

Tennessee Department of Environment and Conservation

Objective 1 Stakeholder Outreach

Comments and Responses



June 22, 2016

Response to Comments Summary

Solid waste and materials management is dynamic, and existing statewide waste diversion and recycling goals have not been updated since 1991. In order to continue encouraging Tennessee communities to further reduce environmental impacts associated with solid waste disposal, the Tennessee Department of Environment and Conservation (TDEC) is undertaking efforts to update statewide waste diversion and recycling goals. Updating of these goals is a recommendation (“Objective 1”) included in Tennessee’s 2015-2025 Solid Waste and Materials Management Plan and will raise the bar for local communities which have historically attained the current goals, while providing achievable goals and helpful resources for meeting goals to local communities which have historically fallen short of meeting the current goals. TDEC believes it is critical to evaluate concerns and feedback from multiple stakeholder perspectives regarding policy research and recommendations before developing final goals for recommendation and eventual statewide adoption. This document provides a summary response to in-person and written comments received by TDEC regarding research and recommendations for updating statewide waste diversion and recycling goals through April 25, 2016.¹ These comments will be considered when developing the final goal recommendations for the rulemaking process. More information about Objective 1 can be found at <http://tn.gov/environment/article/sw-2015-2025-plan-objective-1>.

1. Funding and Costs

TDEC received various comments expressing concerns over funding and costs associated with local community waste diversion and recycling efforts, and how these current challenges within local communities would affect a community’s

¹ TDEC hosted three stakeholder meetings in Kingsport, Nashville, and Jackson, and offered a recorded webinar detailing Objective 1 research and recommendations.

ability to attain any newly established or revised statewide goals. Specific concerns or challenges expressed include: limited state funding available to support recycling; competition with other local program and service areas for limited funding sources (e.g., local recycling may be considered a lower priority than local school program efforts); and requirements to comply with “unfunded mandates.” Even with these concerns, stakeholders recognized the need to update goals but encouraged setting them such that they are achievable and realistic. Stakeholders also encouraged the completion of a thorough cost benefit analysis and development of a funding strategy for the final recommended goals prior to proceeding with rulemaking to establish the new goal. Funding sources for waste diversion and recycling play a critical role in assisting communities with their ability to achieve any established goal. Consequently, stakeholders also emphasized the need for additional funding sources and more efficient and equitable methods for distributing funds to the local governments to maximize local government ability to pursue targets. Last, stakeholders also expressed concern of recycling program costs that are comparable or greater than solid waste management costs, which creates a disincentive for engaging in waste diversion and recycling activities.

TDEC appreciates the comments expressed regarding funding and costs associated with waste diversion and recycling efforts, and recognizes that these factors play a significant role in determining how local communities implement waste diversion and recycling programs. In fact, any newly established or updated goals and developing a sustainable funding structure for materials management programs are tied closely with one another. Additionally, waste diversion and recycling goals are not unfunded mandates. Rather, these goals are established as targets for solid waste planning Regions to meet in an effort to move Tennessee towards more responsible waste management and reduced environmental impacts associated

with the generation and disposal of waste. In the event that a Solid Waste Region does not meet its waste diversion and recycling goals, TDEC shall evaluate programs in those Regions to determine if they are qualitatively equivalent to Regions that did achieve the goal. A comprehensive report is presented to the Region that provides program recommendations and required activities. The Region may then have at least thirty (30) days to prepare a written response before the report is finalized. TDEC will then work with the Region to develop a timetable to return to compliance and offer technical assistance and resources to achieve the goal, before penalties provided in §68-211-816 and 68-211-861 are enforced. If a Region complies with the required actions for two years, it shall return to compliance.

Additionally, as part of the rulemaking process, all proposed rules are required to describe any associated fiscal impacts to small businesses, local governments, as well as to state government operations, as part of the rulemaking process. Therefore, expected costs and benefits to local communities will be included within any rulemaking package that is considered by stakeholders, the Solid Waste Disposal Control Board, the Secretary of State, and the Joint Government Operations Committee.

