

108TH CONGRESS
2D SESSION

H. R. 4940

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State and foreign municipal solid waste, to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. GILLMOR (for himself, Mr. DINGELL, Mr. GREENWOOD, Mr. ROGERS of Michigan, Mr. STUPAK, Mr. UPTON, Mr. HALL, Mr. STEARNS, Mr. PICKERING, Mr. TAUZIN, Mr. TERRY, Mr. RADANOVICH, Mr. PITTS, Mr. DEAL of Georgia, Mrs. CUBIN, Mrs. MILLER of Michigan, Mr. OXLEY, Mr. BUYER, Mr. BILIRAKIS, Mr. KILDEE, Mr. SULLIVAN, Mr. GREEN of Texas, Mr. BROWN of Ohio, Mr. STRICKLAND, Mr. LEVIN, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State and foreign municipal solid waste, to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes.

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 “Municipal Solid Waste
5 Responsibility Act of 2004”.

6 **SEC. 2. INTERSTATE AND INTERNATIONAL TRANSPOR-**
7 **TATION AND DISPOSAL OF MUNICIPAL SOLID**
8 **WASTE.**

9 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-
10 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
11 after section 4010 the following new sections:

12 **“SEC. 4011. INTERSTATE TRANSPORTATION AND DISPOSAL**
13 **OF MUNICIPAL SOLID WASTE.**

14 “(a) RESTRICTION ON RECEIPT OF OUT-OF-STATE
15 WASTE.—

16 “(1) IN GENERAL.—

17 “(A) AUTHORIZATION.—A landfill or incin-
18 erator in a State may not receive for disposal
19 or incineration any out-of-State municipal solid
20 waste unless the owner or operator of such
21 landfill or incinerator obtains explicit authoriza-
22 tion (as part of a host community agreement)
23 from the affected local government to receive
24 the waste.

1 “(B) REQUIREMENTS FOR AUTHORIZA-
2 TION.—An authorization granted pursuant to
3 subparagraph (A) shall—

4 “(i) be granted by formal action at a
5 meeting;

6 “(ii) be recorded in writing in the offi-
7 cial record of the meeting; and

8 “(iii) remain in effect according to its
9 terms.

10 “(C) DISCRETIONARY TERMS AND CONDI-
11 TIONS.—An authorization granted pursuant to
12 subparagraph (A) may specify terms and condi-
13 tions, including an amount of out-of-State
14 waste that an owner or operator may receive
15 and the duration of the authorization.

16 “(D) NOTIFICATION.—Promptly, but not
17 later than 90 days after an authorization is
18 granted, the affected local government shall no-
19 tify the Governor, contiguous local govern-
20 ments, and any contiguous Indian tribes of an
21 authorization granted under this subsection.

22 “(2) INFORMATION.—Prior to seeking an au-
23 thorization to receive out-of-State municipal solid
24 waste pursuant to this subsection, the owner or op-
25 erator of the facility seeking such authorization shall

1 provide (and make readily available to the Governor,
2 each contiguous local government and Indian tribe,
3 and any other interested person for inspection and
4 copying) the following information:

5 “(A) A brief description of the facility, in-
6 cluding, with respect to both the facility and
7 any planned expansion of the facility, the size
8 and ultimate waste capacity of the facility, and
9 the anticipated monthly and yearly quantities
10 (expressed in terms of volume) of waste to be
11 handled.

12 “(B) A map of the facility site indicating
13 location in relation to the local road system and
14 topography and hydrogeological features. The
15 map shall indicate any buffer zones to be ac-
16 quired by the owner or operator as well as all
17 facility units.

18 “(C) A description of the then current en-
19 vironmental characteristics of the site, a de-
20 scription of ground water use in the area (in-
21 cluding identification of private wells and public
22 drinking water sources), and a discussion of al-
23 terations that may be necessitated by, or occur
24 as a result of, the facility.

1 “(D) A description of environmental con-
2 trols typically required to be used on the site
3 (pursuant to permit requirements), including
4 run on or run off management (or both), air
5 pollution control devices, source separation pro-
6 cedures (if any), methane monitoring and con-
7 trol, landfill covers, liners or leachate collection
8 systems, and monitoring programs. In addition,
9 the description shall include a description of
10 any waste residuals generated by the facility,
11 including leachate or ash, and the planned man-
12 agement of the residuals.

13 “(E) A description of site access controls
14 to be employed, and roadway improvements to
15 be made, by the owner or operator, and an esti-
16 mate of the timing and extent of increased local
17 truck traffic.

18 “(F) A list of all required Federal, State,
19 and local permits.

20 “(G) Estimates of the personnel require-
21 ments of the facility, including information re-
22 garding the probable skill and education levels
23 required for jobs at the facility. To the extent
24 practicable, the information shall distinguish

1 between employment statistics for
2 preoperational and postoperational levels.

