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S. 710

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

IN THE SENATE OF THE UNITED STATES

MARCH 31, 2011

Mr. THUNE (for himself, Mr. CARDIN, Ms. KLOBUCHAR, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hazardous Waste
5 Electronic Manifest Establishment Act”.

1 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**
 2 **TEM.**

3 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-
 4 posal Act (42 U.S.C. 6921 et seq.) is amended by adding
 5 at the end the following:

6 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**
 7 **SYSTEM.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) BOARD.—The term ‘Board’ means the
 10 Hazardous Waste Electronic Manifest System Advi-
 11 sory Board established under subsection (f).

12 “(2) FUND.—The term ‘Fund’ means the Haz-
 13 arduous Waste Electronic Manifest System Fund es-
 14 tablished by subsection (d).

15 “(3) PERSON.—The term ‘person’ includes an
 16 individual, corporation (including a Government cor-
 17 poration), company, association, firm, partnership,
 18 society, joint stock company, trust, municipality,
 19 commission, Federal agency, State, political subdivi-
 20 sion of a State, or interstate body.

21 “(4) SYSTEM.—The term ‘system’ means the
 22 hazardous waste electronic manifest system estab-
 23 lished under subsection (b).

24 “(5) USER.—The term ‘user’ means a haz-
 25 arduous waste generator, a hazardous waste trans-
 26 porter, an owner or operator of a hazardous waste

1 treatment, storage, recycling, or disposal facility, or
2 any other person that—

3 “(A) is required to use a manifest to com-
4 ply with any Federal or State requirement to
5 track the shipment, transportation, and receipt
6 of hazardous waste or other material that is
7 shipped from the site of generation to an off-
8 site facility for treatment, storage, disposal, or
9 recycling; and

10 “(B)(i) elects to use the system to com-
11 plete and transmit an electronic manifest for-
12 mat; or

13 “(ii) submits to the system for data proc-
14 essing purposes a paper copy of the manifest
15 (or data from such a paper copy), in accordance
16 with such regulations as the Administrator may
17 promulgate to require such a submission.

18 “(b) ESTABLISHMENT.—Not later than 3 years after
19 the date of enactment of this section, the Administrator
20 shall establish a hazardous waste electronic manifest sys-
21 tem that may be used by any user.

22 “(c) USER FEES.—

23 “(1) IN GENERAL.—The Administrator may im-
24 pose on users such reasonable service fees as the Ad-
25 ministrator determines to be necessary to pay costs

1 incurred in developing, operating, maintaining, and
 2 upgrading the system, including any costs incurred
 3 in collecting and processing data from any paper
 4 manifest submitted to the system after the date on
 5 which the system enters operation.

6 “(2) COLLECTION OF FEES.—The Adminis-
 7 trator shall—

8 “(A) collect the fees described in para-
 9 graph (1) from the users in advance of, or as
 10 reimbursement for, the provision by the Admin-
 11 istrator of system-related services; and

12 “(B) deposit the fees in the Fund for use
 13 in accordance with this subsection.

14 “(3) FEE STRUCTURE.—

15 “(A) IN GENERAL.—The Administrator, in
 16 consultation with information technology ven-
 17 dors, shall determine through the contract
 18 award process described in subsection (e) the
 19 fee structure that is necessary to recover the
 20 full cost to the Administrator of providing sys-
 21 tem-related services, including costs relating
 22 to—

23 “(i) materials and supplies;

24 “(ii) contracting and consulting;

25 “(iii) overhead;

1 “(iv) information technology (includ-
2 ing costs of hardware, software, and re-
3 lated services);

4 “(v) information management;

5 “(vi) collection of service fees;

6 “(vii) investment of any unused serv-
7 ice fees;

8 “(viii) reporting and accounting;

9 “(ix) employment of direct and indi-
10 rect Government personnel dedicated to es-
11 tablishing and maintaining the system; and

12 “(x) project management.

