

**Department of State**

**Division of Publications**

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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Environment and Conservation  |
| <b>Division:</b>                | Solid Waste Management  |
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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

| Chapter Number | Chapter Title                       |
|----------------|-------------------------------------|
| 0400-11-01     | Solid Waste Processing and Disposal |
| Rule Number    | Rule Title                          |
| 0400-11-01-.09 | Waste Reduction and Planning        |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0400-11-01  
Solid Waste Processing and Disposal

Amendments

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (1) in its entirety and substituting instead the following:

(1) General Purpose

The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at the municipal solid waste disposal facilities and incinerators, as measured on a per capita basis within Tennessee by weight. The goal shall also apply to each municipal solid waste region, but does not apply to individual disposal facilities or incinerators. Individual disposal facilities or incinerators are used only as measurement locations for assessing the achievement of a region's waste reduction efforts. As an alternative to calculating the waste reduction goal on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the Department and approved by the Underground Storage Tanks and Solid Waste Disposal Control Board.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (4) in its entirety and substituting instead the following:

(4) Qualitative Assessment and Noncompliance

(a) A qualitative assessment, as defined below, will be applied to municipal solid waste regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) based on data from the region's Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the municipal solid waste region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions similar in population and socio-economic level that meet the goal and whether the failure is due to factors beyond the control of the region.

(b) The Department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the 25% waste reduction and diversion goal.

(c) Noncompliance Procedures

1. The review of solid waste regions identified to be qualitatively assessed by the Department shall be accomplished through the following methodology:

(i) The Department shall use the submission of the municipal solid waste region's Annual Progress Report for the most current reporting period to determine whether 25% of the solid waste generated in that year was either diverted from Class I facilities or recycled. If it was, the region meets the goal and the Department does not proceed to the next step. The region is considered qualitatively equivalent.

(ii) Regions that are not found qualitatively equivalent in the first step shall continue the qualitative assessment and be compared to two other regions that are most equivalent in population and socio-economic level.

(iii) The Department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the

25% waste reduction and diversion goal by evaluating at least the following current solid waste program activities, giving the first three items the greatest weight:

- (I) waste reduction and recycling programs and systems;
  - (II) waste diversion programs and systems;
  - (III) the quality of the region's municipal solid waste plan;
  - (IV) solid waste education programs and systems;
  - (V) waste collection and handling systems;
  - (VI) solid waste program budgets and staffing; and
  - (VII) a cost benefit analysis of the waste reduction and recycling progress as well as the solid waste generation in the region.
- (iv) As part of the evaluation of subpart (iii) of this part, the Department shall visit the region and meet with the appropriate officials from each local government to research and investigate programs and activities listed in subpart (iii) of this part.
- (v) The Department shall prepare a comprehensive report for the region providing an analysis of program activities and explaining findings, recommendations, and any required activities. The Department shall meet with each local government in the region to review the comprehensive report and provide the region and its member local governments at least thirty (30) days to prepare a written response that shall be included in the final report prior to finalizing and publishing.
- (vi) Findings. The Department shall clearly identify to the region or the local governments assessed their status upon completion of the qualitative assessment. This status shall be one of the following:
- (I) Qualitatively Equivalent – The local government or region is qualitatively equivalent to the comparison regions. This means that the systems and activities are equal to comparison counties, but the region failed to meet the goal through no fault of their own.
  - (II) Marginally Qualitatively Equivalent – The local government or region is marginally qualitatively equivalent to the comparison regions. This means that some systems and activities are equal to comparison regions, but some are not. Further, the solid waste plan is not being followed and may be contributing to the goal not fully being attained. The Department for purposes of goal achievement shall deem the region or local governments as equivalent but may require remedial activities or need to follow-up to assist the region in strengthening efforts to attain the goal.
  - (III) Qualitatively Not Equivalent – The local government or region is not qualitatively equivalent to one or more of the comparison regions. This means that many systems or activities may be equal to the comparison counties, but more than half are not and the region or local government did not meet the goal. The Department may direct or prescribe efforts to assist the region in achieving their goal.
  - (IV) Qualitatively Not Equivalent (No-Fault) – The local government or region is not qualitatively equivalent to one or more of the comparison regions, but has mitigating circumstances like topography or geography that prevents qualitative equivalency.

2. If a region is determined qualitatively not equivalent to comparison regions, the Department shall work with the region and its member local governments to establish a timetable to achieve the goal and achieve compliance with the Act. This may include technical assistance (system design, improvements, and needs assessments), grant offerings, workshops, and other activities designed to assist the region in achieving the goal.
  3. If a region that has been found not to be qualitatively equivalent complies with the required recommendations for two years, it shall be deemed to have returned to compliance and not be subject to penalties.
- (d) Except as provided in subparagraph (a) of this paragraph, failure to comply with the applicable requirements of this rule will subject any entity to the penalties provided by T.C.A. §§ 68-211-816 and 68-211-861.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by adding new a paragraph (5) to read as follows:

(5) Reporting

- (a) Class I landfills shall report to the Department, on forms provided by the Department, the county of origin and tonnage of municipal solid waste on a quarterly basis within thirty (30) days after the end of the quarter.
- (b) Class III and Class IV landfills shall report to the Department, on forms provided by the Department, the county of origin and tonnage of material data collected and disposed on an annual basis by January 31<sup>st</sup> for the previous calendar year. Volume data shall be converted from cubic yards to tons at a conversion factor of 4 cubic yards per ton.
- (c) Recovered Materials Processing Facilities (RMPF) that manage over 100 tons per year of reclaimed, recovered or recycled materials or are publically owned shall report to the Department, on forms provided by the Department, the county of origin and tonnage by commodity type processed by March 1 of each calendar year. Material Processing Facilities may optionally report this information on a quarterly basis on forms provided by the Department.

