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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC20-130
<b>Regulation title(s)</b>	Solid Waste Planning and Recycling Regulations
<b>Action title</b>	<i>Fast-track amendment to reorganize the regulation, clarify the recycling rate calculation, clarify major and minor amendments to the solid waste management plan and other minor clarifying changes.</i>
<b>Date this document prepared</b>	September 26, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

In 2015, a periodic review was conducted of this regulation and the result of the review was to retain the regulation. After the periodic review was completed, DEQ staff met individually with solid waste planning units to identify areas of the regulation that could be clarified or improved. As a result of these meetings and agency staff feedback, the regulation is being amended to be more easily understood.

The primary change being made to the regulation is the re-ordering of regulatory sections. The regulation is being re-structured to address the requirements for solid waste planning units prior to discussing solid waste management plan requirements. The regulation is also being restructured to move the

requirement for planning units to maintain and update solid waste management plans to a standalone section.

The regulation is also being amended to clarify the difference between major and minor amendments to a solid waste management plan. Other changes are being made to clarify the requirements of the regulation. No new requirements are being added to the regulation.

Changes have also been made to assist the reader with understanding how to calculate the recycling rate. Information has been added to the regulation to further explain how to include credits in the recycling rate.

The regulation has also been revised to be consistent with the language found in §10.1-1411 C concerning recycling rate credits.

### Acronyms and definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

- MSW- Municipal Solid Waste
- PRMs- Principal Recyclable Materials
- SRP- Source Reduction Program
- SWPU- solid waste planning unit

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

At its meeting on January 8, 2018, the Virginia Waste Management Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board’s authorization also constituted its amendment of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

Section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6942(b)), requires all states to develop and implement state solid waste management plans. 40 CFR Parts 255 and 256 contain requirements applicable to state solid waste management plans.

Section 10.1-1402 of the Code of Virginia directs the Virginia Waste Management Board to “Supervise and control waste management activities in the Commonwealth.” Section 10.1-1411 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate this regulation. The regulation is required to include all aspects of solid waste management including waste reduction, recycling and reuse, storage, treatment, and disposal. The board is also required to consider urban concentrations, geographic conditions, markets, transportation conditions, and other appropriate factors and provide reasonable variances and exemptions from regulatory requirements when adopting this regulation.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

This regulation is required by state statute. The Code of Virginia directs the Waste Management Board to adopt this regulation. This regulation establishes requirements for localities to conduct planning efforts to ensure that solid waste is properly managed now and in the future. The regulation also implements the mandatory recycling rates described in state statute. These solid waste planning requirements are similar to the planning efforts that localities undertake to ensure their locality is planning for the future and is able to provide general services to their residents. This regulation allows localities to develop their own solid waste management plan or work with other localities to form a regional solid waste management plan. Solid waste management plans ensure that the locality or region is working to meet mandatory recycling rates and is preparing for future waste management needs. These actions reduce the amount of waste required to be disposed of and strives to protect the health and welfare of their citizens from impacts related to improper management of solid waste.

**Rationale for using fast-track process**

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

This regulatory action is expected to be noncontroversial. This amendment clarifies the requirements of the regulation and does not add any new requirements. There are no additional impacts to the regulated community as a result of these amendments. The changes to the regulation improve the readability and understanding of the regulation. The changes also make the regulation consistent with state statute.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

The regulation is being reorganized to assist the regulated community with understanding and complying with the requirements of this regulation. Sections of the regulation are being rearranged to appear in the order the regulated community would use the regulation. For example, the regulation currently discusses the designation of solid waste planning units after the requirements for the content of solid waste plans are discussed. Prior to developing a solid waste management plan, the membership of the planning unit must be established. The logical progression would be to discuss the establishment of solid waste planning units prior to discussing the plans the planning units are required to develop. By re-arranging the order of the sections of the regulation, the reader will be able to more easily understand the correct order tasks described in the regulation need to occur.

