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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

Agency/Board/Commission:	Environment and Conservation
Division:	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 Disposal Reduction Goal
0400-11-01-.10	Convenience Centers/County Public Collection Receptacles

(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

The Table of Contents for Chapter 0400-11-01 Solid Waste Processing and Disposal is amended by deleting the title to Rule 0400-11-01-.09 and replacing it with 0400-11-01-.09 Waste Reduction and Planning

Rule 0400-11-01-.09 Waste Disposal Reduction Goal is amended by deleting it in its entirety and replacing it with a new rule so that, as amended, the new rule shall read as follows:

0400-11-01-.09 Waste Reduction and Planning

(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 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 Municipal Solid Waste Advisory Committee.

(b) The Department may consider a variety of options that a region shall take into account in meeting the twenty-five percent (25%) goal. As used in this rule, 0400-11-01-.09, "municipal solid waste" (MSW) means any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities which are required to be disposed of in a Class I landfill, as defined in regulations adopted pursuant to T.C.A. Title 68, Chapter 211; provided, that "municipal solid waste" does not include the following:

1. Radioactive waste;
2. Hazardous waste as defined in T.C.A. § 68-212-104;
3. Infectious wastes;
4. Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and
5. Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility.

(2) Waste Reduction

(a) Comprehensive Integrated Municipal Solid Waste Management Plan. The Department shall prepare a statewide solid waste plan to be used as guidance in achieving the statewide waste reduction goal. This plan shall be reviewed and, if needed, updated every five (5) years to account for any new available technologies.

1. The plan shall identify current preferred waste reduction and recycling practices to assist the State and the solid waste regions to effectuate their solid waste plans.
 2. Best Management Practices. The Department shall prepare waste reduction and recycling best management practices based on the state solid waste plan that local governments will implement as needed in sum or in part to attain the statewide goal.
 3. Preferred Waste Reduction Options. The Department shall, based on the most current statewide solid waste plan, prepare preferred options of waste reduction methodologies. These options shall be considered for determining qualitative equivalence in regional and local government solid waste programs.
- (b) Waste Reduction Methods. The following restrictions and guidance shall be used to evaluate waste reduction methodologies implemented by local governments and their programs.
1. Landfill Bans. Local governments are best suited to design, implement, and manage landfill bans and material redirection at the point of collection, due to the dynamic nature of solid waste, waste streams, and its infrastructure, the variety and availability of local markets, local geography and topography.
 2. Class III and Class IV materials. Materials received at a Class III or Class IV landfill are not considered as waste reduction unless the materials are recycled or used for other approved beneficial use activities.
 3. Composting of "municipal solid waste." Only the portion of composted municipal solid waste that is sold or beneficially used may be counted as waste reduction towards the goal.
 4. Mulching of "municipal solid waste." Only the portion of mulch made from municipal solid waste that is sold or beneficially used may be counted as waste reduction towards goal.
 5. Recycling. Recycling constitutes a method of waste reduction so long as the recovered materials are marketed for recycling, or are stored for recycling at a solid waste management facility and at least seventy-five percent (75%) of the stored material must be marketed within the succeeding twelve (12) months. The following processes shall not be considered as marketing of recyclable materials nor counted toward the goal:
 - (i) Collection or material handling in preparation for buyers pending market sales.
 - (ii) Storage of unprocessed or processed materials. Unprocessed municipal solid waste is not considered as being recyclable pending market.
 6. Source Reduction of "municipal solid waste." Process modifications, feedstock substitutions or improvements, various housekeeping and management practices, and increases in the efficiency of machinery that decrease the overall amounts of residual materials affect the amount of materials destined for final disposal. As source reduction increases, the disposal amount should reflect a proportional decrease.
 7. Energy recovery and production. Materials redirected for energy recovery and production shall be considered waste reduction.
 - (i) To calculate the tons of waste reduction the following formula shall apply:

$$T^i - T^o = T^d$$
 Where:
 T^i = tons of municipal solid waste material input into the energy recovery system;
 T^o = tons of residual material output from the energy recovery system sent for disposal; and
 T^d = tons diverted for energy recovery.

- (ii) Waste incinerated where the primary purpose is not energy recovery is not considered waste reduction.
 - (iii) Residuals from wood wastes reduced in a pit burner or air curtain destructor are not considered waste reduction unless diverted from disposal or otherwise beneficially used in accordance with the Department's beneficial use policy.
 - 8. Problem waste diversion. The diversion of waste tires, used oil, lead-acid batteries, paints and other problem waste, as determined and identified by the Department, from a Class I disposal facility for recycling constitutes waste reduction.
 - 9. The Department shall evaluate new technologies, as they are presented to the Department, to determine their applicability towards waste reduction efforts for the regions in meeting the goal.
- (3) (a) The Department shall develop a comprehensive integrated municipal solid waste management plan, hereafter the Plan, for the State based on component requirements in T.C.A. § 68-211-815 that will serve as a master plan for the State and its local governments in the management of statewide integrated solid waste systems. The plan shall be reviewed every five (5) years and, if needed, updated accordingly based on available new technologies, resources, stakeholders, etc.
- (b) The Plan shall be divided into the following major sections. These sections shall provide and describe in detail how the Plan shall be implemented:
 - 1. Infrastructure, Demographic and Geological Overview
 - 2. Solid Waste Plan
 - 3. Waste Reduction Plan
 - 4. Disaster Debris Management Plan
 - 5. Outreach and Education Plan
 - 6. Funding, Responsibilities, and Administration Plan
- (c) At a minimum, each plan and revised plan submitted by a municipal solid waste region shall include the following:
 - 1. Demographic information;
 - 2. A current system analysis of:
 - (i) Waste streams, including data concerning types and amounts generated;
 - (ii) Collection capability, including data detailing the different types of collection systems and the populations and areas which receive and do not receive such services;
 - (iii) Disposal capability, including an analysis of the remaining life expectancy of landfills or other disposal facilities;
 - (iv) Costs, using a full-cost accounting model developed by the commissioner, including costs of collection, disposal, maintenance, contracts and other costs; and
 - (v) Revenues, including cost reimbursement fees, appropriations and other revenue sources;
 - 3. Adoption of the uniform financial accounting system required by T.C.A. § 68-211-874;

4. Anticipated growth trends for the next five-year period;
 5. Anticipated waste capacity needs;
 6. Planned capacity assurance, including descriptions of planned or needed facilities;
 7. A recycling plan, including a description of current public and private recycling efforts and planned efforts to enhance recycling within the county or region;
 8. A plan for the disposal of household hazardous wastes;
 9. Adoption of uniform reporting requirements as required by this part;
 10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;
 11. A description of education initiatives aimed at businesses, industries, schools, citizens and others, which addresses recycling, waste reduction, collection and other goals of this part;
 12. An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;
 13. A timetable for implementation of the plan;
 14. A description of the responsibilities of the various participating jurisdictions;
 15. A certification from the region's title 68, chapter 211, part 9 solid waste authority, if such an authority has been formed, or if no such authority has been formed, the county legislative body of each county in the region, that they have reviewed and approved of the region's plan and/or revised plan;
 16. A plan for managing solid waste generated as a result of disasters or emergencies based, in part, upon the FEMA 325 Public Assistance Program; and
 17. Any other information as the Commissioner may deem relevant to the implementation of this part.
- (d) Each county shall develop a comprehensive integrative municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule. This plan shall be designed based upon all resources within the county.
- (e) Each municipal solid waste region shall compile and develop a comprehensive integrated municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule and from the county plans within the region.
- (f) Municipalities may elect to develop an integrated municipal solid waste management plan provided that they meet the same requirements as the county as described by this rule.
- (g) When the State approves and sets a new municipal solid waste goal to implement the goal, each local government and region with an integrated municipal solid waste management plan developed under this rule shall develop and submit a plan update in the format and methodology described by the Department. These local governments and regions shall be given a minimum of two (2) years to prepare major updates for their plan.
- (h) All local governments and the municipal solid waste regions developing plans under this rule must submit such plans to the Department for review and approval. Approval by the Department shall deem that the submitted plan is consistent with the Plan described in this rule.

- (i) The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process.
 - (j) Routine updates to the solid waste region's plan shall be submitted by March 31 of each year for the immediate preceding calendar year in a format prescribed by the Department.
 - (k) Failure to complete an update to the Plan or to submit the Plan shall subject the solid waste region or local government to possible sanctions pursuant to T.C.A. §§ 68-211-816 and 68-211-871.
 - (l) The twenty-five percent (25%) goal applies to only the waste that has been going to Class I landfills or municipal solid waste incinerators. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. Materials recovered or collected for recycling at these facilities prior to combustion or landfilling shall be weighed and deducted from the total amount being disposed.
 - (m) The region shall present its calculation of the twenty-five percent (25%) reduction on a per capita basis or the economic growth basis to be prescribed by the Department in accordance with paragraph (1) of this rule.
 - (n) The region plan shall utilize the base year of 1995 for measuring waste reduction unless a region can demonstrate that the 1995 data is clearly in error. A region may receive credit toward the waste reduction goal from recycling and source reduction programs prior to 1995, but no earlier than 1985. The region shall notify in writing the Division Director of such an error and request approval of any adjustment to the 1995 data.
 - (o) By March 31 of each year, each region shall submit an annual report to the Division. Pursuant to T.C.A. §§ 68-211-863 and 68-211-871, such reports shall include, at a minimum, the amount and type of recycled materials collected in the region.
- (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 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 subparagraphs (3)(l) and (3)(m) of this rule to determine if they are qualitatively equivalent to those that did meet the twenty-five percent (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.

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

Paragraph (1) of Rule 0400-11-01-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting the current paragraph and substituting the following language, so that, as amended, the new paragraph shall read as follows:

- (1) Purpose
 - (a) This rule shall establish the minimum level of service which every county must provide in order to assure that all residents of a county are provided with collection and disposal service.
 - (b) This rule shall establish minimum standards for the design and operation of convenience centers if such service is selected by a County.
 - (c) This rule shall establish requirements for operation and use of county public collection receptacles for municipal solid waste.

Paragraphs (5) and (6) of Rule 1200-01-07-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting them in their entirety and replacing them with the following new paragraph so that, as amended, the new paragraph shall read as follows:

- (5) Requirements for Operation and Use of County Public Collection Receptacles for Municipal Solid Waste
 - (a) Each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center shall develop a plan for the elimination of collection receptacles or the conversion to manned convenience centers as defined in paragraph (2) of Rule 0400-11-01-.01 by June 30, 2015. The county will include the following information as part of the municipal solid waste planning region's annual report (which is submitted to the Division) until said collection receptacles are eliminated or converted:
 - 1. The number of receptacles in the County by location;
 - 2. The location of all receptacles by street address and geo-code (longitude and latitude);
 - 3. Collection times for such receptacles; and
 - 4. Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety. Such information required by this part must be in the form of a narrative manual and meet the minimum requirements in subparagraph (b) of this paragraph.
 - (b) Minimum operation and security requirements shall be as follows:
 - 1. All containers must be emptied at a minimum of once every 7 days, except the commissioner may provide an extension of time for severe weather or other emergency conditions.