For the purposes of this paragraph, RMPF shall not include end processors of materials or secondary/intermediate collectors of recycled materials. Only RMPFs that initially receive recycled materials directly from the public (including commercial collections, contracted collections, etc.) and process and market these materials to secondary, intermediate or end users are required to report under this paragraph.

- (d) Material data collected from private sector recovered materials processing facilities shall be considered proprietary business information if requested by the private material recovery facility, and shall be protected as such and not be disclosed in a non-aggregated format. Data ownership information shall not be disclosed in this circumstance unless authorized by the data originator to do so.
- (e) All municipal solid waste planning regions shall submit by March 31<sup>st</sup> in the calendar year immediately following the reporting year their annual progress report by county. The region may request in writing prior to the due date an additional thirty (30) days to submit all required information. Additional time may be granted by the Commissioner for good cause shown.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member              | Aye | No | Abstain | Absent | Signature (if required) |
|---------------------------|-----|----|---------|--------|-------------------------|
| Marty Calloway            | X   |    |         |        |                         |
| Stacy Cothran             | X   |    |         |        |                         |
| Kenneth L. Donaldson      |     |    |         | X      |                         |
| Dr. George Hyfantis, Jr.  | X   |    |         |        |                         |
| Bhag Kanwar               | X   |    |         |        |                         |
| Jared L. Lynn             | X   |    |         |        |                         |
| David Martin              |     |    |         | X      |                         |
| Beverly Philpot           | X   |    |         |        |                         |
| DeAnne Redman             | X   |    |         |        |                         |
| Mayor Franklin Smith, III |     |    |         | X      |                         |
| Mark Williams             | X   |    |         |        |                         |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 08/20/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/07/13

Rulemaking Hearing(s) Conducted on: (add more dates). 01/29/14

Date: August 20, 2014

Signature: *Marty Calloway*

Name of Officer: Marty Calloway

Title of Officer: Chairman



Subscribed and sworn to before me on: August 20, 2014

Notary Public Signature: *Brenda Carr*

My commission expires on: July 3, 2017

MY COMMISSION EXPIRES:  
July 3, 2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Herbert H. Slatery, III*  
Herbert H. Slatery, III  
Attorney General and Reporter  
January 28, 2015  
Date

Department of State Use Only

Filed with the Department of State on: 2/26/15

Effective on: 5/27/15

Tre Hargett

Tre Hargett  
Secretary of State

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## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

**Comment:** I'm not opposed to the goal. We've been living with the goal for many years now. I am concerned about how vaguely the goal is written. It just says we are to reduce by 25% the amount of solid waste disposed of at the municipal solid waste disposal facilities and incinerators as measured on a per capita basis. The goal does not state what we're comparing to arrive at this 25% reduction as to whether or not we've met the goal. I'm not sure if that was an oversight or was done intentionally to allow the goal to be adjusted over time, but we are not comfortable with trying to hit a moving target. I think there is a real opportunity missed here to clearly define the goal and what basis is going to be used as comparison.

**Response:** The proposed rule amendment package does not address the goal, with the exception of a small housekeeping measure of harmonizing the date with the existing statute. The goal methodology is defined by rule, though the formulas are not specifically mentioned. Regions may make the goal with a standard per capita waste reduction method based on a 1995 base year. If circumstances such as poor economy or population changes may have impacted the region negatively, adjustments may be added to help the region meet the goal. The goal methodology was added to the rules in October 2001.

**Comment:** My concern is the definition of solid waste disposal facility. Is that a purely class I facility or does that include class III/IV facilities? If in fact that does include class III/IV facilities then we have gone away from a true diversion goal to a pure recycling goal. I'm not opposed to a recycling goal, but I feel like this 25% mark is a bit high that we're placing on the solid waste regions, as I read that. That's who this goal applies to, is the solid waste regions, and that is in essence county government, and county government only controls a small portion of the waste inside their county boundaries. The majority of the waste is controlled by the municipalities, by business and industry, and other entities, but yet, this goal only applies to us. So it seems to me that goal is fundamentally unfair to county government. It places all the responsibility on their shoulders to meet this goal when we only control a small portion of the waste.

**Response:** Tennessee has a 25% waste reduction and diversion goal. The current goal allows for Construction and Demolition material sent to Class III/IV landfills to be counted as diversion and towards their 25%. Construction and Demolition materials sent to a recycling or reclamation center are considered recycled and diverted and also count toward the goal. Regions would receive credit towards their 25% waste reduction and diversion goal for this material. Construction and Demolition materials that are beneficially used for applications such as alternate daily cover would still receive credit towards their 25% waste reduction and diversion goal because of the beneficial use designation.

Under the region's solid waste plan to meet the 25% waste reduction and diversion goal, roles and responsibilities are identified for all local governments (counties and municipalities). The region is responsible for effectuating the solid waste plan and the amendments to that plan that were approved by the region's solid waste board to achieve this goal. Each local government that uses solid waste collection has representation on the region's solid waste board and determines how their plan will be implemented. Fairness in implementation is determined by the region's solid waste board based on how the plan is written and implemented not by the goal itself.

**Comment:** In (4)(c)1(i) it says "The department shall use the submission of the municipal solid waste region's solid waste region's Annual Progress Report for the most current reporting period to determine whether twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled." Traditionally diversion to Class III/IV landfill counted toward the

twenty-five percent goal. This section implies that waste diverted from a Class I facility will continue to go toward this goal, however it has been mentioned in several meetings that diversion would not be counted if it was not used in some other form such as mulch or used as boiler fuel. As you can see a clear definition is needed. The adding of additional reporting of Class III/IV landfills being required in section (5)(b), seems to confirm this idea that diversion to Class III/IV landfill will no longer be a part of twenty-five percent goal. If these municipal solid waste facilities do not include class III/IV, why are the class III/IV included in the reporting requirements?