The Division of Solid Waste Management (DSWM) and Office of Policy and Planning (POL) are evaluating current waste management fee structures and identifying opportunities for developing more sustainable funding sources for environmentally-responsible materials management, a component of what is known as Objective 8 of the Solid Waste and Materials Management Plan. Objective 8 aims to ensure that state and local governments have long-term funding sources available to develop and support waste diversion programs

capable of meeting the needs of circumstances which may vary considerably for each Solid Waste Region. DSWM and POL will analyze the historical fee, materials management data, and program costs, as well as projected materials management data and program costs, and develop recommendations for revisions to materials management fee structure. Similar to the current methodology being used for Objective 1, stakeholder input will be sought throughout the process. Concurrent with the work on fee structure and also as a component of Objective 8, the DSWM will examine the ability of current grant programs to meet the needs of Solid Waste Regions and identify opportunities for improving grant programs to best support state materials management goals and Solid Waste Region needs, such that targeted assistance will be available to Regions that may experience challenges in meeting updated goals.

2. Terminology

TDEC received various comments regarding the use of the term “waste diversion” in the goal recommendations.

Using clear and consistent terminology throughout the goal recommendation and implementation processes is a key component of developing effective statewide goals. Stakeholders commented that it may be more logical to use the term waste reduction instead of waste diversion in updating statewide goals.

TDEC appreciates these comments and recognizes that clarity regarding goals and associated terms is important to maximizing local communities’ abilities to understand and achieve goals. In evaluating this recommendation, TDEC will continue to consider factors such as: how waste diversion and waste reduction are defined within the solid waste and materials management plan, current statute and rules, current internal and external programs, and by the U.S. Environmental

Protection Agency and other relevant association/organization standards; and TDEC's ability to measure waste diversion and waste reduction based on those definitions and associated data points that are gathered from Solid Waste Regions. In establishing and updating goals, TDEC strives to ensure consistency in terminology and definitions across all of its materials management programs such that the regulated community and program staff are operating under the same, uniform definitions. As TDEC continues to evaluate appropriate terminology, TDEC would appreciate additional feedback on this topic.

3. Data and Measurement

TDEC received various comments regarding the accuracy of data, Class III/IV landfill diversion credit, and the goal recommendations calculations.

Accurate data is a crucial part for developing and implementing statewide goals. Stakeholders commented “[we] cannot move forward with bad data” and recommended TDEC continue efforts to identify and address gaps in reported data and also evaluate the use of incentives or disincentives to increase accuracy of numbers. Origin reporting by Class I and Class III/IV landfills and Recovered Material Processing Facilities will help to bridge the data gaps that concerned some stakeholders that expressed little control over private sector or municipal solid waste and recycling programs. Also, TDEC recently developed and released an Annual Progress Report (APR) guidance document designed to assist Solid Waste Regions in gathering and reporting annual solid waste and materials management data to TDEC. This guidance document is available at http://www.tennessee.gov/assets/entities/environment/attachments/sw-mm-apr_guidance.pdf. TDEC is also forming an APR working group to determine ways to improve data accuracy and evaluate the possibility of allowing municipalities and

commercial/industrial businesses to report their waste diversion efforts directly into the online reporting system so as to reduce the counties' responsibility of gathering and entering the data outside of their control.

Goal calculation methodologies are another area where data gaps can occur, especially if complex and misleading calculations, like the historic Class III/IV landfill diversion credit, are used. TDEC's current goal recommendations consider Class III/IV landfill as disposal, therefore it will not be considered a crediting component that contributes toward achieving the waste diversion goal. However some stakeholders commented that there are many Class III/IV type wastes that can be beneficially used as alternate cover and should be considered as credit towards achieving the waste diversion goal. The Waste Reduction and Planning regulations currently consider Class III/IV materials that are recycled or approved for beneficial use to be a waste reduction method toward the goal. The decision to not credit Class III/IV landfill as diversion is the first step in addressing misleading waste diversion methods and aligns with waste diversion goals of other states.