Changes have been made to the definition section. Obsolete definitions are also being removed from the regulation. Removing the definitions of terms that are not used in the regulation will help to avoid confusion concerning the applicability of these terms. For example, the term “white good” is defined in the definition section of the regulation; however, the term is not found in other sections of the regulation. As part of this amendment, the term “white good” is being removed from the regulation. Two additional definitions have been added to the regulation in response to a comment received during the informal comment period. Definitions of the terms “Nonmunicipal solid waste material” and “solid waste management plan” have been included in the regulation to provide additional clarity to the regulation.

Additional details concerning the calculation of recycling rates have been included in the regulation. The calculation in the current regulation does not calculate the recycling rate as a percentage. The current calculation also mentions the inclusion of credits in the recycling rate, but fails to explain how these credits are added to the recycling rate. This causes confusion since credits allowed may be in tons or percentages. Additional details have been added to this section to address the inclusion of credits in the recycling rate. The regulatory language now mirrors the information on DEQ form 50-30 that is provided to solid waste planning units to assist them with calculating their recycling rate.

The recycling credits listed in the regulation have been reordered to be listed in the same order as they appear in 10.1-1411 C. Only those recycling credits detailed in statute are being included in the regulation.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

*The revisions to the regulation will make the regulation easier for the public and the regulated community to understand. The agency will benefit by having a regulation that is easier for the regulated community to understand. There are no disadvantages to the public, regulated community or the agency from making these changes.*

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are*

*no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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This state regulation has been adopted as required by the Virginia statute. The Code of Virginia establishes minimum recycling rates that are required to be maintained by Virginia localities. Federal regulation (40 CFR256.02) does not require minimum recycling rates for localities; however, they do require source separation to be considered as a method of solid waste management. (40CFR 256.02 (2))

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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No locality is particularly affected by this regulation or the amendment of this regulation.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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This regulation requires localities to develop and maintain solid waste management plans. These plans are developed by an individual locality or on a regional level. Small businesses are not required by this regulation to develop a solid waste management plan or achieve minimum recycling rates.

Since originally adopted, the mandatory recycling rate and reporting requirements for some solid waste planning units has changed. State statute specifies a minimum 15% recycling rate for planning units with a population density rate of less than 100 persons per square mile or for planning units with a not seasonally adjusted civilian unemployment rate for the immediately preceding calendar year that is at least 50 percent greater than the state average. (§10.1-1411 D). Solid waste planning units with a population of greater than 100,000 people must report annually, and those planning units with a population of 100,000 or less submit a report every four years. (§10.1-1411 E.) The reduced reporting requirement does not relieve a locality from achieving the minimum recycling rate.

This regulation currently provides alternative regulatory requirements to smaller communities as well as those that are struggling with high unemployment rates. The regulation also includes reduced reporting requirements for planning units with a population of less than 100,000. These alternatives accomplish the objectives of the law while minimizing the impacts on smaller communities, and those with high unemployment rates. No additional alternative methods were able to be identified that would accomplish the objectives of the applicable law.

### Public participation

*Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Melissa Porterfield, Office of Regulatory Affairs, P.O. BOX 1105, Richmond, VA 23218, phone: 804-698-4238, FAX: 804-698-4019, email: [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. There is no financial impact to the agency as a result of these clarifications being made to the regulation.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. There is no financial impact to localities as a result of these clarifications being made to the regulation.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Localities are required to develop and maintain solid waste management plans individually or collectively as a group. The changes to the</p>

	regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. The regulated community and the agency are not expected to be affected by the changes to the regulation.
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. Currently there are 71 solid waste management planning units that have developed and implemented solid waste management plans approved by DEQ. Small businesses are not directly regulated by this regulation.
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b></p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. There are no changes to the costs of compliance with this regulation.
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. The changes to the regulation are intended to make the regulation easier to understand and avoid confusion concerning the requirements of the regulation.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The agency considered retention of the regulation without making any changes. This alternative was rejected since there are areas of the regulation that the regulated community repeatedly struggles with understanding. The order of the sections of the regulation causes confusion. For example, the regulation discusses requirements for solid waste management plans prior to discussing the process for establishing planning units, which must be established prior to developing a solid waste management plan. The sections of the regulation have been reorganized to be in a more logical order. The changes to the regulation are clarifying in nature and do not place any new requirements on the regulated community or the agency. This regulation focuses on guiding localities through the process of establishing solid waste management plans and the development of solid waste management plans. This regulation does not require small businesses to develop and submit solid waste management plans to the agency.

## Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action will not have an impact on the institution of the family and family stability.

## Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Definitions	The terms “agricultural waste” and “white goods” are being removed from the regulation since these terms are not used in the regulation. The term “compost” has been revised to be consistent with the defined terms in the Solid Waste Management Regulations (9VAC20-81). The acronym MSW has been added to the definition of the term municipal solid waste since the acronym is used in the regulation. Two additional definitions were added to the regulation in response to comments received during the informal comment period. Definitions of “Nonmunicipal solid waste material” and “solid waste management plan” have been included in the regulation to provide additional clarity to the regulation.
30		Policy	Regulatory citations have been updated in response to sections of the regulation being reorganized.
60		Applicability of Regulations	A citation has been updated in response to sections of the regulation being reorganized. The term “director” is being replaced with the term “department” to



			indicate the notification referenced in 9VAC20-130-60 A is to be submitted to the department.
	92	Designation of solid waste planning units	The language in this section was previously found in section 180 and has been moved to this section. No changes have been made to the language in this section.
	94	Considerations in designating solid waste planning unit boundaries	The language in this section was previously found in section 200 and has been moved to this section. No changes have been made to the language in this section.
	96	Criteria for designating a solid waste planning unit	The language in this section was previously found in section 210 and has been moved to this section. No changes have been made to the language in this section.
	98	Development of designated solid waste planning units	The language in this section was previously found in section 190 and has been moved to this section. Minor editorial wording changes have been made to this section. The phrase "director feels a significant need" has been revised to read "director finds a need".
	102	Amendment of solid waste planning unit boundaries	The language in this section was previously found in section 220 and has been moved to this section. Additional language has been added to the regulation to assist the regulated community with understanding the steps to be taken once a solid waste planning unit's boundary is amended. When membership of the planning unit changes, the solid waste management plan must be amended. Entities leaving a regional solid waste planning unit are required to join another solid waste planning unit or become a solid waste management planning unit.
110		Schedule for plan development	Solid waste planning units are required to maintain their solid waste management plan and amend their plan when things change. Language has been added to this section that directs the reader to Section 175 of the regulation for further details concerning amendments to a solid waste management plan. This clarification has been added to assist the reader with finding the details concerning amendments of solid waste management plans. The term "department" has been replaced with the term "director" in 9VAC20-130-110 E since the director, not the department has the authority to

			approve or revoke solid waste management plans.
120		Planning requirements	The term “department” has been replaced with the term “director” in 9VAC20-130-120 B 1 since the director, not the department, approves the solid waste management plans. The regulation has been revised to update the name of the Regional Cooperation Act. The regulation has also been amended to clarify regional solid waste management plans must include the planning unit’s legal authority to adopt the solid waste management plan.
125 C	125 B	Recycling credits	The content of subsection C has been moved to subsection B. The regulatory language now mirrors the information on DEQ form 50-30 that is provided to solid waste planning units to assist them with calculating their recycling rate. The recycling credits listed in subsection B have been rearranged to be listed in the order they appear in statute. (§10.1-1411 C.) The recycling credit for inoperable vehicles for which a locality receives reimbursement from the Virginia Department of Motor Vehicles (§46.2-1207) has been removed from the list of credits since it is not a credit that is listed in statute. Localities may include the tonnage of inoperable vehicles they recycle and receive reimbursement from the Department of Motor Vehicles per §46.2-1207 of the Code of Virginia in the category PRMs recycled.
125 B	125 C	Recycling rate calculation	Information on calculating the recycling rate has been moved from subsection B to subsection C. This subsection has been rewritten to further explain how to calculate the recycling rate. The current regulation contains a single formula that is confusing. The current formula does not include a conversion factor to calculate the recycling rate as a percentage. The current formula also does not specify how the recycling credits, which are in both tons and percentages, should be added to the recycling rate. This subsection has been rewritten to be consistent with how the formula has been historically interpreted and is consistent with the reporting form- Locality Recycling Rate Report for Calendar Year 2016 - Form 50-30. In response to comments received during the informal comment period, additional flexibility has been included in

