

GUIDANCE DISCUSSION DRAFT
MassDEP – Bureau of Air & Waste
Proposed Q&A re: C&D Minimum Performance Standard

No.	Questions	Answers
1.	What are the options for facilities that fail to meet the PSR minimum threshold of 15%?	<p><i>Three options:</i></p> <ol style="list-style-type: none"> <i>1. Ideally, improve operational performance to achieve PSR minimum threshold;</i> <i>2. If arranging for disposal (e.g. rail haul TS), only accept Cat-2 C&D residuals from MPS-compliant facilities</i> <i>3. Transfer all remaining waste (except for MSW) for further processing to an MPS-compliant facility.</i>
2.	When does enforcement of the C&D MPS start?	<p><i>Failure to satisfy either MPS performance criterion constitutes a failure to comply with the Waste Ban Regulations and the Facility's Waste Ban Compliance Plan requirements. For facilities that are below the 15% PSR minimum threshold and do not meet any of the options in Question 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.</i></p>
3.	How and when will the regulated community know the MPS status of C&D Handling Facilities?	<p><i>By June of each year, MassDEP will publish a state-wide facility status report indicating the status of each facility with respect to the two MPS performance criterion. 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.</i></p>
4.	When does a C&D Handling Facility need to update its Waste Ban Compliance Plan to reflect the C&D MPS?	<p><i>All C&D Handling Facilities will be required to submit revised Waste Ban Compliance Plans consistent with C&D MPS Performance Criteria:</i></p>

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		<ul style="list-style-type: none"> • <i>At time new Waste Ban Materials are added to SWM regulation (310 CMR 19.017), or</i> • <i>At time of ATO permit renewal/modification, whichever comes first.</i> <p><i>(MassDEP's current schedule calls for promulgating revised waste ban regulations in fall 2020.)</i></p>
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?	<p><i>One of our fundamental tenets is that all C&D material needs to pass through an MPS-compliance 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 either performance criterion, then it will need to adopt one of the options outlined above in response to Question No. 1.</i></p>
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?	<p><i>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.</i></p>
7.	If MassDEP promotes more jobsite source separation, won't that adversely impact the business viability of the C&D Handling facilities?	<p><i>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.</i></p> <p><i>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.</i></p>

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		<i>Job site separation could also focus on materials that C&D processors have difficulty managing – gypsum, ceiling tiles, carpet, etc. – to help improve process performance.</i>
8.	What happens if wood markets further contract?	<i>Existing MassDEP waste ban regulation contains provisions to address temporary outages in the end market capacity. On a case-by-case basis, a C&D Handling Facility can apply for a temporary waiver to dispose of a waste ban material. If the market decline is more permanent, MassDEP may consider other regulatory options.</i>
9.	Is MassDEP concerned that the PSR minimum threshold of 15% might be too aggressive for the business model of certain facilities?	<i>MassDEP believes that 15% PSR 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, and of that 38% 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.</i>
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?	<i>MassDEP set the 15% PSR minimum threshold standard based on combined C&D waste and Bulky Waste considerations. If bulky waste were excluded, we would have set the standard higher. We believe there actually is a considerable amount of recoverable material in bulky waste loads – materials such as cardboard, metal, wood, brush, mattresses. Whether kick sorting or on a picking line we believe a decent amount of material could be pulled out.</i>
11.	How will MassDEP regulate C&D loads transferred to Out-of-State Processors?	<i>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.</i>
12.	Since so much of the C&D MPS relies on self-	<i>MassDEP can never eliminate every possible</i>

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	reported annual report data, how will MassDEP ensure that some facilities aren't manipulating data to their advantage?	<i>misrepresentation in self-reported data, whether done intentionally or by accident, but MassDEP believes that most regulated parties are trying to provide accurate and truthful data. That said, MassDEP will be strengthening the data validation process through periodic site audits and checking with receiving facilities to verify the types and quantities of materials received.</i>
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