Response: Tennessee has a 25% waste reduction and diversion goal. The current goal allows for Construction and Demolition material sent to Class III/IV landfills to be counted as diversion and towards their 25%. Construction and Demolition materials sent to a recycling or reclamation center are considered recycled and diverted also. Regions would receive credit towards their 25% waste reduction and diversion goal for this material. Construction and Demolition materials that are beneficially used for applications such as alternate daily cover would receive credit towards their 25% waste reduction and diversion goal. By definition, any material that is directed away from a Class I landfill is counted toward the current waste reduction and diversion goal.

The Division will take up the challenge of setting a new goal after the new 2025 Plan is complete and adopted. This will be done in a separate rulemaking package.

The Class III/IV facilities of all types are included in current goal calculations. The addition of Class III/IV landfill reporting is to provide the State and local planning region's crucial information used for solid waste planning across the state and within their region. The solid waste regions have found collection of this information problematic from Class III/IV facilities in the completion of their Annual Progress Reports.

Comment: As a general comment, the words "reduction," "diversion," "recycling" all have different meanings and should not be used interchangeably, as is done repeatedly in the proposed revisions (e.g., use of the word "recycling" at Rule 0400-11-01-.09(4)(b) where the statute uses the term "reduction"). Care should be taken to ensure that the terms are used correctly and appropriately so as to minimize confusion.

Response: Division agrees with the commenter and has revised the rules accordingly.

Comment: It is not clear from the draft regulations presented how these revisions comport with the statutory goal for state waste reduction set forth in Tenn. Code Ann. § 68-211-861(a). Specifically, clarification is needed on how the proposed reporting requirements of Rule 0400-11-01-.09(5) provides meaningful information to address the goal of reducing by twenty five percent (25%) the amount of solid waste disposed of at Class I municipal solid waste disposal facilities and incinerators, which applies to the state and each municipal solid waste region.

Response: According to the Solid Waste Management Act of 1991 as found in T.C.A. §68-211-803 - Public policy.

- (a) *It is declared to be the policy of this state, in furtherance of its responsibility to protect the public health, safety and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive, integrated, statewide program for solid waste management, which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste.*
- (b) *It is further declared to be the policy of this state to educate and encourage generators and handlers of solid waste to reduce and minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, incineration or disposal through source reduction, reuse, composting, recycling and other methods.*
- (c) *It is further declared to be the policy of this state to promote markets for, and engage in the purchase of, goods made from recovered materials and goods which are recyclable.*

The proposed paragraph (5) in Rule 0400-11-01-.09 addresses specifically measurement which is used to determine the effectiveness of waste reduction strategies by local governments and the regions. A comprehensive integrated solid waste management system has many parts including composting, recycling, disposal, and other beneficial uses. Measurement assists in determining the maximum utilization of the resources contained in the solid waste and the effectiveness of the region implementing the program.

Measurement also helps the regions and the state determine strategies needed to best educate and encourage generators and handlers of solid waste to minimize to the greatest extent possible the amount of waste. The goal of measurement is to manage more effectively the materials collected. This information further determines the attainment of waste reduction action by the regions using the current "Real-Time" method of calculating the waste reduction efforts. The information requested supports local governments in collecting this information.

Further, industries seeking feedstock, siting manufacturing facilities, and services frequently contact local governments and the Division for information relative to these goals.

Comment: As proposed, revised Rule 0400-11-01-.09(5)(c) includes every recovered materials processing facility (MPF) rather than MPFs that manage and process only municipal materials. Consequently, the rule would count the same materials multiple times without relating back to the statutory goal of waste reduction by the state and regions.

The reporting requirements also appear to impose considerable burden on recovered MPFs that is neither required nor authorized by statute.

To address these problems and ensure that the goals of municipal waste reduction are properly measured, the following revisions to proposed Rule 0400-11-01-.09 are recommended:

- a. Define recovered materials processing facilities to exclude secondary recyclers and end-processors and to include only MPFs that manage and recover materials directly from the municipal government (i.e., the county), for the purposes of this rule only;
- b. Require the county (and not MPFs) to report information to the Department regarding the origin and tonnage by commodity type processed;
- c. Authorize or require the county to include a provision in its contracts with a MPF that the MPF shall provide information regarding the origin and tonnage by commodity type processed to the county;
- d. Require the MPF to provide the county with such information on an annual basis (rather than quarterly) and in advance of the regional March 31 progress report deadline; and
- e. Define origin as "county of origin."

Response:

- a. The language has been modified.
- b. The regions and counties already report in the Annual Progress Report the materials they specifically have control over. The regions have found it problematic retrieving information from Material Processing Facilities to aid them in their solid waste planning. The Division is better situated to receive and protect information and provide only this information in an aggregated only format. Language was initially placed in this rule package to protect business sensitive information to safeguard the information and address these concerns up front.
- c. The local governments have had this ability previous to this proposed amendment and it can be done. However this method does not address commercial MPF receiving material

from collectors. The requirement for reporting of Material Processing Facilities should be directed to the State not through local governments as is the Class I landfill Origin Reports for consistent statewide reporting. Provisions have been placed in the proposed rule to protect the business interests and proprietary information. Further, the Division's Data collection system can be configured to further protect these interests. The state is in the best position to collect, protect and report the information in a consistent manner without placing a funding burden on local governments.

- d. The required reporting for MPF's has been changed from quarterly to annually.
- e. The language has been added.

Comment: It appears that the Division's proposals are moving toward the promotion of recycling. The Division should work with the Board to draft a rule promoting recycling and waste reduction while considering the factors set forth at Tenn. Code Ann. § 68-211-861(g).

Response: The Division is currently in the process of drafting and adopting a new statewide solid waste plan "2025 Plan" that will identify a suggested goal(s). The Board is updated regularly during this process and will have a document review and comment opportunity when the plan is drafted. The next proposed rule package will be for a new goal. Recycling will likely play a part in this new goal. The "2025 Plan" may further recommend recycling initiatives to present to the Board for consideration.