13 “(B) ADJUSTMENTS IN FEE AMOUNT.—

14 “(i) IN GENERAL.—The Adminis-
15 trator, in consultation with the Board,
16 shall increase or decrease amount of a
17 service fee determined under the fee struc-
18 ture described in subparagraph (A) to a
19 level that will—

20 “(I) result in the collection of an
21 aggregate amount for deposit in the
22 Fund that is sufficient to cover cur-
23 rent and projected system-related
24 costs (including any necessary system
25 upgrades); and

1 “(II) minimize, to the maximum
2 extent practicable, the accumulation
3 of unused amounts in the Fund.

4 “(ii) EXCEPTION FOR INITIAL PERIOD
5 OF OPERATION.—The requirement de-
6 scribed in clause (i)(II) shall not apply to
7 any additional fees that accumulate in the
8 Fund, in an amount that does not exceed
9 \$2,000,000, during the 3-year period be-
10 ginning on the date on which the system
11 enters operation.

12 “(iii) TIMING OF ADJUSTMENTS.—Ad-
13 justments to service fees described in
14 clause (i) shall be made—

15 “(I) initially, at the time at
16 which initial development costs of the
17 system have been recovered by the
18 Administrator such that the service
19 fee may be reduced to reflect the
20 elimination of the system development
21 component of the fee; and

22 “(II) periodically thereafter, upon
23 receipt and acceptance of the findings
24 of any annual accounting or auditing
25 report under subsection (d)(6), if the

1 report discloses a significant disparity
 2 for a fiscal year between the funds
 3 collected from service fees under this
 4 subsection for the fiscal year and ex-
 5 penditures made for the fiscal year to
 6 provide system-related services.

7 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST
 8 SYSTEM FUND.—

9 “(1) ESTABLISHMENT.—There is established in
 10 the Treasury of the United States a revolving fund,
 11 to be known as the ‘Hazardous Waste Electronic
 12 Manifest System Fund’, consisting of—

13 “(A) such amounts as are appropriated to
 14 the Fund under paragraph (2); and

15 “(B) any interest earned on investment of
 16 amounts in the Fund under paragraph (4).

17 “(2) TRANSFERS TO FUND.—There are appro-
 18 priated to the Fund amounts equivalent to amounts
 19 collected as fees and received by the Administrator
 20 under subsection (c).

21 “(3) EXPENDITURES FROM FUND.—

22 “(A) IN GENERAL.—Subject to paragraph
 23 (2), on request by the Administrator, the Sec-
 24 retary of the Treasury shall transfer from the
 25 Fund to the Administrator such amounts as the

1 Administrator determines to be necessary to
2 pay costs incurred in developing, operating,
3 maintaining, and upgrading the system under
4 subsection (c).

5 “(B) USE OF FUNDS.—

6 “(i) IN GENERAL.—Fees collected by
7 the Administrator and deposited in the
8 Fund under this section shall be available
9 to the Administrator for use in accordance
10 with this section without fiscal year limita-
11 tion and without further appropriation.

12 “(ii) OVERSIGHT.—The Administrator
13 shall carry out all necessary measures to
14 ensure that amounts in the Fund are used
15 only to carry out the goals of establishing,
16 operating, maintaining, upgrading, man-
17 aging, supporting, and overseeing the sys-
18 tem.

19 “(4) INVESTMENT OF AMOUNTS.—

20 “(A) IN GENERAL.—The Secretary of the
21 Treasury shall invest such portion of the Fund
22 as is not, in the judgment of the Secretary of
23 the Treasury and the Administrator, required
24 to meet current withdrawals.

1 “(B) INTEREST-BEARING OBLIGATIONS.—

2 Investments may be made only in—

3 “(i) interest-bearing obligations of the

4 United States; or

5 “(ii) obligations, participations, or

6 other instruments that are lawful invest-

7 ments for fiduciaries, trusts, or public

8 funds, as determined by the Secretary of

9 the Treasury.

10 “(C) ACQUISITION OF OBLIGATIONS.—For

11 the purpose of investments under paragraph

12 (1), obligations may be acquired—

13 “(i) on original issue at the issue

14 price; or

15 “(ii) by purchase of outstanding obli-

16 gations at the market price.