3 “(H) Any information that is required by
4 State or Federal law to be provided with re-
5 spect to any violations of environmental laws
6 (including regulations) by the owner, the oper-
7 ator, and any subsidiary of the owner or oper-
8 ator, the disposition of enforcement proceedings
9 taken with respect to the violations, and correc-
10 tive action and rehabilitation measures taken as
11 a result of the proceedings.

12 “(I) Any information that is required by
13 State or Federal law to be provided with re-
14 spect to gifts and contributions made by the
15 owner or operator.

16 “(J) Any information that is required by
17 State or Federal law to be provided with re-
18 spect to compliance by the owner or operator
19 with the State solid waste management plan.

20 “(3) NOTIFICATION.—Prior to taking formal
21 action with respect to granting authorization to re-
22 ceive out-of-State municipal solid waste pursuant to
23 this subsection, an affected local government shall—

24 “(A) notify the Governor, contiguous local
25 governments, and any contiguous Indian tribes;

1 “(B) publish notice of the action in a
2 newspaper of general circulation at least 30
3 days before holding a hearing and again at
4 least 15 days before holding the hearing, except
5 where State law provides for an alternate form
6 of public notification; and

7 “(C) provide an opportunity for public
8 comment in accordance with State law, includ-
9 ing at least 1 public hearing.

10 “(b) AUTHORIZATION NOT REQUIRED FOR CERTAIN
11 FACILITIES.—

12 “(1) IN GENERAL.—A landfill or incinerator
13 may receive for disposal or incineration out-of-State
14 municipal solid waste in the absence of an authoriza-
15 tion under subsection (a) if each of the following re-
16 quirements are met:

17 “(A) The owner or operator provides either
18 of the following to the Governor of the State in
19 which the landfill or incinerator is located and
20 to the affected local government:

21 “(i) Information establishing that, be-
22 fore the date of enactment of this section,
23 the owner or operator of the landfill or in-
24 cinerator has entered into a host commu-
25 nity agreement or received a State permit

1 specifically authorizing the owner or oper-
2 ator to accept, at the landfill or inciner-
3 ator, out-of-State municipal solid waste.
4 This clause shall be effective only if the
5 owner or operator complies with all of the
6 terms and conditions of the host commu-
7 nity agreement or permit and, in the case
8 of a permit, notifies the affected local gov-
9 ernment of the permit, as soon as prac-
10 ticable but not later than 90 days after the
11 date of enactment of this section.

12 “(ii) Information establishing that
13 during 1993 the landfill or incinerator re-
14 ceived shipments of out-of-State municipal
15 solid waste. Such information shall be in
16 such documented form as will result in
17 criminal penalties under State law in case
18 of false or misleading information. Such
19 information shall include information
20 about the date of shipment, place of origin
21 of the waste, and the type of waste.

22 “(B) In the case of a landfill or incinerator
23 in operation on the date of enactment of this
24 section, the landfill or incinerator must be in
25 compliance as of such date with applicable Fed-

1 eral and State environmental laws (including
2 regulations), including, in the case of landfills,
3 applicable laws and regulations relating to de-
4 sign and location standards, leachate collection,
5 ground water monitoring, and financial assur-
6 ance for closure and post-closure care and cor-
7 rective action.

8 “(2) AMOUNT RECEIVED UNDER PARAGRAPH
9 (1)(A)(ii).—

10 “(A) STATES NOT EXERCISING RATCHET
11 AUTHORITY UNDER SUBSECTION (c)(5).—

12 “(i) FACILITIES COVERED.—This sub-
13 paragraph shall cover only landfills and in-
14 cinerators in States which do not establish
15 a limit on out-of-State municipal solid
16 waste under subsection (c)(5).

17 “(ii) WASTE UNDER CONTRACT.—For
18 any landfill or incinerator covered by this
19 subparagraph and authorized to receive
20 out-of-State municipal solid waste pursu-
21 ant to paragraph (1), if out-of-State mu-
22 nicipal solid waste was received at such
23 landfill or incinerator during 1993 under a
24 contract, paragraph (1)(A)(ii) shall apply
25 to the amount of out-of-State municipal

1 solid waste specified in the contract for the
2 longer of the following periods:

3 “(I) The life of the later of the
4 contract in effect in 1993 or any sub-
5 sequent contract in effect as of the
6 date of enactment of this section.

7 “(II) The period ending 6 years
8 after the date of enactment of this
9 section.

10 For purposes of subclause (I), the term
11 ‘life of the contract’ shall not include any
12 renewal, novation, or other extension there-
13 of (as determined under State law).

