

MEMORANDUM

February 2, 2010

TO: Transportation, Infrastructure, Energy & Environment Committee
FROM:  Keith Levchenko, Senior Legislative Analyst
SUBJECT: Solid Waste Management Plan Technical Amendments

Background

On December 15, 2009 the County Council received changes to the Solid Waste Management Plan recommended by the County Executive (see ©1-7). These changes are in response to comments received from the Maryland Department of the Environment (MDE) on July 24, 2009 and November 17, 2009 (see ©8-10) regarding the County's comprehensive update submitted to MDE in March 2009 (Council Resolution 16-894).¹

According to the County Executive's transmittal memorandum, the changes are needed to address MDE's comments and do not reflect policy changes from the Comprehensive Update approved by the Council in March 2009.

A public hearing was held on January 26, 2010.

Technical Changes

The changes the County Executive is recommending in response to the MDE comments are well documented on the draft resolution (©3-7). Council Staff has no issues with the specific changes.

However, in order to avoid, or at least reduce the likelihood of the need for a second Council review and action of a Plan Update in the future, Council Staff suggests that for the next Plan Update, DEP staff solicit comments from MDE staff prior to CE transmittal to the Council or at least prior to the initial Council action approving the Plan Update.

¹ State law (Sections 9-503 and 9-515, Environment Article, of the Maryland Code) requires the governing body of each County to adopt and submit to the Maryland Department of the Environment a ten-year plan dealing with solid waste disposal systems, solid waste acceptance facilities, and the systematic collection and disposal of solid waste. The Environment Article requires each County to review its solid waste management plan at least every three years.

The changes are briefly summarized below with Council Staff comments:

- Language clarifying that the Solid Waste Management Plan shall not be used to create or enforce local land use and zoning requirements.

Council Staff believes the original language was sufficiently clear. However, MDE specifically instructed (see middle paragraph on ©8) that a footnote be added which the CE has done.

- Change the Planning Period from 2007-2016 to 2009 to 2019

This change resulted in changes to the cover page as well as numerous tables in the Plan. The change was needed to align the years with the requirement that the 10 year period not include years prior to the Update approval.

- Electronic Recycling Moved to a New Section in Chapter 4 and additional text regarding “conditions and constraints” and “needs assessment and plan direction” (which are included for other initiatives in this chapter) was added. Similar changes were made in Chapter 5 to break out electronic recycling separately.

These changes are consistent with MDE’s instructions (see ©9-10).

Council Staff recommends approval of the Plan changes recommended by the County Executive.

attachments



ACK AG

12/15/09

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850
MEMORANDUM

053137

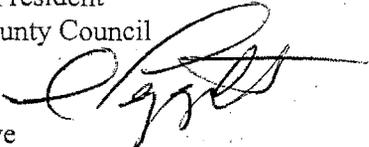
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RECEIVED
MONTGOMERY COUNTY
COUNCIL

Isiah Leggett
County Executive

ENCL IN FILE

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett
County Executive 

SUBJECT: Resolution – Amendment to the Comprehensive Solid Waste Management Plan

I am writing to request that the County Council make certain technical changes in the County's current Comprehensive Solid Waste Management Plan ("Plan") that have been required by the Maryland Department of the Environment (MDE) so that the Plan can be approved by the State.

This Plan is required under Title 9, Subtitle 5 of Environmental Article of the Annotated Code of Maryland and Title 26, Subtitle 3, Chapter 03 of the Code of Maryland Regulations. The Environment Article requires each county to review its solid waste management plan at least every three years.

The County Council adopted the current Plan by Resolution #16-894, dated March 24, 2009. By letters dated July 24, 2009, and November 17, 2009, (copies attached), MDE commented on that Plan and required certain technical changes.

The attached resolution and revised Plan, prepared by the Division of Solid Waste Services (DSWS), reflects no changes other than those technical requirements of MDE and necessary changes in format.

If you have any questions, please feel free to contact Bob Hoyt, Director of the Department of Environmental Protection (DEP) at 240-777-7781 or Dan Locke, Chief of the Division of Solid Waste Services at 240-777-6402. Thank you for your attention to this matter.

