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INTERNATIONAL SOLID WASTE IMPORTATION AND MANAGEMENT ACT OF 2007

MARCH 29, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 518]

[Including cost estimate on the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 518) to amend the Solid Waste Disposal Act to authorize States to restrict receipt of foreign municipal solid waste and implement the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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59–006

PURPOSE AND SUMMARY

Currently, several States on the northern border of the United States of America are receiving substantial imports of municipal solid waste from outside the United States, most notably from the Province of Ontario, Canada. Federal agency estimates are that more than 400 trucks a day cross the border bringing municipal solid waste from Toronto, Canada, to Michigan. The significant amount of municipal solid waste imports is having deleterious effects on the environment and public safety, while also eroding support for State and local recycling programs. These States are experiencing a reduction in their permitted landfill capacity, as well as damage and wear to their natural and physical resources, without sufficient legal remedies to shipments for disposal due to constitutional Commerce Clause limitations. In addition, a process for notice and consent to hazardous and solid waste shipments, established by the United States of America and the Government of Canada in the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada (the "Agreement"), has yet to be implemented, in part because the U.S. Environmental Protection Agency claims that it lacks certain legal authority. The Agreement, however, also required the United States and Canada to use "best efforts" to implement the "notice and consent provisions" while regulatory authority was being obtained.

H.R. 518, the International Solid Waste Importation and Management Act of 2007, is narrowly drafted and intended only to limit international waste in two distinct ways. First, it expressly grants States, for a limited period of time, the authority to enact laws or issue regulations or orders placing limits on the transportation and disposal of municipal solid waste in their State if that waste has been generated in another country. This legislation specifically does not grant any authority to States to regulate the transportation and disposal of municipal solid waste generated in another State. Second, H.R. 518 authorizes and directs the Administrator of the U.S. Environmental Protection Agency to implement and enforce the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada. The Administrator is required to issue final regulations within 24 months after the date of enactment.

BACKGROUND AND NEED FOR LEGISLATION

The debate over State and Federal regulation of solid waste imports involves judicial interpretations of the U.S. Constitution. The Federal Government, specifically the Congress, has a role to play in resolving these controversies since waste and waste management services are considered articles of commerce under court interpretations of the interstate commerce clause, Article I, Section 8, Clause 3 of the U.S. Constitution. The Commerce Clause empowers the Federal Government "[t]o regulate Commerce . . . among the several States." By negative implication, States are limited in their ability to regulate interstate commerce, even in the absence of Federal regulation. This inverse reading, referred to as the "negative" or "dormant" commerce clause, has resulted in an interpreta-

tion by the U.S. Supreme Court that States may not place an "undue burden" on interstate or foreign commerce.

The Supreme Court has identified two categories of State regulation as problematic under the dormant commerce clause. Specifically, (1) regulation that, on its face, is discriminatory against out-of-state commerce and (2) regulation that may serve a legitimate purpose and does not discriminate against out-of-State commerce, but nonetheless imposes a burden on interstate commerce that is "clearly excessive" in relation to its benefits. Congress, however, can immunize the States from court challenges arising under the Commerce Clause in specific legislation.

In response to calls for legislation to address imports of municipal solid waste from foreign countries, in the 108th Congress on July 23, 2003, the Subcommittee on Environment and Hazardous Materials held a hearing on H.R. 411 and H.R. 382. In the 109th Congress, the provisions of H.R. 411 and H.R. 382 formed the basis of H.R. 2491, which was favorably reported by the Committee on Energy and Commerce on September 27, 2005 (Rpt. 109–235). On September 6, 2006, H.R. 2491 was passed by the House of Representatives under the procedure for suspension of the rules. H.R. 518 is identical in substance to H.R. 2491 as passed by the House of Representatives.

International Environmental Agreement Obligations: Transboundary movement of hazardous and municipal solid waste between the United States and Canada is governed by the Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous and Other Waste ("Agreement"). The Agreement is considered an agreement under Article 11 of the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal.

The Agreement requires the exporting country to give prior notice to the importing country of waste shipments, and gives the importing country 30 days from receipt of the notice to respond, "indicating its consent (conditional or not) or its objection to the export" (Art. 3(c)). If the importing country does not respond during this period, it is deemed to have no objection and the export may take place provided the importer complies with all applicable domestic laws of the country of import (Art. 3(d)). The importing country may amend the terms of the proposed shipment as notified and may also withdraw or modify its consent, once given, for good cause (Art. 3(e), (f)).