Comment: If this rule becomes effective, are the solid waste regions and county governments going to be required to file a new plan? We all have solid waste plans in place that have been approved by the state. Those plans are amended annually, when we turn in our annual reports. I'm very concerned that if we get a new rule, or a new goal, we will then be required to file a new plan starting from scratch.

Response: Each year the Annual Progress Report updates each region's solid waste plan. The region's solid waste plan will need to conform to any new adopted statewide solid waste plan. At this time, the Division believes this can be accomplished via the Annual Progress Report. Any new plan should build upon the region's existing solid waste plan.

### **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The proposed rules have minimal effect on small business. Currently there are 79 reporting material recovery processing facilities. The 100 ton per year threshold should exclude the greater majority of any new small business that might meet the definition of Recovered Materials Processing Facility that would have to report under the proposed rule amendments.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are minimal reporting, recordkeeping, or other administrative costs required for small business from the proposed rules. Businesses already keep these records for normal business operation and the Department provides a free reporting tool that would only take about 15 minutes of time once a year.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed package primarily affects Department procedures dealing with the solid waste region and its local governments. The largest impact to small businesses over 100 tons per year would be to file the necessary report once a year. This should take less than half an hour to complete once a year.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less intrusive or less costly alternatives to achieving the purpose and objectives of this proposed rule.

- (5) A comparison of the proposed rule with any federal or state counterparts.

### **EPA-Nationally**

The U.S. Environmental Protection Agency's Resource Conservation Challenge (RCC) has developed the 35 Percent Recycling of Municipal Solid Waste Action Plan. This is a national action plan that lays out a framework or road map for increasing the rate of municipal solid waste recycling and helping the country meet a national goal of 35 percent.

### **Alabama**

Alabama requires recovered material processing facilities/material recovery facilities to register and report to the Alabama Department of Environmental Management. Other organizations required to report are municipalities, counties, and end-users.

### **Arkansas**

Arkansas requires counties, authorities/MSW regions, and material recovery facilities to report.

### **Florida**

Florida requires municipalities, counties, and material recovery facilities to report.

### **Georgia**

Georgia has no reporting requirements at this time for any organization.

**Kentucky**

Kentucky requires material recovery facilities to report.

**Mississippi**

Mississippi has no reporting requirements.

**North Carolina**

North Carolina requires municipal, county, authorities/Municipal Solid Waste regions, and sectors to report. Materials recovery facility reporting is voluntary at this time.

**South Carolina**

South Carolina requires counties to report. Municipalities, material recovery facilities, end-users all have voluntary reporting.

**Virginia**

Virginia requires municipalities, counties, authorities/MSW regions and sectors to report.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Small businesses collecting and processing less than 100 tons per year have no specific duties or requirements under the proposed rule. However, they are expected to assist the State in meeting the statewide waste reduction goal by working with their local governments and the municipal solid waste planning regions as needed. Small businesses with over 100 tons per year material processed would be required to report once per year tonnages of materials to assist local governments in their solid waste planning efforts in accordance with the Solid Waste Management Act of 1991.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that there will be a positive impact on local governments through:

- Time savings on compiling annual progress report information,
- Clarity and improved understanding of qualitative assessment process
- The ability to have extensions on Annual Progress Reports if needed.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed amendments eliminate conflicts and confusion between statutory language and the existing rule and will help the regulated community to understand waste reduction. The rule change brings clarity on how the Department implements qualitative assessments. The changes also clarifies reporting responsibilities that are important to solid waste planning, data requests relative to economic development, provides a needed proprietary information protection for industry, and allows for extensions for local governments for submitting their Annual Progress Report if circumstances warrant. Solid waste planning is essential for local governments to have needed infrastructure to attract industry, meet their waste reduction goals, and protect the health and welfare of their citizens.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These amendments are being promulgated pursuant to T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule amendments lay out in greater detail how solid waste regions would be qualitatively assessed. Local solid waste regions and their respective local governments will be affected by this rulemaking. Material Recovery Processing Facilities processing over 100 tons per year and Class III/IV landfills will be affected due to the reporting requirement. These entities did not urge or reject adoption of these amendments but asked for clarification of the proposed language.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

As the changes reflect defining of current processes and minor reporting adjustments, minimal fiscal impact is expected. No new processes will be started by this rule amendment. The reporting universe would expand slightly to include Material Recovery Processing Facilities and Class III/IV landfills, but no additional costs are expected for state or local governments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Larry Christley  
Division of Solid Waste Management  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 14<sup>th</sup> Floor  
Nashville, Tennessee 37243  
Phone: (615) 532-0744

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard  
Deputy General Counsel  
Office of General Counsel

and

Larry Christley  
Division of Solid Waste Management

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-8685  
[Jenny.Howard@tn.gov](mailto:Jenny.Howard@tn.gov)

and

Division of Solid Waste Management  
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board is not aware of any additional information requested by the committee.