			the regulation concerning how MSW disposed is calculated.
	173	Maintenance of Solid Waste Management Plans	This language was previously found in 175 F and has been moved to this new section. Requirements for solid waste management plans to be maintained have been inserted in a new section. The language has been re-structured to make the requirements easier to understand. The regulatory language has been modified to clarify the plans are to contain a twenty year planning window. Regulatory citations related to certain requirements have been added to the regulation to refer the reader to the section of the regulation where the specific requirements for solid waste plan content are discussed in further detail. The regulation also refers the reader to section 175 if plan amendments are needed.
175		Amendments to plans	This section has been reorganized to discuss major and minor amendments in separate subsections to make the requirements easier to read and understand. Language has been added to remind the reader about the correct order of steps for amending solid waste management plans (changes to planning unit boundaries are to be approved by the director prior to amending the solid waste management plan). Language previously in subsection F has been deleted since it was moved to a new section, §173.
180		Designation of solid waste planning units	This section is being repealed since language in this section was moved to section 92.
190		Development of designated solid waste planning units	This section is being repealed since language in this section was moved to section 98.
200		Considerations in designating solid waste planning unit boundaries	This section is being repealed since language in this section was moved to section 94.
210		Criteria for designating a solid waste planning unit	This section is being repealed since language in this section was moved to section 96.
220		Amendment of solid waste planning unit boundaries	This section is being repealed since language in this section was moved to section 102.
230		Petition for a variance or exemption	Language in 230 B has been clarified. Previously the construction of this subsection was unclear concerning requirements to be met and optional requirements.
DIBR		Documents incorporated by	Deleting the Painter Filter Liquids Test,

		reference	Method 9095, USEPA Publication SW846 since this test method is not applicable to this regulation.
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**Public Comment**

Prior to presenting this amendment to the Solid Waste Planning and Recycling Regulations to the Waste Management Board, the agency held an informal comment period on the changes from March 27, 2017 to April 28, 2017. A summary of comments received during the informal comment period has been provided below.

**The Central Virginia Waste Management Authority (CVWMA) submitted the following comments to the agency concerning the changes to the regulation.**

CVWMA supported many of the changes to the regulation and requested the board consider making an additional change to the regulation concerning calculation of the recycling rate. CVWMA requested an alternate method for calculating the recycling rate be included in the regulation. CVWMA specifically requested the regulation specify MSW generation could be estimated by multiplying the population (provided by the Weldon Cooper Center for Public Service) by the most recent waste generation rates calculated by the US EPA (pounds per person per day). CVWMA indicated that the final destination of waste generated within the boundaries of a solid waste planning unit (SWPU) may be multiple disposal facilities, both in and outside of the planning unit boundary. CVWMA stated that disposal facilities are not tracking this information accurately and are not required to provide information on tons disposed and their origin, making it difficult for a SWPU, like CVWMA, to get an accurate estimate of the amount of waste generated in their region.

*Agency Response: The agency appreciates CVWMA’s support for this amendment. CVWMA requested additional flexibility to be added to the regulation concerning how MSW disposed is calculated as part of calculating the recycling rate. In response to this request, the following additional language has been added to the regulation concerning the calculation of MSW disposed. “In cases where the Solid Waste Planning Unit (SWPU) cannot obtain actual and accurate information from solid waste management facilities, a Solid Waste Planning Unit may request the department to allow the use of an alternative method to calculate MSW disposed for the purposes of calculating the recycling rate.”*

