

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3109

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## AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hazardous Waste  
3 Electronic Manifest Establishment Act”.

4 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**  
5 **TEM.**

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

9 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**  
10 **SYSTEM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BOARD.—The term ‘Board’ means the  
13 Hazardous Waste Electronic Manifest System Gov-  
14 erning Board established under subsection (f).

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

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

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

1           “(5) USER.—The term ‘user’ means a haz-  
2           ardous waste generator, a hazardous waste trans-  
3           porter, an owner or operator of a hazardous waste  
4           treatment, storage, recycling, or disposal facility, or  
5           any other person that—

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

13                   “(B)(i) elects to use the system to com-  
14                   plete and transmit an electronic manifest for-  
15                   mat; or

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

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

25           “(c) USER FEES.—

1           “(1) IN GENERAL.—The Administrator may im-  
2           pose on users such reasonable service fees as the Ad-  
3           ministrator determines to be necessary to pay costs  
4           incurred in developing, operating, maintaining, and  
5           upgrading the system, including any costs incurred  
6           in collecting and processing data from any paper  
7           manifest submitted to the system after the date on  
8           which the system enters operation.

9           “(2) COLLECTION OF FEES.—The Adminis-  
10          trator shall—

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

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

17          “(3) FEE STRUCTURE.—

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

- 1 “(i) materials and supplies;
- 2 “(ii) contracting and consulting;
- 3 “(iii) overhead;
- 4 “(iv) information technology (includ-
- 5 ing costs of hardware, software, and re-
- 6 lated services);
- 7 “(v) information management;
- 8 “(vi) collection of service fees;
- 9 “(vii) investment of any unused serv-
- 10 ice fees;
- 11 “(viii) reporting and accounting;
- 12 “(ix) employment of direct and indi-
- 13 rect Government personnel dedicated to es-
- 14 tablishing and maintaining the system; and
- 15 “(x) project management.

16 “(B) ADJUSTMENTS IN FEE AMOUNT.—

17 “(i) IN GENERAL.—The Administrator  
 18 shall increase or decrease amount of a  
 19 service fee determined under the fee struc-  
 20 ture described in subparagraph (A) to a  
 21 level that will—

22 “(I) result in the collection of an  
 23 aggregate amount for deposit in the  
 24 Fund that is sufficient to cover cur-  
 25 rent and projected system-related

1 costs (including any necessary system  
2 upgrades); and

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

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

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

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

24 “(II) periodically thereafter, upon  
25 receipt and acceptance of the findings

1 of any annual accounting or auditing  
2 report under subsection (d)(6), if the  
3 report discloses a significant disparity  
4 for a fiscal year between the funds  
5 collected from service fees under this  
6 subsection for the fiscal year and ex-  
7 penditures made for the fiscal year to  
8 provide system-related services.

9 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST  
10 SYSTEM FUND.—

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

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

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

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

23 “(3) EXPENDITURES FROM FUND.—

24 “(A) IN GENERAL.—Subject to paragraph  
25 (2), on request by the Administrator, the Sec-

1           retary of the Treasury shall transfer from the  
2           Fund to the Administrator such amounts as the  
3           Administrator determines to be necessary to  
4           pay costs incurred in developing, operating,  
5           maintaining, and upgrading the system under  
6           subsection (c).

7           “(B) USE OF FUNDS.—

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

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

21          “(4) INVESTMENT OF AMOUNTS.—

22                   “(A) IN GENERAL.—The Secretary of the  
23          Treasury shall invest such portion of the Fund  
24          as is not, in the judgment of the Secretary of

1 the Treasury and the Administrator, required  
2 to meet current withdrawals.

3 “(B) INTEREST-BEARING OBLIGATIONS.—

4 Investments may be made only in—

5 “(i) interest-bearing obligations of the  
6 United States; or

7 “(ii) obligations, participations, or  
8 other instruments that are lawful invest-  
9 ments for fiduciaries, trusts, or public  
10 funds, as determined by the Secretary of  
11 the Treasury.

12 “(C) ACQUISITION OF OBLIGATIONS.—For  
13 the purpose of investments under paragraph  
14 (1), obligations may be acquired—

15 “(i) on original issue at the issue  
16 price; or

17 “(ii) by purchase of outstanding obli-  
18 gations at the market price.

19 “(D) SALE OF OBLIGATIONS.—Any obliga-  
20 tion acquired by the Fund may be sold by the  
21 Secretary of the Treasury at the market price.

