

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1198

To amend the Solid Waste Disposal Act to authorize States to restrict receipt of foreign municipal solid waste, to implement the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 8, 2005

Ms. STABENOW (for herself and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Solid Waste Disposal Act to authorize States to restrict receipt of foreign municipal solid waste, to implement the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, 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 “International Solid  
5 Waste Importation and Management Act of 2005”.

1 **SEC. 2. FOREIGN MUNICIPAL SOLID WASTE.**

2 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
3 posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
4 at the end the following:

5 **“SEC. 4011. CANADIAN MUNICIPAL SOLID WASTE.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) AGREEMENT.—The term ‘Agreement’  
8 means—

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

14 “(B) any regulations promulgated and or-  
15 ders issued to implement and enforce that  
16 Agreement.

17 “(2) FOREIGN MUNICIPAL SOLID WASTE.—The  
18 term ‘foreign municipal solid waste’ means munic-  
19 ipal solid waste that is generated outside of the  
20 United States.

21 “(3) MUNICIPAL SOLID WASTE.—

22 “(A) IN GENERAL.—The term ‘municipal  
23 solid waste’ means—

24 “(i) material discarded for disposal  
25 by—

1                   “(I) households (including single  
2                   and multifamily residences); and

3                   “(II) public lodgings such as ho-  
4                   tels and motels; and

5                   “(ii) material discarded for disposal  
6                   that was generated by commercial, institu-  
7                   tional, and industrial sources, to the extent  
8                   that the material—

9                   “(I)(aa) is essentially the same  
10                  as material described in clause (i); or

11                  “(bb) is collected and disposed of  
12                  with material described in clause (i)  
13                  as part of a normal municipal solid  
14                  waste collection service; and

15                  “(II) is not subject to regulation  
16                  under subtitle C.

17                  “(B) INCLUSIONS.—The term ‘municipal  
18                  solid waste’ includes—

19                         “(i) appliances;

20                         “(ii) clothing;

21                         “(iii) consumer product packaging;

22                         “(iv) cosmetics;

23                         “(v) debris resulting from construc-  
24                         tion, remodeling, repair, or demolition of a  
25                         structure;

1 “(vi) disposable diapers;

2 “(vii) food containers made of glass or  
3 metal;

4 “(viii) food waste;

5 “(ix) household hazardous waste;

6 “(x) office supplies;

7 “(xi) paper; and

8 “(xii) yard waste.

9 “(C) EXCLUSIONS.—The term ‘municipal  
10 solid waste’ does not include—

11 “(i) solid waste identified or listed as  
12 a hazardous waste under section 3001, ex-  
13 cept for household hazardous waste;

14 “(ii) solid waste, including contami-  
15 nated soil and debris, resulting from—

16 “(I) a response action taken  
17 under section 104 or 106 of the Com-  
18 prehensive Environmental Response,  
19 Compensation, and Liability Act (42  
20 U.S.C. 9604, 9606);

21 “(II) a response action taken  
22 under a State law with authorities  
23 comparable to the authorities con-  
24 tained in either of those sections; or

1                   “(III) a corrective action taken  
2                   under this Act;

3                   “(iii) recyclable material—

4                   “(I) that has been separated, at  
5                   the source of the material, from waste  
6                   destined for disposal; or

7                   “(II) that has been managed sep-  
8                   arately from waste destined for dis-  
9                   posal, including scrap rubber to be  
10                  used as a fuel source;

11                  “(iv) a material or product returned  
12                  from a dispenser or distributor to the man-  
13                  ufacturer or an agent of the manufacturer  
14                  for credit, evaluation, and possible poten-  
15                  tial reuse;

16                  “(v) solid waste that is—

17                  “(I) generated by an industrial  
18                  facility; and

19                  “(II) transported for the purpose  
20                  of treatment, storage, or disposal to a  
21                  facility (which facility is in compliance  
22                  with applicable State and local land  
23                  use and zoning laws and regulations)  
24                  or facility unit—

1           “(aa) that is owned or oper-  
2           ated by the generator of the  
3           waste;

4           “(bb) that is located on  
5           property owned by the generator  
6           of the waste or a company with  
7           which the generator is affiliated;  
8           or

9           “(cc) the capacity of which  
10          is contractually dedicated exclu-  
11          sively to a specific generator;

12          “(vi) medical waste that is segregated  
13          from or not mixed with solid waste;

14          “(vii) sewage sludge or residuals from  
15          a sewage treatment plant;

16          “(viii) combustion ash generated by a  
17          resource recovery facility or municipal in-  
18          cinerator; or

19          “(ix) waste from a manufacturing or  
20          processing (including pollution control) op-  
21          eration that is not essentially the same as  
22          waste normally generated by households.

23          “(b) MANAGEMENT OF FOREIGN MUNICIPAL SOLID  
24          WASTE.—

25                 “(1) STATE ACTION.—

1           “(A) IN GENERAL.—Except as provided in  
2 paragraph (2) and subject to subparagraph (B),  
3 until the date on which the Administrator pro-  
4 mulgates regulations to implement and enforce  
5 the Agreement (including notice and consent  
6 provisions of the Agreement), a State may  
7 enact 1 or more laws, promulgate regulations,  
8 or issue orders imposing limitations on the re-  
9 ceipt and disposal of foreign municipal solid  
10 waste within the State.