17 “(D) SALE OF OBLIGATIONS.—Any obliga-

18 tion acquired by the Fund may be sold by the

19 Secretary of the Treasury at the market price.

20 “(E) CREDITS TO FUND.—The interest on,

21 and the proceeds from the sale or redemption

22 of, any obligations held in the Fund shall be

23 credited to, and form a part of, the Fund.

24 “(5) TRANSFERS OF AMOUNTS.—

1 “(A) IN GENERAL.—The amounts required
2 to be transferred to the Fund under this sub-
3 section shall be transferred at least monthly
4 from the general fund of the Treasury to the
5 Fund on the basis of estimates made by the
6 Secretary of the Treasury.

7 “(B) ADJUSTMENTS.—Proper adjustment
8 shall be made in amounts subsequently trans-
9 ferred to the extent prior estimates were in ex-
10 cess of or less than the amounts required to be
11 transferred.

12 “(6) ACCOUNTING AND AUDITING.—

13 “(A) ACCOUNTING.—For each 2-fiscal-year
14 period, the Administrator shall prepare and
15 submit to the Committee on Environment and
16 Public Works of the Senate and the Committee
17 on Energy and Commerce of the House of Rep-
18 resentatives a report that includes—

19 “(i) an accounting of the fees paid to
20 the Administrator under subsection (c) and
21 disbursed from the Fund for the period
22 covered by the report, as reflected by fi-
23 nancial statements provided in accordance
24 with—

1 “(I) the Chief Financial Officers
2 Act of 1990 (Public Law 101–576;
3 104 Stat. 2838) and amendments
4 made by that Act; and

5 “(II) the Government Manage-
6 ment Reform Act of 1994 (Public
7 Law 103–356; 108 Stat. 3410) and
8 amendments made by that Act; and

9 “(ii) an accounting describing actual
10 expenditures from the Fund for the period
11 covered by the report for costs described in
12 subsection (c)(1).

13 “(B) AUDITING.—

14 “(i) IN GENERAL.—For the purpose
15 of section 3515(c) of title 31, United
16 States Code, the Fund shall be considered
17 a component of an Executive agency.

18 “(ii) COMPONENTS OF AUDIT.—The
19 annual audit required in accordance with
20 sections 3515(b) and 3521 of title 31,
21 United States Code, of the financial state-
22 ments of activities carried out using
23 amounts from the Fund shall include an
24 analysis of—

1 “(I) the fees collected and dis-
2 bursed under this section;

3 “(II) the reasonableness of the
4 fee structure in place as of the date of
5 the audit to meet current and pro-
6 jected costs of the system;

7 “(III) the level of use of the sys-
8 tem by users; and

9 “(IV) the success to date of the
10 system in operating on a self-sus-
11 taining basis and improving the effi-
12 ciency of tracking waste shipments
13 and transmitting waste shipment
14 data.

15 “(iii) FEDERAL RESPONSIBILITY.—
16 The Inspector General of the Environ-
17 mental Protection Agency shall—

18 “(I) conduct the annual audit de-
19 scribed in clause (ii); and

20 “(II) submit to the Administrator
21 a report that describes the findings
22 and recommendations of the Inspector
23 General resulting from the audit.

24 “(e) CONTRACTS.—

1 “(1) AUTHORITY TO ENTER INTO CONTRACTS
2 FUNDED BY SERVICE FEES.—The Administrator
3 may enter into 1 or more information technology
4 contracts with entities determined to be appropriate
5 by the Administrator (referred to in this subsection
6 as ‘contractors’) under which—

7 “(A) the Administrator agrees to award a
8 contract for the provision of system-related
9 services; and

10 “(B) the contractor agrees to assume the
11 initial risk of the information technology invest-
12 ment, and to obtain reimbursement for invest-
13 ment costs, operating costs, and other fees, by
14 receiving as payment an agreed-upon share of
15 the amounts collected as fees by the Adminis-
16 trator under subsection (c).