2. Litter and/or solid waste outside the receptacles must be controlled. Such wastes must be removed at a minimum frequency of at least once every 7 days.
 3. Receptacles must be maintained and managed in a manner to minimize disease vectors.
 4. Receptacles must be located on an all weather surface (such as gravel).
- (c) Per T.C.A. § 68-211-851, as amended, counties which did not have receptacles in place as of January 1, 1996 or which subsequent to such date discontinues use of any receptacle authorized in this paragraph, shall be prohibited from installing or maintaining additional receptacles.

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:

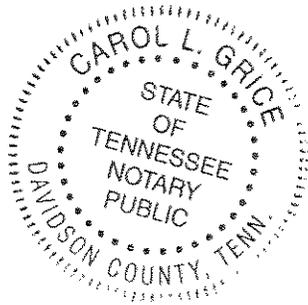
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Michael Atchison	X				
Elaine Boyd	X				
Melissa Bryant				X	
Dr. Jack Deibert				X	
Kenneth Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Jared L. Lynn	X				
Mayor Franklin Smith, III	X				
Mark Williams	X				
Glenn Youngblood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board on 08/07/2012, 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: 04/11/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/12



Date: August 7, 2012

Signature: *Kenneth Donaldson*

Name of Officer: Kenneth Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: August 7, 2012

Notary Public Signature: *Carol L. Grice*

My commission expires on: June 21, 2016

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.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
10-7-12
 Date

Department of State Use Only

Filed with the Department of State on: 10/10/12

Effective on: 1/8/13

Tre Hargett by Alma Scott, POK

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: Justification for the rule changes.
Identify how the proposed changes will benefit municipalities and other affected parties. Identify problems within the existing rules governing solid waste disposal. Identify remedies/solution to these problems that proposed rules correct, simplify, or save money.

Response: As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics. The proposed changes to this rule are housekeeping in nature and provide little change to the current policy, rules and existing statutory requirements. It harmonizes language from the law with the rule by taking existing statutory requirement language and placing it verbatim into the proposed rule amendment.

Benefits come to affected parties though clarification of language-revisions to the existing listing of waste reduction methodologies to include newer technologies used by local governments and regions to allow them to receive waste reduction credit for these activities. It further protects local governments by establishing methods that will evaluate new technologies that may be misleading and costly to uninformed local governments, thereby protecting them.

Other benefits for all local governments include inclusion of disaster debris management components in their solid waste plan that will assist local governments in receiving additional financial credit with FEMA and TEMA in the event of a disaster through their PA325 programs saving local governments millions of dollars, time and resources.

The Waste Reduction Task Force of 2008 identified deficiencies in the existing solid waste systems across the state. Their findings can be located at www.tn.gov/environment/swm/prwr under the Task Force Archives. The Waste Reduction Task Force further identified practical, essential solutions that the regions should implement. These solutions would further increase the opportunity for job creation, increase the tax base and improve the statewide personal income based on findings published and substantiated by several organizations and researched by the College of Charleston.

Comment: Cost of Implementation:
Produce a true cost benefit analysis that examines the cost of land filling vs. cost associated with these proposed rules. Identify any possible expenses that municipalities will incur as a result of compliance with these rules. Identify funding sources intended to offset the cost of implementing these rules.

Response: This rule and the proposed amendment do not require any additional actions or costs on the part of municipalities.

If a municipality chooses to prepare a solid waste plan, the cost for writing this optional plan would be based on the current market rate. The Department provides grants to the local development districts to provide services to the local governments in preparing solid waste plans.

The region, to which a municipality is a part and has representation on their solid waste board, may at its discretion, revise their solid waste plan at any time (as is currently the case). The region's new solid waste plan will dictate new responsibilities and/or processes that all the local governments agree to and approve to implement. The costs of these activities would be known to the region and should be addressed at the specific local level of that region during that process. Activities implemented would be based on availability of local resources including staffing, infrastructure and funding.

No additional funding sources have been identified as this rule does not substantially change the existing circumstances. No major additional expenditures are expected directly relating to this amendment.

Comment: Definition of Municipal Solid Waste:
Your definition of municipal solid waste should include yard waste.

Response: The Department is not currently revising the definition portion of the regulations found at Rule 0400-11-01-.01(2) which reflects the definition of solid waste defined in the statute. Yard waste is considered as landscaping waste and may be disposed in a Class I or Class III landfill.

Comment: TCA 68-211-803 (a) Reference:
These regulations are based on TCA 68-211-800, et al, yet TCA 68-211-803 (a) policy mandates the consideration of health, environment, and job creation. Not only do these regulations not consider the policy, they further poor data capturing by creating more loopholes which allow reports falsely demonstrate improving conditions.

Response: This rule does consider the provisions of the Act. This rule amendment is predominately housekeeping in nature and does not substantially change any existing reporting requirements. Changes to data collection is not included in this rule package.

Comment: Increase of Diversion Rate:
The solid waste board should more thoroughly consider increasing the required diversion rate. They can also assist in helping counties increase their diversion in localized and innovative ways, not just merely report. The increased diversion rate should be incremental and target the 10 largest counties which have 50% of the population. We should start with construction waste recycling and compost food waste, yard waste, and non-recycled paper.

Response: The goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: Rule Title:
It is very misleading to call these "Solid Waste Reduction Regulation." There is nothing in the regulations that will facilitate recycling, composting, or any method of solid waste reduction. This is a serious concern with these regulations. Decision makers and citizens must not be misled into thinking there is a program for reducing solid waste when there is not.

Response: The title of this rule will be revised from "Waste Disposal Reduction" to "Waste Reduction and Planning". The asserted title is not applied to this rule under revision.

Comment: Diversion Goal:
It is clear that counting and reports are the primary concerns of these regulations and the statute.

- A. Credit for landfilled construction waste as recycled, three different ways to count local reports, and ten (10) different base years create a loop-hole riddled system.
- B. I am associated with Bio-Cycle Magazine. The October 2010 Bio-Cycle Magazine and Columbia University Bi-Annual Waste Survey determined that Tennessee diverted 4.64% waste and ranked 7th from the bottom among states. Tennessee apparently claims nearly 50% diversion counting landfilled construction waste.

This lack of uniformity is an obvious problem. How many local governments claim 50% waste diversion? How have numbers been verified?

Response: The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

The data used by Bio-Cycle Magazine is provided by the Department and is the same information used to determine compliance with the current goal. The Department has no control over how information is interpreted or analyzed by third party groups that may use other defined standards.

Comment: Landfill Capacity:
Identify the permit status, landfill capacity, and location of available landfills in the state.

Response: This rule does not specifically address these issues; however, specific questions regarding the status of facility permits, landfill capacity and the availability of landfills should be directed to the Division of Solid Waste Management Permitting Section.

Comment: 0400-11-01-.09(1)(a):
Why is the base year 2003? Why is there a base year? TDEC should count solid waste generated, recycled, composted, and landfilled. If regions submit other information to comply with statutes, that is fine.

Response: 1995 is the base year set by the Solid Waste Management Act of 1991 to determine waste reduction and diversion efforts. 2003 is the year in which the solid waste regions were required to achieve the 25% waste reduction and diversion goal. The goal allows for all material diverted or reduced including recycling, composting to count towards achievement of the goal. Legislation made the goal ongoing.

Comment: 0400-11-01-.09(1)(a):
The use of multiple base years at the discretion of the local government is unwarranted. Solid waste is governed by the State. How can any reliable numbers be developed with multiple ways of counting waste and multiple base years ranging from 1995 to 1985? All of these numbers are exceedingly unworkable.

Response: The Solid Waste Management Act of 1991 and its subsequent amendments set the method by which the goal is measured. The 2007 amendment allows for the goal to be set by rule, but to date a new goal has not been successfully promulgated so the existing 25% waste reduction and diversion goal and methodology is retained.

Comment: 0400-11-01-.09(2)(a):
This paragraph identifies the "State Solid Waste Plan" versus subparagraph (3)(a) identifies the "Comprehensive Integrated Municipal Solid Waste Plan". What is the difference between the two plans? If there is no difference, why identify each plan differently? Why not combine the two subparagraphs to be more clear and concise on the Department's "Plan"?

Response: There is no difference. The language will be revised to reflect this. The two subparagraphs serve two separate purposes. (2)(a) describes how the plan is used for the purpose of waste reduction. (3)(a) describes in detail the requirements for the plan and incorporates statutory language from the Solid Waste Management Act of 1991 into the rule to establish regulatory harmony between the two documents.

Comment: 0400-11-01-.09(2)(a):
We are concerned about the lack of input from counties and solid waste regions in the formation of a statewide solid waste plan that must later be implemented by counties/regions. We request that the rule provide that any proposed plan must be approved by an ad hoc committee of local representatives before being adopted. Additionally, we request that the rule provide that any proposed waste reduction/recycling practices, best management practices, and hierarchy of waste reduction methodologies shall not be adopted until a full projected fiscal impact is prepared and included. Also, we request the rule state – since there are many factors that change the feasibility of different approaches among counties – that no practice shall be mandated if the costs outweigh the benefits in a particular region.

Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will

be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

As part of the best management practices in The Plan, we will request that the contractor provide projected fiscal impact statements based on implementation and include expected operation, revenue and expenditures.

Best management practices will not be mandated through The Plan but will serve as a resource for local governments to develop and choose best fit strategies in their ongoing operations for their local solid waste programs to achieve the current waste reduction and diversion goal. Assessment of costs, successes, and use of the practices will be determined at the local level.

Comment: 0400-11-01-.09(2)(a) State Solid Waste Plan:
As written, this section does not provide for input from local governments regarding the development of the state's solid waste plan. Since municipalities must implement the provisions of this plan, they should have a seat at the table. We request that the rule be redrafted to include input from local governments, specifically that an ad hoc committee of local government officials be established to review and approve any proposed plans or rules regarding the state solid waste plan, best management practices, or preferred waste reduction hierarchy prior to adoption by the UST/SWDCB. Geographic diversity and population should be considered when selecting the members of this committee.

Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

Comment: 0400-11-01-.09(2)(a)2:
TDEC will control and prepare local waste reduction plans and practices. Where is the local input and funding?

Response: All local waste reduction plans are governed by, developed and approved by the solid waste planning region's board. The State reviews the local solid waste plans approved by the local solid waste boards. The local solid waste boards are required by the Solid Waste Management Act of 1991 to provide a public hearing for the general public and the region's stakeholders on any proposed solid waste plan, changes and amendments to the plan prior to approval.

The State of Tennessee currently contracts with the Development Districts to assist solid waste planning across the state for local governments.

Comment: 0400-11-01-.09(2)(a)3: Preferred Waste Reduction Hierarchy:
The proposal states that the Department will prepare a preferred hierarchy of waste reduction methodologies and that such hierarchy shall be considered for determining qualitative equivalence in regional and local government solid waste programs. The Department has indicated that the "hierarchy" will simply be a list of available methodologies to meet the waste reduction goal. We suggest that the term "hierarchy" be replaced with "options" so that regions may utilize the method that is best for their community.

Response: The suggested wording change was made in this part.

Comment: 0400-11-01-.09(2)(a)3:
Are we going to receive partial credit based on the hierarchy? If we're using the forced preferred method are we going to get 25% if what we actually recycled or whatever method we're talking about?

Response: The local solid waste plan as approved by the region determines which practices are used to meet the 25% waste reduction and diversion goal. The current goal is based on reducing the amount of waste going to municipal solid waste landfills by 25%. The hierarchy will only establish the preferred order of waste reduction in much the same way as EPA's waste hierarchy. The region will establish their methodologies of waste reduction based upon available systems, cost, geography, population, etc. Successful implementation of the region's plan will accomplish the goal of directing a minimum of 25% of materials generated away from municipal solid waste landfills.

