

Senate Energy, Natural Resources and Environment Committee
Proponent Testimony
Ohio EPA
Substitute H.B. 432

November 17, 2004

Good morning, Mr. Chairman, members of the committee. My name is Chris Jones, and I am Director of Ohio EPA. I appreciate the opportunity to testify before you this morning in support of the substitute version of H.B. 432. As Representative Webster explained to you in his sponsor testimony last week, H.B. 432 would establish a disposal fee for construction and demolition debris (CDD) disposed of in Ohio. Before I discuss specific provisions of the bill, I would like to thank Representative Webster for sponsoring this much needed legislation and for his consideration of Ohio EPA's concerns throughout the legislative process, both in the House of Representatives and the Senate.

As you may recall, Ohio EPA strongly supported S.B. 199, sponsored by Senator Carnes in the 124th General Assembly. In addition to the funding provision now found in H.B. 432, S.B. 199 contained additional siting criteria, operational controls, and post-closure care requirements. While we would still be supportive of those additional changes, developing a funding source for local boards of health to carry out their oversight functions of the CDD program is a high priority of the Agency. While H.B. 366, enacted in 1990, created the regulatory program for construction and demolition debris disposal in Ohio, the legislation failed to provide adequate compensation to those local health boards. This has been a significant concern to Ohio EPA for years, and we have been supportive of funding options that would help those local boards cover their costs of running the program. H.B. 432 provides a sound funding mechanism to local boards of health charged with local oversight, inspections and licensing of CDD facilities within their jurisdiction.

While adequate funding has always been a concern, the level of concern has increased in recent months. As you may know, Ohio is seeing increased amounts of CDD coming across our borders not just from our neighboring states, but from east coast states such as New York and Massachusetts. We have known that large quantities of out-of-state solid waste are disposed of in our tightly regulated solid waste landfills, but this more recent trend of co-mingled and unrecognizable wastes being taken to our less regulated CDD facilities is a significant concern to the agency.

The issue of out-of-state waste coming into Ohio is really a separate issue that we, as a state, can do little to control directly. The U.S. Supreme Court has ruled that the Commerce Clause of the U.S. Constitution prohibits states from discriminating between out-of-state and in-state waste. I have testified a number of times before Congress on federal legislation to help the states acquire the tools necessary to control imports of waste. I raise the issue at this time only to illustrate the volume of waste coming into some facilities in Ohio, and the daunting task of local boards of health to provide the oversight to make sure that what is being disposed of in these facilities is

really CDD. A problem we are seeing is that the waste coming into Ohio is not recognizable as CDD. We are seeing materials that have been repeatedly run over by tracked vehicles for the sole purpose of reducing the volume to maximize the tonnage that can be placed in a railcar. While much of this material may be CDD, any inspector or facility operator in Ohio would have a difficult time discerning what it was. While Ohio may not establish standards that have a discriminating effect on commerce, Ohio can exercise even-handed and lawful protections to ensure that only Ohio defined CDD is accepted at Ohio CDD sites.

CDD facilities are not designed to take potentially harmful materials that would be safe to dispose in a municipal solid waste (MSW) facility. MSW facilities are designed with more stringent controls such as siting restrictions, engineering controls, and leachate collection. While there are many CDD facilities in Ohio that primarily take waste from local Ohio demolition and construction contractors, Ohio EPA has received applications, and is aware of applications received by local health boards, for facilities designed and established for the sole purpose of taking high volumes of waste from out of state. I have some pictures I would like to share with you of some of these larger operations and the volume, by the truckload or railcar in some cases, of waste coming in. It is the local health board's role to oversee and inspect these operations to insure that they are only taking CDD materials. Some health boards do not have adequate funding for them to inspect once a month let alone weekly or daily.

Ohio EPA is hearing increasing levels of frustration by local health boards who just cannot keep up with the requirements of the program and are wanting to relinquish those responsibilities to Ohio EPA. Ohio EPA currently has oversight of the CDD program as well as solid waste in some counties, and we are hearing from more and more that they want out. The legislative intent of H.B. 366 was for the CDD program to be locally driven and Ohio EPA would like to see that remain the practice. Increasing oversight costs and inadequate funding are the primary drivers of local health departments wanting to make the change. The funding proposal before you in H.B. 432 will help the health departments do their job as intended and retain local oversight.

I would like to note some of the differences between the regulations for solid waste facilities versus CDD facilities. Two years before the CDD statute was adopted, H.B. 592 took effect establishing a regulatory program for solid waste disposal. The bill addressed issues from siting criteria and design construction to background checks for operators /owners and disposal fees to help administer the solid waste program for Ohio EPA, local health departments and solid waste management districts. In contrast to H.B. 592's expansive program for solid waste disposal, H.B. 366 provided only two statutory siting criteria for facilities designed to take CDD. The operations cannot be placed over a federally designated sole source aquifer or within the boundaries of a 100-year flood plain. The statute did not provide authority for the agency to develop rules pertaining to location, background checks, or post-closure care. Therefore, Ohio EPA and the local health departments are currently unable to require those things when granting a license.

In addition to addressing the funding problem of the local boards of health, H.B. 432 also responds to a concern noted by Representative Webster in his sponsor testimony pertaining to solid waste violations received by the CDD facility operators. Substitute H.B. 432 responds to that concern by clarifying when a violation will be issued. I could not support earlier proposals

that would have allowed a “de minimus” amount of solid waste to be disposed of in a CDD facility by including it in the definition of CDD. Municipal solid waste, under federal law, is required to be disposed of in a “Subtitle D” facility which is the state of the art, best available technology landfill established under H.B. 592. CDD facility operators are prohibited by state and federal statute from disposing of solid waste at their facilities and are required to either refuse to take the co-mingled waste or remove the solid waste at the facility’s unloading zone. However, I do support the language in Substitute H.B. 432 that will statutorily allow for a certain amount of solid waste to be removed from the working face of these facilities before a violation is triggered.

I want to express my appreciation to Representative Webster for agreeing to remove language in his revised definition of CDD that had raised much concern on our part. As I noted earlier, in the last two years or so, inspectors have been seeing increasing amounts of unrecognizable material coming into our state for disposal at CDD facilities. Prior to coming into Ohio, the demolition material, generated on the east coast, has been hauled to a transfer station, also on the east coast, where it is crushed, or otherwise processed to the point that it is left unrecognizable. We asked that Rep. Webster delete the words “and through transport” from his revised definition of CDD that had read “dust and particles generated from demolition and through transport.” Our legal concern was that, while demolition will generate dust, including dust generated “through transport” could include the trip to the transfer station where it is systematically rendered unrecognizable dust for the purpose of maximizing their load. Ohio EPA’s regulations preclude the shredding, pulverizing or otherwise rendering the debris unidentifiable. We did not want to see a change in statute threaten that provision.

On the topic of crushed CDD, I would note that we continue to see instances of significant hydrogen sulfide odor problems linked to finely crushed CDD. Certainly, the Warren Recycling CDD facility in Trumbull County has become infamous for serious levels of hydrogen sulfide. More recently, we are noticing that same distinctive odor at solid waste landfills that have taken significant volumes of crushed CDD.

Ohio EPA appreciates Representative Webster’s introduction of this legislation and your attention to a very important issue for Ohio’s CDD program. I would be happy to respond to any questions you may have.