

## Vance Environmental Ltd.

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Chairman Kick, Vice Chair Lear, Ranking Member Rogers, and members of the House Energy and Natural Resources Committee:

My name is Kitt Channing Cooper Jr., and I am the owner operator of Vance Environmental Ltd., a construction and demolition debris (“C&DD”) landfill located in Dayton. My employees and I are hard-working Ohioans. My customers are Ohio homeowners and contractors working in Ohio’s construction and demolition industries. Vance Environmental Ltd. serves Ohioans working on projects in Ohio.

Senator Reineke and his constituents have introduced SB 119 in an attempt to remedy a purely local issue and have failed to consider the consequences borne by Ohioans across the state if SB 119 is enacted. I urge this Committee to consider those consequences through a critical examination of SB 119 – evaluating what SB 119 purports to do, whether such legislative action is necessary and appropriate for *all* of Ohio and, quite frankly, whether it even adequately addresses the local issue that it seeks to resolve.

In his October 4<sup>th</sup> sponsor testimony, Senator Reineke described SB 119 as necessary to thwart out-of-state waste from being disposed of in Ohio, and to ensure adequate funding is available for local oversight of disposal facilities. Senator Reineke also notes that SB 119 does not create any fee “increases”, but then touts the new (*additional*) “permissive and variable fees” for the disposal of C&DD which SB 119 directs be passed on to boards of health and allows boards of health to use those funds to “mitigate impacts to health, safety, and welfare.” To be clear, the impetus behind SB 119 is: (A) concerns regarding the adequacy of oversight of Sunny Farms Landfill, a Municipal Solid Waste Landfill in Seneca County that accepts a disproportionate amount of waste from out-of-state, the majority of which is C&DD, and (B) a complicated local issue involving the allocation of funds – which are generated by the collection of fees for the disposal of solid waste and C&DD at Sunny Farms Landfill – between 3 county boards of health and one joint solid waste management district.

The testimony offered by Senator Reineke and other proponents of SB 119 suggests that the amount of funding received from disposal fees collected by Sunny Farms Landfill is insufficient to provide adequate local oversight of Sunny Farms Landfill, specifically; and some additional fees on C&DD disposal are necessary, as a general matter, to thwart the disposal of out-of-state waste in Ohio and to ensure adequate oversight of solid waste and C&DD facilities across Ohio. A close examination of the facts reveals that neither is true, and that SB 119 misses the mark and would have significant economic consequences on the C&DD industry, its customers, and Ohioans across the state.

### **Additional funding for increased oversight of Sunny Farms Landfill is unnecessary.**

Bill Frankhart, of the Seneca County Board of Commissioners, provided testimony on the amount of waste disposed of at Sunny Farms Landfill, the fees collected in connection with the amount of waste disposed of at Sunny Farms, and how those fees were allocated among the State, the Ottawa-Sandusky-Seneca Joint Solid Waste Management District, and the Seneca County General Health District. Mr. Frankhart highlighted the discrepancy in terms of the amount of funding allocated to the State (\$1,785,000) vs. the

County Health District (\$800,000) and argued that increased local oversight at Sunny Farms Landfill – i.e. additional funding allocated to the Health District – is necessary due to the facility’s history of non-compliance. However, the information that Ohio EPA submitted to the Senate Agricultural and Natural Resources Committee dispels this notion. Notably, the information provided by Ohio EPA shows that, on average, the Seneca County Health District inspects Sunny Farms Landfill twice a month – i.e. the approximately \$800,000 of disposal fee-generated revenue allocated to the Seneca County General Health District per year is enough for the Health District to inspect Sunny Farms 24 times on an annual basis. The minimum inspection frequency required by Ohio law is 4 per year.

The documented history of non-compliance at Sunny Farm Landfill, including Ohio EPA administrative orders in 2008, 2013 and 2019, and a court order in 2019, speaks for itself. There was certainly a period of time when significant state and local expenditures were necessarily being made for regulatory oversight at Sunny Farms. That time, however, appears to have passed. The information provided by Ohio EPA indicates that Sunny Farms Landfill is currently in compliance with all orders and applicable permits, and that odor complaints have significantly decreased since 2018-2019 when odors were at their worst. If Sunny Farms Landfill is currently operating in compliance with applicable requirements, and the Seneca County Health District is already receiving about \$800,000/year in fees from the facility – an amount sufficient enough for the Health District to inspect the facility at a frequency six times greater than what is required by law – what does the County need *more* money for?

