

**Environmental
Protection Agency**

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

May 4, 2011

**RE: JEFFERSON COUNTY
FAC- C&DD TECHNOLOGIES, LLC**

Mr. Joseph Scugoza, Operator
C&D Disposal Technologies LLC
3250 County Road 26
P.O.Box 2219
Wintersville, Ohio 43953

Mr. Larry Tyson, Supervisor
C&D Disposal Technologies LLC
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Mr. Dennis Ipolito, Supervisor
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Mr. Daniel Thorn, Supervisor
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Dear Sirs:

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 March 9, 10, 16, 17 and 31 and April 1, 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 facts that the facility has no 2011 license, the Jefferson County Board of Health issued a final denial of the facility's 2010 license, and the Facility has not received a stay from the ERAC, in violation of OAC 3745-400-04, OAC 3745-400-04(B), and ORC 3714.06(A).

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.

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.

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 solid waste disposal facility."*

Pursuant to OAC 3745-400-04(B) [emphasis added]: *"No person shall conduct or allow illegal disposal 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 any place other than a solid waste facility 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 Technologies 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 March 9, 2011, I observed large quantities of readily identifiable and visible solid waste placed on the working face. Obviously, no real attempt was made to remove all of the solid waste before the C&DD reached the working face, in violation of ORC 3714.021(B).

I pointed out some solid waste intermingled with C&DD to site personnel and asked that it be pushed off the working face and back into the unloading zone. However, there was no real attempt to remove all of the solid waste. The waste was never spread and was only picked around the edges, once again, in violation of O.R.C. 3714.021(B).

On March 10, 2011, I observed that substantial amounts of solid waste that were present on March 9, 2011, remained on the working face, in violation of ORC 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 March 16, 17 and 31, I continued to observe large quantities of readily identifiable and visible solid waste placed on the working face. Once again, it was obvious that no real attempt was made to remove all of the solid waste before the C&DD reached the working face or to inspect the

working face to remove the solid waste placed on it, in violation of ORC 3714.021(B), OAC 3745-400-11(A)(10) and OAC 3745-400-11(A)(9).

On March 31, I observed a dozer spreading a new load of C&DD waste over C&DD waste that was already placed on the working face. The C&DD waste that was being covered with a new lift had solid waste intermingled in it. Thus, solid waste was being disposed of in the working face in violation of ORC 3714.021(B)(2), OAC 3745-400-11(F)(3)(a), ORC3734.03 and OAC 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 OAC 3745-27-05(C).

4. Record Keeping

The owner and/or operator shall keep a record of the solid waste removed from the working face. OAC 3745-400-11(A)(10). There is a space for this information on the C&DD Facility Daily Logs of Operation form provided by the director. Get this form at the following link: http://www.epa.state.oh.us/portals/34/document/guidance/gd_574.pdf

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 both March 9 and 10, 2011, the workers placed the solid waste removed from the working face directly into dumpsters without measuring the amount of solid waste removed, in violation of OAC 3745-400-11(A)(10) and OAC 3745-400-11(A)(9).

On March 9, 2011, it became clear, through my conversations with Joseph Scugoza, that the facility has never had a device for measuring the amount of solid waste removed from the working face before this inspection. Thus, throughout the history of the site at least until March 9, 2011, the facility has been out of compliance OAC 3745-400-11(A)(10) and OAC 3745-400-11(A)(9).

Unfortunately, Ohio EPA has not discovered these solid waste record keeping violations until the date of this inspection, in part, because the electronic daily logs kept by the facility are highly difficult to discern. I shared this fact with Joe Scugoza during my March 9, 2011 inspection. While

possibly not expressly stated in the law, I have been advised by counsel that the intent of the law is for such records to be discernable by inspecting authorities so that they can determine compliance. See ORC 3714.08(C).

On April 11, 2011, I observed another significant record keeping violation. C&DD waste that was being placed inside the facility on Monday 4/11/11 was being recorded on the 4/8/11 logs instead of the 4/11/11 log in violation of O.A.C. 3745-400-11(A)(9) and triggering ORC 3714.101.

5. Weekly Cover

The owner or operator shall operate the facility in a manner that prevents fires by *"covering all disposed combustible debris on a weekly basis with soil, clean hard fill, or other material which is noncombustible. For the purpose of this rule, covering means to apply noncombustible material in a manner such that combustible debris is not visible."* OAC 3745-400-11 (H)(1).

On March 13, 2011 and continuing to at least April 12, 2011, I observed that Cell 1(D) had areas that were not covered with weekly cover, in violation of OAC 3745-400-11(H)(1).

6. Inspection Authority & Protocol

All of the following is pursuant to ORC 3714.08(C): *"The board of health or its authorized representative and the director or his authorized representative, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times upon any public or private property, real or personal, to inspect or investigate, obtain samples, and examine or copy records to determine compliance with this chapter and rules adopted under it."*

"The board of health or its authorized representative or the director or his authorized representative may apply for, and any judge of a court of record may issue, an appropriate search warrant necessary to achieve the purposes of this chapter and rules adopted under it within the court's territorial jurisdiction."

"If entry is refused or inspection or investigation is refused, hindered, or thwarted, the board of health or the director may suspend or revoke the construction and demolition debris facility's license." emphasis added.

On March 9, 10, 16 and 17, 2011, I observed and experienced Ohio EPA personnel trying to conduct investigations inside and outside of the approved limits of the C&D Disposal Facility only to be unnecessarily hindered, thwarted and/or temporarily refused, in violation of ORC 3714.08(C).

The tactics used to impede Ohio EPA's investigation of the site included, in part, 1) limiting inspectors from proceeding until site personnel was located to accompany them; 2) blocking in Ohio EPA vehicles with C&D Disposal site vehicles; 3) temporarily preventing Ohio EPA from investigating the C&D Disposal site with video and audio devices; 4) physically blocking Ohio EPA personnel from walking to areas of the facility; 5) creating unusually long wait periods before Ohio EPA personnel was allowed to proceed with its investigation at the site; 6) preventing Ohio EPA personnel access until after communicating with C&D Disposal's counsel over the phone; 7) having C&D Disposal counsel tell the Attorney General's office that it would have to get a warrant before Ohio EPA personnel was allowed to proceed with its inspection.

If C&D Disposal had not already had its license denied, these actions could cause the director to request the suspension or revocation of C&D Disposal's license in accordance with ORC 3714.08(C).

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

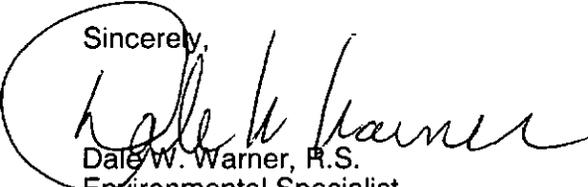
Further, on my visits outside of the C&D facility, in the area designated as the Recycling Area, C&DD and solid waste continues to remain placed on the ground, crushed and intermixed by heavy equipment, exposed to the elements, and ever growing in size. Further, the waste stored in the area is developing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

While 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).

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.

Refer to attached notes and the pictures and video already provided through counsel for more specific details concerning the violations stated above. 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: Marc Maragos, Jefferson County Health Department
Melinda Berry, Ohio EPA, DMWM
Robert Eubanks, AGO, EES