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation in the 110th Congress.

COMMITTEE CONSIDERATION

On Tuesday, March 20, 2007, the Subcommittee on Environment and Hazardous Materials met in open markup session and approved H.R. 518 for full Committee consideration by voice vote. On Thursday, March 22, 2007, the full Committee met in open markup session and ordered H.R. 518 favorably reported to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 518 reported. A motion by Mr. Dingell to order H.R. 518 favorably reported to the House was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation in the 110th Congress.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 518 assists States in managing flows of municipal solid waste by authorizing a period of time to enact or issue laws, regulations, or orders to place limitations on municipal solid waste generated in a foreign country and exported for disposal in their State. H.R. 518 authorizes and directs the Administrator of the Environmental Protection Agency to implement and enforce the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 518, the International Solid Waste Importation and Management Act of 2007, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 518 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

COMMITTEE COST ESTIMATES

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c) (3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MARCH 28, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 518, the International Solid Waste Importation and Management Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), Lisa Ramirez-Branum (for the state and local impact), and Craig Cammarata (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 518—International Solid Waste Importation and Management Act of 2007

Summary: The Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, which was signed in 1986 and later amended in 1992, governs the trade in hazardous and municipal solid waste between the United States and Canada. Enacting H.R. 518 would authorize the Administrator of the Environmental Protection Agency (EPA) to perform certain functions under this agreement to determine whether to allow certain imports of hazardous or municipal solid waste from Canada. Under the legislation, EPA would be required to issue final regulations concerning imports and exports of hazardous and municipal solid waste within 24 months of the bill's enactment, and it would be responsible for implementing and enforcing those regulations. CBO estimates that implementing this legislation would cost about $2 million in 2008 and about $6 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Enacting H.R. 518 could increase revenues because the bill would provide for civil penalties for any past or current violations of its provisions. CBO expects that the amount of fines collected under this bill would not be significant.

H.R. 518 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt the regulatory authority of state governments and impose requirements on some local governments that own solid waste facilities. Because the details of those requirements would depend on future federal regulations, CBO cannot determine whether local governments would lose income from waste disposal fees. Therefore, we cannot estimate the total costs of complying with those mandates or determine whether they would exceed the threshold for intergovernmental mandates ($66 million in 2007 dollars, adjusted annually for inflation) established by UMRA.

H.R. 518 would impose private-sector mandates, as defined in UMRA, on certain companies involved in the importation, exportation, and disposal of solid waste. CBO cannot determine the cost of those mandates because the requirements established by the bill would depend on future regulatory action.

Estimated cost to the Federal Government: The estimated budgetary impact of this legislation is shown in the following table. The

costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Additional EPA Personnel:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Contractor Costs:					
Estimated Authorization Level	1	*	*	*	*
Estimated Outlays	1	*	*	*	*
Total Changes:					
Estimated Authorization Level	2	1	1	1	1
Estimated Outlays	2	1	1	1	1

1. Enacting H.R. 518 also could increase federal revenues from the collection of civil penalties, but CBO estimates that additional collections would not be significant.
Note.—*= less than $500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 518 will be enacted by the end of fiscal year 2007 and that the necessary amounts will be appropriated for each fiscal year.

Spending subject to appropriation

Based on information from EPA, CBO estimates that, in 2008, about $1 million would be required for 10 staff members to promulgate regulations, and about $1 million would be required for contractor services, such as conducting an economic impact analysis and providing training and outreach activities. In subsequent years, as EPA would begin to implement and enforce the regulations, CBO estimates that contractor costs would decline. We estimate that annual costs would be about $1 million over the 2008–2012 period.

Revenues

Enacting H.R. 518 could increase revenues because the bill would provide for civil penalties for any past or current violations of its provisions. Civil penalties are recorded in the budget as revenues. According to EPA, similar fines collected under current law total less than $500,000 annually. Thus, CBO expects that the additional fines collected under this bill would not be significant.

Estimated impact on state, local, and tribal governments: H.R. 518 would grant states the ability to enact laws or issue regulations to restrict the receipt and disposal within their borders of solid waste originating in another country. The bill would provide states with up to 24 months to take such action but would preempt them from implementing their own regulations if they fail to act within the required time period. Such a preemption is an intergovernmental mandate as defined in UMRA, but CBO expects it would impose no significant costs on state governments.

