

109TH CONGRESS
1ST SESSION

H. R. 70

To authorize States to regulate the receipt and disposal of out-of-State municipal solid waste.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mrs. JO ANN DAVIS of Virginia introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize States to regulate the receipt and disposal of out-of-State municipal solid waste.

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 “State Waste Empower-
5 ment and Enforcement Provision Act of 2005”.

6 **SEC. 2. AUTHORITY TO REGULATE.**

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

1 **“SEC. 4011. RECEIPT AND DISPOSAL OF OUT-OF-STATE MU-**
2 **NICIPAL SOLID WASTE.**

3 “(a) AUTHORITY OF STATE TO RESTRICT OUT-OF-
4 STATE MUNICIPAL SOLID WASTE.—A State may limit or
5 place restrictions on, or otherwise regulate, out-of-State
6 municipal solid waste received or disposed of annually at
7 each landfill or incinerator in the State, except as provided
8 in subsection (b). In limiting, restricting, or regulating
9 out-of-State municipal solid waste under this section, a
10 State’s powers include, but are not limited to—

11 “(1) assessing different fees for the receipt or
12 disposal of out-of-State municipal solid waste from
13 those assessed for municipal solid waste from inside
14 the State;

15 “(2) requiring local referenda on the establish-
16 ment of landfills and construction of incinerators in-
17 tended for receipt or disposal of out-of-State munic-
18 ipal solid waste;

19 “(3) considering local need for disposal capacity
20 when making permitting and expansion decisions;

21 “(4) limiting the receipt of out-of-State munic-
22 ipal solid waste to a percentage of a landfill’s or in-
23 cinerator’s capacity;

24 “(5) freezing the levels of out-of-State munic-
25 ipal solid waste receipt or disposal at particular cal-

1 endar year levels or percentages of calendar year lev-
2 els;

3 “(6) requiring companies to publicly disclose in-
4 formation about previous health and safety viola-
5 tions before opening new landfills or incinerators;

6 “(7) regulating and restricting modes of trans-
7 portation for out-of-State municipal solid waste; and

8 “(8) requiring inspectors at landfills, inciner-
9 ators, and transfer stations that accept out-of-State
10 municipal solid waste.

11 “(b) EXCEPTION.—A State may not, until after the
12 expiration of 2 years after the date of the enactment of
13 this section, limit, restrict, or regulate out-of-State munic-
14 ipal solid waste received or disposed of annually at a land-
15 fill or incinerator in the State under subsection (a) to the
16 extent that a host community agreement specifically au-
17 thorizes the receipt of such waste.

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

19 “(1) AFFECTED LOCAL GOVERNMENT.—The
20 term ‘affected local government’ means—

21 “(A) the public body authorized by State
22 law to plan for the management of municipal
23 solid waste, a majority of the members of which
24 are elected officials, for the area in which a

1 landfill or incinerator is located or proposed to
2 be located;

3 “(B) if there is no such body authorized by
4 State law, the elected officials of the city, town,
5 township, borough, county, or parish exercising
6 primary responsibility over municipal solid
7 waste management or the use of land in the ju-
8 risdiction in which a landfill or incinerator is lo-
9 cated or proposed to be located; or

10 “(C) contiguous units of local government
11 located in each of 2 or more adjoining States
12 acting jointly as an affected local government,
13 pursuant to the authority provided in section
14 1005(b), for purposes of providing authoriza-
15 tion under subsection (b) for municipal solid
16 waste generated in the jurisdiction of one of
17 those units of local government and received for
18 disposal or incineration in the jurisdiction of
19 another.

20 “(2) HOST COMMUNITY AGREEMENT.—The
21 term ‘host community agreement’ means a written,
22 legally binding agreement, lawfully entered into be-
23 fore the date of the enactment of this section be-
24 tween an owner or operator of a landfill or inciner-
25 ator and an affected local government that specifi-

1 cally authorizes the landfill or incinerator to receive
2 out-of-State municipal solid waste.