**Arlington County submitted the following comments to the agency concerning the changes to the regulation.**

When planning units were first developing their Solid Waste Management Plans (SWMPs) in the early 1990s, DEQ’s primary objective appeared to be increasing the Commonwealth’s recycling rate. During this time, the 25 percent recycling goal was established for each county, city, town or regional authority and SWMPs were required to describe how this goal would be met or exceeded. As such, in the early 2000s, jurisdictions underwent extensive planning processes—as

described in 9VAC20-130—to develop 20-year Solid Waste Management Plans. Five years after plan implementation, jurisdictions were required to “update” or certify that their plans were on task, milestones were being met, and that the population projections, waste generation projections and the disposal capacity were still adequate for that planning period.

We believe the proposed “clarification” added to Section 175 strays from the original intent of the regulation, focusing instead on “maintenance” of the SWMP, with a new 20-year planning horizon established every five years. Requiring maintenance of the SWMP on a rolling basis will shift the focus to disposal capacity only and will displace the more in-depth and very important planning process that is needed to ensure waste reduction goals are set and accomplished.

In general, we believe the proposed regulation changes are sending mixed messages. What is the aim of the Solid Waste Planning and Recycling Regulations? Is it to increase recycling, or is it to keep track of disposal capacity in the Commonwealth? If the DEQ is simply interested in knowing disposal capacity, then yes, population and waste projections for a 20-year planning window can easily be updated every five years. If the objective of the regulations is to increase recycling, then a well-thought out integrated waste approach with objectives, strategies and milestones should be required in the Solid Waste Management Plan (SWMP). Creating this blueprint of operation—if done effectively—takes a significant amount of time, energy and money. To ask an organization to undergo this process every five years is administratively burdensome and ineffective. Asking a jurisdiction to undertake this process every 20 years—with five year certifications that they are on track to accomplish goals set forth in the plan—is a much more practical approach, and the approach DEQ had prior to the 2015 SWMP update process.

We ask that the DEQ consider our argument and reconsider the SWMP “maintenance” approach being proposed.

*Agency Response: The original Regulations for the Development of Solid Waste Management Plans (VR 672-50-01) were initially adopted by the Waste Management Board in 1990 (prior to the formation of DEQ). The initial regulation required Solid Waste Management Plans to be submitted to the Department of Waste Management no later than July 1, 1991. (§3.1 A) Section 3.1 E. of the 1990 regulation stated “On July 1, 2017 and each succeeding five year period thereafter, each city, county, town, or region shall submit a report to the Executive Director updating the plan.” This requirement was maintained in the regulation and is found in the current regulation in 9VAC20-130-175 F :*

*“Solid waste management planning units are required to maintain current plans. On or before each five-year anniversary of the department's plan-approval date, the planning unit shall submit a letter to the department, by mail or electronic mail, certifying that the following plan elements, listed in [9VAC20-130-120 C](#), have been maintained and updated: waste generation estimates are current, the schedule increments have been met, and a projected 20-year waste management capacity remains available or projects otherwise are on schedule to meet the unit's solid waste needs. The letter of certification will be used in the*

*department's assessment of whether any plan amendments are necessary and to ensure compliance with [9VAC20-130-110 E.](#)”*

*Section 175 of the current regulation is titled “Amendment to Plans.” The language previously found in 175 F. is being moved to a new section- section 173. 9VAC20-130-173 Maintenance of Solid Waste Management Plans is being created and states: “*

*A. Solid waste management planning units are required to maintain current solid waste management plans containing a 20 year planning window.*

*B. On or before each five-year anniversary of the department's plan approval date, the planning unit shall submit a letter to the department, by mail or electronic mail, certifying that the following plan elements, listed in 9VAC20-130-120 C, have been maintained and updated:*

*1. waste generation estimates are current (9VAC20-130-120 C 3);*

*2. the schedule increments have been met (9VAC20-130-120 C 5); and*

*3. a projected 20-year waste management capacity remains available or projects otherwise are on schedule to meet the planning unit's solid waste needs (9VAC20-130-120 C 9).*