Mr. Frankhart’s plea for additional funding for increased local oversight lacks support.

**The current fee structure for the disposal of C&DD is appropriate and adequate to fund regulatory oversight.**

While the current fee structure for C&DD disposal has been in place since 2005, there is no evidence that the current fee structure is inadequate. The fact that Ohio EPA has not testified in support of SB 119 says a lot. Nor has Ohio EPA independently sought to increase fees. Notably, the most recent State operating budget – the most likely mechanism through which Ohio EPA would pursue a new solid waste/C&DD fee structure – was passed in June without any change to the current disposal fee structure.

**The new permissive and variable fee on C&DD disposal under SB 119 is misguided and will not achieve its intended purpose of reducing the flow of out-of-state waste into Ohio.**

One key component of SB 119 is the permissive and variable fee that a solid waste management district may levy on the disposal of C&DD at C&DD facilities and solid waste landfills. Specifically, SB 119 authorizes a solid waste management district to levy a fee between \$1-\$2/ton for the disposal of C&DD generated in the district or out of state; and a fee between \$2-\$4/ton for the disposal of C&DD generated outside of the district but in state. Considering the majority of out-of-state waste being disposed of at the Sunny Farms Landfill is C&DD, and because the Interstate Commerce Clause prohibits the disparate treatment of out-of-state waste, this new permissive and variable fee on the disposal of C&DD is intended to thwart the continued influx of out-of-state waste disposal in Ohio. However, the proposed new fee on the disposal of C&DD is problematic on several fronts.

As an initial matter, solid waste management districts have always been excluded from the regulation of C&DD, including levying/collecting fees on C&DD disposal, because “C&DD” is expressly excluded from the definition of “solid waste” under R.C. 3734.01. With that, solid waste management districts have very little experience and knowledge of C&DD industry practices and the C&DD waste stream. Aside from being

directly contrary to the long-standing fundamental principle of regulating C&DD separately from solid waste in Ohio, the proposed permissive and variable fee on the disposal of C&DD will not result in any cognizable reduction of the flow of out-of-state waste into Ohio. The new fee is simply too small to “move the needle” on the existing cost advantage of sending waste to Ohio for disposal as opposed to disposing of it where it is generated.

This additional fee on C&DD disposal – which would be imposed *statewide* to remedy a particular *local* issue – is significant and likely to result in negative outcomes for **Ohio’s domestic C&DD operators and their Ohio-based customers**. The direct and immediate impact of the proposed new fee on C&DD disposal under SB 119 will be borne by C&DD landfill operators like Vance, who will have to increase their disposal rates in order stay in business. The indirect impact of the additional fee will be felt by all Ohioans throughout Ohio. Senate Bill 119 will cost an Ohio family who repairs a roof or remodels their home hundreds of dollars. It will cost homebuilders and site developers thousands. It will cost Ohio’s Cities, who are revitalizing their struggling neighborhoods by demolishing nuisance structures, MILLIONS.

The proposed additional fee on C&DD disposal under SB 119 is an anti-business tax on municipalities, C&DD operators and residents across Ohio. These additional costs will cause some homeowners to put off making repairs. Site developers will rethink demolition projects, and Ohio Cities will have to delay or cancel some revitalization efforts. Certainly, this is not what Senator Reineke had in mind for SB 119.

I respectfully request that the House Energy and Natural Resources Committee consider alternatives to funding the local oversight of and reducing the disposal of out-of-state waste at one particular solid waste landfill in Seneca County that does not have significant implications on the entire C&DD industry in Ohio. One such alternative solution is impose the new C&DD disposal fee only on C&DD disposed of in a solid waste landfill. This would exempt the majority of Ohioans who dispose of their C&DD in dedicated C&DD landfills.

Thank you for your consideration.

Sincerely,

*/s/ Kitt Channing Cooper Jr.*

Kitt Channing Cooper Jr.