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 Rule ID(s): 5882  
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 Effective Date: 5/27/15

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

|                                 |   |
|---------------------------------|---|
| <b>Agency/Board/Commission:</b> | Environment and Conservation  |
| <b>Division:</b>                | Solid Waste Management  |
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

| Chapter Number | Chapter Title                       |
|----------------|-------------------------------------|
| 0400-11-01     | Solid Waste Processing and Disposal |
| Rule Number    | Rule Title                          |
| 0400-11-01-.09 | Waste Reduction and Planning        |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0400-11-01  
Solid Waste Processing and Disposal

Amendments

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (1) in its entirety and substituting instead the following:

(1) General Purpose

~~(a) —~~The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at the municipal solid waste disposal facilities and incinerators ~~by December 31, 2003~~, as measured on a per capita basis within Tennessee by weight. The goal shall also apply to each municipal solid waste region, but does not apply to individual disposal facilities or incinerators. Individual disposal facilities or incinerators are used only as measurement locations for assessing the achievement of a region's waste reduction efforts. As an alternative to calculating the waste reduction goal on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the Department and approved by the Underground Storage Tanks and Municipal Solid Waste Advisory Committee Disposal Control Board.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (4) in its entirety and substituting instead the following:

~~(4) —~~Qualitative Assessment Methods

~~(a) —~~An assessment method shall be developed by the Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. ~~This assessment will be applied to Municipal Solid Waste Planning Regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) according to the 2003 Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the Municipal Solid Waste Planning Region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region.~~

~~(b) —~~The qualitative assessment shall be done in the following two steps:

~~1. —~~The Department shall use the waste and diversion reported by the solid waste region for the most current reporting period to determine whether in that year twenty five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. ~~If it was, the region meets the qualitative assessment and the department does not proceed to the next step.~~

~~2. —~~The Department shall evaluate the programs in those regions that do not satisfy subparagraph (2)(a) of this rule to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following solid waste program activities for the most current reporting period, giving the first two items the greatest weight:

~~(i) —~~waste reduction and recycling programs and systems;

~~(ii) —~~waste diversion programs and systems;

~~(iii) —~~solid waste education programs and systems;

~~(iv) waste collection and handling systems; and~~

~~(v) solid waste program budgets and staffing.~~

~~The methodology shall make comparisons between regions that are as similar as possible in terms of population and socio-economic level to the region that failed to meet the goal.~~

(4) Qualitative Assessment and Noncompliance

(a) A qualitative assessment, as defined below, will be applied to municipal solid waste regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) based on data from the region's Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the municipal solid waste region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions similar in population and socio-economic level that meet the goal and whether the failure is due to factors beyond the control of the region.

(b) The Department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the 25% waste reduction and diversion goal.

(c) Noncompliance Procedures

1. The review of solid waste regions identified to be qualitatively assessed by the Department shall be accomplished through the following methodology:

(i) The Department shall use the submission of the municipal solid waste region's Annual Progress Report for the most current reporting period to determine whether 25% of the solid waste generated in that year was either diverted from Class I facilities or recycled. If it was, the region meets the goal and the Department does not proceed to the next step. The region is considered qualitatively equivalent.

(ii) Regions that are not found qualitatively equivalent in the first step shall continue the qualitative assessment and be compared to two other regions that are most equivalent in population and socio-economic level.

(iii) The Department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the 25% waste reduction and diversion goal by evaluating at least the following current solid waste program activities, giving the first three items the greatest weight:

(I) waste reduction and recycling programs and systems;

(II) waste diversion programs and systems;

(III) the quality of the region's municipal solid waste plan;

(IV) solid waste education programs and systems;

(V) waste collection and handling systems;

(VI) solid waste program budgets and staffing; and

(VII) a cost benefit analysis of the waste reduction and recycling progress as well as the solid waste generation in the region.

- (iv) As part of the evaluation of subpart (iii) of this part, the Department shall visit the region and meet with the appropriate officials from each local government to research and investigate programs and activities listed in subpart (iii) of this part.
  - (v) The Department shall prepare a comprehensive report for the region providing an analysis of program activities and explaining findings, recommendations, and any required activities. The Department shall meet with each local government in the region to review the comprehensive report and provide the region and its member local governments at least thirty (30) days to prepare a written response that shall be included in the final report prior to finalizing and publishing.
  - (vi) Findings. The Department shall clearly identify to the region or the local governments assessed their status upon completion of the qualitative assessment. This status shall be one of the following:
    - (I) Qualitatively Equivalent – The local government or region is qualitatively equivalent to the comparison regions. This means that the systems and activities are equal to comparison counties, but the region failed to meet the goal through no fault of their own.
    - (II) Marginally Qualitatively Equivalent – The local government or region is marginally qualitatively equivalent to the comparison regions. This means that some systems and activities are equal to comparison regions, but some are not. Further, the solid waste plan is not being followed and may be contributing to the goal not fully being attained. The Department for purposes of goal achievement shall deem the region or local governments as equivalent but may require remedial activities or need to follow-up to assist the region in strengthening efforts to attain the goal.
    - (III) Qualitatively Not Equivalent – The local government or region is not qualitatively equivalent to one or more of the comparison regions. This means that many systems or activities may be equal to the comparison counties, but more than half are not and the region or local government did not meet the goal. The Department may direct or prescribe efforts to assist the region in achieving their goal.
    - (IV) Qualitatively Not Equivalent (No-Fault) – The local government or region is not qualitatively equivalent to one or more of the comparison regions, but has mitigating circumstances like topography or geography that prevents qualitative equivalency.
2. If a region is determined qualitatively not equivalent to comparison regions, the Department shall work with the region and its member local governments to establish a timetable to achieve the goal and achieve compliance with the Act. This may include technical assistance (system design, improvements, and needs assessments), grant offerings, workshops, and other activities designed to assist the region in achieving the goal.
3. If a region that has been found not to be qualitatively equivalent complies with the required recommendations for two years, it shall be deemed to have returned to compliance and not be subject to penalties.
- (d) Except as provided in subparagraph (a) of this paragraph, failure to comply with the applicable requirements of this rule will subject any entity to the penalties provided by T.C.A. §§ 68-211-816 and 68-211-861.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by adding new a paragraph (5) to read as follows:

(5) Reporting

- (a) Class I landfills shall report to the Department, on forms provided by the Department, the county of origin and tonnage of municipal solid waste on a quarterly basis within thirty (30) days after the end of the quarter.
- (b) Class III and Class IV landfills shall report to the Department, on forms provided by the Department, the county of origin and tonnage of material data collected and disposed on an annual basis by January 31<sup>st</sup> for the previous calendar year. Volume data shall be converted from cubic yards to tons at a conversion factor of 4 cubic yards per ton.
- (c) Recovered Materials Processing Facilities (RMPF) that manage over 100 tons per year of reclaimed, recovered or recycled materials or are publically owned shall report to the Department, on forms provided by the Department, the county of origin and tonnage by commodity type processed by March 1 of each calendar year. Material Processing Facilities may optionally report this information on a quarterly basis on forms provided by the Department.