Comment: 0400-11-01-.09(2)(a)3:
TDEC will determine the hierarchy of waste reduction methodologies and control which recycling or diversion programs local governments will implement. Where is the local input?

Response: The State does not control which recycling or diversion programs local governments implement as this responsibility is the local solid waste region's role. The statewide "Plan" will define very broad, general, widespread and well accepted, existing practices and standards within the solid waste and recycling industry that the local solid waste regions may select and implement based on local conditions to help them achieve the goal. Solid waste planning regions will conduct public hearings to obtain local input from government entities, citizens and industry.

Comment: 0400-11-01-.09(2)(a)3:
By statute the policy is repeatedly stated in writing that policy of the State is to recycle first and that includes composting. (Policy of Solid Waste Act of 1991, TCA 68-211-101) If this is the policy why not implement it now. Why does TDEC have to determine the hierarchy of waste disposal?

Response: The policies of the Solid Waste Management Act of 1991 are currently implemented, reassessed and re-implemented as needed to fulfill the purpose of the Act. Recycling and composting are just two aspects of the waste reduction practices used to effectuate the Act. Local governments may choose from these and other practices to meet their goal. Since material management is locally implemented, it is the local government's choice of which programs to implement to meet the goal based on their solid waste plan along with availability of local resources including infrastructure, staffing and funding.

Comment: 0400-11-01-.09(2)(b):
It appears that the proposed rules simply retain the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). The General Assembly provided the following guidelines to the board for the construction of the new rule:

'The general assembly recognizes that the ways in which solid waste is generated and managed are very dynamic. The opportunities for recycling and for reduction of waste generated change with both market factors and technological developments. These in turn, affect the costs of solid waste management and recycling. Also there are many factors that change the feasibility of different approaches among the counties, in addition to population and amount of commercial and industrial activity; these include proximity to markets for recyclable materials and the solid waste activities of municipalities. In order to better address all of these changing circumstances, the solid waste disposal control board is authorized to adopt a rule promoting recycling and waste reduction. In so doing, the board shall consider the use of incentives, disincentives, public education, costs and benefits of recycling, and the widely varying circumstances of the different solid waste regions. Upon the effective date of such rule, the provisions of subsection (a) through (f) of this section, § 68-211-861, will be repealed and of no further force and effect and the rule will be enforceable according to its terms and in accordance with § 68-211-816.'

2007 Public Chapter 462, Section 13 (emphasis added). Retaining the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal does not appear to comply with the General Assembly's mandate.

- Response: The 25% waste reduction and diversion goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is implementing the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.
- Comment: 0400-11-01-.09(2)(b) Regarding Waste Reduction Methods:
The proposed rule retains the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). A "blanket" goal does not take into account many factors that affect a region's ability to achieve this goal such as population, geographic diversity, industrial activity, proximity to markets for recyclable materials, and fuel cost. The Department should develop a formula that takes these factors into consideration when determining the waste reduction goal for a particular region.
- Response: This rule package does not change Tennessee's 25% waste reduction and diversion goal. Also, all material that is directed away from municipal solid waste (Class I) landfills is counted towards meeting the goal. The rule does not change this. Material going to a Class III or IV landfill would still help the region meet the 25% waste reduction and diversion goal. Methodologies for calculating a region's accomplishment toward achieving the goal have not changed.
- Comment: 0400-11-01-.09(2)(b)1:
If landfill bans are a part of the state plan, then are the counties and the people that are required to carry this out, are we then required to implement these bans?
- Response: The inclusion of Landfill Bans in this rule as a waste reduction method is only to give credit for local governments that choose to implement local landfill bans as a method towards meeting their waste reduction goal. Landfill bans while considered as a method of waste reduction does not imply any current or future statewide bans such as the current bans on whole tires, used oil, etc.
- Comment: 0400-11-01-.09(2)(b)1:
Landfill Bans. Identify the costs associated with implementing landfill bans.
- Response: The inclusion of Landfill Bans in this rule as an acceptable waste reduction method does not require any region to implement a landfill ban. As conditions and infrastructure are different for all local governments and regions across the State, it is incumbent upon those agencies to determine the costs and effectiveness of any waste reduction methodology verses expected outcome in the implementation of a locally enacted landfill ban before establishing one.
- Comment: 0400-11-01-.09(2)(b)1:
Nashville started landfill bans and as a private company I'm trying to understand how I'm going to comply with that for cardboard, electronics and yard waste. But nobody in Davidson County will tell me how it's going to be enforced. Nobody in the city or state can tell me how it's going to be enforced. Are they going to do an audit of my trucks and fine me or are they going to go into the transfer station and find out. Or are they going out to the landfill for the last six months of material dumps. So for the landfill bans in the rule, I encourage a well thought out plan to the cities and counties.
- Response: The Nashville landfill ban is a local issue, and as such, the Department is unable to comment on the specific issues raised. The inclusion of landfill bans as a waste reduction method in this rule only acknowledges that the solid waste regions may use bans as a waste reduction method to help them toward achieving the 25% waste reduction and diversion goal. The extent of implementation and enforcement would be determined at the local level.
- Comment: 0400-11-01-.09(2)(b)2:
Right now in the re-Trac system, the Class III/IV waste is being counted in the total disposed amount, but it is also then part of the diverted amount. In the proposed rules, it would be part of the diverted amount, but is it still going to count as a disposed amount? If so, it would make it impossible for our regions to meet the 25% goal by any means. Or is it only Class I waste that will be counted in the solid waste disposal numbers?

- Response: Only Class I waste is counted in the disposal numbers and used in calculating a region's accomplishment toward the 25% waste reduction and diversion goal.
- Comment: 0400-11-01-.09(2)(b)2: Waste Reduction Methods:
Material being disposed of in Class 3 and 4 landfill will be counted as waste going into a Class I landfill. The 1991 Solid Waste Management Act, Amended, provides for construction/demolition waste going into a Class 3/4 Landfill not be classified as Municipal Solid Waste going into a Class I Landfill. This would need legislative amendment, not rulemaking, as it is current Tennessee Code.
- Response: Materials disposed of in a Class III/IV landfill will not be counted as Class I disposal. Diverting this material away from the Class I landfill would help the region achieve the 25% waste reduction and diversion goal. The 2007 amendments authorize a new goal to be set by rule and the measurements toward the goal.
- Comment: 0400-11-01-.09(2)(b)2:
Only a portion of mulched material diverted from Class I Landfills counts towards materials diverted from Class I Landfills. Why would not all material being diverted count towards diversion? Will other materials that are being completely diverted be added to this list of only receiving partial credit reduction?
- Response: Any material that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. Materials must be successfully marketed and not landfilled.
- Comment: 0400-11-01-.09(2)(b)2:
Tennessee is the only state that counts landfilled construction waste as diverted or recycled. I do not understand how this is useful. The proposed Rule continues to exclude this waste by applying the 25% only to waste formerly landfilled in Class I landfills. This creates an artificial incentive to landfill construction waste that is actually the most plentiful and easiest material to recycle. Recycling C & D creates 10 times as many jobs as landfill disposal. I do not understand the goal or the purpose of making recycling confusing to the public and businesses.
- Response: This rule package does not change the existing 25% waste reduction and diversion goal or how material is counted toward the goal. We agree that recycling promotes job creation and sustaining those jobs. Studies also show that recycling further increases the tax base by over \$3,000 for every 1,000 tons recycled and improves personal revenue across the state.
- Comment: 0400-11-01-.09(2)(b)2:
In my opinion, with a properly backed plan in place, including rules and regulations making jobsite waste recycling more attractive, private industry could and should be able to take on up to 80% of construction waste for recycling. Private industry could and should, with a little nudge from our governmental institutions, take care of this problem in a profitable and environmentally friendly way. Last, but not least, I feel that much greater emphasis needs to be put on the recycling of waste from existing homes and businesses.
- Response: Construction and demolition waste recycling is a component of any waste reduction and diversion goal. Local governments have the opportunity to incorporate continued expansion into this area under the proposed rule. This rule does not prohibit this. At this time, however, the new waste reduction goal is not part of this package.
- Comment: 0400-11-01-.09(2)(b)6:
The source reduction of "municipal solid waste" allows technical changes in businesses and industry to be counted as waste reduction without documentation. This is another loophole that only furthers the lack of accountability and responsibility of Tennesseans to the health of the state.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.

- Comment: 0400-11-01-.09(2)(b)6:
I am concerned with another potential loophole: source reduction of 'municipal solid waste". This allows technical changes in business and industry to be counted as waste reduction even with no documentation.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.
- Comment: 0400-11-01-.09(2)(b)6:
This Rule will not promote waste reduction; rather, it convolutes waste counting and reporting. The inclusion of construction and demolition waste as a part of the diversion rate should not be continued. This waste is merely being diverted from one landfill to another; is not being considered for reuse; and should count as part of the base tonnage for landfilled waste. Additionally, the diversion of tires, car batteries, paints and other toxic waste would still continue to be counted as diversion from Class 1 landfills, even though these sources have not been landfilled for years. These loopholes have existed for too long.
- Response: The rule identifies acceptable waste reduction and diversion activities that are based on current industry practices. Until a new goal is established by rule the current 25% waste reduction and diversion goal and the supporting methodologies established will continue to direct the State on the determination of a region's compliance with the goal.
- Comment: 0400-11-01-.09(2)(b)7(iii):
No portion of wood waste volume reduction will be counted towards Class I waste diversion, even if the wood ash is not placed in a Class I Landfill. Again, the 1991 Solid Waste Management Act, Amended, provides for waste diverted from a Class I Landfill be considered as waste diversion from a Class I Landfill.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all volume reduction of materials from air curtain destruction and pit burners as is the current practice. If the ash from these processes is sent to a Class I municipal solid waste landfill instead of diverted to another use, it would be counted as disposal.
- Comment: 0400-11-01-.09(2)(b)9:
This part says the Department will evaluate new technologies. Who's going to evaluate this new technology? How is that evaluation going to take place? What criteria are going to be used to evaluate?
- Response: As new technologies emerge, the State, solid waste and recycling industries, local governments and other states are confronted with the applicability and trustworthiness of these technologies. The State's beneficial use policy sets a framework in determining applicability and trustworthiness of such technologies. This along with current statutory and regulatory standards, references and prior examples of successful launches of the technology assists in the determination of applicability towards waste reduction.
- Comment: 0400-11-01-.09(3):
Subparagraphs (3)(l), (3)(m), (4)(a), and (4)(b) refer to the 25% goal. Each of these subparagraphs state 25% in different terms, such as the 25% goal versus 25% waste reduction and diversion goal versus 25% recycling and diversion goal. Suggest using consistent wording for the 25% goal. There may be other references in this rule to the 25% goal that should be reviewed and revised accordingly.
- Response: This rule package does not address the goal or any related language as it might be construed as re-setting the goal and invoking the 2007 Public Chapter 462 updating and revising the existing goal. This will be addressed in a subsequent rule package.
- Comment: 0400-11-01-.09(3):

I am very puzzled with the over-riding emphasis on superficial counts of solid waste that excludes any real steps to reduce solid waste. The three (3) different methods of counting solid waste reduction are:

- A. Calculate 25% reduction per capita. [Subparagraph (3)(m)].
- B. Economic growth basis. [Subparagraph (3)(m)].
- C. Qualitative Assessment Methods. [Paragraph (4)].

