in the previous full business day. **Regardless** of the amount of solid waste that is placed in the working face, the owner or operator or the employees of the facility must remove the solid wastes from the working face of the facility in accordance with ORC 3714.021(B)(2) and OAC 3745-400-11(F)(3)(a).

Additionally, if an authorized representative of OEPA or the Board of Health *"requests the removal of specific, visible solid wastes that are located on the working face of a construction and demolition debris facility... the owner or operator or the employees of the facility shall remove those solid wastes,"* in accordance with ORC 3714.021(C).

Pursuant to ORC 3745-27-01(O)(4) [emphasis added], Open dumping means *"the deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at <u>any place other than a solid waste facility</u> operated in accordance with Chapter 3734 of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code."*

Pursuant to ORC 3734.03, *"No person shall dispose of solid wastes by... open dumping."* Also see OAC 3745-27-05(C).

Pursuant to OAC 3745-27-05(C), *"In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."*

During my inspections, I observed the existence of solid waste in the working face. I have also questioned employees of C&D Disposal about compliance with ORC 3714.021(B)(1) and OAC 3745-400-11(F). I have also requested the removal of solid waste that I have observed on the working face and returned to the facility and found that those solid wastes had not been removed.

On May 17, 2011, I observed the following solid waste buried in an area that appeared prepared for additional waste or soil cover. I dug all these items out from below other debris and therefore these items had not been removed by the facility. A plastic dumpster lid, spray can, pink and white flip flop, brown shoe, pink shirt Christmas clothing, upholstery fabric with some of the furniture wood and springs still attached. The facility is in violation of O.R.C. 3714.021(B)(2) and OAC 3745-400-11F(3)(a). Furthermore, the amounts of solid waste that remained on the working face on March 10, 2011, were more than the ratio allowed by ORC 3714.021(B)(1).

On June 3, I observed a dozer spreading soil cover over C&DD waste that was placed prior to that day's disposal activities. I observed CDs, beverage bottles, food packaging, a Pepsi bottle, denim clothing, 2-liter bottle, magazine, Reese's cup wrapper, mattress, underwear packaging, bath towel, and child shoes in this area that was being covered with soil. These items were very difficult to see due to the area having been well compacted and a thin wet mud covering the illegally disposed debris. Also, at the time of inspection, and based on my review of the daily records including May 18, 23, 24, 25, 26, 27, 31 and June 1, 2011, the records show that more solid waste was removed from the workingface than allowed by the Ohio Revised Code. Thus, solid waste was being disposed of in the working face in violation of O.R.C. 3714.021(B)(2), OAC 3745-400-11F(3)(a), O.R.C 3734.03 and O.A.C. 3745-27-05(C).

Because the site has submitted no verification that it has removed the solid waste buried on March 31, 2011, I have to assume that the solid waste remains buried and not managed in accordance with Chapter 3734. Accordingly, this is a violation of O.A.C. 3745-27-05(C).

4. Record Keeping

Pursuant to OAC 3745-400-11(A)(9). *"The owner or operator shall keep a daily log of operations of the facility that contains all the information specified on forms prescribed by the director. All entries required by the log form shall be completed."* Specifically, note that the form provided by the Director requires a C&DD facility to record the waste it receives inside the limits of the facility on a particular day on that particular day's log. See instructions on the Director's forms once again at the following link: http://www.epa.state.oh.us/portals/34/document/guidance/gd_574.pdf.

The owner or operator *"may use alternate forms, either in paper or electronic formats, for the daily log of operations, provided that all of the information requested on the prescribed forms is present."* Regardless, whether the information is kept on forms as provided by the director or on alternate forms, *"a copy of the log shall be available for inspection by the licensing authority during normal operating hours."* OAC 3745-400-11(A)(9).

Pursuant to ORC 3714.101: *"Falsification of any material information that is required to be submitted to a board of health or the director of environmental protection with respect to a permit to install or a license issued under this chapter or an application for such a permit or license, or falsification of any other material information that is required to be submitted to a board or the director under this chapter and rules adopted under it, is grounds for the denial, suspension, or revocation of a permit to install or a license issued under this chapter."*

On April 11, 2011, I observed another significant record keeping violation. C&DD waste that was being placed inside the facility on Monday, April 11, 2011, was being recorded on the April 5, 2011 logs instead of the April 11, 2011 log in violation of O.A.C. 3745-400-11(A)(9) and triggering O.R.C. 3714.101. Please be advised that the daily log of operations should be completed for each day of operation and should only contain waste actually disposed of on that day calendar day of operation.

6. Leachate Outbreaks

OAC 3745-400-11(O)(2) - Leachate outbreaks. If there is an outbreak of leachate at the surface, the owner or operator shall do all of the following:

(1) Contain the leachate.

(2) Manage and dispose the leachate in accordance with applicable regulations.

(3) Repair the outbreak.

On April 27, 2011, I witnessed leachate discharging from the south side of the facility into a surface water control ditch. The leachate was not being properly managed and was not contained as required by this regulation. Therefore the facility is in violation of the aforementioned regulation.

7. Illegal Disposal of C&DD and Open Dumping of Solid Waste Outside Facility Boundaries

Further, on my visits outside of the C&D Disposal Facility, in the area designated as the "Recycling Area," C&DD and solid waste continue to remain placed on the ground, crushed and intermixed with soil by heavy equipment, exposed to the elements, and the pile is ever growing in size. Further, the waste stored in the area is developing hot spots that smell of hydrogen sulfide and that could lead to a fire. I pointed this out to C&D Disposal personnel.

While some limited items within the C&DD and solid waste pile stored in the "Recycling Area" are recycled, the vast majority of the waste placed in this area is clearly not "stored for a temporary period remaining unchanged and retrievable" and, thus, this area is not an excluded facility under OAC 3745-400-03. The "Recycling Area" is an open dump and an unlawful C&DD dump, in violation of ORC 3714.06 (A), OAC 3745-400-04, OAC 3745-400-04(B), ORC 3734.03 and OAC 3745-27-05(C).

On June 15 and 16, 2011, I witnessed the excavation of illegally disposed of C&DD and solid waste to the east of the area referred to by the Facility as the "Recycling Area." I observed a hole four to five foot deep and approximately one acre in size that was being excavated. According to Dennis Ipolito, this material was being taken up to the landfill for disposal. When I questioned Mr. Scugoza on whether those materials were being run across the scale, Mr. Scugoza indicated that fees had already been paid on those wastes and so there was no need to do that. This is a violation of the aforementioned OAC rules and ORC record keeping laws.

Nothing in this letter shall be construed to authorize any waiver from any requirements of applicable state solid waste laws or regulations. This letter shall not be interpreted to release the owner or operator of the facility or others from responsibility under ORC Chapters 3704., 3714., 3734. or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

Please respond to the Southeast District Office within 14 days detailing your actions taken to abate the above noted violations. Please feel free to contact me at 740-380-5435 if you have any questions regarding the above referenced inspections.

Sincerely,

Dale W. Warner, R.S.
Environmental Specialist
Division of Materials and Waste Management

DWW/jg

cc: Carla Gampolo, Jefferson County Health Department
Melinda Berry, Ohio EPA, DMWM
Robert Eubanks, AGO, EES