For the purposes of this paragraph, RMPFs shall not include end processors of materials or secondary/intermediate collectors of recycled materials. Only RMPFs that initially receive recycled materials directly from the public (including commercial collections, contracted collections, etc.) and process and market these materials to secondary, intermediate or end users are required to report under this paragraph.

- (d) Material data collected from private sector recovered materials processing facilities shall be considered proprietary business information if requested by the private material recovery facility, and shall be protected as such and not be disclosed in a non-aggregated format. Data ownership information shall not be disclosed in this circumstance unless authorized by the data originator to do so.
- (e) All municipal solid waste planning regions shall submit by March 31<sup>st</sup> in the calendar year immediately following the reporting year their annual progress report by county. The region may request in writing prior to the due date an additional thirty (30) days to submit all required information. Additional time may be granted by the Commissioner for good cause shown.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member   | Aye | No | Abstain | Absent | Signature (if required) |
|--|-----|----|---------|--------|-------------------------|
| <b>Marty Calloway</b><br>(Petroleum Business with at least 15 Underground Storage Tanks)                 | X   |    |         |        |                         |
| <b>Stacy Cothran</b><br>(Solid/Hazardous Waste Management Industry)                                      | X   |    |         |        |                         |
| <b>Kenneth L. Donaldson</b><br>(Municipal Government)  |     |    |         | X      |                         |
| <b>Dr. George Hyfantis, Jr.</b><br>(Institution of Higher Learning)                                      | X   |    |         |        |                         |
| <b>Bhag Kanwar</b><br>(Single Facility with less than 5 Underground Storage Tanks)                       | X   |    |         |        |                         |
| <b>Jared L. Lynn</b><br>(Manufacturing experienced with Solid/Hazardous Waste)                           | X   |    |         |        |                         |
| <b>David Martin</b><br>(Working in a field related to Agriculture)                                       |     |    |         | X      |                         |
| <b>Beverly Philpot</b><br>(Manufacturing experienced with Underground Storage Tanks/Hazardous Materials) | X   |    |         |        |                         |
| <b>DeAnne Redman</b><br>(Petroleum Management Business)  | X   |    |         |        |                         |
| <b>Mayor Franklin Smith, III</b><br>(County Government)  |     |    |         | X      |                         |
| <b>Mark Williams</b><br>(Small Generator of Solid/Hazardous Materials representing Automotive Interests) | X   |    |         |        |                         |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 08/20/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/07/13

Rulemaking Hearing(s) Conducted on: (add more dates). 01/29/14

Date: August 20, 2014

Signature: \_\_\_\_\_

Name of Officer: Marty Calloway

Title of Officer: Chairman

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General and Reporter

\_\_\_\_\_  
Date

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Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

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## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

**Comment:** I'm not opposed to the goal. We've been living with the goal for many years now. I am concerned about how vaguely the goal is written. It just says we are to reduce by 25% the amount of solid waste disposed of at the municipal solid waste disposal facilities and incinerators as measured on a per capita basis. The goal does not state what we're comparing to arrive at this 25% reduction as to whether or not we've met the goal. I'm not sure if that was an oversight or was done intentionally to allow the goal to be adjusted over time, but we are not comfortable with trying to hit a moving target. I think there is a real opportunity missed here to clearly define the goal and what basis is going to be used as comparison.

**Response:** The proposed rule amendment package does not address the goal, with the exception of a small housekeeping measure of harmonizing the date with the existing statute. The goal methodology is defined by rule, though the formulas are not specifically mentioned. Regions may make the goal with a standard per capita waste reduction method based on a 1995 base year. If circumstances such as poor economy or population changes may have impacted the region negatively, adjustments may be added to help the region meet the goal. The goal methodology was added to the rules in October 2001.

**Comment:** My concern is the definition of solid waste disposal facility. Is that a purely class I facility or does that include class III/IV facilities? If in fact that does include class III/IV facilities then we have gone away from a true diversion goal to a pure recycling goal. I'm not opposed to a recycling goal, but I feel like this 25% mark is a bit high that we're placing on the solid waste regions, as I read that. That's who this goal applies to, is the solid waste regions, and that is in essence county government, and county government only controls a small portion of the waste inside their county boundaries. The majority of the waste is controlled by the municipalities, by business and industry, and other entities, but yet, this goal only applies to us. So it seems to me that goal is fundamentally unfair to county government. It places all the responsibility on their shoulders to meet this goal when we only control a small portion of the waste.

**Response:** Tennessee has a 25% waste reduction and diversion goal. The current goal allows for Construction and Demolition material sent to Class III/IV landfills to be counted as diversion and towards their 25%. Construction and Demolition materials sent to a recycling or reclamation center are considered recycled and diverted and also count toward the goal. Regions would receive credit towards their 25% waste reduction and diversion goal for this material. Construction and Demolition materials that are beneficially used for applications such as alternate daily cover would still receive credit towards their 25% waste reduction and diversion goal because of the beneficial use designation.

Under the region's solid waste plan to meet the 25% waste reduction and diversion goal, roles and responsibilities are identified for all local governments (counties and municipalities). The region is responsible for effectuating the solid waste plan and the amendments to that plan that were approved by the region's solid waste board to achieve this goal. Each local government that uses solid waste collection has representation on the region's solid waste board and determines how their plan will be implemented. Fairness in implementation is determined by the region's solid waste board based on how the plan is written and implemented not by the goal itself.

