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**Ohio EPA Proponent Testimony on House Bill 397
House Economic Development and Environment Committee
November 2, 2005**

Good afternoon Chairman Collier and members of the committee. My name is Laura Powell and I am the Assistant Director at the Ohio EPA. I appreciate the opportunity to testify on behalf of the Agency as a proponent to House Bill 397, sponsored by Representative Hagan, which incorporates the recommendations of the Construction and Demolition Debris Study Committee which convened this summer in accordance with H.B. 66.

As a representative on the Committee for Ohio EPA, I would like to thank both Chairman Collier and Representative Hagan for their leadership, determination, and balanced approach toward working through the issues before the Study Committee. The charge of the committee was challenging and the time in which to conduct a thorough review of the program was limited. Despite the controversial nature of some of the items before us for debate, the Agency was pleased with the constructive discussion and the compromises that were reached. The Agency was supportive of the recommended changes that were presented in the final report, and as such, are supportive of H.B. 397 which moves us forward in environmental protection associated with C&DD landfills.

H.B. 397, as Representative Hagan outlined for this Committee last week, contains provisions that will address many of Ohio EPA's long-standing concerns with the C&DD program and C&DD landfill facilities. Among our concerns have been the lack of adequate statutory siting criteria; lack of background checks for owners/operators; inadequate groundwater monitoring that would determine if contamination from the facility impacted ground water; and lack of financial assurance for closure and post-closure care. In more recent years, new concerns have arisen about the increasing amounts of pulverized material, not recognizable as construction and demolition debris, showing up at some C&DD facilities in large volumes for disposal. We also began receiving increasing numbers of odor complaints associated in part with hydrogen sulfide generation at several sites. In light of our concerns, we have consistently advocated for legislative changes that addressed these concerns and resulted in a C&DD program that would ensure that those facilities are protective of human health and the environment.

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director



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While Ohio EPA is supportive overall with the legislative proposal, I would like to share with this Committee two primary concerns we have with the introduced version of the bill. As I say this, I understand that one issue dealing with our concern about pulverized waste may be addressed in a substitute bill. While H.B. 397 attempts to establish a certification process to inhibit the influx of pulverized C&DD from out of state sources, we fear exactly the opposite will occur by actually legitimizing the practice of crushing and pulverizing C&DD. The economies of scale are such that paying potential travel expenses for state or local health department inspectors to “certify” the debris would not be prohibitive for these large companies. We strongly request the committee consider removing the certification process language and allow our current prohibition against “unrecognizable waste” to remain in place.

The second issue we would like to raise involves the background check provision. While Ohio EPA strongly supports the Study Committee’s motion to include a provision for adopting a background check, upon reviewing the language in H.B. 397, we are concerned that the provision will not achieve the desired goal. There are several aspects of an effective background check program that can be used to identify and prohibit “bad” owners and operators.

At today’s facilities, an owner/operator is typically a corporate entity and employs individuals. These individuals make key decisions on how the facility is operated on a day to day basis and may include felons. As written, the language does not provide identification and information on these “key” individuals or employees. To address this issue, identification of “key employees” and submittal of fingerprint cards is necessary. This is a provision of Ohio EPA’s solid waste background check process. While we do not see a need to adopt the complete background check system used in the solid waste program, we believe this one component would allow us to take advantage of a valuable tool.

The current language also does not address changes in ownership or changes in key employees after issuance of the permit. It also does not provide for any regular review of key employees and owner/operators who may become felons after issuance of the permit. As currently drafted, H.B. 397 would allow the owners/operators of an existing facility that never seeks a PTI to avoid a background check altogether.

In conclusion, Ohio EPA has observed first hand the numerous problems associated with the disposal of C&DD in Ohio. Other Federal agencies, including U.S. EPA and the Agency for Toxic Substances and Disease Registry, have also testified to the problems that C&DD disposal has caused in the State. There are also numerous citizens from throughout Ohio that have experienced these problems and expressed to us their concerns with the manner in which C&DD is handled and disposed of in our state. We are pleased the General Assembly has examined this issue in depth and see H.B. 397 as the vehicle to help establish a program that will protect the citizens of Ohio while enabling C&DD landfills to remain a viable part of Ohio’s economy.

Again, I appreciate the opportunity to testify and am happy to answer any questions you may have.