Some stakeholders shared concerns that percentages are not a good mechanism for establishing goals; others were concerned that the target goal percentages are not achievable and attempt to standardize programs or take a "one-size-fits-all" approach to local community waste diversion and recycling. The five recommendations presented to the stakeholders went through rigorous research and analysis and considered goal rationale from neighboring states and based on historic waste generation, diversion, and recycling data, and projected waste generation, diversion, and recycling data. Several of the proposed recommendations also attempt to consider establishing goals which would be specific to each community based on their current waste diversion and recycling

performance (continuous annual incremental improvement in waste diversion), which is distinct from a single waste diversion and recycling goal which would be applicable across all communities in the state (target percentage diversion goal). TDEC will continue to evaluate all current goal recommendations before moving forward with a final recommendation. However, the current proposed recommendations are only a subset of possibilities with which TDEC could move forward. Additional stakeholder input and engagement regarding goal setting methodologies and target goal levels will help to ensure a well-defined goal for Tennessee that allows for diverse program infrastructure and operation.

4. Management Practices

TDEC received various comments from stakeholders expressing concerns regarding the extent to which waste and materials management practices are under local government control, the concept of a one size fits all plan, and the need for TDEC to assist with education and outreach.

The Solid Waste and Materials Management Plan includes discussion of challenges and opportunities for enhancing waste and materials management practices that are under local government control. Specifically, the plan dedicates an entire strategy within Objective 1 on page 68 to updating local government waste reduction and recycling goals and measurement based on municipal solid waste (MSW) disposed by residents and the local government agencies themselves. Although only a fraction of the MSW generated in the State is controlled by local governments, this is the MSW on which state and local governments can have the most influence via mechanisms such as local community education and outreach, selection of haulers/providers for government-provided materials management services, and establishment of local community ordinances and policy. Any of the

five recommendations for statewide goals applicable to Solid Waste Regions could incorporate a complementary goal for waste diversion and recycling under local government control. We encourage stakeholder input for determining how this should be incorporated, which sectors should be considered, and what materials should be measured.

TDEC recognizes that the three grand divisions and 66 Solid Waste Regions of Tennessee are each unique and a “one size fits all” approach will not meet communities where they are or allow for improvements based on current circumstances in areas or Regions across the state. Waste streams and markets vary statewide. Nevertheless, it is necessary to have a statewide form of measurement to create standardization and consistency with regard to statewide solid waste and materials management goals such that progress as a state can be achieved and individual Regions are held to the same standards with regard to goal setting approaches (not necessarily specific numeric goals, which may vary Region by Region). *“If you can’t measure it, you can’t improve it”* (William Thomson, Lord Kelvin). Additionally, variations of each of the five recommendations may be considered. For example, one approach suggested by stakeholders would be to establish multiple statewide goals. This would allow more flexible waste diversion/recycling practices and allow for Regions to adapt their own strategies to meet set goals. Additional input regarding various goal setting approaches and what would work best for Regions would be necessary in order to move forward with such a methodology. TDEC welcomes suggestions for any goal setting methodologies and how TDEC would be able to determine when a Region has met a given goal.

Education and outreach is a vital component of any solid waste and materials management program. TDEC is committed to the implementation of Objective 6:

Expand and Focus Education and Outreach and provide greater assistance to local government efforts. Successful implementation of Objective 6 will support all objectives in the Plan. As waste streams evolve, technology develops, and society becomes more influential, there will be need for multiple methods of ongoing education and outreach from both state and local governments.