14 “(iii) SPOT WASTE.—For a landfill or
15 incinerator covered by this subparagraph
16 and authorized to receive out-of-State mu-
17 nicipal solid waste pursuant to paragraph
18 (1), if out-of-State municipal solid waste
19 was received at such landfill or incinerator
20 during 1993 in the absence of a contract,
21 paragraph (1)(A)(ii) shall apply to the re-
22 ceipt of out-of-State municipal solid waste
23 for a period ending 3 years after the date
24 of enactment of this section.

1 “(iv) CONTRACT AND SPOT WASTE.—

2 For any landfill or incinerator covered by
3 this subparagraph and authorized to re-
4 ceive out-of-State municipal solid waste
5 pursuant to paragraph (1), if out-of-State
6 municipal solid waste was received at such
7 landfill or incinerator during 1993 both
8 under a contract and otherwise, clause (ii)
9 shall apply with respect to the waste re-
10 ceived under the contract and clause (iii)
11 shall apply to the other municipal solid
12 waste received at the landfill or inciner-
13 ator.

14 “(B) STATES EXERCISING RATCHET AU-
15 THORITY UNDER SUBSECTION (c)(5).—

16 “(i) FACILITIES COVERED.—This sub-
17 paragraph shall cover only landfills and in-
18 cinerators in States which establish a limit
19 on out-of-State municipal solid waste
20 under subsection (c)(5).

21 “(ii) WASTE UNDER CONTRACT.—For
22 any landfill or incinerator covered by this
23 subparagraph and authorized to receive
24 out-of-State municipal solid waste pursu-
25 ant to paragraph (1), if out-of-State mu-

1 municipal solid waste was received at such
2 landfill or incinerator during 1993 under a
3 contract, paragraph (1)(A)(ii) shall apply
4 to the amount of out-of-State municipal
5 solid waste specified in the contract for the
6 longer of the following periods:

7 “(I) The life of the later of the
8 contract in effect in 1993 or any sub-
9 sequent contract in effect as of the
10 date of enactment of this section.

11 “(II) The period ending January
12 1, 2007.

13 For purposes of subclause (I), the term
14 ‘life of the contract’ shall not include any
15 renewal, novation, or other extension there-
16 of (as determined under State law).

17 “(iii) SPOT WASTE.—For a landfill or
18 incinerator covered by this subparagraph
19 and authorized to receive out-of-State mu-
20 nicipal solid waste pursuant to paragraph
21 (1), if out-of-State municipal solid waste
22 was received at such landfill or incinerator
23 during 1993 in the absence of a contract,
24 paragraph (1)(A)(ii) shall apply to the re-

cept of out-of-State municipal solid waste
for a period ending January 1, 2007.

“(iv) CONTRACT AND SPOT WASTE.—
For any landfill or incinerator covered by
this subparagraph and authorized to re-
ceive out-of-State municipal solid waste
pursuant to paragraph (1), if out-of-State
municipal solid waste was received at such
landfill or incinerator during 1993 both
under a contract and otherwise, clause (ii)
shall apply with respect to the waste re-
ceived under the contract and clause (iii)
shall apply to the other municipal solid
waste received at the landfill or inciner-
ator.

“(3) AVAILABILITY OF DOCUMENTATION.—The
owner or operator of a landfill or incinerator which
is exempt under paragraph (1) of this subsection
from the requirements of subsection (a) shall provide
to the State and affected local government, and
make available for inspection by the public in the af-
fected local community, a copy of the host commu-
nity agreement or other documentation required
under paragraph (1). The owner or operator may
omit any proprietary information contained in the

1 contracts, but shall ensure that at least the following
2 information is apparent: the volume of out-of-State
3 municipal solid waste to be received, the source of
4 the waste, and the duration of the contract.

5 “(4) DENIED OR REVOKED PERMITS.—A land-
6 fill or incinerator may not receive for disposal or in-
7 cineration out-of-State municipal solid waste in the
8 absence of a host community agreement if the oper-
9 ating permit or license for the landfill or incinerator
10 (or renewal thereof) was denied or revoked by the
11 appropriate State agency before the date of enact-
12 ment of this section unless such permit or license (or
13 renewal) has been reinstated as of such date of en-
14 actment.

15 “(5) WASTE WITHIN BI-STATE METROPOLITAN
16 STATISTICAL AREAS.—The owner or operator of a
17 landfill or incinerator in a State may receive out-of-
18 State municipal solid waste without obtaining au-
19 thorization under subsection (a) from the affected
20 local government if the out-of-State waste is gen-
21 erated within, and the landfill or incinerator is lo-
22 cated within, the same bi-State level A metropolitan
23 statistical area (as defined by the Office of Manage-
24 ment and Budget and as listed by the Office of
25 Management and Budget as of the date of enact-

1 ment of this section) which contains two contiguous
2 major cities each of which is in a different State.