*C. The letter of certification submitted in accordance with 9VAC20-130-173 B shall be used in the department's assessment of whether any plan amendments are necessary and to ensure compliance with 9VAC20-130-110 E.*

*D. If revisions to the plan are needed, solid waste management planning units shall amend the plan as described in 9VAC20-130-175.*

*The intent of the regulation is to maintain current solid waste management plans. The commenter is correct that plans are to be updated every 5 years. Additionally, if the plan changes between these five year intervals, then the plan should be amended. The maintenance of solid waste plans has been a confusing concept for some localities, and the agency has attempted to make the requirements easier to understand as part of this regulatory amendment. It is not the agency's intent for localities to develop and re-submit a solid waste management plan every 20 years or every 5 years. The agency requests plans be maintained and for three pieces of information to be reviewed and updated if necessary at 5 year intervals.*

Other general comments include the following:

#### **Definitions:**

- The definition of "**Principal Recyclable Materials (PRMs)**" needs to be updated and expanded and the listed materials in this definition should also be defined. The following materials should be included in the PRM definition and defined independently:
  - “Paper” should be defined to include all fiber: mixed paper, shredded paper, newspaper, cardboard, paperboard and aseptic containers.
  - “Plastic” should include all recyclable plastics
  - “Metal Containers” should include aluminum and steel food and beverage containers

- “White Goods” or “Large Household Appliances” should be included as a PRM, as well as other “Scrap Metal” (note “White Goods” is an industry-accepted term and its materials—whatever you call them--should not be deleted from the Definitions section)
- “Yard Trimmings” (without the word “commingled” in front of it)
- “Food Scraps”
- “Used Cooking Oil”
- “Wood”
- “Textiles”
- “Tires”
- “Used Motor Oil”
- “Used Oil Filters”
- “Used Antifreeze”
- “Batteries”
- “Electronics”

*Agency response: The current regulation defines Principal recyclable materials (PRMs) as “paper, metal, plastic, glass, commingled yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.” The agency has developed a list of PRMs and their associated volume and weight in pounds for use by localities to assist them with converting volumes of materials to pounds. The list provides specific examples of materials within the definition of PRMs. For example, the list includes different types of plastic such as PETE, film, HDPE (dairy only) HDPE (mixed) as well as conversion rates between volume and pounds for the specific material. Due to the extensive list of types of recyclable materials included in the definition of PRMs, and the list of specific examples of PRMs, the agency does not believe that the terms listed by the commenter need to be further defined in regulation.*

*The agency is proposing to remove the term “white goods” from the regulation because the term only appears in the definition section of the regulation and does not appear in any other definitions or sections of the regulation.*

*The agency is also proposing to add a comma to the definition of PRM. After reviewing the definition, it is apparent that a comma is needed between the words “commingled” and “yard waste.” The definition will now read “paper, metal, plastic, glass, commingled, yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.”*

- **“Solid Waste Management Plan”** needs to be defined.

*Agency response: A definition has been added to the regulation. “Solid Waste Management Plan” means a plan submitted by a solid waste planning unit in accordance with the requirements of 9VAC20-130 et seq.*

- **“Nonmunicipal Solid Waste Material”** needs to be defined.

*Agency response: A definition has been added to the regulation. “Nonmunicipal solid waste material” means waste that is not normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.*

Clarification requested concerning the language in 9VAC20-130-120 G. which states “The plan shall specify the solid waste planning unit’s legal authority to adopt the solid waste management plan.”

*Agency response: The language being added is intended to clarify that the plan should specify the legal authority the solid waste planning unit has to adopt the solid waste management plan. When a regional solid waste management plan is developed, the members of the solid waste planning unit must have the legal authority to adopt the plan. This authority may be granted to the solid waste planning unit members by the Regional Cooperation Act, the Virginia Water and Waste Authorities Act, §15.2-1300 of the Code of Virginia, or other applicable authority. The request is for the solid waste planning unit to include a reference to the statutory authority that grants them the ability to adopt the solid waste management plan in their solid waste management plan. No change has been made to the regulation.*