



Department of
**Environment &
Conservation**

The Role of the Municipal Solid Waste Board in Tennessee

A Handbook for Board Members



Course Objectives

- Understand the composition of the region's solid waste board
- Understand responsibilities of the region's solid waste board
- Understand solid waste planning objectives
- Understand enforcement
- Identify resources



**The composition of
the region's solid
waste board**



Representation

- Membership of the board is designed to provide participation and representation of all local governments within the region whether it is a single county or a multi-county region.
- This is to insure all local governments that have solid waste services have a voice on the board.



Representation

- The board should have a variety of representation that reflects the diversity of interests in solid waste management. This would include private industry, agricultural interests, and at-large citizen representation.
- Municipalities that fall within the boundaries of two or more solid waste regions must select by resolution the region in which they will participate.



Board Membership Terms

- Board member terms are for six (6) years or until successors are elected.
- Board members may serve for more than one term.
- Board members terms are to be staggered with 1/3 rolling off the board every two (2) years.
- Representation of appointed areas does not change or rotate but are maintained through appointment.



Municipal Solid Waste Regions



Municipal Solid Waste Regions

- The SWMA required that solid waste regions be formed and develop plans to manage solid waste within the regions for a ten year planning period.
- The solid waste board is further responsible for overseeing, directing and implementing waste reduction efforts.



Municipal Solid Waste Regions

- At a minimum, the region should meet once yearly to review updates to the ten year solid waste plan and Annual Progress Report that is submitted to the state for review and approval.
- Local governments within a solid waste region were to share resources to eliminate duplication and provide maximum utilization of funds and resources.



Municipal Solid Waste Regions

- The region's solid waste planning board can be a mechanism to bridge any differences among their local governments since they represent the entire region and should provide a consistent vision across the region.



Region Dissolution, Reformation and Consolidation

- Once established, solid waste regions will continue to exist until they are dissolved or modified.
- The resolutions must be passed by the legislative body of each county represented in the region.
- Approval of the new solid waste plan becomes the creation date of the new region.
- The Department contracts with technical assistance providers to assist with this process.



Responsibilities



Municipal Solid Waste planning

- The main function of the solid waste board is to provide direction and oversight to the region on matters of solid waste.
- Solid waste should be done at the local level.
- The responsibility was directed by the SWMA to the regional solid waste board as the best means of managing planning and oversight of solid waste within the region to include generation, collection and proper disposal.



Municipal Solid Waste Planning

- Solid waste planning should be done from a materials management approach leveraging the integrated solid waste management systems of the region.
- The long term goal is to remove as much material from the waste stream as possible to lengthen the life spans of landfills and to leverage more sustainable methods of using the material collected.



Municipal Solid Waste Planning

- The long term plan should also remove potential toxic materials by diverting them to other programs.
- Seventy-five percent (75%) of materials going to the landfill can be redirected to other material management options.
- The solid waste planning region has the responsibility to review the various solid waste systems and options and make sound planning decisions on how the region needs to proceed.



Municipal Solid Waste Planning

- When solid waste planning is done from a regional level, the region will benefit from economy of size.
- Better contracts may be attracted due to the combined, larger population of a region
- The solid waste board is required to maintain a solid waste plan for the region.



Municipal Solid Waste Planning

- In 2005, the Annual Progress Report was designated as the primary document to yearly updating the ten-year plan, eliminating the need for a five year update to the plan.
- The solid waste plan may be completely or partially revised at anytime to address changes within the region.
- Most changes can be made through the Annual Progress report due March 31st.



Municipal Solid Waste Planning

- Before a new or revised solid waste plan is submitted to the Department, the solid waste planning region must hold a public hearing on proposed solid waste plan or plan revision.



Solid Waste Facility Review

- Before an applicant for a solid waste disposal facility or incinerator can be issued a solid waste permit by the Department, an application must be submitted to the solid waste planning region's board.
 - 90 days to review a completed application
 - Public Hearings
 - Transcribed and recorded



Solid Waste Facility Review

- The board is required to review the application against the solid waste plan and determine whether the application is in compliance with T.C.A. 68-211-814 and the region's solid waste plan.
- The board's review should determine if the proposed construction or expansion of the solid waste facility or incinerator's application is inconsistent with the solid waste management plan adopted by the county or region and approved by the department.