17 “(2) TERM OF CONTRACT.—A contract awarded
18 under this subsection shall have a term of not more
19 than 10 years.

20 “(3) ACHIEVEMENT OF GOALS.—The Adminis-
21 trator shall ensure, to the maximum extent prac-
22 ticable, that a contract awarded under this sub-
23 section—

24 “(A) is performance-based;

25 “(B) identifies objective outcomes; and

1 “(C) contains performance standards that
2 may be used to measure achievement and goals
3 to evaluate the success of a contractor in per-
4 forming under the contract and the right of the
5 contractor to payment for services under the
6 contract, taking into consideration that a pri-
7 mary measure of successful performance shall
8 be the development of a hazardous waste elec-
9 tronic manifest system that—

10 “(i) meets the needs of the user com-
11 munity (including States that rely on data
12 contained in manifests);

13 “(ii) attracts sufficient user participa-
14 tion and service fee revenues to ensure the
15 viability of the system;

16 “(iii) decreases the administrative
17 burden on the user community; and

18 “(iv) provides the waste receipt data
19 applicable to the biennial reports required
20 by section 3002(a)(6).

21 “(4) PAYMENT STRUCTURE.—Each contract
22 awarded under this subsection shall include a provi-
23 sion that specifies—

1 “(A) the service fee structure of the con-
2 tractor that will form the basis for payments to
3 the contractor;

4 “(B) the fixed-share ratio of monthly serv-
5 ice fee revenues from which the Administrator
6 shall reimburse the contractor for system-re-
7 lated development, operation, and maintenance
8 costs and provide an additional profit or fee
9 commensurate with the risk undertaken by the
10 contractor in performing in accordance with the
11 contract;

12 “(C) the amount of additional trans-
13 actional costs attributed to—

14 “(i) the ancillary costs of the Admin-
15 istrator in implementing and managing the
16 system, including the costs of integrating
17 the applications of the contractor with the
18 central data exchange architecture of the
19 Environmental Protection Agency;

20 “(ii) the direct and indirect personnel
21 costs incurred by the Administrator to em-
22 ploy personnel dedicated to the implemen-
23 tation and management of the system; and

24 “(iii) expenses incurred in procuring
25 any independent contractor services to as-

1 sist staff of the Administrator in the prep-
2 aration of financial statements and reports
3 and the conduct of regular user group and
4 governance meetings necessary for the
5 oversight of the system.

6 “(5) CANCELLATION AND TERMINATION.—

7 “(A) IN GENERAL.—If the Administrator
8 determines that sufficient funds are not made
9 available for the continuation in a subsequent
10 fiscal year of a contract entered into under this
11 subsection, the Administrator shall cancel or
12 terminate the contract.

13 “(B) COSTS.—The costs of cancellation or
14 termination under subparagraph (A) may be
15 paid using—

16 “(i) appropriations available for per-
17 formance of the contract;

18 “(ii) unobligated appropriations avail-
19 able for acquisition of the information
20 technology procured under the contract; or

21 “(iii) funds subsequently appropriated
22 for payment of costs of the cancellation or
23 termination.

24 “(C) NEGOTIATION OF AMOUNTS.—The
25 amount payable in the event of cancellation or

1 termination of a contract entered into under
2 this subsection shall be negotiated with the con-
3 tractor at the time at which the contract is
4 awarded.

5 “(D) AUTHORITY TO ENTER INTO CON-
6 TRACTS.—The Administrator may enter into a
7 contract under this subsection for any fiscal
8 year, regardless of whether funds are made spe-
9 cifically available for the full costs of cancella-
10 tion or termination of the contract, if—

11 “(i) funds are available at the time at
12 which the contract is awarded to make
13 payments with respect to a contingent li-
14 ability in an amount equal to at least 100
15 percent of the estimated costs of a can-
16 cellation or termination during the first
17 fiscal year of the contract, as determined
18 by the Administrator; or

19 “(ii) funds described in clause (i) are
20 not available as described in that clause,
21 but the contractor—

22 “(I) is informed of the amount of
23 any unfunded contingent liability; and

1 “(II) agrees to perform the con-
2 tract despite the unfunded contingent
3 liability.

