

OHIO'S RECYCLING REVOLUTION: SENATE BILL 2 AIMS TO PREVENT ILLEGAL DUMPING AND ERADICATE THE INDUSTRY'S SHAM RECYCLING

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Construction and demolition debris (C&DD) landfills play a crucial role in Ohio's booming real estate development and construction industries. Most of the C&DD generated in this region is sent to licensed disposal facilities or to recyclers that run responsible, environmentally-friendly operations, but some waste inevitably finds its way to illegal dump sites. These sites often collect and then abandon large volumes of waste material, creating nuisance conditions and leaving local communities and the state to bear the cost of cleanup.

Fortunately, Ohio recently enacted legislation to regulate the growing recycling industry while giving new teeth to Ohio EPA's authority to shut down these problem sites.

In July, Governor Kasich signed Senate Bill 2 which establishes new regulatory oversight of C&DD recyclers, called "processing facilities." State regulators, county and city governments and the C&DD industry alike welcomed the passage of the bill. The new law, which took effect on October 6, 2017, is designed to encourage legitimate C&DD recycling while preventing the operation of illegal dumps.

Existing C&DD Laws and Rules

For decades, Ohio EPA and local health departments had authority to regulate C&DD disposal but not C&DD recycling.

C&DD is material resulting from the construction or demolition of man-made structures, such as houses, buildings or roadways. See O.A.C. 3745-400-01(C). It includes non-hazardous materials such as brick, concrete, stone, glass, wall coverings, plaster, drywall, wood and roofing materials, but excludes solid wastes, infectious wastes, and hazardous wastes.

Because C&DD is generally considered to be inert and poses little threat to the environment as compared to other wastes, Ohio and some other states regulate C&DD separately from municipal and household solid waste.

C&DD disposal facilities are licensed and regulated under O.R.C. Chapter 3714 and

3745 and O.A.C. Chapters 3745-37 and 3745-400. The regulatory program establishes authorized and prohibited methods for C&DD disposal, standards for licensed facility operations, siting requirements, facility design requirements and construction specifications, rules for certification of construction and final closure, financial assurance requirements for closure and post-closure care of facilities, and rules for ground water and leachate monitoring.

As of August 2017, there were 44 facilities on Ohio EPA's list of licensed C&DD facilities.¹

No Authority to Regulate C&DD Recycling

A major limitation of Ohio's C&DD program is that it does not apply to any site "where debris is not disposed, such where debris is reused or recycled in a beneficial manner, or stored for a temporary period remaining unchanged and retrievable." O.A.C. 3745-400-03(C). As a result, the most regulators could do was inspect recycling operations to verify that they were not causing a nuisance or creating a risk to public health and safety.

The Cuyahoga County Board of Health (CCBH) is among the local health districts authorized by Ohio EPA to administer the C&DD program within their jurisdiction. In addition to using its delegated authority from Ohio EPA, a local board of health is required to abate and remove all nuisances within its jurisdiction. R.C. 3707.01. It may order the abatement and removal of the nuisance and prosecute the owners or occupants for neglect or refusal to comply. A board of health may also regulate sites "where offensive or dangerous substances or liquids are or may accumulate." A building or premises may be declared a public nuisance when it is in "a condition dangerous to life or health." Id.

In addition to offensive impacts and nuisance conditions such as loud construction noises, dust, odors, unsightly dump piles, pests and adverse impacts to soil and ground water, illegal dumps are also associated with serious potential health and safety risks

including exposure to hydrogen sulfide gas, methane, volatile organic compounds and carcinogens, fugitive dust/particulate matter, and asbestos.

Emergence of the C&DD Recycling Industry

Despite the absence of a state regulatory program, many Ohio C&DD disposal facility operators long ago saw the opportunity for selling recycled materials and saving landfill air space. What began as simply hand-picking metals out of the incoming debris piles has evolved into large-scale screening and sorting operations to separate valuable recyclables for resale.

One such operator, Kurtz Bros., Inc., has emerged as a pioneer in the use of recycled commercial and industrial byproducts, many of which are now used in the landscape and construction industries. In addition to operating a licensed C&DD disposal facility, Kurtz recycles materials ranging from hardwood byproducts, green waste trimmings and bio-solids to steel slag and spent non-toxic foundry sand.²

Despite its size and unique customer services, however, Kurtz Bros. and other C&DD facility operators are forced to compete with poorly-managed, unregulated "recyclers" whose unscrupulous methods are a stain on the entire industry. The existing C&DD program not only failed to establish standards for legitimate recycling, it failed to prevent irresponsible operators from collecting and storing massive piles of mixed C&DD under the guise of recycling.