IL:wd

Attachments

cc: Bob Hoyt, Director, DEP
Dan Locke, Chief, DEP/DSWS
Keith Levchenko, County Council

Resolution No.: _____

Introduced: _____

Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Comprehensive Amendment to the Comprehensive Solid Waste Management Plan

Background

1. State law (Sections 9-503 and 9-515, Environment Article, of the Annotated Code of Maryland) requires the governing body of each County to adopt and submit to the Maryland Department of the Environment a ten-year plan dealing with solid waste disposal systems, solid waste acceptance facilities, and the systematic collection and disposal of solid waste.
2. The Environment Article further requires each County to review its solid waste management plan at least every three years.
3. On March 24, 2009, the County Council adopted the Comprehensive Solid Waste Management Plan for the years 2007 through 2016 for Montgomery County, Maryland by Resolution 16-894.
4. By letters dated July 24, 2009 and November 17, 2009, to the Montgomery County Division of Solid Waste Services, the Maryland Department of the Environment specified changes that it required in order for the Plan to be approved by the State.
5. On December __, 2009, the County Executive transmitted to the County Council a revised Plan containing only those changes required by the Maryland Department of the Environment.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Comprehensive Solid Waste Management Plan for the Years 2009 through 2019 is modified as listed below and is approved as attached.

A. Zoning Ordinance Issue, MDE Letters, July 24 comment 1 and November 17		
<i>Location</i>	<i>Original</i>	<i>Proposed</i>
Page 2-11 Section 2.3.1	Chapter 59 of the County Code defines zoning requirements and establishes zones designating agricultural, residential, commercial, industrial, or a mixture of uses at specified densities.	Chapter 59 of the County Code defines zoning requirements and establishes zones designating agricultural, residential, commercial, industrial, or a mixture of uses at specified densities. ² (footnote) ² This plan shall not be used to create or enforce local land use and zoning requirements.
Page 4-53 Section 4.3.2	The County Zoning Ordinance includes standards for solid waste facilities.	The County Zoning Ordinance includes standards for solid waste facilities. ⁶ (footnote) ⁶ This plan shall not be used to create or enforce local land use and zoning requirements.
B. The Planning Period issue, MDE Letters, July 24 comment 2		
<i>Location</i>	<i>Original</i>	<i>Proposed</i>
Chapters 1, 2, 3, 4, 5, and Appendix B	(The data were listed for years 2007 to 2016)	(All tables updated and include the years 2009 to 2019)
C. Electronic Recycling issue, MDE Letters, July 24 comment 2		
<i>Location</i>	<i>Original</i>	<i>Proposed</i>
Page 4-16 Section 4.1.2.4	4.1.2.4 Drop-Off Programs (Second paragraph deleted) Electronics Recycling: The DSWS also recycles computers, televisions and other consumer electronics. The computer recycling program started in 2000, and this was expanded to include other consumer electronics in October, 2007. In April, 2008, this program was again expanded to	

	<p>include electronics cell phones, PDAs, digital cameras, CD players and anything with a cord. Currently this program recycles about 90 tons of computers and 60 tons of televisions and other electronics per month. DEP is currently conducting a short-term program involving specially advertised and arranged collection events at satellite sites using Park & Ride lots and schools. This started in June 2008 and will continue until after June 2009 when the switch from analog to digital television signals occurs. Currently, E-Structors, located in Elkridge MD, receives material collected via the County's electronics recycling programs. The contract with E-Structors requires them to recycle all material except residue (non-electronic material).</p>	
<p>Page 4-17 Section 4.1.2.5</p>		<p>(added section) 4.1.2.5 Electronic Recycling Program Current Conditions and Constraints:</p> <p>DSWS' electronics recycling program is consistent with the provisions of the Statewide Electronics Recycling Program Act ("Act"), which took effect on October 1, 2007. The program provides for the recycling of computers, which includes desktop personal computers, laptop computers and computer monitors, and is consistent with the Act. Additionally, and again consistent with Act, the program also provides for the recycling of covered electronic devices, which means a computer or video display device with a screen that is greater than 4 inches measured diagonally. Other electronics items are acceptable for recycling under the program.</p> <p>The computer recycling program started in 2000, and this was expanded to include televisions in October, 2007. In April, 2008, this program was again expanded to include cell phones, PDAs, digital cameras, and CD players, to list some of the items. Currently, this program recycles about 55 tons of computers and 100 tons of televisions and other electronics per month. County</p>