**Comment:** In (4)(c)1(i) it says "The department shall use the submission of the municipal solid waste region's solid waste region's Annual Progress Report for the most current reporting period to determine whether twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled." Traditionally diversion to Class III/IV landfill counted toward the

twenty-five percent goal. This section implies that waste diverted from a Class I facility will continue to go toward this goal, however it has been mentioned in several meetings that diversion would not be counted if it was not used in some other form such as mulch or used as boiler fuel. As you can see a clear definition is needed. The adding of additional reporting of Class III/IV landfills being required in section (5)(b), seems to confirm this idea that diversion to Class III/IV landfill will no longer be a part of twenty-five percent goal. If these municipal solid waste facilities do not include class III/IV, why are the class III/IV included in the reporting requirements?

Response: Tennessee has a 25% waste reduction and diversion goal. The current goal allows for Construction and Demolition material sent to Class III/IV landfills to be counted as diversion and towards their 25%. Construction and Demolition materials sent to a recycling or reclamation center are considered recycled and diverted also. Regions would receive credit towards their 25% waste reduction and diversion goal for this material. Construction and Demolition materials that are beneficially used for applications such as alternate daily cover would receive credit towards their 25% waste reduction and diversion goal. By definition, any material that is directed away from a Class I landfill is counted toward the current waste reduction and diversion goal.

The Division will take up the challenge of setting a new goal after the new 2025 Plan is complete and adopted. This will be done in a separate rulemaking package.

The Class III/IV facilities of all types are included in current goal calculations. The addition of Class III/IV landfill reporting is to provide the State and local planning region's crucial information used for solid waste planning across the state and within their region. The solid waste regions have found collection of this information problematic from Class III/IV facilities in the completion of their Annual Progress Reports.

Comment: As a general comment, the words "reduction," "diversion," "recycling" all have different meanings and should not be used interchangeably, as is done repeatedly in the proposed revisions (e.g., use of the word "recycling" at Rule 0400-11-01-.09(4)(b) where the statute uses the term "reduction"). Care should be taken to ensure that the terms are used correctly and appropriately so as to minimize confusion.

Response: Division agrees with the commenter and has revised the rules accordingly.

Comment: It is not clear from the draft regulations presented how these revisions comport with the statutory goal for state waste reduction set forth in Tenn. Code Ann. § 68-211-861(a). Specifically, clarification is needed on how the proposed reporting requirements of Rule 0400-11-01-.09(5) provides meaningful information to address the goal of reducing by twenty five percent (25%) the amount of solid waste disposed of at Class I municipal solid waste disposal facilities and incinerators, which applies to the state and each municipal solid waste region.

Response: According to the Solid Waste Management Act of 1991 as found in T.C.A. §68-211-803 - Public policy.

- (a) *It is declared to be the policy of this state, in furtherance of its responsibility to protect the public health, safety and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive, integrated, statewide program for solid waste management, which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste.*
- (b) *It is further declared to be the policy of this state to educate and encourage generators and handlers of solid waste to reduce and minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, incineration or disposal through source reduction, reuse, composting, recycling and other methods.*
- (c) *It is further declared to be the policy of this state to promote markets for, and engage in the purchase of, goods made from recovered materials and goods which are recyclable.*

The proposed paragraph (5) in Rule 0400-11-01-.09 addresses specifically measurement which is used to determine the effectiveness of waste reduction strategies by local governments and the regions. A comprehensive integrated solid waste management system has many parts including composting, recycling, disposal, and other beneficial uses. Measurement assists in determining the maximum utilization of the resources contained in the solid waste and the effectiveness of the region implementing the program.

Measurement also helps the regions and the state determine strategies needed to best educate and encourage generators and handlers of solid waste to minimize to the greatest extent possible the amount of waste. The goal of measurement is to manage more effectively the materials collected. This information further determines the attainment of waste reduction action by the regions using the current "Real-Time" method of calculating the waste reduction efforts. The information requested supports local governments in collecting this information.

Further, industries seeking feedstock, siting manufacturing facilities, and services frequently contact local governments and the Division for information relative to these goals.

Comment: As proposed, revised Rule 0400-11-01-.09(5)(c) includes every recovered materials processing facility (MPF) rather than MPFs that manage and process only municipal materials. Consequently, the rule would count the same materials multiple times without relating back to the statutory goal of waste reduction by the state and regions.

The reporting requirements also appear to impose considerable burden on recovered MPFs that is neither required nor authorized by statute.

To address these problems and ensure that the goals of municipal waste reduction are properly measured, the following revisions to proposed Rule 0400-11-01-.09 are recommended:

- a. Define recovered materials processing facilities to exclude secondary recyclers and end-processors and to include only MPFs that manage and recover materials directly from the municipal government (i.e., the county), for the purposes of this rule only;
- b. Require the county (and not MPFs) to report information to the Department regarding the origin and tonnage by commodity type processed;
- c. Authorize or require the county to include a provision in its contracts with a MPF that the MPF shall provide information regarding the origin and tonnage by commodity type processed to the county;
- d. Require the MPF to provide the county with such information on an annual basis (rather than quarterly) and in advance of the regional March 31 progress report deadline; and
- e. Define origin as "county of origin."

Response: a. The language has been modified.

b. The regions and counties already report in the Annual Progress Report the materials they specifically have control over. The regions have found it problematic retrieving information from Material Processing Facilities to aid them in their solid waste planning. The Division is better situated to receive and protect information and provide only this information in an aggregated only format. Language was initially placed in this rule package to protect business sensitive information to safeguard the information and address these concerns up front.

c. The local governments have had this ability previous to this proposed amendment and it can be done. However this method does not address commercial MPF receiving material

from collectors. The requirement for reporting of Material Processing Facilities should be directed to the State not through local governments as is the Class I landfill Origin Reports for consistent statewide reporting. Provisions have been placed in the proposed rule to protect the business interests and proprietary information. Further, the Division's Data collection system can be configured to further protect these interests. The state is in the best position to collect, protect and report the information in a consistent manner without placing a funding burden on local governments.

