

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KALAELOA
Honolulu, Hawaii, 96813

June 5, 2019

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Update Regarding the Issue Involving the Stockpiled Material in the Kalaeloa Heritage Park.

SUMMARY:

Since September 2013, approximately 2,259 cubic yards of material has been stockpiled on the Kalaeloa Heritage Park site. In September 2013, the City Department of Planning and Permitting (DPP) issued the Hawaii Community Development Authority (HCDA), as landowner, a Notice of Violation for stockpiling without a permit, for which in May 2015, the HCDA obtained a stockpiling permit to stop further fines from accumulating. HCDA received another one-year extension on the stockpiling permit in May 2019.

HCDA subsequently contracted for the haul away and disposal of the stockpile, however asbestos pipe was discovered during that process. As required by state Department of Health (DOH) regulations, HCDA stopped work, returned material that had been hauled away to the site, and contracted for characterization of the stockpile. The methodology used in the testing process had to be approved by DOH.

The HCDA staff presented a rough order of magnitude for the cost of remediating the stockpile at the May 2019 board meeting. Members of the authority informally asked staff to explore lower cost options including remediating the stockpile in place.

BACKGROUND:

Since the discovery of the asbestos pipe, there are certain new obligations incurred by HCDA, by both federal and state rules and laws, including tracking, and documenting of the material that is to be disposed, whether on site or off site.

40 Code of Federal Regulations (CFR) 262.40 requires in relevant part, "(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy

must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”

In addition, any remediation plan would need to be approved by the DOH.

According to the DOH’s “Guidance for Construction & Demolition (C&D) Waste Disposal,” (Exhibit A) the department advises, “contractors to work with experienced environmental companies and labs for guidance and implementation.”

HCDA’s current engineering staff does not have the experience to qualify in this area, and recommends that a consultant be engaged as required by the DOH.

Staff has not fully investigated potential Brownfields designation; however, Brownfields funds generally disfavor a self-created hardship.

ANALYSIS:


Based on the requirements of the DOH, in order for HCDA to move forward on the remediation of the stockpile a consultant must be engaged to design a plan to remediate the stockpile on-site.

Thus, HCDA staff is working through the procurement process to find the most cost-effective consultant. This process is governed by procurement laws and rules as adopted by the state.

Staff will consider a scope of work that includes the recordkeeping and monitoring functions as required by the federal government, though such a scope may or may not be included in the consultant’s engagement.

Staff will continue to pursue Brownfields funding, however grants are usually awarded in the first half of the calendar year, and there is no guarantee that HCDA would qualify as the landowner when the stockpile first was reported.

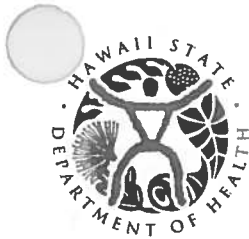
Respectfully submitted,



Garrett Kamemoto
Interim Kakaako Planning and
Development Director

Attachments

Exhibit A – DOH Guidance



Guidance for

Construction & Demolition (C&D) Waste Disposal

State of Hawaii, Department of Health



2013

Background Information

This C&D waste disposal guidance supersedes the previous letter dated May 24, 1996. Although the waste composition varies from project to project, C&D wastes generally consist of concrete, wood, metal, glass, plastic, asphalt, tile, drywall, roofing and insulation material. These wastes are often bulked as one waste stream when sent for disposal. With advance planning, most of these wastes can be reused on the job site and/or salvaged for recycling opportunities.

Another type of C&D waste stream sometimes generated from a construction project is excavated soil. If the C&D waste is designated for disposal to a landfill or to any other off-site location, the contractor must make a hazardous waste determination in accordance with the Hawaii Administrative Rules (HAR) §11-262-11. Making a hazardous waste determination is a step-by-step process, and should start with determining whether the waste is excluded, then if listed, and finally if characteristic. Determining whether a waste is hazardous under RCRA (Resource Conservation and Recovery Act) can be done through one of the following methods:

Testing

Test the waste according to the methods set forth in subpart C of HAR 11-261.

Knowledge

Collecting a representative sample of the bulk C&D waste or excavated soil waste is crucial to characterizing environmental samples. If a sample is not representative, there are legal and environmental consequences. Each generator would be responsible for its own sampling plan. We advise contractors to work with experienced environmental companies and labs for guidance and implementation.

Note - Construction wastes with lead-based paint may be exempt from HAR §11-262-11. Provided wastes:

were from a residential structure; and from renovation, remodeling or abatement work; and contain no other listed constituents – refer to HAR §§11-261-20 and 11-261-30.

- ◆ In some cases, a generator can use his/her knowledge of a waste to make a determination as to whether the waste is a characteristic hazardous waste. In order to use knowledge to characterize the waste, the generator must consider the raw materials that constitute the waste or the **process(es)** that result in the waste being generated.

In considering the materials that make up the waste, the generator needs to examine the specific chemical and physical characteristics of the waste material. Information such as Material Safety Data Sheets (MSDSs) can be a helpful resource. However, while MSDSs can provide useful information regarding ignitability (flash point), corrosivity (pH), and reactivity, they tend to be less useful when it comes to identifying the toxic characteristics of waste.

MSDSs are not required to list all of the ingredients in a certain material, but only those that make up greater than 1% of the total constituents of that material. This means that a waste may contain a toxic constituent exceeding the regulatory limit (making it a hazardous waste), but this constituent may not necessarily be included on the MSDS.

Generators should also be aware that MSDSs are representative of raw materials; the MSDS may not accurately represent a waste material that is generated by the use of a particular raw material.

Guidance for

Construction & Demolition (C&D) Waste Disposal

State of Hawaii, Department of Health

2013



Knowledge

In considering the **process** that generates the waste, the generator needs to ask himself/herself: How does the operation/process affect the waste? For example, does the process make the waste ... more concentrated? ... more dilute?... contain free liquids?... become contaminated? ...etc.

One critical factor in using knowledge to characterize waste is that the knowledge must be applied appropriately. In other words, the knowledge that is applied must be valid and verifiable. A generator should not just assume that a waste is non-hazardous without providing some type of supporting, verifiable information to justify that conclusion. Using knowledge of the waste to conduct a hazardous waste determination involves a well thought out process in which the waste materials or the process generating the waste are considered. It should be noted that, more often than not, it is easier to use knowledge of the waste to characterize it as hazardous than it is to characterize it as non-hazardous.

- ◆ In many cases knowledge alone is inadequate to properly characterize the waste, specifically in those cases where the waste is cross-contaminated or inherently non-homogeneous. If you are generating a waste and your knowledge of the waste is insufficient to completely and accurately characterize it, you will need to get the waste tested by a lab that is certified to perform the tests that need to be conducted on the waste. Generators that use knowledge of process in waste determinations must be able to demonstrate the basis for their claim.
- ◆ An initial characterization must be done on each waste stream and a re-characterization must be performed at least every twelve months, or whenever there is a process change. It is recommended that MSDSs and other "knowledge of process" information be specifically reviewed during re-characterizations to ensure that neither the raw materials nor the process associated with the waste have changed.
- ◆ According to [40 CFR 262.40](#), a generator must keep records of any test results, waste analysis, or other determinations made in accordance with 40 CFR 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. Generators that use knowledge of process in waste determinations must be able to demonstrate the basis for this claim.