



**Environmental
Protection Agency**

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

November 18, 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

Dear Sirs:

This notice of violation (NOV) letter was written in cooperation with the Ohio Attorney General's Office to memorialize my inspections of the C&D Disposal Technologies Landfill on September 21, 2011 and November 2, 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).

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. 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. I was informed by Doug Doyle that *outside contractors will be contracted to bring the systems into compliance with the 2008 license no time frame was given to complete this work.* 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 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. 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 November 2, 2011, I observed an area that had been filled in cell 1D and was approximately 200 feet to the south of the active working area beyond an area that had been compacted and had areas that were not covered and contained solid waste. When I asked Doug Doyle when that area was last worked, he was unable to provide that information. Mr. Doyle indicated that Mr. Ipolito was responsible for the filling operation. I asked Mr. Doyle to obtain that information before I left the area. The requested information was not provided. Please provide documentation from daily inspections or other documentation that will indicate when the last date was that waste had been placed in the aforementioned area prior to November 2, 2011. This information is needed to determine compliance with OAC 3745-400-11(H)(1).

4. Illegal Acceptance of Unidentifiable Waste

OAC 3745-400-11(F) "Waste acceptance and disposal. Prior to acceptance by the facility, debris shall be readily identifiable as construction and demolition debris and shall not have been shredded, pulverized, or otherwise rendered to the extent that the debris is unidentifiable. The owner or operator shall dispose of only construction and demolition debris as defined in rule 3745-400-01 of the Administrative Code, except as specified in this rule".

On August 10, 2011, I observed several loads of debris that had been received and disposed of by the facility that consisted of large amounts of soil that was comingled with solid waste and wood flooring from an industrial demolish job. The soil had a petroleum odor and did not appear to be clean soil expected as part of normal demolition projects. Since this material was unidentifiable and appeared to be a solid waste, it should have been rejected by the facility and sent to a solid waste facility for disposal.

On August 30, 2011, an E-mail from you indicated that you had sent via E-mail TCLP results for the aforementioned material and further requested a decision by Ohio EPA as to whether the aforementioned waste stream could be disposed of. You indicated within your E-mail that since Ohio EPA had not indicated any concerns with disposal of the aforementioned waste stream, the facility would wait until 1:30 for any objections by Ohio EPA and if you did not hear from Ohio EPA, the facility would proceed with the disposal of the waste stream.

At the time of inspection, Ohio EPA, prior to leaving the site, specifically told you that the waste stream in question was to be removed and disposed of at an appropriate solid waste facility. This was further indicated to you via an E-mail response on August 30, 2011. On September 21, 2011, a site inspection was conducted and at that time it was determined that the aforementioned material was disposed of on site. C&D Disposal is in violation of OAC 3745-400-11(F) for the disposal of an unidentifiable waste.

5. 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.*" On November 2, 2011, I observed an area that had been filled in cell 1D and was approximately 200 feet to the south of the active working area beyond an area that had been compacted. This area had not been covered and contained solid waste documented in photographs taken at the time of my inspection. The facility is in violation for 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 OAC 3745-27-05(C).

6. Illegal Disposal of C&DD and Open Dumping of Solid Waste outside Facility Boundaries

On September 21, 2011 and November 2, 2011, I inspected an area 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. Further, the waste stored in the area is developing hot spots that smell of hydrogen sulfide and that could lead to a fire. On November 2, 2011, I pointed this out to C&D Disposal personnel and measured the temperature of one area that measured between 155-157 F. I indicated at the time that the facility should investigate the area to determine if a fire existed. I further indicated that the Jefferson County Health District should be contacted prior to any investigation so that they could be present. Mr. Doyle agreed to contact them and said he would contact URS for recommendations. An investigation was conducted later that same day in the presence of a Wintersville Fireman; however, the Jefferson County Health Department was not contacted prior to the investigation. Ohio EPA suggests that C&DD Technologies conduct an investigation of the entire open dump and determine if any other elevated temperatures exist. Please submit the results of your investigation.

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).

Mandatory Closure (OAC 3745-400-12)

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). The facility is, therefore, in violation of the following OAC rules: C&DD Tech is in violation for failing to initiate closure as required by the following OAC Rules:

OAC 3745-400-12(A) Applicability- "The owner or operator shall complete final closure of a construction and demolition debris facility in a manner which minimizes further maintenance at the facility, as well as the formation and release of leachate to the air, soil, surface water, or ground water to the extent necessary to protect human and the environment, as follows":

OAC 3745-400-12(A)(2) -"The owner or operator of a licensed facility which meets the criteria contained in paragraphs (B)(6) to (B)(8) of this rule shall comply with paragraphs (C) to (H) of this rule. For the purpose of paragraph (A)(2) of this rule, "licensed" facility means any facility which received a license in accordance with Chapters 3745-400 and 3745-37 of the administrative Code."

OAC 3745-400-12(B)(6) states "A facility license has expired and another license has been applied for and denied as a final action of the licensing authority."

OAC 3745-400-12(D) - Timing of closure. After ceasing to accept debris for disposal or after required mandatory closure in accordance with paragraph (B) of this rule, the owner or operator shall perform final closure activities outlined in paragraph (E) of this rule.

The licensing authority may grant a time extension if the licensing authority determines that additional time is needed in order to ensure proper closure of a facility.

C&DDT was required to initiate mandatory closure on January 26, 2011.

In accordance with OAC 3745-400-12(D) the facility should have completed all of the following tasks outlined in OAC 3745-400-12(E):

(E) Closure activities. The owner or operator shall complete the final closure activities for licensed facilities as follows:

(1) Within seven days of ceasing to accept debris for disposal, the owner or operator shall provide written notification to the licensing authority of the date the facility ceased to accept debris. This was required to be completed by February 2, 2011, seven days after mandatory closure.

(2) Within seven days of ceasing to accept debris for disposal, the owner or operator shall block, by locked gates, fencing or other sturdy obstacles, all entrances and access roads to the facility to prevent unauthorized access during the final 3745-400-12 closure period, unless the facility is

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to be used for other purposes which are indicated in writing to the licensing authority. This was required to be completed by February 2, 2011, seven days after mandatory closure.

(3) Within thirty days of ceasing to accept debris for disposal, the owner or operator shall post signs, easily visible from all access roads leading onto the facility, stating in letters at least three inches high that the construction and demolition debris facility is closed and no longer accepts construction and demolition debris. The signs shall be maintained in legible condition for at least two years after the facility ceases to accept debris. This was required to be completed by February 25, 2011, 30 days after mandatory closure.

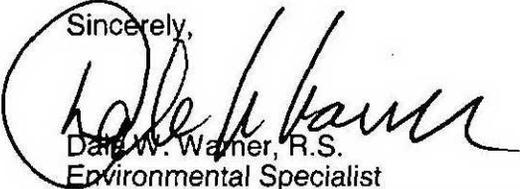
(4) Within sixty days of ceasing to accept debris for disposal, the owner or operator shall cover all uncapped disposal areas with at least six inches of recompacted soil and grade this soil to prevent ponding of water. This soil layer may be considered a part of the cap system required by paragraphs (D) and (E) of rule 3745-400-07 of the Administrative Code. This was required to be completed by March 27, 2011, 60 days after mandatory closure. At the time of my inspections on September 21, 2011 and November 2, 2011, the closure activities listed above had not been completed.

The facility is in violation for failure to complete the aforementioned requirements. Please be advised that capping of the facility as required by OAC 3745-400-12(5) shall be completed by January 26, 2012, one year after mandatory closure.

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