



Department of Environmental Protection

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MassDEP – Bureau of Air & Waste C&D Minimum Performance Standard Q&A GUIDANCE DOCUMENT May 2020

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 or 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 partially-picked C&D waste and any other remaining waste (except for MSW) to an MPS-compliant facility for further processing.*

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 will commence ca. June 2021 based on analysis of the CY2020 annual report data. So while enforcement does not start until June 2021, it is based on CY2020 performance. Therefore, facilities need to be operating in conformance with the C&D MPS starting this year to avoid adverse outcomes.

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.

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 PSR minimum threshold, they will be allowed to submit quarterly reports.

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:

- *At the time new Waste Ban Materials are added to SWM regulation (310 CMR 19.017), or*
- *At the time of ATO permit renewal/modification, whichever comes first.*

(MassDEP's current schedule calls for promulgating revised waste ban regulations in fall 2020.)

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:

- *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 (pp. 12-13) 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 3/10/2020, is MassDEP considering delaying implementation of the C&D Minimum Performance Standard Guidance?

Response: No, MassDEP does not intend to delay implementation of the C&D Minimum Performance Standard Guidance that went into effect in February 2020. The C&D Minimum Performance Standard Guidance does not introduce any new requirements. It simply clarifies what facilities need to do to comply with MassDEP's existing waste disposal ban regulations, which are still in effect and have not been suspended under any emergency order. C&D handling facilities have several options for how to comply with

the guidance. Facilities that choose to invest in the equipment and/or labor to meet the specified 15 percent process separation rate can do so. It may also be possible to meet this process separation rate by kick-sorting, particularly at reduced volumes under current market conditions. Alternatively, a facility can either choose to accept only C&D waste residual materials for disposal from other processors that meet the standard, or simply transfer unprocessed or partially-picked C&D waste materials to other processors that meet the standard for further processing. Any of these options will be effective in meeting the MPS.

It is important to note that MassDEP's schedule for actual enforcement of the 15% process separation rate criterion of the C&D minimum performance standard starts in July 2021. As that date draws closer, MassDEP will evaluate the status of COVID-19 and related operational issues to determine whether any change in schedule is warranted.

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.

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.