3 “(c) AUTHORITY OF STATE TO RESTRICT OUT-OF-
4 STATE MUNICIPAL SOLID WASTE.—

5 “(1) LIMITATIONS ON AMOUNT OF WASTE RE-
6 CEIVED.—

7 “(A) LIMIT FOR ALL FACILITIES IN THE
8 STATE.—A State may limit the amount of out-
9 of-State municipal solid waste received annually
10 for disposal at each landfill or incinerator in the
11 State to the limitation amount described in
12 paragraph (2), except as provided in this sub-
13 section. No such limit may conflict—

14 “(i) with provisions of a permit spe-
15 cifically authorizing the owner or operator
16 to accept, at the facility, out-of-State mu-
17 nicipal solid waste; or

18 “(ii) with a host community agree-
19 ment entered into between the owner or
20 operator of any such landfill or incinerator
21 and the affected local government.

22 “(B) CONFLICT.—A limit referred to in
23 subparagraph (A) shall be treated as conflicting
24 with a permit or host community agreement
25 if—

1 “(i) the permit or host community
2 agreement establishes a higher limit; or

3 “(ii) the permit or host community
4 agreement does not establish any limit,
5 on the amount of out-of-State municipal solid
6 waste which may be received annually at the fa-
7 cility.

8 “(C) LIMIT FOR PARTICULAR FACILI-
9 TIES.—At the request of an affected local gov-
10 ernment that has not executed a host commu-
11 nity agreement, the State may limit the amount
12 of out-of-State municipal solid waste received
13 annually for disposal at a particular landfill or
14 incinerator to the limitation amount described
15 in paragraph (2). No such limit may conflict
16 with provisions of a permit specifically author-
17 izing the owner or operator to accept, at the fa-
18 cility, out-of-State municipal solid waste.

19 “(D) EFFECT ON OTHER LAWS.—Nothing
20 in this subsection shall be interpreted or con-
21 strued to have any effect on any State law re-
22 lating to contracts.

23 “(2) LIMITATION AMOUNT.—For any landfill or
24 incinerator that commenced receiving documented
25 out-of-State municipal solid waste before the date of

1 enactment of this section, the limitation amount re-
2 ferred to in paragraph (1) for any year shall be
3 equal to the amount of out-of-State municipal solid
4 waste received for disposal at the landfill or inciner-
5 ator concerned during calendar year 1993. The doc-
6 umentation referred to in this paragraph shall be
7 such as would result in criminal penalties in case of
8 false or misleading information. Such documentation
9 shall include the amount of waste received, place of
10 origin, including the identity of the generator, date
11 of shipment, and type of waste.

12 “(3) OTHER LIMITATION AMOUNT.—(A) Except
13 as provided in subparagraph (B), the limitation
14 amount referred to in paragraph (1) shall be zero
15 for a landfill or incinerator authorized to receive out-
16 of-State municipal solid waste solely by reason of re-
17 ceipt in calendar year 1993 of municipal solid waste
18 that was not received under a contract, permit, or
19 host community agreement.

20 “(B) The limitation amount of zero referred to
21 in subparagraph (A) shall not be applicable to re-
22 ceipt of any out-of-State municipal solid waste by
23 the landfill or incinerator if the owner or operator,
24 on the date of enactment of this section, owned the

1 land on which the facility that received such waste
2 is located.

3 “(4) NO DISCRIMINATION.—In establishing a
4 limitation under this subsection, a State shall act in
5 a consistent manner that does not discriminate
6 against any shipments of out-of-State municipal
7 solid waste on the basis of State of origin.

8 “(5) ADDITIONAL LIMIT FOR MUNICIPAL
9 WASTE.—(A) Any State that imported more than
10 750,000 tons of out-of-State municipal solid waste
11 in 1993 (in this paragraph referred to as an ‘import-
12 ing State’) may establish a limit under this para-
13 graph on the amount of out-of-State municipal solid
14 waste received pursuant to the authority of sub-
15 section (b)(1) for disposal at landfills and inciner-
16 ators in the importing State. A limit under this
17 paragraph may be in addition to, or in lieu of, any
18 other limit imposed under this subsection. A limit
19 under this paragraph may be imposed only if each
20 of the following requirements are met:

21 “(i) The limit shall not conflict (within the
22 meaning of paragraph (1)(B)) with any permit
23 or host community agreement authorizing the
24 receipt of out-of-State municipal solid waste.

1 “(ii) The importing State shall notify the
 2 Governor of the exporting State or States of the
 3 proposed limit at least 12 months before im-
 4 position of the limit.