4 “(6) NO EFFECT ON OWNERSHIP.—Regardless
5 of whether the Administrator enters into a contract
6 under this subsection, the system shall be owned by
7 the Federal Government.

8 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST
9 SYSTEM ADVISORY BOARD.—

10 “(1) ESTABLISHMENT.—Not later than 3 years
11 after the date of enactment of this section, the Ad-
12 ministrator shall establish a board to be known as
13 the ‘Hazardous Waste Electronic Manifest System
14 Advisory Board’.

15 “(2) COMPOSITION.—The Board shall be com-
16 posed of 9 members, of which—

17 “(A) 1 member shall be the Administrator
18 (or a designee), who shall serve as Chairperson
19 of the Board; and

20 “(B) 8 members shall be individuals ap-
21 pointed by the Administrator—

22 “(i) at least 2 of whom shall have ex-
23 pertise in information technology;

24 “(ii) at least 3 of whom shall have ex-
25 perience in using or represent users of the

1 manifest system to track the transpor-
2 tation of hazardous waste under this sub-
3 title (or an equivalent State program); and

4 “(iii) at least 3 of whom shall be a
5 State representative responsible for proc-
6 essing those manifests.

7 “(3) DUTIES.—The Board shall meet annually
8 to discuss, evaluate the effectiveness of, and provide
9 recommendations to the Administrator relating to,
10 the system.

11 “(g) REGULATIONS.—

12 “(1) PROMULGATION.—

13 “(A) IN GENERAL.—Not later than 1 year
14 after the date of enactment of this section, the
15 Administrator shall promulgate regulations to
16 carry out this section.

17 “(B) INCLUSIONS.—The regulations pro-
18 mulgated pursuant to subparagraph (A) may
19 include such requirements as the Administrator
20 determines to be necessary to facilitate the
21 transition from the use of paper manifests to
22 the use of electronic manifests, or to accommo-
23 date the processing of data from paper mani-
24 fests in the electronic manifest system, includ-
25 ing a requirement that users of paper manifests

1 submit to the system copies of the paper mani-
2 fests for data processing purposes.

3 “(C) REQUIREMENTS.—The regulations
4 promulgated pursuant to subparagraph (A)
5 shall ensure that each electronic manifest pro-
6 vides, to the same extent as paper manifests
7 under applicable Federal and State law, for—

8 “(i) the ability to track and maintain
9 legal accountability of—

10 “(I) the person that certifies that
11 the information provided in the mani-
12 fest is accurately described; and

13 “(II) the person that acknowl-
14 edges receipt of the manifest;

15 “(ii) if the manifest is electronically
16 submitted, State authority to access paper
17 printout copies of the manifest from the
18 system; and

19 “(iii) access to all publicly available
20 information contained in the manifest.

21 “(2) EFFECTIVE DATE OF REGULATIONS.—Any
22 regulation promulgated by the Administrator under
23 paragraph (1) and in accordance with section 3003
24 relating to electronic manifesting of hazardous waste

1 shall take effect in each State as of the effective
2 date specified in the regulation.

3 “(3) ADMINISTRATION.—The Administrator
4 shall carry out regulations promulgated under this
5 subsection in each State unless the State program is
6 fully authorized to carry out those regulations in lieu
7 of the Administrator.

8 “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT
9 TO CERTAIN STATES.—In any case in which the State in
10 which waste is generated, or the State in which waste will
11 be transported to a designated facility, requires that the
12 waste be tracked through a hazardous waste manifest, the
13 designated facility that receives the waste shall, regardless
14 of the State in which the facility is located—

15 “(1) complete the facility portion of the applica-
16 ble manifest;

17 “(2) sign and date the facility certification; and

18 “(3) submit to the system a final copy of the
19 manifest for data processing purposes.”.

20 (b) CONFORMING AMENDMENT.—The table of con-
21 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)
22 is amended by inserting at the end of the items relating
23 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.

○