22 “(E) CREDITS TO FUND.—The interest on,  
23 and the proceeds from the sale or redemption  
24 of, any obligations held in the Fund shall be  
25 credited to, and form a part of, the Fund.

1           “(5) TRANSFERS OF AMOUNTS.—

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

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

13          “(6) ACCOUNTING AND AUDITING.—

14                   “(A) ACCOUNTING.—For each 2-fiscal-year  
15          period, the Administrator shall prepare and  
16          submit to Congress a report that includes—

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

23   “(I) the Chief Financial Officers  
24   Act of 1990 (Public Law 101–576;

1 104 Stat. 2838) and amendments  
2 made by that Act; and

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

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

11 “(B) AUDITING.—

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

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

23 “(I) the fees collected and dis-  
24 bursed under this section;

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

5 “(III) the level of use of the sys-  
6 tem by users; and

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

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

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

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

22 “(e) CONTRACTS.—

23 “(1) AUTHORITY TO ENTER INTO CONTRACTS  
24 FUNDED BY SERVICE FEES.—The Administrator  
25 may enter into 1 or more information technology

1 contracts with entities determined to be appropriate  
2 by the Administrator (referred to in this subsection  
3 as ‘contractors’) under which—

4 “(A) the Administrator agrees to award a  
5 contract for the provision of system-related  
6 services; and

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

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

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

21 “(A) is performance-based;

22 “(B) identifies objective outcomes; and

23 “(C) contains performance standards that  
24 may be used to measure achievement and goals  
25 to evaluate the success of a contractor in per-

1 forming under the contract and the right of the  
2 contractor to payment for services under the  
3 contract, taking into consideration that a pri-  
4 mary measure of successful performance shall  
5 be the development of a hazardous waste elec-  
6 tronic manifest system that—

7 “(i) meets the needs of the user com-  
8 munity (including States that rely on data  
9 contained in manifests); and

10 “(ii) attracts sufficient user participa-  
11 tion and service fee revenues to ensure the  
12 viability of the system.

13 “(4) PAYMENT STRUCTURE.—Each contract  
14 awarded under this subsection shall include a provi-  
15 sion that specifies—

16 “(A) the service fee structure of the con-  
17 tractor that will form the basis for payments to  
18 the contractor;

19 “(B) the fixed-share ratio of monthly serv-  
20 ice fee revenues from which the Administrator  
21 shall reimburse the contractor for system-re-  
22 lated development, operation, and maintenance  
23 costs and provide an additional profit or fee  
24 commensurate with the risk undertaken by the

1 contractor in performing in accordance with the  
2 contract;

3 “(C) the amount of additional trans-  
4 actional costs attributed to—

5 “(i) the ancillary costs of the Admin-  
6 istrator in implementing and managing the  
7 system, including the costs of integrating  
8 the applications of the contractor with the  
9 central data exchange architecture of the  
10 Environmental Protection Agency;

11 “(ii) the direct and indirect personnel  
12 costs incurred by the Administrator to em-  
13 ploy personnel dedicated to the implemen-  
14 tation and management of the system; and

15 “(iii) expenses incurred in procuring  
16 any independent contractor services to as-  
17 sist staff of the Administrator in the prep-  
18 aration of financial statements and reports  
19 and the conduct of regular user group and  
20 governance meetings necessary for the  
21 oversight of the system.

22 “(5) CANCELLATION AND TERMINATION.—

23 “(A) IN GENERAL.—If the Administrator  
24 determines that sufficient funds are not made  
25 available for the continuation in a subsequent

1 fiscal year of a contract entered into under this  
2 subsection, the Administrator shall cancel or  
3 terminate the contract.

4 “(B) COSTS.—The costs of cancellation or  
5 termination under subparagraph (A) may be  
6 paid using—

7 “(i) appropriations available for per-  
8 formance of the contract;

9 “(ii) unobligated appropriations avail-  
10 able for acquisition of the information  
11 technology procured under the contract; or

12 “(iii) funds subsequently appropriated  
13 for payment of costs of the cancellation or  
14 termination.

15 “(C) NEGOTIATION OF AMOUNTS.—The  
16 amount payable in the event of cancellation or  
17 termination of a contract entered into under  
18 this subsection shall be negotiated with the con-  
19 tractor at the time at which the contract is  
20 awarded.