		<p>residents and businesses may drop-off unwanted electronics at a dedicated drop-off site, which has an enclosure and a canopy, seven-days-a-week on the county's Transfer Station's campus. Additionally, DSWS began a satellite event electronics recycling program in June 2008, using Park & Ride lots and schools as event sites for residents and businesses who are at a distance from the Transfer Station. These satellite events will continue for the foreseeable future and have occurred approximately on a monthly basis. Currently, E-Structors, located in Elkridge MD, receives material collected via the County's electronics recycling programs. The contract with E-Structors requires them to recycle all material except residue (non-electronic material).</p> <p>Needs Assessment and Plan Direction: The County will continue to provide drop-off services for certain recyclable materials. The County may modify the drop-off services as needed to reflect changes in the collection program or market conditions.</p>
<p>Page 4-17 4.1.2.5</p>	<p>4.1.2.5</p>	<p>4.1.2.6</p>
<p>Page 5-35 Section 5.2.1.8</p>	<p>5.2.1.8 Recycling and Waste Reduction Programs g. Waste Stream Detoxification (removed last four paragraph)</p> <p>In addition to the HHW and Ecowise programs, the County has a drop-off program for computers (CPUs), monitors and related electronic items at the Transfer Station, and it recently expanded this program to include TV sets, computer monitors, cell phones, and virtually any electronic device with a cord. Material is accepted from County residents and businesses. Some computer components in working order are salvaged for reuse; hazardous and toxic materials in unusable components are recovered for proper disposal.</p> <p>In addition to accepting these electronics at the Transfer Station, DEP has just recently</p>	

	<p>begun to routinely conduct several electronic collection events per year at various, more convenient, locations around the County. In the future, DSWS will continue to explore the most effective means of attracting electronics for recycling.</p> <p>For CFLs the County will continue to work to expand the number and locations of retailers who accept CFLs for recycling.</p> <p>DEP shall conduct an on-going assessment of existing waste detoxification procedures and identify additional feasible programs, and costs of such programs, to expand the detoxification of the waste stream in a manner that minimizes environmental and legal liability risks.</p>	
<p>Page 5-39 Section 5.2.1.9</p>		<p>(added section) 5.2.1.9 Electronic Recycling</p> <p>DSWS' electronics recycling program is consistent with the provisions of the Statewide Electronics Recycling Program Act ("Act"), which took effect on October 1, 2007. The program provides for the recycling of computers, which includes desktop personal computers, laptop computers and computer monitors, and is consistent with the Act. Additionally, and again consistent with Act, the program also provides for the recycling of covered electronic devices, which means a computer or video display device with a screen that is greater than 4 inches measured diagonally. Other electronics items are acceptable for recycling under the program.</p> <p>In addition to the HHW and Ecowise programs as described in previous section, the County has a drop-off program for computers (CPUs), monitors and related electronic items at the Transfer Station, and it recently expanded this program to include TV sets, computer monitors, cell phones, and virtually any electronic device with a cord. Material is accepted from County residents and businesses. Some computer</p>

		<p>components in working order are salvaged for reuse; hazardous and toxic materials in unusable components are recovered for proper disposal.</p> <p>DEP has also just recently begun to routinely conduct several electronic collection events per year at various, more convenient, locations around the County. For CFLs the County will continue to work to expand the number and locations of retailers who accept CFLs for recycling.</p> <p>Plan of Action: In the future, DED will continue to explore the most effective means of attracting electronics for recycling. DEP will also continue to monitor the needs and opportunities including the need for more electronics recycling and evaluate whether there is a need to continue satellite electronics recycling events at their current frequency.</p>
Page 5-40 5.2.1.10	5.2.1.9	5.2.1.10
Page 5-42 5.2.1.11	5.2.1.10	5.2.1.11
Page 5-43 5.2.1.12	5.2.1.11	5.2.1.12
Page 5-43 5.2.1.13	5.2.1.12	5.2.1.13

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

November 17, 2009

RECEIVED
DEPT OF ENVIRONMENTAL PROTECTION

NOV 19 2009

Mr. Dan Locke
Division of Solid Waste Services
Montgomery County
101 Monroe Street
Rockville MD 20850

DIVISION OF SOLID WASTE SERVICES

Dear Mr. Locke:

This letter is a follow up to the comments that the Maryland Department of the Environment (the "Department") provided to you by letter dated July 24, 2009 concerning the language for the zoning requirements included in the Montgomery County 2007-2016 Comprehensive Solid Waste Management Plan (the "Plan"). After an internal review with the Office of Attorney General, the Department has decided that it will accept the language in the Plan, provided a statement regarding the use of zoning information is added to the Plan.

Regarding the first comment of the Department's July 24, 2009 letter, the Department recommends that the County add a statement at the beginning of Section 2.3 that reads "This plan shall not be used to create or enforce local land use and zoning requirements." Subsequently, the zoning information provided on Page 4-55 should refer to this new statement in Section 2.3. The Department is requiring this statement to ensure the Plan will not be used to create or enforce local land use and zoning requirements or replace the local approval processes related to land use and zoning decisions. The Department notes that Maryland Annotated Code, Art. 66B § 4.01(a) provides that planning and zoning controls shall be implemented by local governments.