Apparently, this is in the law. I am concerned that your reliance on such numbers does more to reward local governments with excellent numbers than to actually use solid waste as a raw material for jobs and business.

Response: Yes, the Solid Waste Management Act of 1991 dictates how accomplishment toward the goal is to be measured.

The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: 0400-11-01-.09(3): Comprehensive Planning:
TDEC will develop the comprehensive integrated solid waste management plan which will serve as the master plan for all local governments. As history has shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: The statewide comprehensive integrated solid waste management plan will update the existing plan that was adopted in 1991 for the state and serve as the master plan to take into account all subsequent technology improvements. The local solid waste regions will still be the focal point of local solid waste plans. These local plans, which have been the practice since 1991, are written to support the statewide plan at the local level based on what the region plans to implement to achieve the 25% waste reduction and diversion goal using available resources, i.e., staffing, infrastructure and funding.

Comment: 0400-11-01-.09(3)(a):
Every few years the state is going to update their plan. If a new technology comes on the market does that mean the state will say the goal is no longer 25% reduction but now it's 40% reduction, regardless whether the county can afford that new technology or not?

Response: No. The goal is set currently by law as 25% waste reduction and diversion. The 2007 Amendments to the Solid Waste Management Act allows for a new goal to be set by rule. The State Solid Waste Plan will not change the goal. The Plan serves as a guide to the State and to local governments on how to reach the established goal. Review and update of the State plan allows for new technologies to be incorporated into the existing Plan when they come available. The statewide plan does not require the local governments to incorporate every new technology or even every practice into their regional solid waste plan. The local solid waste board makes the determination of which practices are appropriate, available, and cost effective in the region effectuating their solid waste plan and reaching the goal.

Comment: 0400-11-01-.09(3)(c)8:
It says that the county's plan has to come up with a plan for the disposal of household hazardous wastes. Does that mean the state will no longer provide household hazardous waste services, but the counties are now going to have to provide for not only household waste disposal but household hazardous waste?

Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The Department will continue to provide mobile HHW collection services and continue to sponsor and develop new regional HHW collection facilities. This part of the plan only describes how local governments intend on managing HHW materials within the region which may include participating in the State's mobile HHW collection events.

- Comment: 0400-11-01-.09(3)(c)12:
I feel like it is a bit of a stretch to require me either to form a multi-county region, or tell you why I can't form a multi-county. This is something the counties have struggled with for years and it quite simply boils down to a matter of 'I don't want your waste in my backyard'. At that point you stop listening to each other and come back to the political reality of it. But you know, you can't ignore the politics that go on at the county level, because we don't want your waste over here.
- Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The determination to be a single or multi-county region has already been made over the past 21 years by each region's local governments. Waste destination is already addressed by the local solid waste region with no change required by this rule.
- Comment: 0400-11-01-.09(3)(c)14:
This language talks about various participating jurisdictions. The counties are going to be the only participating jurisdiction without forcing the cities to participate – for the state to insist they participate. They're not going to because it costs money and in these economic times we're all stretched about as far as we can stretch regardless of whether it's the right thing to do or not. They're not going to raise their taxes on their citizens to participate in a plan they're not required to participate in.
- Response: Participation of local governments in the solid waste region was determined in the initial development of the region's plan and subsequent updates which included responsibilities for each entity identified. This rule does not change this.
- Comment: 0400-11-01-.09(3)(d):
All the counties will later have to write and submit a plan, or write a new plan that can conform to the statewide solid waste plan. Nowhere in this do I read where there's an opportunity for input from the people that are going to be the most affected by it and that is county government.
- Response: The Request for Proposal for development of the State's solid waste plan will include statewide meetings to seek input from local governments regarding the plan.
- Also, all local governments in Tennessee are currently included in their solid waste region's plan. The plan may be updated in total or in part at the discretion of the solid waste region. Annual updates to this plan are made through the Annual Progress Report that is required to be submitted by March 31 after the corresponding calendar year. This rule does not change this.
- Each region is required to review the Annual Progress Report at their solid waste region's public meeting for approval prior to the submission to the Department to provide the general public an opportunity to comment and see the report. Each local government (county and municipal governments) is represented on the solid waste board and has the ability, opportunity and responsibility to give input.
- Comment: 0400-11-01-.09(3)(d):
Under subdivision (d), it appears to be a duplication of efforts to require counties to develop separate plans if they approve their region's plan. This could also lead to inconsistencies between plans.
- Response: This subparagraph clarifies that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. And, therefore, by developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.
- Comment: 0400-11-01-.09(3)(d), (e), and (f):
Municipalities and Solid Waste Regions must implement a solid waste plan that is consistent with the TDEC Comprehensive Integrated Solid Waste Management Plan for the state. As history has

shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: These subparagraphs clarify that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. By developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.

Comment: 0400-11-01-.09(3)(g):
When TDEC set a new solid waste of recycling goal, solid waste regions and municipalities will have a minimum of 12 months to meet the goal or implement the plan prescribed to meet this goal. Twelve months, or more, depending on the plan and goal, may be too short a time period for major plan modification, funding and implementation, particularly if unfunded mandates are initiated.

Response: The time to meet the goal or implement the plan prescribed will be extended to 24 months to accommodate this concern.

Comment: 0400-11-01-.09(3)(i):
This paragraph says "The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process." Your budget is in the same state of affairs as our county's budget. You're not saying the state 'shall' provide money and assistance to save money, but something you're requiring me to do is going to cost me money. The general thing, that's been government in general, and county government in particular, we're just about stretched to the breaking point. So I would ask that we take a serious look at the economic consequence of this rule before it's passed.

Response: The Department has provided technical assistance in solid waste planning for twenty-one years. As this is important in achieving any solid waste waste-reduction goal, continued funding is a priority based on availability of funds for this activity.

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 no effect on small business.

- (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 no reporting, recordkeeping, or other administrative costs required for small business from the proposed rules.

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

The proposed package is housekeeping in nature and should not affect small business and consumers directly unless the region's change their local solid waste plans in a manner that would affect them.

- (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.

The Government Performance and Results Act (GPRA) require strategic plans to be developed and revised every three years with annual performance reporting each year. This plan states that each year through 2008; maintain the national average MSW generation rate at not more than 4.5 pounds per person per day. And, by 2008, increase recycling of the total annual MSW produced to 35 percent from 31 percent in 2002. Currently, under this ongoing program, the recycling rate has been set at 38%.

Alabama

Alabama law requires that cities and counties develop and adopt comprehensive solid waste management plans. These plans must address how local governments will meet the statewide 25% waste reduction and recycling goal. Alabama law also requires all state agencies, K-12 public schools, state universities and post secondary schools to implement their own recycling programs. The Alabama Legislature passed the Solid Wastes and Recyclable Materials Management Act on April 15, 2008, which required that the Alabama Department of Environmental Management (ADEM) to establish a percentage goal for recycling by October 2009.

Florida

The 2008 Florida Energy Bill (House Bill 7135) created Section 403.7032, Florida Statutes, which establishes a new statewide recycling goal of 75% to be achieved by the year 2020.

Georgia

In 2005, Georgia did away with its percent waste reduction goal and went with a statewide goal to limit waste disposed to 5.0 pounds per person per day by 2012. Specifically spelled out in this goal were individual goals for the following four commodities: glass (0.140 lbs/person/day), paper (0.850 lbs/person/day), metal (0.186 lbs/person/day) and plastic (0.530 lbs/person/day).

Kentucky

In 2002, Kentucky did away with its 25% waste reduction goal. Currently in effect is a statewide goal to achieve 35% recycling in 2010. Only major items recycled by the public (metals, paper products, plastics and glass) are considered. In 2006, Kentucky had a statewide recycling rate of 27%. Individual counties are not required to meet this goal.

Mississippi

Mississippi has a 25% waste reduction goal. By law, each county is required to have an "adequate strategy" established to meet this goal in their solid waste plans. These plans are required to be reviewed annually. However, no method is established for the measurement or enforcement of the goal.

North Carolina

North Carolina has a statewide 40% per capita goal that continues to be the benchmark although approximately 5.1 million tons of waste was recycled in North Carolina, representing a recycling rate of 43%.

South Carolina

In October 2000, South Carolina amended its Solid Waste Act to reflect new state recycling and disposal goals. The recycling goal was changed to 35% of the municipal solid waste (msw) stream. The disposal goal was changed to 3.5 pounds of msw per person per day. Both of these goals were to be met by Fiscal Year 2005. The state did not reach either goal. South Carolina's Departments of Health and Environmental Control have asked the Legislature to extend the deadline for meeting those goals until Fiscal Year 2012.

- (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 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.

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 planning for the region noted in the rule will have a positive financial impact on local government.

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 majority of changes are housekeeping in nature. The amendment requires the state to update its existing solid waste plan to address new technologies and serve as a framework for the local solid waste region's updated solid waste plans. This framework describes the parts of the plan and takes into account changes in statutory requirements for the region's solid waste plan contents (i.e., disaster debris management plan) and the inclusion of existing statutory language into the rule. The statewide solid waste plan addresses content for updates, revisions, and progress reports for the solid waste regions.

Changes also address the solid waste planning process including timelines, technical and financial assistance to develop, and content.

The rule amendments include a plan to eliminate county public collection receptacles (green box) sites in their annual progress reports.

- (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;

TDEC will be required to update the statewide solid waste plan. Local solid waste regions and their respective local governments will be affected when they revise or update their solid waste plans.

- (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 are primarily housekeeping in nature, minimal fiscal impact is expected. The Department will expend budgeted funds for the development of a new statewide comprehensive municipal solid waste plan.

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

Larry Christley
Division of Solid Waste Management
5th Floor, L & C Tower, 401 Church Street
Nashville, TN 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;

Alan M. Leiserson
Legal Services Director, Office of General Counsel

Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

- (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

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
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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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 File Date: _____
 Effective Date: _____

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

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
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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 Disposal Reduction Goal
0400-11-01-.10	Convenience Centers/County Public Collection Receptacles

(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

The Table of Contents for Chapter 0400-11-01 Solid Waste Processing and Disposal is amended by deleting the title to Rule 0400-11-01-.09 and replacing it with 0400-11-01-.09 Waste Reduction and Planning

Rule 0400-11-01-.09 Waste Disposal Reduction Goal is amended by deleting it in its entirety and replacing it with a new rule so that, as amended, the new rule shall read as follows:

0400-11-01-.09 Waste Disposal Reduction Goal and Planning

(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 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 Municipal Solid Waste Advisory Committee.

~~(2) Waste Reduction Methods~~

- ~~(a)(b)~~ The Department may consider a variety of options that a region shall take into account in meeting the twenty-five percent (25%) goal. As used in this rule, 0400-11-01-.09, "municipal solid waste" (MSW) means any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities which are required to be disposed of in a Class I landfill, as defined in regulations adopted pursuant to T.C.A. Title 68, Chapter 211; provided, that "municipal solid waste" does not include the following:

1. Radioactive waste;
2. Hazardous waste as defined in T.C.A. § 68-212-104;
3. Infectious wastes;
4. Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and
5. Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility.

(2) Waste Reduction

- (a) Comprehensive Integrated Municipal Solid Waste Management Plan. The Department shall prepare a statewide solid waste plan to be used as guidance in achieving the statewide waste reduction goal. This plan shall be reviewed and if needed updated every five years to account for any new available technologies.