The bill also contains an intergovernmental mandate because it would impose new requirements on local waste facilities owned by municipalities that accept solid waste from foreign countries. EPA would promulgate the necessary regulations over the next two years. At this time, EPA cannot provide information about the direction the agency might take in designing those regulations, although it is possible that EPA would restrict the importation of municipal solid waste from foreign countries. Such restrictions

would likely result in lost fees by municipal facilities that accept solid waste from foreign countries. CBO does not have the data to determine the amount of fees currently collected by those facilities or how much of those collections would be lost as a result of future EPA regulations. Thus, we cannot determine whether those losses would exceed the threshold for intergovernmental mandates ($66 million in 2007, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 518 would impose private-sector mandates, as defined in UMRA, on certain companies involved in the importation, exportation, and disposal of solid waste. The bill would require the Environmental Protection Agency to issue regulations to implement and enforce the agreement with respect to the importation and exportation of solid waste within two years of enactment. While those regulations are being created and implemented by EPA, the bill would allow states to enact laws or issue regulations consistent with international trade obligations that limit the import and disposal of solid waste from foreign countries. Any future regulations created by EPA that affect private waste-management companies would constitute private-sector mandates under this bill. CBO cannot determine if the cost of the mandates would exceed the annual threshold established by UMRA ($131 million in 2007, adjusted annually for inflation) because we have no basis for predicting what requirements would be imposed by such regulations.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on state, local, and tribal governments: Lisa Ramirez-Braun. Impact on the Private Sector: Craig Cammarata.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section one establishes the short title of the bill as the "International Solid Waste Importation and Management Act of 2007."

Section 2. International transportation and disposal of municipal solid waste

Section two establishes a new section 4011 to subtitle D of the Solid Waste Disposal Act as set out below.

Section 4011. International transportation and disposal of municipal solid waste

Section 4011(a) allows a State to enact laws or to issue regulations or orders to limit the receipt and disposal of foreign municipal solid waste (MSW) within the State. This authority for States exists only until the regulations implementing the Agreement become effective. Laws enacted pursuant to this authority may remain in force and effect after the effective date for U.S. implementation of the Agreement passes. Nothing in this section affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

Section 4011(a)(1) is an express, specific delegation of authority to States to enact laws or issue regulations or orders imposing limitations on the receipt and disposal of only foreign municipal solid waste as defined in section 4011(f)(2). The Committee intends the express delegation of otherwise prohibited State authority to be clear and unambiguous.

It is not the intent of the Committee that the word "interstate" in 4011(a)(2) gives any State the authority to enact legislation or issue regulations or orders affecting interstate or domestically generated waste. As drafted, this bill explicitly only allows States to impose limits or restrictions on foreign municipal solid waste as defined in new 4011(f)(2).

In 4011(a)(3), "prior" law refers to any law in existence before the enactment of this Act. It is the intent of the Committee to not affect, replace, or amend existing law relating to the need for consistency with international trade obligations.

4011(b) has four components. This subsection requires the Administrator of the Environmental Protection Agency to carry out functions prescribed in the Agreement, namely determining whether or not to consent to a shipment of foreign MSW that has been the subject of a notification by Canada; requires within 24 months, the EPA Administrator to publish rules implementing the Agreement, prohibits persons from importing, transporting, or exporting MSW in violation of the Agreement and implementing laws, regulations, and orders; and, establishes various enforcement authorities.

4011(b)(3) requires the Administrator, when considering whether to consent to a shipment of foreign MSW to: (1) give substantial weight to the views of the recipient State or States; (2) consider the impact of the shipment as it relates to continued public support for and adherence to recycling programs, landfill capacity as provided in comprehensive waste management plans, air emissions and road deterioration from increased vehicular traffic; and, (3) consider the

impact of the importation on homeland security, public health, and the environment.

4011(b)(4) makes unlawful, under the Solid Waste Disposal Act, the import, transport, or export of municipal solid waste if it violates the Agreement.