Montgomery County should make the requested changes to the Plan, as well as the changes discussed in the Department's July 24, 2009 letter, within thirty (30) days of your receipt of this letter so that the Plan can be approved promptly. The Department would be happy to meet with County Representatives to discuss final wording for these changes at a mutually convenient time. If I may be of further assistance, please contact me at 410-537-3314, toll free at 800-633-6101 x3314, or by email at hmillers@mde.state.md.us or Mr. David Mrgich, Chief of Recycling, at 410-537-3314 or by e-mail at dmgich@mde.state.md.us.

Sincerely,

Hilary Miller, Program Manager
Technical Services and Operations Program

cc: Jacqueline Russell, Assistant Attorney General
David Mrgich, Chief, Recycling Unit



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
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Robert M. Summers, Ph.D.
Deputy Secretary

July 24, 2009

RECEIVED
DEPT OF ENVIRONMENTAL PROTECTION

Mr. Dan Locke
Division of Solid Waste Services
Montgomery County
101 Monroe Street
Rockville MD 20850

DIVISION OF SOLID WASTE SERVICES

Dear Mr. Locke:

This letter is to acknowledge that on April 29, 2009, the Maryland Department of the Environment (the "Department") received the Montgomery County 2007-2016 Comprehensive Solid Waste Management Plan (the "Plan"). Of greatest concern to the Department is language concerning zoning requirements that is included in the Plan.

The Plan can not be approved until the following points are fully addressed:

1. Page 2-12, the first paragraph beginning with "The Zoning Ordinance limits private recycling facilities to specific industrial zones." needs to be deleted. Also, on Page 4-55, the second, third and fourth paragraphs beginning with "The County Zoning Ordinance includes standards for solid waste facilities." need to be deleted. This is because a solid waste management plan is not a document used to create or enforce local land use and zoning requirements nor does it replace the local approval processes relating to land use and zoning decisions. As drafted, the language in these sections imposes land use and zoning requirements. As such, the inclusion of the referenced statements in the draft Plan as well as the final plan is not enforceable nor is it specifically required by the referenced regulations. Therefore, these sections are not acceptable to the Department.
2. The planning period (2007-2016) listed throughout the Plan should be updated to 2009-2019 as §9-503(a)(b) of the Environmental Article, Annotated Code of Maryland, requires that a solid waste management plan covers at least the 10-year period next following the adoption by the county governing body.
3. Electronic recycling needs to be separately addressed and not simply listed as a material collected. If the County wishes to be eligible for future MDE eCycling grants under the Statewide Electronics Recycling Program, the County must be sure to address the electronics covered (Covered Electronic Device – CED) under the Stateside Electronics Recycling Program in the description of their "Electronics Recycling" program in

Mr. Dan Locke
Page Two

the Plan. A CED includes a computer or video display device with a screen that is greater than four inches measured diagonally. Details are available at www.mde.state.md.us/eCycling.

4. Table 3.11 correctly indicates a 2007 MRA recycling rate of 38.5%. However, the 434,121 tons of recyclables and 1,128,400 tons of MSW reported in the Plan do not equal the 461,629 and 1,198,387 tons reported in the County MRA Report for 2007. Also, in Tables 3.10 and 3.11 of the Plan, it is reported that 694,278 tons of MSW was disposed in 2007. Solid Waste Reports on file at the Department and reported to the County as part of the 2007 MRA Report indicate 736,758 tons of waste disposed. Changes made to these tables should also be reflected in Table 4.1.

Please also be aware that during Maryland's 2009 legislative session, HB 1290 Environment – Recycling – Public School Plans was passed. It requires a county recycling plan to address the collection, processing, marketing and disposition of recyclable materials from county public schools, and requires a county to submit a revised recycling plan by October 1, 2010. The County should refer to the text of the bill for details.

In conclusion, in accordance with Sections 9-507(a) and 9-508(a) of the Environment Article, Annotated Code of Maryland, and for the reasons stated herein, the Department disapproves the County's Plan at this time until the requested changes are made. We acknowledge that with the requested changes, the document will represent a sound proposal for the future of environmentally responsible solid waste management in Montgomery County. Montgomery County is strongly encouraged to make the requested changes to the Plan within ninety (90) days of your receipt of this letter.

In accordance with Section 9-508(b) of the Environmental Article, Annotated Code of Maryland, Montgomery County has six (6) months from the date that the County receives this letter to request that the Secretary of the Department reconsider this disapproval. However, we encourage the County to make the requested changes, in which case the Plan can be approved forthwith. We will be happy to meet with County Representatives to discuss final wording for these changes at any mutually convenient time. Questions concerning this matter can be directed to me or Mr. A.Hussain Alihija, Chief, Nutrient Resources Division at (410) 537-3375.

Sincerely,



Horacio Tablada, Director
Land Management Administration

HT:APM:apm

cc: Ms. Hilary Miller