5 “(iii) The importing State shall notify the
 6 Governor of the exporting State or States of the
 7 proposed limit at least 90 days before enforce-
 8 ment of the limit.

9 “(iv) The percentage reduction in the
 10 amount of out-of-State municipal solid waste
 11 which is received at each facility in the import-
 12 ing State at which a limit may be established
 13 under this paragraph shall be uniform for all
 14 such facilities.

15 “(B) The limit established under this para-
 16 graph shall be a percentage of the amount of out-
 17 of-State municipal solid waste generated in the ex-
 18 porting State during calendar year 1993 and re-
 19 ceived at facilities in the importing State in which
 20 a limit is established under this paragraph. For any
 21 calendar year after 2003, the percentage shall be as
 22 specified in the following table:

“Calendar year:	Applicable percentage:
2004	85
2005	75
2006	65
2007	55
2008 and thereafter	50.

1 “(d) NEEDS DETERMINATION.—Any comprehensive
2 solid waste management plan approved under Federal or
3 State law and any implementation of such plan through
4 the State permitting process may take into account local
5 and regional needs for solid waste disposal capacity. An
6 affected local government may make a determination that
7 there is no local or regional need for a new landfill or in-
8 cinerator or major modification to an existing facility in
9 the area under the jurisdiction of the affected local govern-
10 ment. Such determination shall be based on a finding that
11 the proposed facility does not have a host community
12 agreement or is inconsistent with the capacity needs estab-
13 lished in the comprehensive solid waste management plan
14 adopted by the affected local government pursuant to
15 State law. No comprehensive solid waste management plan
16 may expressly prohibit the importation of municipal solid
17 waste from out of State.

18 “(e) IMPLEMENTATION AND ENFORCEMENT.—Any
19 State may adopt such laws and regulations, not incon-
20 sistent with this section, as are necessary to implement
21 and enforce this section, including provisions for penalties.

22 “(f) EFFECT ON INTERSTATE COMMERCE.—No
23 State limitation established as provided in subsection (c),
24 no State planning and permitting process referred to in
25 subsection (d), and no State law or regulation referred to

1 in subsection (e) shall be considered to impose an undue
2 burden on interstate commerce or to otherwise impair, re-
3 strain, or discriminate against interstate commerce.

4 “(g) ANNUAL STATE REPORT.—Each year the owner
5 or operator of each landfill or incinerator receiving out-
6 of-State municipal solid waste shall submit to the Gov-
7 ernor of the State in which the landfill or incinerator is
8 located information specifying the amount of out-of-State
9 municipal solid waste received for disposal during the pre-
10 ceding year. Each year each such State shall publish and
11 make available to the public a report containing informa-
12 tion on the amount of out-of-State municipal solid waste
13 received for disposal in the State during the preceding
14 year.

15 “(h) DEFINITIONS.—For purposes of this section:

16 “(1) AFFECTED LOCAL GOVERNMENT.—(A)
17 For any landfill or incinerator, the term ‘affected
18 local government’ means—

19 “(i) the public body authorized by State
20 law to plan for the management of municipal
21 solid waste, a majority of the members of which
22 are elected officials, for the area in which the
23 landfill or incinerator is located or proposed to
24 be located; or

1 “(ii) if there is no such body created by
2 State law, the elected officials of the city, town,
3 township, borough, county, or parish exercising
4 primary responsibility for the use of land on
5 which the facility is located or proposed to be
6 located.

7 No host community agreement that is entered into
8 by the elected officials described in clause (ii) may
9 be overturned by an act of a public body described
10 in clause (i) if such body is created by State law
11 after the execution of such host community agree-
12 ment.

13 “(B) Two or more Governors of adjoining
14 States may use the authority provided in section
15 1005(b) to enter into an agreement under which
16 contiguous units of local government located in each
17 of the adjoining States may act jointly as the af-
18 fected local government for purposes of providing
19 authorization for municipal solid waste generated in
20 the jurisdiction of one of such units of local govern-
21 ment and received for disposal or incineration in an-
22 other.

23 “(2) HOST COMMUNITY AGREEMENT.—The
24 term ‘host community agreement’ means a written,
25 legally binding agreement, lawfully entered into be-

1 tween an owner or operator of a landfill or inciner-
2 ator and an affected local government that specifi-
3 cally authorizes the landfill or incinerator to receive
4 out-of-State municipal solid waste.