3 “(3) MUNICIPAL SOLID WASTE.—

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

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

11 “(ii) sewage sludge and residuals from
12 any sewage treatment plant;

13 “(iii) combustion ash generated by re-
14 source recovery facilities or municipal in-
15 cinerators;

16 “(iv) petroleum contaminated soil; and

17 “(v) all waste materials discarded for
18 disposal that were generated by commer-
19 cial, institutional, municipal, and industrial
20 sources, to the extent such materials—

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

23 “(II) were collected and disposed
24 of with other municipal solid waste
25 described in clause (i) or subclause (I)

1 of this clause as part of normal mu-
2 nicipal solid waste collection services,
3 except that this subclause does not
4 apply to hazardous materials other
5 than hazardous materials that, pursu-
6 ant to regulations issued under sec-
7 tion 3001(d), are not subject to regu-
8 lation under subtitle C.

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

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

20 “(i) Any solid waste identified or list-
21 ed as a hazardous waste under section
22 3001, except for household hazardous
23 waste.

24 “(ii) Any solid waste, including con-
25 taminated soil (other than petroleum con-

1 taminated soil) and debris, resulting
2 from—

3 “(I) a response action taken
4 under section 104 or 106 of the Com-
5 prehensive Environmental Response,
6 Compensation, and Liability Act (42
7 U.S.C. 9604 or 9606);

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

12 “(III) a corrective action taken
13 under this Act.

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

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

21 “(v) Materials and products returned
22 from a dispenser or distributor to the man-
23 ufacturer or an agent of the manufacturer
24 for credit, evaluation, and possible reuse.

25 “(vi) Any solid waste that is—

1 “(I) generated by an industrial
2 facility; and

3 “(II) transported for the purpose
4 of treatment, storage, or disposal to a
5 facility or unit thereof that is owned
6 or operated by the generator of the
7 waste, located on property owned by
8 the generator or a company with
9 which the generator is affiliated, or
10 the capacity of which is contractually
11 dedicated exclusively to a specific gen-
12 erator, so long as the disposal area
13 complies with local and State land use
14 and zoning regulations applicable to
15 the disposal site.

16 “(vii) Any medical waste that is seg-
17 regated from or not mixed with solid
18 waste.

19 “(viii) Waste from manufacturing or
20 processing (including pollution control) op-
21 erations not essentially the same as waste
22 normally generated by households.

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

1 solid waste generated outside of the State. The term
2 includes municipal solid waste generated outside of
3 the United States and includes municipal solid waste
4 generated outside of the State that has passed
5 through a transfer facility or other interim holding
6 facility inside the State.

7 “(5) RECYCLABLE MATERIALS.—The term ‘re-
8 cyclable materials’ means materials that are di-
9 verted, separated from, or separately managed from
10 materials otherwise destined for disposal as solid
11 waste, by collecting, sorting, or processing for use as
12 raw materials or feedstocks in lieu of, or in addition
13 to, virgin materials, including petroleum, in the
14 manufacture of usable materials or products.

15 “(6) SPECIFICALLY AUTHORIZES.—The term
16 ‘specifically authorizes’ refers to an explicit author-
17 ization, contained in a host community agreement or
18 permit, to import municipal solid waste from outside
19 the State. Such authorization may include a ref-
20 erence to a fixed radius surrounding the landfill or
21 incinerator which includes an area outside the State
22 or a reference to ‘any place of origin’, reference to
23 specific places outside the State, or use of such
24 phrases as ‘regardless of origin’ or ‘outside the
25 State’. The language for such authorization must

1 clearly and affirmatively state the approval or con-
2 sent of the affected local government or State for re-
3 ceipt of municipal solid waste from sources or loca-
4 tions outside the State from which the owner or op-
5 erator of a landfill or incinerator proposes to import
6 it. The term shall not include general references to
7 the receipt of waste from outside the jurisdiction of
8 the affected local government.”.

9 (b) TABLE OF CONTENTS.—The table of contents of
10 the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is
11 amended by adding after the item relating to section 4010
12 the following new item:

“Sec. 4011. Receipt and disposal of out-of-State municipal solid waste.”.

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