5. Penalties and Fail-safes

TDEC received comments concerning penalties for regions failing to meet the proposed goals. Each local government would be required to make a good-faith effort to achieve the established goal through the adoption of strategies that the region feels would assist them in meeting the goal. Examples of strategies which may be adopted include but are not limited to: adding infrastructure or services or providing education and outreach efforts as determined by the region's board and identified in their regional plan. Failing to meet the goal could be considered a violation of the rules or statute and require enforcement procedures according to the following process. Failure to meet the goal would initially include a qualitative assessment to determine if the local government or region did not meet the goal through no fault of their own. Historically, TDEC has not taken enforcement action against local governments or regions which can document sincere and intentional efforts to adopt strategies designed to meet established goals.

TDEC also received comments regarding fail-safes, or responses that will cause little to no harm if a specific event causes a Region to fail the goal (i.e. economic, natural disaster). The current 25% waste reduction and diversion goal methodology does not include a fail-safe that considers the cost/benefit ratio of recycling or factors that prevent Regions from implementing disaster debris management plans that include diversion and recycling practices. One recommendation under

consideration is calculating the cost to landfill/recycling ratio. Developing a mechanism to determine a ratio when markets fluctuate and make recycling cost prohibitive over landfilling is an area TDEC has interest in receiving more input. TDEC is also interested in what would trigger such a fail-safe and how frequently it would be evaluated, either by TDEC or planning Regions.

6. Recycling Markets

TDEC received various comments concerning goal setting during a time of recycling market instability and limited markets for specific materials (e.g. electronics, tires).

TDEC is aware that there are concerns with the costs associated with recycling and that recycling is tied to a global market that can be unpredictable. The concerns of “when does recycling become too expensive” and “costs twice as much to recycle as to landfill” are all considerations that support the need for a fail-safe in statewide goals. TDEC welcomes suggestions for how it can incorporate the most current recycling markets information into its methodology of goal-setting and/or evaluating achievement of goals on an annual basis. Ideas for consideration include incorporating an adjustment factor based on market activity or incorporating market activity considerations into the qualitative assessment process.

Stakeholders also requested TDEC provide greater assistance in their recycling marketing efforts. TDEC supports cooperative processing and marketing efforts in the state through improvements in local hub and spoke infrastructure development, partnerships, grants, education and outreach, and best practices to enhance collection, transportation, processing, and marketing. While TDEC is capable of providing support in the aforementioned fashions, establishing

sustainable, feasible, cost-effective markets for recyclable materials also requires the assistance of local communities, businesses, and industries, and is highly dependent upon marketplace factors such as commodity pricing and costs of transactions, which are not within TDEC's control.

Some Regions are at or nearing the point where the full cost to manage materials for recycling exceeds the cost for disposal and implementing a specific recycling goal is not palatable. Given these circumstances, some comments questioned the timing for updating the goal. TDEC recognizes this concern, but welcomes additional information regarding what stakeholders would believe to be more reasonable timing than the timing currently proposed for updating current waste diversion and recycling goals. Additionally TDEC believes the successful implementation of the remaining Solid Waste and Materials Management Plan objectives is contingent upon updating a new well-defined goal. Therefore, by not implementing a new goal, all other objectives may be negatively impacted.

7. Next Steps

TDEC received comments concerning the next steps in establishing a new goal.

Upon final recommendation of a new goal, TDEC will begin the rulemaking process, which consists of:

1. Public notice
2. Public hearings
3. Responding to comments received on the draft rule and drafting a final rulemaking package
4. Adoption by the rulemaking authority- in this case the Solid Waste Disposal Control Board
5. Legal review and approval

6. Filing with the Secretary of State
7. Review by the Joint Government Operations Committees

TDEC is going through this expanded stakeholder outreach comment process prior to developing a proposed rule with the intent that it will be able to develop and present a rule that is well-informed, thoroughly vetted, and favorable to interested parties.

Additional information regarding Objective 1 of the Solid Waste and Materials Management Plan can be found at <https://tn.gov/environment/article/sw-2015-2025-plan-objective-1>. Inquiries and additional comments can be directed to Seth McCormick at Seth.McCormick@tn.gov.