5 “(3) MUNICIPAL SOLID WASTE.—

6 “(A) WASTE INCLUDED.—Except as pro-
7 vided in subparagraph (B), the term ‘municipal
8 solid waste’ means—

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

13 “(ii) all waste materials discarded for
14 disposal that were generated by commer-
15 cial, institutional, municipal, and industrial
16 sources, to the extent such materials—

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

19 “(II) were collected and disposed
20 of with other municipal solid waste
21 described in clause (i) or subclause (I)
22 of this clause as part of normal mu-
23 nicipal solid waste collection services,
24 except that this subclause does not
25 apply to hazardous materials other

1 than hazardous materials that, pursu-
2 ant to regulations issued under sec-
3 tion 3001(d), are not subject to regu-
4 lation under subtitle C.

5 Examples of municipal solid waste include food
6 and yard waste, paper, clothing, appliances,
7 consumer product packaging, disposable dia-
8 pers, office supplies, cosmetics, glass and metal
9 food containers, and household hazardous
10 waste. Such term shall include debris resulting
11 from construction, remodeling, repair, or demo-
12 lition of structures.

13 “(B) WASTE NOT INCLUDED.—The term
14 ‘municipal solid waste’ does not include any of
15 the following:

16 “(i) Any solid waste identified or list-
17 ed as a hazardous waste under section
18 3001, except for household hazardous
19 waste.

20 “(ii) Any solid waste, including con-
21 taminated soil and debris, resulting from—

22 “(I) a response action taken
23 under section 104 or 106 of the Com-
24 prehensive Environmental Response,

1 Compensation, and Liability Act (42
2 U.S.C. 9604 or 9606);

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

7 “(III) a corrective action taken
8 under this Act.

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

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

16 “(v) Materials and products returned
17 from a dispenser or distributor to the man-
18 ufacturer or an agent of the manufacturer
19 for credit, evaluation, and possible reuse.

20 “(vi) Any solid waste that is—

21 “(I) generated by an industrial
22 facility; and

23 “(II) transported for the purpose
24 of treatment, storage, or disposal to a
25 facility or unit thereof that is owned

1 or operated by the generator of the
2 waste, located on property owned by
3 the generator or a company with
4 which the generator is affiliated, or
5 the capacity of which is contractually
6 dedicated exclusively to a specific gen-
7 erator, so long as the disposal area
8 complies with local and State land use
9 and zoning regulations applicable to
10 the disposal site.

11 “(vii) Any medical waste that is seg-
12 regated from or not mixed with solid
13 waste.

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

16 “(ix) Combustion ash generated by re-
17 source recovery facilities or municipal in-
18 cinerators, or waste from manufacturing or
19 processing (including pollution control) op-
20 erations not essentially the same as waste
21 normally generated by households.

22 “(4) OUT-OF-STATE MUNICIPAL SOLID
23 WASTE.—The term ‘out-of-State municipal solid
24 waste’, means, with respect to any State, municipal
25 solid waste generated outside of the State. The term

1 also includes municipal solid waste generated outside
2 of the United States.

3 “(5) SPECIFIC AUTHORIZATION.—The term
4 ‘specifically authorizes’ refers to an explicit author-
5 ization, contained in a host community agreement or
6 permit, to import waste from outside the State.
7 Such authorization may include a reference to a
8 fixed radius surrounding the landfill or incinerator
9 which includes an area outside the State or a ref-
10 erence to ‘any place of origin’, reference to specific
11 places outside the State, or use of such phrases as
12 ‘regardless of origin’ or ‘outside the State’. The lan-
13 guage for such authorization may vary as long as it
14 clearly and affirmatively states the approval or con-
15 sent of the affected local government or State for re-
16 ceipt of municipal solid waste from sources or loca-
17 tions outside the State from which the owner or op-
18 erator of a landfill or incinerator proposes to import
19 it. The authorization shall not include general ref-
20 erences to the receipt of waste outside the jurisdic-
21 tion of the affected local government.

22 “(i) COST RECOVERY SURCHARGE.—

23 “(1) AUTHORITY.—A State may impose and
24 collect a cost recovery surcharge on the combustion

1 or disposal in a landfill or incinerator of out-of-State
2 municipal solid waste in such State.

3 “(2) LIMITATION.—During the period begin-
4 ning on the date of enactment of this section and
5 ending on December 31, 2006, a State may not im-
6 pose or collect a cost recovery surcharge from a fa-
7 cility on any out-of-State municipal solid waste that
8 meets both of the following conditions:

9 “(A) The waste is being received at the fa-
10 cility under one or more contracts entered into
11 before the date of enactment of this section.

12 “(B) The amount of waste being received
13 in a calendar year under the contract or con-
14 tracts does not exceed the amount of waste re-
15 ceived at the facility during calendar year 2003.

16 “(3) AMOUNT OF SURCHARGE.—The amount of
17 the cost recovery surcharge may be no greater than
18 the amount necessary to recover those costs deter-
19 mined in conformance with paragraph (5) and in no
20 event may exceed \$2 per ton of waste.