1. The plan shall identify current, preferred waste reduction and recycling practices to assist the State and the solid waste regions to effectuate their solid waste plans.
2. Best Management Practices. The Department shall prepare waste reduction and recycling best management practices based on the state solid waste plan that local governments will implement as needed in sum or in part to attain the statewide goal.
3. Preferred Waste Reduction Options. The Department shall, based on the most current statewide solid waste plan, prepare preferred options of waste reduction methodologies. These options shall be considered for determining qualitative equivalence in regional and local government solid waste programs.

(b) ~~Waste reduction methods or activities include, but are not limited to, the following:~~

1. ~~Any "municipal solid waste" diverted from a Class I disposal facility to a Class III or Class IV disposal facility as provided under Rules 0400-11-01-.01 through 0400-11-01-.04 adopted pursuant to the provisions of T.C.A. Title 68, Chapter 211, Part 1.~~
2. ~~Composting of "municipal solid waste". The composting of municipal solid waste must have a market for such composted product in order to be considered as a method for waste reduction.~~
3. ~~Recycling. Recycling constitutes a method of waste reduction so long as the recovered materials are marketed for recycling, or are stored for recycling at a solid waste management facility and at least seventy-five percent (75%) of the stored material must be marketed within the succeeding twelve (12) months. The following processes shall not be considered as marketing of recyclable materials nor counted toward the 25% waste reduction goal:~~
 - (i) ~~Collection or material handling in preparation for buyers.~~
 - (ii) ~~Storage of unprocessed or processed materials. Unprocessed municipal solid waste is not considered as being recyclable.~~
4. ~~Source reduction of "municipal solid waste". Source reduction measures as a method of waste reduction may include industrial process modification, feedstock substitutions or improvements in feedstock purity, various housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process.~~
 - (i) ~~Source reduction may also include reduction in the amount and toxicity of waste generated by residential and commercial sectors, through such measures as product substitution, home composting and recycling.~~
 - (ii) ~~Source reduction may also be achieved through the encouragement of consumer habits that include the selection of products that have reduced and recyclable packaging, and the re-use of durable goods.~~
5. ~~Problem waste diversion. The diversion of waste tires, used oil, lead-acid batteries, paints and other problem waste, as determined and identified by the Department, from a Class I disposal facility for recycling constitutes waste reduction. Problem wastes diverted from a Class I disposal facility and stored for recycling at a municipal solid waste management facility until marketed qualifies as waste reduction when diverted.~~
6. ~~Mulching of "municipal solid waste". Any non-treated wood waste that may be converted to a mulch must have a market in order to be considered as a method for waste reduction.~~

(b) Waste Reduction Methods. The following restrictions and guidance shall be used to evaluate waste reduction methodologies implemented by local governments and their programs.

1. Landfill Bans. Due to the dynamic nature of solid waste, waste streams, and its infrastructure to manage these waste streams, the variety and availability of local markets, local geography and topography also vary, local governments are best suited to design, implement, and manage landfill bans and material redirection at the point of collection.
2. Class III and Class IV materials. Materials received at a Class III or Class IV landfill are not considered as waste reduction unless the materials are recycled or used for other approved beneficial use activities.
3. Composting of "municipal solid waste". Only the portion of composted municipal solid waste that is sold or beneficially used may be counted as waste reduction towards the goal.
4. Mulching of "municipal solid waste". Only the portion of mulch made from municipal solid waste that is sold or beneficially used may be counted as waste reduction towards goal.
5. Recycling. Recycling constitutes a method of waste reduction so long as the recovered materials are marketed for recycling, or are stored for recycling at a solid waste management facility and at least seventy-five percent (75%) of the stored material must be marketed within the succeeding twelve (12) months. The following processes shall not be considered as marketing of recyclable materials nor counted toward the goal:
 - (i) Collection or material handling in preparation for buyers pending market.
 - (ii) Storage of unprocessed or processed materials. Unprocessed municipal solid waste is not considered being recyclable pending market.
6. Source Reduction of "municipal solid waste". Process modifications, feedstock substitutions or improvements, various housekeeping and management practices, increases in the efficiency of machinery that decrease the overall amounts residual materials affect the amount of materials destined for final disposal. As source reduction increases the disposal amount should reflect a proportional decrease.
7. Energy recovery and production. Materials redirected for energy recovery and production shall be considered waste reduction.
 - (i) To calculate the tons of waste reduction the following formula shall apply:

$$T^i - T^o = T^d$$
 Where:
 T^i = tons of municipal solid waste material input into the energy recovery system;
 T^o = tons of residual material output from the energy recovery system sent for disposal; and
 T^d = tons diverted for energy recovery.
 - (ii) Waste incinerated where the primary purpose is not energy recovery is not considered waste reduction.
 - (iii) Residuals from wood wastes reduced in a pit burner or air curtain destructor is not considered waste reduction unless diverted from disposal or otherwise beneficially used in accordance with the Department's beneficial use policy.
8. Problem waste diversion. The diversion of waste tires, used oil, lead-acid batteries, paints and other problem waste, as determined and identified by the Department, from a Class I disposal facility for recycling constitutes waste reduction.

9. The Department shall evaluate new technologies, as they are presented to the Department, to determine the applicability towards waste reduction efforts for the regions in meeting the goal.

(3) Region's Waste Reduction Plan Comprehensive Integrated Municipal Solid Waste Management Planning

~~(a) A region's waste reduction plan shall be consistent with the guidelines issued by the Division. Such a plan shall explain the region's waste reduction methods. The region may use any combination of methods; however, the following methods or practices will not be considered in the calculation for the region's waste reduction plan:~~

- ~~1. Incineration;~~
- ~~2. Unmarketed municipal solid waste compost;~~
- ~~3. Recovered materials (other than problem wastes) stored for recycling without being marketed as prescribed by part (2)(b)3 of this rule; and~~
- ~~4. Illegal or unauthorized storage or disposal of municipal solid waste.~~

(a) The Department shall develop a comprehensive integrated municipal solid waste management plan, hereafter the Plan, for the State based on component requirements in T.C.A. § 68-211-815 and that will serve as a master plan for the State and its local governments in the management of statewide integrated solid waste systems. This plan shall be reviewed every five years and, if needed, updated accordingly based on new technologies, resources, stakeholders, etc. available.

(b) The Plan shall be divided into the following major sections. These sections shall provide and describe in detail how the Plan shall be implemented.

1. Infrastructure, Demographic and Geological Overview
2. Solid Waste Plan
3. Waste Reduction Plan
4. Disaster Debris Management Plan
5. Outreach and Education Plan
6. Funding, Responsibilities, and Administration Plan

(c) At a minimum, each plan and revised plan submitted by a municipal solid waste region shall include the following:

1. Demographic information;
2. A current system analysis of:
 - (i) Waste streams, including data concerning types and amounts generated;
 - (ii) Collection capability, including data detailing the different types of collection systems and the populations and areas which receive and do not receive such services;
 - (iii) Disposal capability, including an analysis of the remaining life expectancy of landfills or other disposal facilities;
 - (iv) Costs, using a full-cost accounting model developed by the commissioner, including costs of collection, disposal, maintenance, contracts and other costs; and

- (v) Revenues, including cost reimbursement fees, appropriations and other revenue sources;
 - 3. Adoption of the uniform financial accounting system required by T.C.A. § 68-211-874;
 - 4. Anticipated growth trends for the next five-year period;
 - 5. Anticipated waste capacity needs;
 - 6. Planned capacity assurance, including descriptions of planned or needed facilities;
 - 7. A recycling plan, including a description of current public and private recycling efforts and planned efforts to enhance recycling within the county or region;
 - 8. A plan for the disposal of household hazardous wastes;
 - 9. Adoption of uniform reporting requirements as required by this part;
 - 10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;
 - 11. A description of education initiatives aimed at businesses, industries, schools, citizens and others, which addresses recycling, waste reduction, collection and other goals of this part;
 - 12. An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;
 - 13. A timetable for implementation of the plan;
 - 14. A description of the responsibilities of the various participating jurisdictions;
 - 15. A certification from the region's title 68, chapter 211, part 9 solid waste authority, if such an authority has been formed, or if no such authority has been formed, the county legislative body of each county in the region that they have reviewed and approved of the region's plan and/or revised plan;
 - 16. A plan for managing solid waste generated as a result of disasters or emergencies based, in part, upon the FEMA 325 Public Assistance Program; and
 - 17. Any other information as the commissioner may deem relevant to the implementation of this part.
- (d) Each county shall develop a comprehensive integrative municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule. This plan shall be designed based upon all resources within the county.
 - (e) Each municipal solid waste region shall compile and develop a comprehensive integrated municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule and from the county plans within the region.
 - (f) Municipalities may elect to develop an integrated municipal solid waste management plan provided that they meet the same requirements as the county as described by this rule.
 - (g) When the State approves and sets a new municipal solid waste goal, to implement the goal, each local government and region with an integrated municipal solid waste management plan developed under this rule shall develop and submit a plan update in the format and methodology described by the Department. These local governments and regions shall be given a minimum of two years to prepare major updates for their plan.

- (h) All local governments and the municipal solid waste regions developing plans under this rule must submit such plan to the Department for review and approval. Approval by the Department shall deem that the submitted plan is consistent with the Plan described in this rule.
- (i) The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process.
- (j) Routine updates to the solid waste region's plan shall be submitted by March 31 of each year for the immediate preceding calendar year in a format prescribed by the Department.
- (k) Failure to complete an update to the plan or to submit the plan shall subject the solid waste region or local government to possible sanctions pursuant to T.C.A. §§ 68-211-816 and 68-211-871.
- ~~(b)(l)~~ The twenty-five percent (25%) goal applies to only the waste that has been going to Class I landfills or municipal solid waste incinerators. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. Materials recovered or collected for recycling at these facilities prior to combustion or landfilling shall be weighed and deducted from the total amount being disposed.
- ~~(e)(m)~~ The region shall present its calculation of the twenty-five percent (25%) reduction on a per capita basis or the economic growth basis to be prescribed by the Department in accordance with paragraph (1) of this rule.
- ~~(d)(n)~~ The region plan shall utilize the base year of 1995 for measuring waste reduction unless a region can demonstrate that the 1995 data is clearly in error. A region may receive credit toward the waste reduction goal from recycling and source reduction programs prior to 1995, but no earlier than 1985. The region shall notify in writing the Division Director of such an error and request approval of any adjustment to the 1995 data.
- ~~(e)(o)~~ By March 31 of each year, each region shall submit an annual report to the Division. Pursuant to T.C.A. §§ 68-211-863 and 68-211-871, such reports shall include, at a minimum, the amount and type of recycled materials collected in the region.

(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)~~ subparagraphs (3)(l) and (3)(m) 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.

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

Paragraph (1) of Rule 0400-11-01-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting the current paragraph and substituting the following language, so that, as amended, the new paragraph shall read as follows:

(1) Purpose

- (a) This rule shall establish the minimum level of service which every county must provide in order to assure that all residents of a county are provided with collection and disposal service.
- (b) This rule shall establish minimum standards for the design and operation of convenience centers if such service is selected by a County.
- ~~(c) This rule shall establish the economic index and local matching rates for grant assistance to counties to establish and upgrade convenience centers.~~
- ~~(d)~~(c) This rule shall establish requirements for operation and use of county public collection receptacles for municipal solid waste.

