



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

MassDEP – Bureau of Air & Waste C&D Minimum Performance Standard Q&A GUIDANCE DOCUMENT Updated: October 2021

Question 1. What are the options for facilities that fail to meet the C&D Minimum Performance Standard (MPS)?

Response: The C&D MPS serves to clarify how C&D Handling Facilities will comply with the existing Waste Ban Regulations by establishing two measurable performance criteria: 1. Achieve a Process Separation Rate (PSR) minimum threshold of 15%; and 2. Demonstrate that all waste ban materials are separated to the greatest extent possible. For C&D Handling Facilities that fail to meet the MPS, they have three options:

- 1. Ideally, improve operational performance to comply with the MPS (e.g. This could include adjusting the volumes and categories of materials accepted so that they can be managed properly under the operational limitations of the facility, or adding additional equipment and staff to improve separation capabilities);*
- 2. If arranging disposal of C&D residuals (e.g. rail haul TS), only accept processed C&D waste residuals from MPS-compliant facilities*
- 3. Transfer all unprocessed and partially processed C&D materials to an MPS-compliant facility for further processing after first separating any clean gypsum wallboard and any zero-tolerance waste ban items.*

Question 2. When does enforcement of the C&D MPS start?

Response: Failure to comply with the C&D MPS constitutes a failure to comply with the Waste Ban Regulations and the Facility's Waste Ban Compliance Plan requirements. For facilities that fail to meet the C&D MPS, and also do not meet any of the options described above in Question No. 1, progressive enforcement of the C&D MPS can occur any time after the MPS effective date based on a MassDEP facility inspection. Beginning around September 2021 MassDEP may start conducting inspections of specific facilities

that are MPS non-compliant and have not received approval from the regional SWM Section Chief for a plan to achieve MPS compliance by year-end 2021.

Question 3. How and when will the regulated community know the MPS status of C&D Handling Facilities?

Response: By June of each year, MassDEP will publish a state-wide facility status report indicating the status of each facility with respect to its MPS compliance. MassDEP's status report will be based on annual report data from the previous calendar year. (In 2021, since it was the first time that MPS compliance was being enforced, and in light of the complications of the ongoing pandemic, MassDEP issued facility specific Preliminary MPS status report letters in June based on CY2020 annual report data. For facilities that were not MPS-compliant, they were granted the opportunity to submit a plan to achieve MPS compliance by year-end.)

MassDEP strongly encourages facilities not to wait for the published data, but to keep a running tab of the facility PSR so that there are no surprises.

For facilities wishing to demonstrate return-to-compliance with the MPS, they will need to request approval from the regional SWM Section Chief for a site-specific MPS compliance plan with monthly performance monitoring data for a specified period of time.

Question 4. When does a C&D Handling Facility need to update its Waste Ban Compliance Plan to reflect the C&D MPS?

Response: All C&D Handling Facilities will be required to submit revised Waste Ban Compliance Plans consistent with C&D MPS Performance Criteria:

- 90-days prior to the effective date of the expected Solid Waste Management (310 CMR 19.017) regulatory amendments that will add new Waste Ban Materials (mattresses, textiles and a lower threshold for commercial organic food waste) ,*
- or*
- At the time of the next ATO permit renewal/modification, whichever comes first.*

(MassDEP's current schedule calls for promulgating waste ban regulatory amendments in fall 2021, with an effective date of Fall 2022.)

Question 5. How will C&D MPS be measured at "paired facilities"; e.g. a C&D Processor that works in close coordination with a rail-haul C&D TS? Especially as concerns "low-value" C&D loads, or the MSW "trash" portion of a C&D load?

Response: One of the fundamental tenets of the C&D MPS is that all C&D material needs to pass through an MPS-compliant facility for processing. Each permitted C&D Handling Facility will be viewed as a stand-alone entity. Each facility will have to demonstrate

compliance with the C&D MPS on the basis of its individual performance. If it fails to meet the MPS, then it will need to adopt one of the options outlined above in response to Question No. 1.

Question 6. With more “low-value” C&D loads and “partially picked” C&D loads being transferred to the better-performing MPS-compliant processors, is MassDEP concerned the overall PSR will drop at the better-performing facilities?

Response: MassDEP believes that ensuring that all C&D loads pass through an MPS-compliant facility will reduce “leakage” of inadequately processed C&D loads for disposal, and improve the overall industry performance state-wide. How individual facilities choose to handle or not handle low values loads is at their discretion. Ideally, MassDEP would like to incentivize the MPS non-compliant facilities to improve their performance and come into compliance with the MPS.

Question 7. If MassDEP promotes more jobsite source separation, won’t that adversely impact the business viability of the C&D Handling facilities?