11           “(B) NO EFFECT ON EXISTING AUTHOR-  
12 ITY.—A State law, regulation, or order that is  
13 enacted, promulgated, or issued before the date  
14 on which the Administrator promulgates regula-  
15 tions under subparagraph (A)—

16                   “(i) may continue in effect after that  
17 date; and

18                   “(ii) shall not be affected by the regu-  
19 lations promulgated by the Administrator.

20           “(2) EFFECT ON INTERSTATE AND FOREIGN  
21 COMMERCE.—No State action taken in accordance  
22 with this section shall be considered—

23                   “(A) to impose an undue burden on inter-  
24 state or foreign commerce; or

1           “(B) to otherwise impair, restrain, or dis-  
2           criminate against interstate or foreign com-  
3           merce.

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

8           “(c) AUTHORITY OF ADMINISTRATOR.—

9           “(1) IN GENERAL.—Beginning immediately  
10          after the date of enactment of this section, the Ad-  
11          ministrators shall—

12           “(A) perform the functions of the Des-  
13           ignated Authority of the United States de-  
14           scribed in the Agreement with respect to the  
15           importation and exportation of municipal solid  
16           waste under the Agreement; and

17           “(B) implement and enforce the Agree-  
18           ment (including notice and consent provisions  
19           of the Agreement).

20           “(2) REGULATIONS.—Not later than 2 years  
21          after the date of enactment of this section, the Ad-  
22          ministrators shall promulgate final regulations with  
23          respect to the responsibilities of the Administrator  
24          under paragraph (1).

1           “(3) CONSENT TO IMPORTATION.—In consid-  
2           ering whether to consent to the importation of Cana-  
3           dian municipal solid waste under article 3(e) of the  
4           Agreement, the Administrator shall—

5                   “(A) give substantial weight to the views of  
6                   each State into which the foreign municipal  
7                   solid waste is to be imported, and consider the  
8                   views of the local government with jurisdiction  
9                   over the location at which the waste is to be  
10                  disposed;

11                  “(B) consider the impact of the importa-  
12                  tion on—

13                          “(i) continued public support for and  
14                          adherence to State and local recycling pro-  
15                          grams;

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

18                          “(iii) air emissions from increased ve-  
19                          hicular traffic; and

20                          “(iv) road deterioration from in-  
21                          creased vehicular traffic; and

22                  “(C) consider the impact of the importa-  
23                  tion on—

24                          “(i) homeland security;

25                          “(ii) public health; and

1 “(iii) the environment.

2 “(4) ACTIONS IN VIOLATION OF THE AGREE-  
3 MENT.—No person shall import, transport, or export  
4 municipal solid waste for final disposal or for incin-  
5 eration in violation of the Agreement.

6 “(d) COMPLIANCE ORDERS.—

7 “(1) IN GENERAL.—If, on the basis of any in-  
8 formation, the Administrator determines that any  
9 person has violated or is in violation of this section,  
10 the Administrator may—

11 “(A) issue an order assessing a civil pen-  
12 alty for any past or current violation, requiring  
13 compliance immediately or within a specified  
14 time period, or both; or

15 “(B) commence a civil action in the United  
16 States district court in the district in which the  
17 violation occurred for appropriate relief, includ-  
18 ing a temporary or permanent injunction.

19 “(2) SPECIFICITY.—Any order issued pursuant  
20 to this subsection shall state with reasonable speci-  
21 ficity the nature of the violation.

22 “(3) MAXIMUM AMOUNT OF PENALTY.—Any  
23 penalty assessed in an order described in paragraph  
24 (1) shall not exceed \$25,000 per day of noncompli-  
25 ance for each violation.

1           “(4) PENALTY ASSESSMENT.—In assessing a  
2 penalty under paragraph (1), the Administrator  
3 shall take into account the seriousness of the viola-  
4 tion and any good faith efforts to comply with appli-  
5 cable requirements.

6           “(e) PUBLIC HEARING.—

7           “(1) IN GENERAL.—Any order issued under  
8 this section shall become final unless, not later than  
9 30 days after the date on which the order is served,  
10 1 or more persons named in the order request a  
11 public hearing.

12           “(2) PROCEDURE FOR HEARING.—The Admin-  
13 istrator—

14           “(A) shall promptly conduct a public hear-  
15 ing on receipt of a request under paragraph (1);

16           “(B) in connection with any proceeding  
17 under this section, may issue subpoenas for the  
18 attendance and testimony of witnesses and the  
19 production of relevant papers, books, and docu-  
20 ments; and

21           “(C) may promulgate rules for discovery  
22 procedures.

23           “(f) VIOLATION OF COMPLIANCE ORDERS.—If a vio-  
24 lator fails to take corrective action within the time speci-  
25 fied in a compliance order issued under this section, the

1 Administrator may assess a civil penalty of not more than  
2 \$25,000 for each day of continued noncompliance with the  
3 order.”.

4 (b) CONFORMING AMENDMENT.—The table of con-  
5 tents of the Solid Waste Disposal Act (42 U.S.C. prec.  
6 6901) is amended by adding after the item relating to sec-  
7 tion 4010 the following:

“Sec. 4011. Foreign municipal solid waste”.

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