Paragraphs (5) and (6) of Rule 1200-01-07-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting them in their entirety and replacing them with the following new paragraph so that, as amended, the new paragraph shall read as follows:

~~(5)~~ Economic Index

- ~~(a) Matching rates for convenience center grants shall be determined using the mean of a county's rank for equalized property tax generation and per capita income. Property tax generation shall be the equalized value of property as published in the Tennessee State Tax Aggregate Report by the State Board of Equalization. Per capita income shall be the income figure published by the United States Department of Commerce, Bureau of Economic Analysis.~~
- ~~(b) The Department shall issue annually in March the County ranking based on this mean.~~
- ~~(c) The local share required to match grant funds shall be 10% for those counties in the lower one-half (½) of the economic index. Those counties in the upper one-half (½) of the economic index shall be required to provide a 20% local match.~~

~~(6)~~(5) Requirements for Operation and Use of County Public Collection Receptacles for Municipal Solid Waste

- (a) ~~By March 31 of each year, each~~ Each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center, shall develop a plan for the elimination or conversion to manned convenience centers as

defined in paragraph (2) of Rule 0400-11-01-.01 by June 30, 2015. The county will include the following information as part of the Solid Waste Region's municipal solid waste planning region's annual report (which is submitted to the Division) until said collection receptacles are eliminated or converted:

1. The number of receptacles in the County by location;
 2. The location of all receptacles by street address and geo-code (longitude and latitude);
 3. Collection times for such receptacles; and
 4. Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety. Such information is required by this part must be in the form of a narrative manual and meet the minimum requirements in subparagraph (b) of this paragraph.
- (b) Minimum operation and security requirements shall be as follows:
1. All containers must be emptied at a minimum of once every 7 days, except the commissioner may provide an extension of time for severe weather or other emergency conditions.
 2. Litter and/or solid waste outside the receptacles must be controlled. Such wastes must be removed at a minimum frequency of at least once every 7 days.
 3. Receptacles must be maintained and managed in a manner to minimize disease vectors.
 4. Receptacles must be located on an all weather surface (such as gravel).
- (c) Per T.C.A. § 68-211-851, as amended, counties which did not have receptacles in place as of January 1, 1996 or which subsequent to such date discontinues use of any receptacle authorized in this paragraph, shall be prohibited from installing or maintaining additional receptacles.

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)
Dr. Warren Anderson				X	
Michael Atchison	X				
Elaine Boyd	X				
Melissa Bryant				X	
Dr. Jack Deibert				X	
Kenneth Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Jared L. Lynn	X				
Mayor Franklin Smith, III	X				
Mark Williams	X				
Glenn Youngblood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board on 08/07/2012, 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: 04/11/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/12

Date: August 7, 2012

Signature: _____

Name of Officer: Kenneth Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.

 Robert E. Cooper, Jr.
 Attorney General and Reporter

 Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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: Justification for the rule changes.
Identify how the proposed changes will benefit municipalities and other affected parties. Identify problems within the existing rules governing solid waste disposal. Identify remedies/solution to these problems that proposed rules correct, simplify, or save money.

Response: As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics. The proposed changes to this rule are housekeeping in nature and provide little change to the current policy, rules and existing statutory requirements. It harmonizes language from the law with the rule by taking existing statutory requirement language and placing it verbatim into the proposed rule amendment.

Benefits come to affected parties though clarification of language-revisions to the existing listing of waste reduction methodologies to include newer technologies used by local governments and regions to allow them to receive waste reduction credit for these activities. It further protects local governments by establishing methods that will evaluate new technologies that may be misleading and costly to uninformed local governments, thereby protecting them.

Other benefits for all local governments include inclusion of disaster debris management components in their solid waste plan that will assist local governments in receiving additional financial credit with FEMA and TEMA in the event of a disaster through their PA325 programs saving local governments millions of dollars, time and resources.

The Waste Reduction Task Force of 2008 identified deficiencies in the existing solid waste systems across the state. Their findings can be located at www.tn.gov/environment/swm/prwr under the Task Force Archives. The Waste Reduction Task Force further identified practical, essential solutions that the regions should implement. These solutions would further increase the opportunity for job creation, increase the tax base and improve the statewide personal income based on findings published and substantiated by several organizations and researched by the College of Charleston.

Comment: Cost of Implementation:
Produce a true cost benefit analysis that examines the cost of land filling vs. cost associated with these proposed rules. Identify any possible expenses that municipalities will incur as a result of compliance with these rules. Identify funding sources intended to offset the cost of implementing these rules.

Response: This rule and the proposed amendment do not require any additional actions or costs on the part of municipalities.

If a municipality chooses to prepare a solid waste plan, the cost for writing this optional plan would be based on the current market rate. The Department provides grants to the local development districts to provide services to the local governments in preparing solid waste plans.

The region, to which a municipality is a part and has representation on their solid waste board, may at its discretion, revise their solid waste plan at any time (as is currently the case). The region's new solid waste plan will dictate new responsibilities and/or processes that all the local governments agree to and approve to implement. The costs of these activities would be known to the region and should be addressed at the specific local level of that region during that process. Activities implemented would be based on availability of local resources including staffing, infrastructure and funding.

No additional funding sources have been identified as this rule does not substantially change the existing circumstances. No major additional expenditures are expected directly relating to this amendment.

Comment: Definition of Municipal Solid Waste:
Your definition of municipal solid waste should include yard waste.

Response: The Department is not currently revising the definition portion of the regulations found at Rule 0400-11-01-.01(2) which reflects the definition of solid waste defined in the statute. Yard waste is considered as landscaping waste and may be disposed in a Class I or Class III landfill.

Comment: TCA 68-211-803 (a) Reference:
These regulations are based on TCA 68-211-800, et al, yet TCA 68-211-803 (a) policy mandates the consideration of health, environment, and job creation. Not only do these regulations not consider the policy, they further poor data capturing by creating more loopholes which allow reports falsely demonstrate improving conditions.

Response: This rule does consider the provisions of the Act. This rule amendment is predominately housekeeping in nature and does not substantially change any existing reporting requirements. Changes to data collection is not included in this rule package.

Comment: Increase of Diversion Rate:
The solid waste board should more thoroughly consider increasing the required diversion rate. They can also assist in helping counties increase their diversion in localized and innovative ways, not just merely report. The increased diversion rate should be incremental and target the 10 largest counties which have 50% of the population. We should start with construction waste recycling and compost food waste, yard waste, and non-recycled paper.

Response: The goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: Rule Title:
It is very misleading to call these "Solid Waste Reduction Regulation." There is nothing in the regulations that will facilitate recycling, composting, or any method of solid waste reduction. This is a serious concern with these regulations. Decision makers and citizens must not be misled into thinking there is a program for reducing solid waste when there is not.

Response: The title of this rule will be revised from "Waste Disposal Reduction" to "Waste Reduction and Planning". The asserted title is not applied to this rule under revision.

Comment: Diversion Goal:
It is clear that counting and reports are the primary concerns of these regulations and the statute.

- A. Credit for landfilled construction waste as recycled, three different ways to count local reports, and ten (10) different base years create a loop-hole riddled system.
- B. I am associated with Bio-Cycle Magazine. The October 2010 Bio-Cycle Magazine and Columbia University Bi-Annual Waste Survey determined that Tennessee diverted 4.64% waste and ranked 7th from the bottom among states. Tennessee apparently claims nearly 50% diversion counting landfilled construction waste.

This lack of uniformity is an obvious problem. How many local governments claim 50% waste diversion? How have numbers been verified?

Response: The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

The data used by Bio-Cycle Magazine is provided by the Department and is the same information used to determine compliance with the current goal. The Department has no control over how information is interpreted or analyzed by third party groups that may use other defined standards.

- Comment: Landfill Capacity:
Identify the permit status, landfill capacity, and location of available landfills in the state.
- Response: This rule does not specifically address these issues; however, specific questions regarding the status of facility permits, landfill capacity and the availability of landfills should be directed to the Division of Solid Waste Management Permitting Section.
- Comment: 0400-11-01-.09(1)(a):
Why is the base year 2003? Why is there a base year? TDEC should count solid waste generated, recycled, composted, and landfilled. If regions submit other information to comply with statutes, that is fine.
- Response: 1995 is the base year set by the Solid Waste Management Act of 1991 to determine waste reduction and diversion efforts. 2003 is the year in which the solid waste regions were required to achieve the 25% waste reduction and diversion goal. The goal allows for all material diverted or reduced including recycling, composting to count towards achievement of the goal. Legislation made the goal ongoing.
- Comment: 0400-11-01-.09(1)(a):
The use of multiple base years at the discretion of the local government is unwarranted. Solid waste is governed by the State. How can any reliable numbers be developed with multiple ways of counting waste and multiple base years ranging from 1995 to 1985? All of these numbers are exceedingly unworkable.
- Response: The Solid Waste Management Act of 1991 and its subsequent amendments set the method by which the goal is measured. The 2007 amendment allows for the goal to be set by rule, but to date a new goal has not been successfully promulgated so the existing 25% waste reduction and diversion goal and methodology is retained.
- Comment: 0400-11-01-.09(2)(a):
This paragraph identifies the "State Solid Waste Plan" versus subparagraph (3)(a) identifies the "Comprehensive Integrated Municipal Solid Waste Plan". What is the difference between the two plans? If there is no difference, why identify each plan differently? Why not combine the two subparagraphs to be more clear and concise on the Department's "Plan"?
- Response: There is no difference. The language will be revised to reflect this. The two subparagraphs serve two separate purposes. (2)(a) describes how the plan is used for the purpose of waste reduction. (3)(a) describes in detail the requirements for the plan and incorporates statutory language from the Solid Waste Management Act of 1991 into the rule to establish regulatory harmony between the two documents.
- Comment: 0400-11-01-.09(2)(a):
We are concerned about the lack of input from counties and solid waste regions in the formation of a statewide solid waste plan that must later be implemented by counties/regions. We request that the rule provide that any proposed plan must be approved by an ad hoc committee of local representatives before being adopted. Additionally, we request that the rule provide that any proposed waste reduction/recycling practices, best management practices, and hierarchy of waste reduction methodologies shall not be adopted until a full projected fiscal impact is prepared and included. Also, we request the rule state – since there are many factors that change the feasibility of different approaches among counties – that no practice shall be mandated if the costs outweigh the benefits in a particular region.
- Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will

be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

As part of the best management practices in The Plan, we will request that the contractor provide projected fiscal impact statements based on implementation and include expected operation, revenue and expenditures.

Best management practices will not be mandated through The Plan but will serve as a resource for local governments to develop and choose best fit strategies in their ongoing operations for their local solid waste programs to achieve the current waste reduction and diversion goal. Assessment of costs, successes, and use of the practices will be determined at the local level.

Comment: 0400-11-01-.09(2)(a) State Solid Waste Plan:
As written, this section does not provide for input from local governments regarding the development of the state's solid waste plan. Since municipalities must implement the provisions of this plan, they should have a seat at the table. We request that the rule be redrafted to include input from local governments, specifically that an ad hoc committee of local government officials be established to review and approve any proposed plans or rules regarding the state solid waste plan, best management practices, or preferred waste reduction hierarchy prior to adoption by the UST/SWDCB. Geographic diversity and population should be considered when selecting the members of this committee.

Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

Comment: 0400-11-01-.09(2)(a)2:
TDEC will control and prepare local waste reduction plans and practices. Where is the local input and funding?

Response: All local waste reduction plans are governed by, developed and approved by the solid waste planning region's board. The State reviews the local solid waste plans approved by the local solid waste boards. The local solid waste boards are required by the Solid Waste Management Act of 1991 to provide a public hearing for the general public and the region's stakeholders on any proposed solid waste plan, changes and amendments to the plan prior to approval.

The State of Tennessee currently contracts with the Development Districts to assist solid waste planning across the state for local governments.

Comment: 0400-11-01-.09(2)(a)3: Preferred Waste Reduction Hierarchy:
The proposal states that the Department will prepare a preferred hierarchy of waste reduction methodologies and that such hierarchy shall be considered for determining qualitative equivalence in regional and local government solid waste programs. The Department has indicated that the "hierarchy" will simply be a list of available methodologies to meet the waste reduction goal. We suggest that the term "hierarchy" be replaced with "options" so that regions may utilize the method that is best for their community.

Response: The suggested wording change was made in this part.

Comment: 0400-11-01-.09(2)(a)3:
Are we going to receive partial credit based on the hierarchy? If we're using the forced preferred method are we going to get 25% if what we actually recycled or whatever method we're talking about?

Response: The local solid waste plan as approved by the region determines which practices are used to meet the 25% waste reduction and diversion goal. The current goal is based on reducing the amount of waste going to municipal solid waste landfills by 25%. The hierarchy will only establish the preferred order of waste reduction in much the same way as EPA's waste hierarchy. The region will establish their methodologies of waste reduction based upon available systems, cost, geography, population, etc. Successful implementation of the region's plan will accomplish the goal of directing a minimum of 25% of materials generated away from municipal solid waste landfills.

Comment: 0400-11-01-.09(2)(a)3:
TDEC will determine the hierarchy of waste reduction methodologies and control which recycling or diversion programs local governments will implement. Where is the local input?

Response: The State does not control which recycling or diversion programs local governments implement as this responsibility is the local solid waste region's role. The statewide "Plan" will define very broad, general, widespread and well accepted, existing practices and standards within the solid waste and recycling industry that the local solid waste regions may select and implement based on local conditions to help them achieve the goal. Solid waste planning regions will conduct public hearings to obtain local input from government entities, citizens and industry.

Comment: 0400-11-01-.09(2)(a)3:
By statute the policy is repeatedly stated in writing that policy of the State is to recycle first and that includes composting. (Policy of Solid Waste Act of 1991, TCA 68-211-101) If this is the policy why not implement it now. Why does TDEC have to determine the hierarchy of waste disposal?

Response: The policies of the Solid Waste Management Act of 1991 are currently implemented, reassessed and re-implemented as needed to fulfill the purpose of the Act. Recycling and composting are just two aspects of the waste reduction practices used to effectuate the Act. Local governments may choose from these and other practices to meet their goal. Since material management is locally implemented, it is the local government's choice of which programs to implement to meet the goal based on their solid waste plan along with availability of local resources including infrastructure, staffing and funding.

Comment: 0400-11-01-.09(2)(b):
It appears that the proposed rules simply retain the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). The General Assembly provided the following guidelines to the board for the construction of the new rule:

'The general assembly recognizes that the ways in which solid waste is generated and managed are very dynamic. The opportunities for recycling and for reduction of waste generated change with both market factors and technological developments. These in turn, affect the costs of solid waste management and recycling. Also there are many factors that change the feasibility of different approaches among the counties, in addition to population and amount of commercial and industrial activity; these include proximity to markets for recyclable materials and the solid waste activities of municipalities. In order to better address all of these changing circumstances, the solid waste disposal control board is authorized to adopt a rule promoting recycling and waste reduction. In so doing, the board shall consider the use of incentives, disincentives, public education, costs and benefits of recycling, and the widely varying circumstances of the different solid waste regions. Upon the effective date of such rule, the provisions of subsection (a) through (f) of this section, § 68-211-861, will be repealed and of no further force and effect and the rule will be enforceable according to its terms and in accordance with § 68-211-816.'

2007 Public Chapter 462, Section 13 (emphasis added). Retaining the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal does not appear to comply with the General Assembly's mandate.

- Response: The 25% waste reduction and diversion goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is implementing the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.
- Comment: 0400-11-01-.09(2)(b) Regarding Waste Reduction Methods:
The proposed rule retains the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). A "blanket" goal does not take into account many factors that affect a region's ability to achieve this goal such as population, geographic diversity, industrial activity, proximity to markets for recyclable materials, and fuel cost. The Department should develop a formula that takes these factors into consideration when determining the waste reduction goal for a particular region.
- Response: This rule package does not change Tennessee's 25% waste reduction and diversion goal. Also, all material that is directed away from municipal solid waste (Class I) landfills is counted towards meeting the goal. The rule does not change this. Material going to a Class III or IV landfill would still help the region meet the 25% waste reduction and diversion goal. Methodologies for calculating a region's accomplishment toward achieving the goal have not changed.
- Comment: 0400-11-01-.09(2)(b)1:
If landfill bans are a part of the state plan, then are the counties and the people that are required to carry this out, are we then required to implement these bans?
- Response: The inclusion of Landfill Bans in this rule as a waste reduction method is only to give credit for local governments that choose to implement local landfill bans as a method towards meeting their waste reduction goal. Landfill bans while considered as a method of waste reduction does not imply any current or future statewide bans such as the current bans on whole tires, used oil, etc.
- Comment: 0400-11-01-.09(2)(b)1:
Landfill Bans. Identify the costs associated with implementing landfill bans.
- Response: The inclusion of Landfill Bans in this rule as an acceptable waste reduction method does not require any region to implement a landfill ban. As conditions and infrastructure are different for all local governments and regions across the State, it is incumbent upon those agencies to determine the costs and effectiveness of any waste reduction methodology verses expected outcome in the implementation of a locally enacted landfill ban before establishing one.
- Comment: 0400-11-01-.09(2)(b)1:
Nashville started landfill bans and as a private company I'm trying to understand how I'm going to comply with that for cardboard, electronics and yard waste. But nobody in Davidson County will tell me how it's going to be enforced. Nobody in the city or state can tell me how it's going to be enforced. Are they going to do an audit of my trucks and fine me or are they going to go into the transfer station and find out. Or are they going out to the landfill for the last six months of material dumps. So for the landfill bans in the rule, I encourage a well thought out plan to the cities and counties.
- Response: The Nashville landfill ban is a local issue, and as such, the Department is unable to comment on the specific issues raised. The inclusion of landfill bans as a waste reduction method in this rule only acknowledges that the solid waste regions may use bans as a waste reduction method to help them toward achieving the 25% waste reduction and diversion goal. The extent of implementation and enforcement would be determined at the local level.
- Comment: 0400-11-01-.09(2)(b)2:
Right now in the re-Trac system, the Class III/IV waste is being counted in the total disposed amount, but it is also then part of the diverted amount. In the proposed rules, it would be part of the diverted amount, but is it still going to count as a disposed amount? If so, it would make it impossible for our regions to meet the 25% goal by any means. Or is it only Class I waste that will be counted in the solid waste disposal numbers?

- Response: Only Class I waste is counted in the disposal numbers and used in calculating a region's accomplishment toward the 25% waste reduction and diversion goal.
- Comment: 0400-11-01-.09(2)(b)2: Waste Reduction Methods:
Material being disposed of in Class 3 and 4 landfill will be counted as waste going into a Class I landfill. The 1991 Solid Waste Management Act, Amended, provides for construction/demolition waste going into a Class 3/4 Landfill not be classified as Municipal Solid Waste going into a Class I Landfill. This would need legislative amendment, not rulemaking, as it is current Tennessee Code.
- Response: Materials disposed of in a Class III/IV landfill will not be counted as Class I disposal. Diverting this material away from the Class I landfill would help the region achieve the 25% waste reduction and diversion goal. The 2007 amendments authorize a new goal to be set by rule and the measurements toward the goal.
- Comment: 0400-11-01-.09(2)(b)2:
Only a portion of mulched material diverted from Class I Landfills counts towards materials diverted from Class I Landfills. Why would not all material being diverted count towards diversion? Will other materials that are being completely diverted be added to this list of only receiving partial credit reduction?
- Response: Any material that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. Materials must be successfully marketed and not landfilled.
- Comment: 0400-11-01-.09(2)(b)2:
Tennessee is the only state that counts landfilled construction waste as diverted or recycled. I do not understand how this is useful. The proposed Rule continues to exclude this waste by applying the 25% only to waste formerly landfilled in Class I landfills. This creates an artificial incentive to landfill construction waste that is actually the most plentiful and easiest material to recycle. Recycling C & D creates 10 times as many jobs as landfill disposal. I do not understand the goal or the purpose of making recycling confusing to the public and businesses.
- Response: This rule package does not change the existing 25% waste reduction and diversion goal or how material is counted toward the goal. We agree that recycling promotes job creation and sustaining those jobs. Studies also show that recycling further increases the tax base by over \$3,000 for every 1,000 tons recycled and improves personal revenue across the state.
- Comment: 0400-11-01-.09(2)(b)2:
In my opinion, with a properly backed plan in place, including rules and regulations making jobsite waste recycling more attractive, private industry could and should be able to take on up to 80% of construction waste for recycling. Private industry could and should, with a little nudge from our governmental institutions, take care of this problem in a profitable and environmentally friendly way. Last, but not least, I feel that much greater emphasis needs to be put on the recycling of waste from existing homes and businesses.
- Response: Construction and demolition waste recycling is a component of any waste reduction and diversion goal. Local governments have the opportunity to incorporate continued expansion into this area under the proposed rule. This rule does not prohibit this. At this time, however, the new waste reduction goal is not part of this package.
- Comment: 0400-11-01-.09(2)(b)6:
The source reduction of "municipal solid waste" allows technical changes in businesses and industry to be counted as waste reduction without documentation. This is another loophole that only furthers the lack of accountability and responsibility of Tennesseans to the health of the state.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.