Response: MassDEP is not favoring any one alternative over another. Our goal is to reduce disposal of C&D materials and maximize recycling/reuse of recoverable materials. We favor an “all-of-the-above” approach where market conditions and jobsite specific conditions dictate how the waste reduction and reuse/recycling goals are achieved.

C&D processors may be ideally positioned to take advantage of the jobsite source separation opportunities and will receive PSR credit for source-separated materials received and sent out to recycling/re-use markets.

Jobsite separation could also focus on materials that C&D processors have difficulty managing – gypsum, ceiling tiles, carpet, etc. – to help improve process performance.

Question 8. What happens if wood markets further contract?

Response: The existing MassDEP waste ban regulation contains provisions to address temporary outages in the end market capacity. On a case-by-case basis, if a C&D Handling Facility cannot identify any market availability for a particular waste ban material (such as wood), then it can apply for a temporary waiver to dispose of a limited quantity of that waste ban material. If the market decline is more permanent, MassDEP may consider other regulatory options.

Question 9. Is MassDEP concerned that the PSR minimum threshold of 15% might be too aggressive for the business model of certain facilities?

Response: MassDEP believes that a 15% PSR minimum threshold is a readily achievable standard for C&D processors operating in Massachusetts. This is supported by empirical evidence of actual PSR achieved by the majority of existing C&D processors. Furthermore, the 2016 C&D Debris Market Study by NERC/DSM reported the incoming

material composition at C&D Handling Facilities consists of approximately 53% by weight banned materials, including some 38% that was considered to have good market potential for recycling or reuse. From a level playing field perspective we believe that every facility should either be able to meet the 15% PSR standard or transfer to another facility that does.

Question 10. Isn't it statistically inaccurate to include Bulky Waste, which often has very little C&D recyclable material content value, in the quantity of Total Inbound Material in the denominator of the PSR calculation?

Response: MassDEP set the 15% PSR minimum threshold criteria based on combined C&D waste and Bulky Waste considerations. If bulky waste were excluded, we would have set the criteria higher. We believe there actually is a considerable amount of recoverable material in bulky waste loads – materials such as cardboard, metal, appliances, electronics, wood, brush, textiles, mattresses. In addition, C&D Handling Facilities are required under the Waste Ban Regulation and their site-specific Waste Ban Compliance Plan to identify and separate any Waste Ban materials or other recoverable materials contained in any waste load (including Bulky Waste) that comes through the gate.

Question 11. How will MassDEP regulate C&D loads transferred to Out-of-State Processors?

Response: If transferring material out-of-state, the C&D Handling Facility must be able to produce documentation, upon request, that the out-of-state processor operates in conformance with the MassDEP MPS performance criteria.

Question 12. Since so much of the C&D MPS relies on self-reported annual report data, how will MassDEP ensure that some facilities aren't manipulating data to their advantage?

Response: It is worth noting that the C&D Facility Annual Report Form, which serves as one of the primary measures of MPS compliance, includes a certification statement endorsed under the signature of an authorized representative of the company that the data provided is accurate and true. Falsifying the annual report data carries the possibility of significant legal penalties. MassDEP will be strengthening the annual report data validation process through periodic site audits and checking with receiving facilities to verify the types and quantities of materials received. If MassDEP identifies any gross inaccuracies or false data, it will pursue enforcement as deemed appropriate.

Question 13. Where can C&D Processing Facilities and Transfer Stations find guidance on categorizing materials received, recycled, reused and disposed.

Response: The authoritative reference is always the definitions found in the Solid Waste Management Facility Regulations (310 CMR 19.006) which can be found at the following link: <https://www.mass.gov/regulations/310-CMR-19000-solid-waste-facility-regulations>, This section of the regulation defines such terms as:



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

- *Asphalt pavement, brick and concrete (ABC)*
- *Bulky Wastes*
- *Clean Gypsum Wallboard*
- *Clean Wood*
- *C&D Processing Facility*
- *C&D Waste*
- *C&D Waste Transfer Station*
- *Disposal*
- *Disposal Facility*
- *Metal*
- *Municipal Solid Waste*
- *Recyclable Material*
- *Recycle*
- *Tires*
- *Wood*

Another good resource is Attachment G of the Waste Ban Compliance Plan Guidance which can be found at the following link: <https://www.mass.gov/doc/attachment-g-compliance-plan-form-for-facility-operators/download>. The last two pages contain a list of definitions specific to C&D Handling Facilities. As a supplement to the defined terms in the regulation listed above, this guidance document also includes additional definitions for such terms as:

- *Categories of C&D Waste Material*
- *C&D Fines*
- *C&D Residuals*
- *Kick-sorting*
- *Waste Ban Materials*
- *Zero Tolerance Items*

Of course, it is always advisable to check the definitions included in the approved Site-specific Waste Ban Compliance Plan attached to the current ATO Permit issued to the C&D Handling Facility by the regional office of the MassDEP Solid Waste Management Division.