4011(c) allows the Administrator to either: (1) issue an order assessing a civil penalty for any past or current violation or both, or (2) commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Additionally, under new 4011(c)(2), the Committee intends that any order issued under the authority specified in new 4011(c)(1), set forth, with reasonable specificity, the nature of the violation and that any penalty assessed under new 4011(c)(1) not exceed $25,000 per day of noncompliance for each violation. In assessing a penalty under new 4011(c)(1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

4011(d) allows any person(s) named in a compliance order issued under new 4011(c) to, within 30 days of the order's issuance, request a public hearing on the matter. If no one named in the order makes this request then the order becomes final. Upon the request for hearing by the person named in the order, the Administrator is required to promptly conduct a public hearing and is authorized, in connection with any proceeding under this section, to issue subpoenas for the attendance and testimony of witnesses as well as the production of relevant papers, books, and documents. Finally, the Administrator may promulgate rules for discovery procedures under the hearing procedures.

4011(e) allows the Administrator to assess a civil penalty for each day of continued noncompliance with an order under new 4011(c), not to exceed $25,000 per day.

4011(f) defines the key terms for the purposes of new section 4011. The Committee does not intend that the term "municipal solid waste" include any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation. Specifically, the term "foreign municipal solid waste" is defined as municipal solid waste generated outside of the United States.

The term "municipal solid waste" is defined as all waste materials discarded for disposal by households, including single and multifamily residences, and hotels and motels. It also includes all waste materials discarded for disposal that were generated by commercial, institutional, municipal, and industrial sources, to the extent such materials are essentially the same as materials discarded by households, hotels and motels and that these materials were collected and disposed of with other discarded household, hotel, or motel generated municipal solid waste as part of normal municipal solid waste collection services. The definition of "municipal solid waste" does not apply to hazardous materials, except for materials that, pursuant to regulations issued under section 3001(d), are not subject to regulation under subtitle C. Examples of municipal solid waste include: food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, and household haz-

ardous waste. Such term shall include debris resulting from construction, remodeling, repair, or demolition of structures.

The term "municipal solid waste" does not include any solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste; any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606), a response action taken under a State law comparable to section 104 or 106, or a corrective action taken under this Act; recyclable materials that have been separated, at the source of the waste, from waste otherwise destined for disposal or that have been managed separately from waste destined for disposal; scrap rubber to be used as a fuel source; materials and products returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible reuse; any solid waste generated by an industrial facility and transported for the purpose of treatment, storage, or disposal to a facility or unit thereof that is owned or operated by the generator of the waste, located on property owned by the generator or a company with which the generator is affiliated, or the capacity of which is contractually dedicated exclusively to a specific generator, so long as the disposal area complies with local and State land use and zoning regulations applicable to the disposal site; any medical waste that is segregated from or not mixed with solid waste; sewage sludge and residuals from any sewage treatment plant; and combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations that are not essentially the same as waste normally generated by households.

The term "Agreement" is defined as the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, signed at Ottawa on October 28, 1986 (TIAS 11099) and amended on November 25, 1992; and any regulations promulgated or orders issued to implement and enforce that Agreement.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as "this Act"), together with the following table of contents, may be cited as the "Solid Waste Disposal Act":

Subtitle A—General Provisions

Sec. 1001. Short title and table of contents.

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Subtitle D—State or Regional Solid Waste Plans

Sec. 4001. Objectives of subtitle.

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Sec. 4011. International transportation and disposal of municipal solid waste.

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Subtitle D—State or Regional Solid Waste Plans

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SEC. 4011. INTERNATIONAL TRANSPORTATION AND DISPOSAL OF MUNICIPAL SOLID WASTE.

(a) STATE AUTHORITY TO ADDRESS IMPORTATION AND MANAGEMENT OF MUNICIPAL SOLID WASTE.—

(1) IN GENERAL.—Until the date on which all final regulations issued by the Administrator to implement and enforce the Agreement (including notice and consent provisions of the Agreement) become effective, a State may enact a law or laws or issue regulations or orders imposing limitations on the receipt and disposal of foreign municipal solid waste within the State. Laws, regulations, and orders enacted or issued before that date may continue in effect according to their terms after that date.

(2) EFFECT ON INTERSTATE AND FOREIGN COMMERCE.—No State action taken as authorized by this section shall be considered to impose an undue burden on interstate and foreign commerce or to otherwise impair, restrain, or discriminate against interstate and foreign commerce.