Operators such as John Kurtz of Kurtz Bros., Inc. hope the new regulations will shut down these "pretenders" who claim to be recycling but really are not. Senate Bill 2 is designed to do just that. It casts a wide net, defining "processing facility" as a site, location or building "that is used or intended to be used for the purpose of processing, transferring, or recycling" C&DD that was generated off-site. R.C. 3714.01 (eff. Oct. 6, 2017). The term "transferring" means the



Mixed C&DD is placed on the sort line at the Kurtz Bros., Inc. Material Reclamation Facility in Independence, Ohio

receipt or storage of C&DD, or the movement of C&DD from vehicles or containers to a working surface and into other vehicles or containers, for purposes of transporting it to a disposal or processing facility. *Id.* "Processing" means the receipt or storage of C&DD, or the movement of C&DD from vehicles or containers to a working surface, for purposes of separating it into individual types of materials as a commodity for use in a beneficial manner that does not constitute disposal. *Id.*

The High Cost of Cleaning Up Illegal Dump Sites

As has been widely reported, the six-acre ARCO Recycling facility located at the corner of Noble Road and Euclid Avenue in East Cleveland is currently being cleaned up after years of complaints. Prior to the start of cleanup efforts, the four-story mountain of debris included concrete, dirt, lumber and other materials from residential demolition projects.

Ohio EPA considers the ARCO site one of the worst examples of illegal dumping in the state. Worst of all, the dump sits in the middle of a residential neighborhood.

Like many illegal dumps, ARCO Recycling had auspicious beginnings. It started operating

in April 2014 under a business plan that required incoming C&DD to be accepted and processed within thirty days of receipt. Recyclables such as clean hard fill, scrap wood, and scrap metal would be separated and would remain on site temporarily, while non-recyclable debris would be removed and properly disposed of in a landfill.

It didn't take long for ARCO to begin its downward slide. Since June 2014, the CCBH routinely visited the site and investigated nuisance complaints, often accompanied by Ohio EPA agents. It soon became clear that the facility was not operating as a C&DD recycler, but as an illegal disposal facility.

By early 2016, ARCO had amassed huge quantities of unseparated C&DD that sat for years without being recycled or properly disposed of. In January 2017, after years of residents' complaints, Ohio EPA issued a Notice of Violation and ordered that no more waste be accepted and all C&DD be removed within fourteen days. Although the facility did close, the owner failed to comply with the order to remove material.

Ohio EPA has provided \$6 million to remove the debris from the illegal dump, which has caused health and other concerns to Noble Road residents.

In June, Kurtz Bros., Inc. was awarded a \$1 million contract to remove an estimated 80,000 cubic yards of concrete, bricks and blocks from the four-story ARCO Recycling dump. Under the contract, Kurtz Bros. can crush and reuse some of what it removes as fill from the six-acre site.

In early September, the CCBH solicited proposals for the selection of a contractor to remove, transport, and properly dispose of the remaining C&DD and other wastes from the ARCO site, which are estimated to include 150,000 cubic yards of material. With dump trucks carting away loads every six minutes, it will take 10 months to finish the work.

New Processing Facility Regulations Will Help Reduce Illegal Dumping

The future enactment of new processing facility regulations authorized under Senate Bill 2 is expected to reduce the high costs of dealing with illegal dumps. For example, Ohio EPA was forced to refer the ARCO matter to the Ohio Attorney General's Office for enforcement proceedings when the owner failed to remove the debris. All of this consumes substantial time and public resources.

Even before Senate Bill 2 was signed into law, Ohio EPA took initial steps toward

developing a regulatory program for C&DD processing. In early May, it issued Early Stakeholder Outreach fact sheets to bring stakeholders into the review process as early as possible. The new rules will likely include permit and licensing procedures, siting and design requirements, operational standards and closure requirements. The rules may also cover the type of materials that can be recycled, and how long they can be stored. Importantly, the new rules will require recyclers to establish financial assurance in case they go bankrupt or are otherwise unable to close properly.

Senate Bill 2 provides grandfathering for processing facilities in operation prior to the enactment of any new rules. After October 6, 2017, any person proposing to operate or continue to operate an existing processing facility or one that begins operating between October 6, 2017 and the effective date of any new processing facility rules that may be adopted by Ohio EPA, must submit an application for registration from the applicable board of health or Ohio EPA.

Ohio EPA's newly-expanded legislative authority will allow greater control and oversight of the recycling industry to prevent future

ARCOs and safeguard public health, safety and the environment across Ohio.

¹ www.epa.ohio.gov/portals/34/document/facility_lists/lic_cdd.pdf.

² See www.kurtz-bros.com/waste-management-services/construction-demolition-recycling/.



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