Additionally, it is a good practice to inspect each load that shows up at the scale-house of a C&D Handling Facility and ask the driver where the load originated and what it contains. Then when the load is tipped on the tip-floor, the tip-floor inspector should verify that the load matches what it is purported to contain. Any deviations should be noted and reconciled in accordance with the approved site-specific Waste Ban Compliance Plan.

Question 14. In light of the economic effects and societal disruptions related to the COVID-19 Pandemic declared by the World Health Organization on 3/11/2020 and the associated state-of-emergency declaration and emergency orders issued by Governor Baker starting on

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

3/10/2020, is MassDEP considering delaying implementation of the C&D Minimum Performance Standard Guidance?

Response: No, MassDEP did not delay implementation of the C&D Minimum Performance Standard that went into effect in January 2020. The C&D Minimum Performance Standard did not introduce any new requirements. It simply clarified what facilities needed to do to comply with MassDEP's existing waste disposal ban regulations, which remained in effect and were never suspended under any emergency order. ...C&D handling facilities have several options for how to comply with the guidance. See response to Question 1 above.

In 2021, since it was the first time that MPS compliance was being enforced, and in light of the complications of the ongoing pandemic, MassDEP issued facility specific Preliminary MPS status report letters in June based on CY2020 annual report data. For purposes of calculating a facility's PSR for 2020, MassDEP considered the effect of COVID-19 on facility operations by evaluating the PSR for each facility in two ways: 1. calculated the PSR based on the full year 2020 data as reported; and 2. calculated the PSR for the full year less tonnages during the most severely impacted months of the pandemic, i.e. April, May and June of 2020. MassDEP then used whichever PSR calculation was the most favorable for the facility in determining MPS status. For facilities that were not MPS-compliant, they were granted the opportunity to submit a plan to achieve MPS compliance by year-end 2021.

It is also worth noting that if necessary, MassDEP has the ability to issue temporary waivers to allow for the disposal of waste ban materials when it is not possible to divert these materials from disposal due to market conditions or other factors. If a facility needs to request a waste ban waiver at any time, they can contact John Fischer, Deputy Division Director, at MassDEP at john.fischer@mass.gov. If MassDEP does need to issue a waste ban waiver for some amount of material, that waiver will be taken into account in determining a facility's compliance with the waste disposal bans.

Question 15. When does C&D Wood separated from mixed C&D waste at one C&D Handling facility and transferred to another C&D handling facility count as "Diverted Material" in the numerator of the PSR calculation for the facility of origin?

Response: To count as a "Diverted Material", C&D Wood must be sent and received as a separated material. The wood must meet the applicable end-market specification at the receiving facility as a separated material (not mixed C&D waste). Contaminants (anything other than specification-wood in the load) shall be at de minimis levels, and in no case more than 5% by volume.

Question 16. How does MassDEP distinguish between a C&D Bulky Waste load and an MSW Bulky Waste load?

Response: Regardless of how a waste load is classified - MSW, C&D or Bulky - Waste Ban materials must be addressed in compliance with the facility specific WBCP. If the Bulky Waste shows up in an MSW load and contains any WB materials in excess of the Action Levels, it must be managed as a failed load, or the WB materials must be separated in compliance with the WBCP. If the Bulky Waste shows up in a C&D load and contains any WB materials, all WB materials must be separated to the greatest extent possible in compliance with the WBCP.

Loads that come in open top roll offs, box trucks, or dump trucks, that are not part of regular trash collection should generally be considered C&D/Bulky and managed accordingly under the facility's waste ban compliance plan. These loads are considered part of the "total inbound material accepted" in the denominator of the PSR calculation.

Question 17. How does stockpiled ABC material count toward the monthly or annual report operating data?

Response: MassDEP cautions against stockpiling of any material for extended periods of time to avoid "speculative accumulation"¹. A facility can take no credit for stockpiled ABC until it is crushed and put to some type of legitimate reuse as aggregate (for example: moved onsite to an area for retail sale, or moved offsite for reuse in construction), or transferred to a processor where it will be crushed for re-use as above.

(Note: Coated/painted ABC cannot be processed or reused without approval of a site-specific BUD or other applicable permitting.)

If you have any questions about this guidance, please do not hesitate to contact the MassDEP statewide C&D program coordinator, Michael Elliott, at 617-292-5575 or by email at michael.elliott@mass.gov.

¹ *Speculative Accumulation* means the accumulation of any materials or waste, whether in their as-received, in-process or processed condition, and storing of them for more than 90 days, except as otherwise specified in 310 CMR 16.00/19.000, after the date such materials or waste are received at the site.