Solid Waste Facility Review

- The region must document in writing the specific grounds to which any application is determined to be inconsistent with the plan.
- The Department will review decision to insure the determination was not arbitrary and capricious.
- The Department's approval of the Part 1 application can not be completed with out the boards decision.



Solid Waste Facility Review

- The public hearing process allows the general public and all interested parties to express their opinion in the permitting process.
- The solid waste board review is different and separate from the local government's adoption of the Jackson Law.
- Both processes allow those affected by the proposed facility to speak their opinions.



Flow Control

- The subject of the control of the flow of solid waste is one that has many legal complexities.
- It is recommended that the regional board obtain current legal advise before taking an action to restrict the import or export of solid waste across the region's boundaries, or an action approving or disapproving a land fill application.

Flow Control

- To determine whether a particular action is permissible, an attorney must review both what the SWMA says and what the courts have said.
- Two types of actions appear to be authorized by the law and the courts
 - Consistency with plan Eastern Kentucky Resources v. Fiscal Court of Magoffin County, 127 F.3d 5312 (6th Cir. 1997)
 - Regional boards and local governments may also require that waste generated within region go to certain publically owned facilities (United Hauler's Association v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, (2007))



Flow Control

- The solid waste board cannot restrict the flow of recovered materials into, out of, or within the region.
- The board also may not interfere with contractual obligations entered into prior to the approval of the region's plan. This includes the original or subsequent plan that may be adopted by the region following reconfiguration.



Solid Waste Planning



Ten Year Plan

- At anytime, the region may update or revise the plan to reflect subsequent developments within the region.
- The revision or update must be submitted, reviewed, and either approved or rejected by the Department in the same manner as noted in the initial plan review and approval.



Ten Year Plan

- Ultimately, any plan should detail the region's infrastructure needs, then define the end goal for the planning period and provide a timeline for accomplishment of that goal.
- The plan should further define action steps required to meet the goal.



Annual Progress Reports

- The Annual Progress Report due March 31st of each year is currently accepted as an update to the region's solid waste plan.
- The Annual Progress Report should provide a window looking 10 years into the future for solid waste planning.
- Prior to submission, the Annual Progress Report should be presented, reviewed, adopted and certified before submitting to the department.



Annual Progress Reports

- When the region's annual progress report is complete and properly reviewed, the county mayors within the solid waste planning region and the solid waste board chairman may access the document and digitally sign it certifying its accuracy to the department.



Funding

- Funding for the solid waste planning region should be addressed in the authorizing resolutions by the local governments and in the solid waste plan itself.



Enforcement



The Region's Powers of Enforcement

- The SWMA places the burden of enforcement of the regional solid waste plan on the region.
- The solid waste planning region is charged with implementing its plan and the SWMA gives the region authority to see that the plan can be effectuated.
- The solid waste planning region is entitled to recover all costs and attorney's fees from persons failing to comply with the reporting requirements.



Enforcement Sanctions Against the Region

- Failing to comply with the SWMA may bring serious sanctions on the region by the Department.
 - Warning Letter (initial)
 - Loss of eligibility for grants (after 30 days from warning letter)
 - Civil penalties up to \$5,000 per day for non-compliance (after 60 days from warning letter)
- Individuals involved in wastes thrown in sinkholes \$5,000 per day for non-compliance.



**Regional Municipal
Solid Waste Advisory
Committee**



Regional Municipal Solid Waste Advisory Committee

- This advisory committee's composition may be whatever the solid waste board deems necessary to accomplish its goals.
- Examples –
 - Engineers
 - Development Districts
 - CTAS
 - Planners
 - Local citizens



Part 9 Authorities



Part 9 Authorities

- These authorities created under Part 9, or the Solid Waste Authority Act, have autonomy and more powers in order that the regional solid waste management systems and services are expedited, economized, and consolidated.
- Part 9 authorities can operate very independently from the local governments they serve.

Part 9 Authorities

- Additional Powers include:
 - Right to sue and be sued
 - Right to acquire real and personal property and exercise the power of eminent domain in order to achieve solid waste planning goals
 - The right to enter into contracts for any projects undertaken and to make rules and regulations deemed necessary to manage the affairs of the authority
 - Power to issue revenue bonds on its own authority
 - Borrow money and incur debt
 - Employ agents and pay compensation to employees
 - Set tipping fees and surcharges



Questions?



For More Information

- For more information on this topic, contact your local development district planner

or You may contact TDEC Recovered Materials Section by:

- Email Recycle.Questions@tn.gov