(3) TRADE AND TREATY OBLIGATIONS.—Nothing in this section affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(b) AUTHORITY OF ADMINISTRATOR.—

(1) IN GENERAL.—Beginning immediately after the date of enactment of this section, the Administrator shall—

(A) perform the functions of the Designated Authority of the United States described in the Agreement with respect to the importation and exportation of municipal solid waste under the Agreement; and

(B) implement and enforce the notice and consent and other provisions of the Agreement.

(2) REGULATIONS.—Not later than 24 months after the date of enactment of this section, the Administrator shall issue final regulations with respect to the Administrator's responsibilities under paragraph (1).

(3) CONSENT TO IMPORTATION.—In considering whether to consent to the importation under article 3(c) of the Agreement, the Administrator shall—

(A) give substantial weight to the views of the State or States into which the municipal solid waste is to be imported, and consider the views of the local government with jurisdiction over the location where the waste is to be disposed;

(B) consider the impact of the importation on—

(i) continued public support for and adherence to State and local recycling programs;

(ii) landfill capacity as provided in comprehensive waste management plans;

(iii) air emissions from increased vehicular traffic; and

(iv) road deterioration from increased vehicular traffic; and

(C) consider the impact of the importation on homeland security, public health, and the environment.

(4) ACTIONS IN VIOLATION OF THE AGREEMENT.—No person shall import, transport, or export municipal solid waste for final disposal or for incineration in violation of the Agreement.

(c) COMPLIANCE ORDERS.—(1) Whenever on the basis of any information the Administrator determines that any person has violated or is in violation of this section, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) PUBLIC HEARING.—Any order issued under this section shall become final unless, not later than 30 days after the order is served, the person or persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(e) VIOLATION OF COMPLIANCE ORDERS.—If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $25,000 for each day of continued noncompliance with the order.

(f) DEFINITIONS.—For purposes of this section:

(1) AGREEMENT.—The term "Agreement" means—

(A) the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, signed at Ottawa on October 28, 1986 (TIAS 11099) and amended on November 25, 1992; and

(B) any regulations promulgated and orders issued to implement and enforce that Agreement.

(2) FOREIGN MUNICIPAL SOLID WASTE.—The term "foreign municipal solid waste" means municipal solid waste generated outside of the United States.

(3) MUNICIPAL SOLID WASTE.—

(A) WASTE INCLUDED.—Except as provided in subparagraph (B), the term "municipal solid waste" means—

(i) all waste materials discarded for disposal by households, including single and multifamily residences, and hotels and motels; and

(ii) all waste materials discarded for disposal that were generated by commercial, institutional, municipal, and industrial sources, to the extent such materials—

(I) are essentially the same as materials described in clause (i); and

(II) were collected and disposed of with other municipal solid waste described in clause (i) or subclause (I) of this clause as part of normal municipal solid waste collection services, except that this subclause does not apply to hazardous materials other than hazardous materials that, pursuant to regulations issued under section 3001(d), are not subject to regulation under subtitle C.

Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, and household hazardous waste. Such term shall include debris resulting from construction, remodeling, repair, or demolition of structures.

(B) WASTE NOT INCLUDED.—The term "municipal solid waste" does not include any of the following:

(i) Any solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste.

(ii) Any solid waste, including contaminated soil and debris, resulting from—

(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604 or 9606);

(II) a response action taken under a State law with authorities comparable to the authorities of such section 104 or 106; or

(III) a corrective action taken under this Act.

(iii) Recyclable materials that have been separated, at the source of the waste, from waste otherwise destined for disposal or that have been managed separately from waste destined for disposal.

(iv) Scrap rubber to be used as a fuel source.

(v) Materials and products returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible reuse.

(vi) Any solid waste that is—

(I) generated by an industrial facility; and

(II) transported for the purpose of treatment, storage, or disposal to a facility or unit thereof that is owned or operated by the generator of the waste, located on property owned by the generator or a company with which the generator is affiliated, or the capacity of which is contractually dedicated ex-

clusively to a specific generator, so long as the disposal area complies with local and State land use and zoning regulations applicable to the disposal site.

(vii) Any medical waste that is segregated from or not mixed with solid waste.

(viii) Sewage sludge and residuals from any sewage treatment plant.

(ix) Combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

(x) Solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation.

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