21 “(4) USE OF SURCHARGE COLLECTED.—All
22 cost recovery surcharges collected by a State shall be
23 used to fund those solid waste management pro-
24 grams administered by the State or its political sub-

1 divisions that incur costs for which the surcharge is
2 collected.

3 “(5) CONDITIONS.—(A) Subject to subpara-
4 graphs (B) and (C), a State may impose and collect
5 a cost recovery surcharge on the combustion or dis-
6 posal within the State of out-of-State municipal solid
7 waste if—

8 “(i) the State demonstrates a cost to the
9 State arising from the combustion or disposal
10 within the State of a volume of municipal solid
11 waste from a source outside the State;

12 “(ii) the surcharge is based on those costs
13 to the State demonstrated under clause (i) that,
14 if not paid for through the surcharge, would
15 otherwise have to be paid or subsidized by the
16 State; and

17 “(iii) the surcharge is compensatory and is
18 not discriminatory.

19 “(B) In no event shall a cost recovery surcharge
20 be imposed by a State to the extent that the cost for
21 which recovery is sought is otherwise recovered by
22 any other fee or tax assessed against the generation,
23 transportation, treatment, combustion, or disposal of
24 solid waste.

1 “(C) The grant of a subsidy by a State with re-
 2 spect to entities disposing of waste generated within
 3 the State does not constitute discrimination for pur-
 4 poses of subparagraph (A)(iii).

5 “(6) BURDEN OF PROOF.—In any proceeding in
 6 which a State invokes this subsection to justify a
 7 cost recovery surcharge on the combustion or dis-
 8 posal within the State of out-of-State municipal solid
 9 waste, the State shall bear the burden of estab-
 10 lishing that the cost recovery surcharge satisfies the
 11 conditions set forth in paragraph (5).

12 **“SEC. 4012. INTERNATIONAL TRANSPORTATION AND DIS-**
 13 **POSAL OF MUNICIPAL SOLID WASTE.**

14 “(a) AUTHORITY.—Consistent with section 4011, a
 15 State may enact a law or laws imposing limitations (in-
 16 cluding a prohibition) on the receipt and disposal of for-
 17 eign municipal solid waste.

18 “(b) EFFECT ON INTERSTATE AND FOREIGN COM-
 19 MERCE.—No State action taken as authorized by this sec-
 20 tion shall be considered to impose an undue burden on
 21 interstate and foreign commerce or to otherwise impair,
 22 restrain, or discriminate against interstate and foreign
 23 commerce.

24 “(c) DEFINITIONS.—For purposes of this section:

1 “(1) FOREIGN MUNICIPAL SOLID WASTE.—The
2 term ‘foreign municipal solid waste’ means munic-
3 ipal solid waste generated outside of the United
4 States.

5 “(2) MUNICIPAL SOLID WASTE.—The term
6 ‘municipal solid waste’ has the meaning given that
7 term in section 4011.

8 **“SEC. 4013. CANADIAN TRANSBOUNDARY MOVEMENT OF**
9 **MUNICIPAL SOLID WASTE.**

10 “(a) PROHIBITION.—No person shall import, trans-
11 port, or export municipal solid waste for final disposal or
12 for incineration in violation of the Agreement Between the
13 Government of the United States of America and the Gov-
14 ernment of Canada Concerning the Transboundary Move-
15 ment of Hazardous Waste, or any regulations issued to
16 implement and enforce such agreement.

17 “(b) ADMINISTRATOR’S AUTHORITY.—The Adminis-
18 trator shall perform the functions of the Designated Au-
19 thority of the United States with respect to the importa-
20 tion and exportation of municipal solid waste under the
21 agreement described in subsection (a). Upon the enact-
22 ment of this section, the Administrator shall implement
23 and enforce the notice and consent provisions of such
24 agreement, as well as the other provisions thereof. In con-
25 sidering whether to consent to the importation of munic-

1 ipal solid waste under article 3(c) of such agreement, the
2 Administrator shall—

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

8 “(2) consider the impact of the importation
9 on—

10 “(A) continued public support for and ad-
11 herence to State and local recycling programs;

12 “(B) landfill capacity as provided in com-
13 prehensive waste management plans;

14 “(C) air emissions from increased vehicular
15 traffic;

16 “(D) road deterioration from increased ve-
17 hicular traffic; and

18 “(E) public health and the environment.

19 “(c) COMPLIANCE ORDERS.—(1) Whenever on the
20 basis of any information the Administrator determines
21 that any person has violated or is in violation of this sec-
22 tion, the Administrator may issue an order assessing a
23 civil penalty for any past or current violation, requiring
24 compliance immediately or within a specified time period,
25 or both, or the Administrator may commence a civil action

1 in the United States district court in the district in which
2 the violation occurred for appropriate relief, including a
3 temporary or permanent injunction.