- Comment: 0400-11-01-.09(2)(b)6:
I am concerned with another potential loophole: source reduction of "municipal solid waste". This allows technical changes in business and industry to be counted as waste reduction even with no documentation.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.
- Comment: 0400-11-01-.09(2)(b)6:
This Rule will not promote waste reduction; rather, it convolutes waste counting and reporting. The inclusion of construction and demolition waste as a part of the diversion rate should not be continued. This waste is merely being diverted from one landfill to another; is not being considered for reuse; and should count as part of the base tonnage for landfilled waste. Additionally, the diversion of tires, car batteries, paints and other toxic waste would still continue to be counted as diversion from Class 1 landfills, even though these sources have not been landfilled for years. These loopholes have existed for too long.
- Response: The rule identifies acceptable waste reduction and diversion activities that are based on current industry practices. Until a new goal is established by rule the current 25% waste reduction and diversion goal and the supporting methodologies established will continue to direct the State on the determination of a region's compliance with the goal.
- Comment: 0400-11-01-.09(2)(b)7(iii):
No portion of wood waste volume reduction will be counted towards Class I waste diversion, even if the wood ash is not placed in a Class I Landfill. Again, the 1991 Solid Waste Management Act, Amended, provides for waste diverted from a Class I Landfill be considered as waste diversion from a Class I Landfill.
- Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all volume reduction of materials from air curtain destruction and pit burners as is the current practice. If the ash from these processes is sent to a Class I municipal solid waste landfill instead of diverted to another use, it would be counted as disposal.
- Comment: 0400-11-01-.09(2)(b)9:
This part says the Department will evaluate new technologies. Who's going to evaluate this new technology? How is that evaluation going to take place? What criteria are going to be used to evaluate?
- Response: As new technologies emerge, the State, solid waste and recycling industries, local governments and other states are confronted with the applicability and trustworthiness of these technologies. The State's beneficial use policy sets a framework in determining applicability and trustworthiness of such technologies. This along with current statutory and regulatory standards, references and prior examples of successful launches of the technology assists in the determination of applicability towards waste reduction.
- Comment: 0400-11-01-.09(3):
Subparagraphs (3)(l), (3)(m), (4)(a), and (4)(b) refer to the 25% goal. Each of these subparagraphs state 25% in different terms, such as the 25% goal versus 25% waste reduction and diversion goal versus 25% recycling and diversion goal. Suggest using consistent wording for the 25% goal. There may be other references in this rule to the 25% goal that should be reviewed and revised accordingly.
- Response: This rule package does not address the goal or any related language as it might be construed as re-setting the goal and invoking the 2007 Public Chapter 462 updating and revising the existing goal. This will be addressed in a subsequent rule package.
- Comment: 0400-11-01-.09(3):

I am very puzzled with the over-riding emphasis on superficial counts of solid waste that excludes any real steps to reduce solid waste. The three (3) different methods of counting solid waste reduction are:

- A. Calculate 25% reduction per capita. [Subparagraph (3)(m)].
- B. Economic growth basis. [Subparagraph (3)(m)].
- C. Qualitative Assessment Methods. [Paragraph (4)].

Apparently, this is in the law. I am concerned that your reliance on such numbers does more to reward local governments with excellent numbers than to actually use solid waste as a raw material for jobs and business.

Response: Yes, the Solid Waste Management Act of 1991 dictates how accomplishment toward the goal is to be measured.

The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: 0400-11-01-.09(3): Comprehensive Planning:
TDEC will develop the comprehensive integrated solid waste management plan which will serve as the master plan for all local governments. As history has shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: The statewide comprehensive integrated solid waste management plan will update the existing plan that was adopted in 1991 for the state and serve as the master plan to take into account all subsequent technology improvements. The local solid waste regions will still be the focal point of local solid waste plans. These local plans, which have been the practice since 1991, are written to support the statewide plan at the local level based on what the region plans to implement to achieve the 25% waste reduction and diversion goal using available resources, i.e., staffing, infrastructure and funding.

Comment: 0400-11-01-.09(3)(a):
Every few years the state is going to update their plan. If a new technology comes on the market does that mean the state will say the goal is no longer 25% reduction but now it's 40% reduction, regardless whether the county can afford that new technology or not?

Response: No. The goal is set currently by law as 25% waste reduction and diversion. The 2007 Amendments to the Solid Waste Management Act allows for a new goal to be set by rule. The State Solid Waste Plan will not change the goal. The Plan serves as a guide to the State and to local governments on how to reach the established goal. Review and update of the State plan allows for new technologies to be incorporated into the existing Plan when they come available. The statewide plan does not require the local governments to incorporate every new technology or even every practice into their regional solid waste plan. The local solid waste board makes the determination of which practices are appropriate, available, and cost effective in the region effectuating their solid waste plan and reaching the goal.

Comment: 0400-11-01-.09(3)(c)8:
It says that the county's plan has to come up with a plan for the disposal of household hazardous wastes. Does that mean the state will no longer provide household hazardous waste services, but the counties are now going to have to provide for not only household waste disposal but household hazardous waste?

Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The Department will continue to provide mobile HHW collection services and continue to sponsor and develop new regional HHW collection facilities. This part of the plan only describes how local governments intend on managing HHW materials within the region which may include participating in the State's mobile HHW collection events.

Comment: 0400-11-01-.09(3)(c)12:
I feel like it is a bit of a stretch to require me either to form a multi-county region, or tell you why I can't form a multi-county. This is something the counties have struggled with for years and it quite simply boils down to a matter of 'I don't want your waste in my backyard'. At that point you stop listening to each other and come back to the political reality of it. But you know, you can't ignore the politics that go on at the county level, because we don't want your waste over here.

Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The determination to be a single or multi-county region has already been made over the past 21 years by each region's local governments. Waste destination is already addressed by the local solid waste region with no change required by this rule.

Comment: 0400-11-01-.09(3)(c)14:
This language talks about various participating jurisdictions. The counties are going to be the only participating jurisdiction without forcing the cities to participate – for the state to insist they participate. They're not going to because it costs money and in these economic times we're all stretched about as far as we can stretch regardless of whether it's the right thing to do or not. They're not going to raise their taxes on their citizens to participate in a plan they're not required to participate in.

Response: Participation of local governments in the solid waste region was determined in the initial development of the region's plan and subsequent updates which included responsibilities for each entity identified. This rule does not change this.

Comment: 0400-11-01-.09(3)(d):
All the counties will later have to write and submit a plan, or write a new plan that can conform to the statewide solid waste plan. Nowhere in this do I read where there's an opportunity for input from the people that are going to be the most affected by it and that is county government.

Response: The Request for Proposal for development of the State's solid waste plan will include statewide meetings to seek input from local governments regarding the plan.

Also, all local governments in Tennessee are currently included in their solid waste region's plan. The plan may be updated in total or in part at the discretion of the solid waste region. Annual updates to this plan are made through the Annual Progress Report that is required to be submitted by March 31 after the corresponding calendar year. This rule does not change this.

Each region is required to review the Annual Progress Report at their solid waste region's public meeting for approval prior to the submission to the Department to provide the general public an opportunity to comment and see the report. Each local government (county and municipal governments) is represented on the solid waste board and has the ability, opportunity and responsibility to give input.

Comment: 0400-11-01-.09(3)(d):
Under subdivision (d), it appears to be a duplication of efforts to require counties to develop separate plans if they approve their region's plan. This could also lead to inconsistencies between plans.

Response: This subparagraph clarifies that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. And, therefore, by developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.

Comment: 0400-11-01-.09(3)(d), (e), and (f):
Municipalities and Solid Waste Regions must implement a solid waste plan that is consistent with the TDEC Comprehensive Integrated Solid Waste Management Plan for the state. As history has

shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: These subparagraphs clarify that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. By developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.

Comment: 0400-11-01-.09(3)(g):
When TDEC set a new solid waste of recycling goal, solid waste regions and municipalities will have a minimum of 12 months to meet the goal or implement the plan prescribed to meet this goal. Twelve months, or more, depending on the plan and goal, may be too short a time period for major plan modification, funding and implementation, particularly if unfunded mandates are initiated.

Response: The time to meet the goal or implement the plan prescribed will be extended to 24 months to accommodate this concern.

Comment: 0400-11-01-.09(3)(i):
This paragraph says 'The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process.' Your budget is in the same state of affairs as our county's budget. You're not saying the state 'shall' provide money and assistance to save money, but something you're requiring me to do is going to cost me money. The general thing, that's been government in general, and county government in particular, we're just about stretched to the breaking point. So I would ask that we take a serious look at the economic consequence of this rule before it's passed.

Response: The Department has provided technical assistance in solid waste planning for twenty-one years. As this is important in achieving any solid waste waste-reduction goal, continued funding is a priority based on availability of funds for this activity.

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 no effect on small business.

- (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 no reporting, recordkeeping, or other administrative costs required for small business from the proposed rules.

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

The proposed package is housekeeping in nature and should not affect small business and consumers directly unless the region's change their local solid waste plans in a manner that would affect them.

- (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.

The Government Performance and Results Act (GPRA) require strategic plans to be developed and revised every three years with annual performance reporting each year. This plan states that each year through 2008; maintain the national average MSW generation rate at not more than 4.5 pounds per person per day. And, by 2008, increase recycling of the total annual MSW produced to 35 percent from 31 percent in 2002. Currently, under this ongoing program, the recycling rate has been set at 38%.

Alabama

Alabama law requires that cities and counties develop and adopt comprehensive solid waste management plans. These plans must address how local governments will meet the statewide 25% waste reduction and recycling goal. Alabama law also requires all state agencies, K-12 public schools, state universities and post secondary schools to implement their own recycling programs. The Alabama Legislature passed the Solid Wastes and Recyclable Materials Management Act on April 15, 2008, which required that the Alabama Department of Environmental Management (ADEM) to establish a percentage goal for recycling by October 2009.

Florida

The 2008 Florida Energy Bill (House Bill 7135) created Section 403.7032, Florida Statutes, which establishes a new statewide recycling goal of 75% to be achieved by the year 2020.

Georgia

In 2005, Georgia did away with its percent waste reduction goal and went with a statewide goal to limit waste disposed to 5.0 pounds per person per day by 2012. Specifically spelled out in this goal were individual goals for the following four commodities: glass (0.140 lbs/person/day), paper (0.850 lbs/person/day), metal (0.186 lbs/person/day) and plastic (0.530 lbs/person/day).

Kentucky

In 2002, Kentucky did away with its 25% waste reduction goal. Currently in effect is a statewide goal to achieve 35% recycling in 2010. Only major items recycled by the public (metals, paper products, plastics and glass) are considered. In 2006, Kentucky had a statewide recycling rate of 27%. Individual counties are not required to meet this goal.

Mississippi

Mississippi has a 25% waste reduction goal. By law, each county is required to have an "adequate strategy" established to meet this goal in their solid waste plans. These plans are required to be reviewed annually. However, no method is established for the measurement or enforcement of the goal.

North Carolina

North Carolina has a statewide 40% per capita goal that continues to be the benchmark although approximately 5.1 million tons of waste was recycled in North Carolina, representing a recycling rate of 43%.

South Carolina

In October 2000, South Carolina amended its Solid Waste Act to reflect new state recycling and disposal goals. The recycling goal was changed to 35% of the municipal solid waste (msw) stream. The disposal goal was changed to 3.5 pounds of msw per person per day. Both of these goals were to be met by Fiscal Year 2005. The state did not reach either goal. South Carolina's Departments of Health and Environmental Control have asked the Legislature to extend the deadline for meeting those goals until Fiscal Year 2012.

- (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 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.

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 planning for the region noted in the rule will have a positive financial impact on local government.

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 majority of changes are housekeeping in nature. The amendment requires the state to update its existing solid waste plan to address new technologies and serve as a framework for the local solid waste region's updated solid waste plans. This framework describes the parts of the plan and takes into account changes in statutory requirements for the region's solid waste plan contents (i.e., disaster debris management plan) and the inclusion of existing statutory language into the rule. The statewide solid waste plan addresses content for updates, revisions, and progress reports for the solid waste regions.

Changes also address the solid waste planning process including timelines, technical and financial assistance to develop, and content.

The rule amendments include a plan to eliminate county public collection receptacles (green box) sites in their annual progress reports.

- (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;

TDEC will be required to update the statewide solid waste plan. Local solid waste regions and their respective local governments will be affected when they revise or update their solid waste plans.

- (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 are primarily housekeeping in nature, minimal fiscal impact is expected. The Department will expend budgeted funds for the development of a new statewide comprehensive municipal solid waste plan.

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

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

Alan M. Leiserson
Legal Services Director, Office of General Counsel

Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

- (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

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Alan.Leiserson@tn.gov

- (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.