21 “(D) AUTHORITY TO ENTER INTO CON-  
22 TRACTS.—The Administrator may enter into a  
23 contract under this subsection for any fiscal  
24 year, regardless of whether funds are made spe-

1 cifically available for the full costs of cancella-  
2 tion or termination of the contract, if—

3 “(i) funds are available at the time at  
4 which the contract is awarded to make  
5 payments with respect to a contingent li-  
6 ability in an amount equal to at least 100  
7 percent of the estimated costs of a can-  
8 cellation or termination during the first  
9 fiscal year of the contract, as determined  
10 by the Administrator; or

11 “(ii) funds described in clause (i) are  
12 not available as described in that clause,  
13 but the contractor—

14 “(I) is informed of the amount of  
15 any unfunded contingent liability; and

16 “(II) agrees to perform the con-  
17 tract despite the unfunded contingent  
18 liability.

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

23 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST  
24 SYSTEM GOVERNING BOARD.—

1           “(1) ESTABLISHMENT.—Not later than 3 years  
2 after the date of enactment of this section, the Ad-  
3 ministrator shall establish a board to be known as  
4 the ‘Hazardous Waste Electronic Manifest System  
5 Governing Board’.

6           “(2) COMPOSITION.—The Board shall be com-  
7 posed of 7 members, of which—

8                   “(A) 1 member shall be the Administrator  
9 (or a designee), who shall serve as Chairperson  
10 of the Board; and

11                   “(B) 6 members shall be individuals ap-  
12 pointed by the Administrator—

13                           “(i) at least 1 of whom shall have ex-  
14 pertise in information technology;

15                           “(ii) at least 1 of whom shall have ex-  
16 perience in using the manifest system to  
17 track the transportation of hazardous  
18 waste under this subtitle (or an equivalent  
19 State program); and

20                           “(iii) at least 1 of whom shall be a  
21 State representative responsible for proc-  
22 essing those manifests.

23           “(3) DUTIES.—The Board shall meet annually  
24 to discuss, evaluate the effectiveness of, and provide

1 recommendations to the Administrator relating to,  
2 the system.

3 “(g) REGULATIONS.—

4 “(1) PROMULGATION.—

5 “(A) IN GENERAL.—Not later than 1 year  
6 after the date of enactment of this section, the  
7 Administrator shall promulgate regulations to  
8 carry out this section.

9 “(B) INCLUSIONS.—The regulations pro-  
10 mulgated pursuant to subparagraph (A) may  
11 include such requirements as the Administrator  
12 determines to be necessary to facilitate the  
13 transition from the use of paper manifests to  
14 the use of electronic manifests, or to accommo-  
15 date the processing of data from paper mani-  
16 fests in the electronic manifest system, includ-  
17 ing a requirement that users of paper manifests  
18 submit to the system copies of the paper mani-  
19 fests for data processing purposes.

20 “(C) REQUIREMENTS.—The regulations  
21 promulgated pursuant to subparagraph (A)  
22 shall ensure that each electronic manifest pro-  
23 vides, to the same extent as paper manifests  
24 under applicable Federal and State law, for—

1                   “(i) the ability to track and maintain  
2                   legal accountability of—

3                                 “(I) the person that certifies that  
4                                 the information provided in the mani-  
5                                 fest is accurately described; and

6                                 “(II) the person that acknowl-  
7                                 edges receipt of the manifest;

8                                 “(ii) if the manifest is electronically  
9                                 submitted, State authority to access paper  
10                                 copies of manifest; and

11                                 “(iii) access to all publicly-available  
12                                 information contained in the manifest.

13                   “(2) EFFECTIVE DATE OF REGULATIONS.—Any  
14                   regulation promulgated by the Administrator under  
15                   paragraph (1) and in accordance with section 3003  
16                   relating to electronic manifesting of hazardous waste  
17                   shall take effect in each State as of the effective  
18                   date specified in the regulation.

19                   “(3) ADMINISTRATION.—The Administrator  
20                   shall carry out regulations promulgated under this  
21                   subsection in each State unless the State program is  
22                   fully authorized to carry out those regulations in lieu  
23                   of the Administrator.

24                   “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT  
25                   TO CERTAIN STATES.—In any case in which the State in

1 which waste is generated, or the State in which waste will  
2 be transported to a designated facility, requires that the  
3 waste be tracked through a hazardous waste manifest, the  
4 designated facility that receives the waste shall, regardless  
5 of the State in which the facility is located—

6 “(1) complete the facility portion of the applica-  
7 ble manifest;

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

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

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

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

Passed the Senate September 26 (legislative day,  
September 17), 2008.

Attest:

*Secretary.*

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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