4 “(2) Any order issued pursuant to this subsection
5 shall state with reasonable specificity the nature of the vio-
6 lation. Any penalty assessed in the order shall not exceed
7 \$25,000 per day of noncompliance for each violation. In
8 assessing such a penalty, the Administrator shall take into
9 account the seriousness of the violation and any good faith
10 efforts to comply with applicable requirements.

11 “(d) PUBLIC HEARING.—Any order issued under this
12 section shall become final unless, not later than 30 days
13 after the order is served, the person or persons named
14 therein request a public hearing. Upon such request the
15 Administrator shall promptly conduct a public hearing. In
16 connection with any proceeding under this section the Ad-
17 ministrator may issue subpoenas for the attendance and
18 testimony of witnesses and the production of relevant pa-
19 pers, books, and documents, and may promulgate rules for
20 discovery procedures.

21 “(e) VIOLATION OF COMPLIANCE ORDERS.—If a vio-
22 lator fails to take corrective action within the time speci-
23 fied in a compliance order, the Administrator may assess
24 a civil penalty of not more than \$25,000 for each day of
25 continued noncompliance with the order.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
 2 of contents of the Solid Waste Disposal Act (42 U.S.C.
 3 prec. 6901) is amended by adding after the item relating
 4 to section 4010 the following new items:

“Sec. 4011. Interstate transportation and disposal of municipal solid waste.
 “Sec. 4012. International transportation and disposal of municipal solid waste.
 “Sec. 4013. Canadian transboundary movement of municipal solid waste.”.

5 **SEC. 3. TREATMENT AND REUSE OF AGRICULTURAL**
 6 **WASTES.**

7 Subtitle H of the Solid Waste Disposal Act (42
 8 U.S.C. 6981 et seq.) is amended—

9 (1) in section 8005—

10 (A) by striking “and” at the end of sub-
 11 section (a)(9);

12 (B) by striking the period at the end of
 13 subsection (a)(10) and inserting “; and”;

14 (C) by adding at the end of subsection (a)
 15 the following:

16 “(11) the benefits of alternatives to open field
 17 disposal of agricultural solid wastes (including bio-
 18 mass).

19 If a municipality or an intermunicipality contains
 20 3,000,000 or more people, the Administrator shall work
 21 with that State and its municipal and intermunicipal pol-
 22 lution control agencies and the agricultural waste genera-
 23 tors in those States to address pollution reduction or pub-
 24 lic health needs, where new treatment and disposal options

1 referred to in paragraph (11) will reduce risks to public
2 health, improve environmental quality, and conserve land-
3 fill capacity, demonstrate the value of alternatives to agri-
4 cultural solid waste disposal, and develop commercially
5 feasible, environmentally beneficial alternatives and make
6 those methods and means known. For purposes of the pre-
7 ceding sentence and paragraph (11) only, agricultural
8 wastes shall not include urban and forest wood products,
9 and shall include field and seed crop residues, including
10 straws from rice and wheat, and fruit and nut crop resi-
11 dues, including orchard and vineyard pruning and remov-
12 als.”; and

13 (D) by adding at the end the following new
14 subsection:

15 “(d) DEFINITION.—For the purposes if this section,
16 the term ‘pollution control agency’ means—

17 “(1) a single State agency designated by the
18 Governor of that State as the official State pollution
19 control agency for purposes of this Act;

20 “(2) an agency established by two or more
21 States and having substantial powers or duties per-
22 taining to the prevention and control of pollution;

23 “(3) a city, county, or other local government
24 health authority, or, in the case of any city, county,
25 or other local government in which there is an agen-

1 cy other than the health authority charged with re-
 2 sponsibility for enforcing ordinances or laws relating
 3 to the prevention and control of pollution, such other
 4 agency;

5 “(4) an agency of two or more municipalities lo-
 6 cated in the same State or in different States and
 7 having substantial powers or duties pertaining to the
 8 prevention and control of pollution; or

9 “(5) an agency of an Indian tribe responsible
 10 for pollution control.”; and

11 (2) in section 8007—

12 (A) by inserting “(a)” before “There are”;

13 and

14 (B) by adding at the end the following:

15 “(b)(1) Notwithstanding the limitations provided in
 16 section 8006(f), the Administrator may implement a dem-
 17 onstration project relating to the subject described in sec-
 18 tion 8005(a)(11), pursuant to section 8005(b).

19 “(2) There are authorized to be appropriated for gen-
 20 erators of diverted agricultural waste \$6,000,000 to carry
 21 out the demonstration program described in paragraph
 22 (1). Such amounts shall be matched with non-Federal
 23 funding on a one-to-one basis.”.

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