- d. The required reporting for MPF's has been changed from quarterly to annually.
- e. The language has been added.

Comment: It appears that the Division's proposals are moving toward the promotion of recycling. The Division should work with the Board to draft a rule promoting recycling and waste reduction while considering the factors set forth at Tenn. Code Ann. § 68-211-861(g).

Response: The Division is currently in the process of drafting and adopting a new statewide solid waste plan "2025 Plan" that will identify a suggested goal(s). The Board is updated regularly during this process and will have a document review and comment opportunity when the plan is drafted. The next proposed rule package will be for a new goal. Recycling will likely play a part in this new goal. The "2025 Plan" may further recommend recycling initiatives to present to the Board for consideration.

Comment: If this rule becomes effective, are the solid waste regions and county governments going to be required to file a new plan? We all have solid waste plans in place that have been approved by the state. Those plans are amended annually, when we turn in our annual reports. I'm very concerned that if we get a new rule, or a new goal, we will then be required to file a new plan starting from scratch.

Response: Each year the Annual Progress Report updates each region's solid waste plan. The region's solid waste plan will need to conform to any new adopted statewide solid waste plan. At this time, the Division believes this can be accomplished via the Annual Progress Report. Any new plan should build upon the region's existing solid waste plan.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The proposed rules have minimal effect on small business. Currently there are 79 reporting material recovery processing facilities. The 100 ton per year threshold should exclude the greater majority of any new small business that might meet the definition of Recovered Materials Processing Facility that would have to report under the proposed rule amendments.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are minimal reporting, recordkeeping, or other administrative costs required for small business from the proposed rules. Businesses already keep these records for normal business operation and the Department provides a free reporting tool that would only take about 15 minutes of time once a year.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed package primarily affects Department procedures dealing with the solid waste region and its local governments. The largest impact to small businesses over 100 tons per year would be to file the necessary report once a year. This should take less than half an hour to complete once a year.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There are no less burdensome, less intrusive or less costly alternatives to achieving the purpose and objectives of this proposed rule.

- (5) A comparison of the proposed rule with any federal or state counterparts.

### **EPA-Nationally**

The U.S. Environmental Protection Agency's Resource Conservation Challenge (RCC) has developed the 35 Percent Recycling of Municipal Solid Waste Action Plan. This is a national action plan that lays out a framework or road map for increasing the rate of municipal solid waste recycling and helping the country meet a national goal of 35 percent.

### **Alabama**

Alabama requires recovered material processing facilities/material recovery facilities to register and report to the Alabama Department of Environmental Management. Other organizations required to report are municipalities, counties, and end-users.

### **Arkansas**

Arkansas requires counties, authorities/MSW regions, and material recovery facilities to report.

### **Florida**

Florida requires municipalities, counties, and material recovery facilities to report.

### **Georgia**

Georgia has no reporting requirements at this time for any organization.

**Kentucky**

Kentucky requires material recovery facilities to report.

**Mississippi**

Mississippi has no reporting requirements.

**North Carolina**

North Carolina requires municipal, county, authorities/Municipal Solid Waste regions, and sectors to report. Materials recovery facility reporting is voluntary at this time.

**South Carolina**

South Carolina requires counties to report. Municipalities, material recovery facilities, end-users all have voluntary reporting.

**Virginia**

Virginia requires municipalities, counties, authorities/MSW regions and sectors to report.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Small businesses collecting and processing less than 100 tons per year have no specific duties or requirements under the proposed rule. However, they are expected to assist the State in meeting the statewide waste reduction goal by working with their local governments and the municipal solid waste planning regions as needed. Small businesses with over 100 tons per year material processed would be required to report once per year tonnages of materials to assist local governments in their solid waste planning efforts in accordance with the Solid Waste Management Act of 1991.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that there will be a positive impact on local governments through:

- Time savings on compiling annual progress report information,
- Clarity and improved understanding of qualitative assessment process
- The ability to have extensions on Annual Progress Reports if needed.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed amendments eliminate conflicts and confusion between statutory language and the existing rule and will help the regulated community to understand waste reduction. The rule change brings clarity on how the Department implements qualitative assessments. The changes also clarifies reporting responsibilities that are important to solid waste planning, data requests relative to economic development, provides a needed proprietary information protection for industry, and allows for extensions for local governments for submitting their Annual Progress Report if circumstances warrant. Solid waste planning is essential for local governments to have needed infrastructure to attract industry, meet their waste reduction goals, and protect the health and welfare of their citizens.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These amendments are being promulgated pursuant to T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule amendments lay out in greater detail how solid waste regions would be qualitatively assessed. Local solid waste regions and their respective local governments will be affected by this rulemaking. Material Recovery Processing Facilities processing over 100 tons per year and Class III/IV landfills will be affected due to the reporting requirement. These entities only asked for clarification of the proposed language.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

As the changes reflect defining of current processes and minor reporting adjustments, minimal fiscal impact is expected. No new processes will be started by this rule amendment. The reporting universe would expand slightly to include Material Recovery Processing Facilities and Class III/IV landfills, but no additional costs are expected for state or local governments.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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Division of Solid Waste Management  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 14<sup>th</sup> Floor  
Nashville, Tennessee 37243  
Phone: (615) 532-0744

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard

Deputy General Counsel  
Office of General Counsel

and

Larry Christley  
Division of Solid Waste Management

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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Tennessee Department of Environment and Conservation  
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and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board is not aware of any additional information requested by the committee.

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