

110TH CONGRESS
2D SESSION

S. 3109

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2008

Referred to the Committee on Energy and Commerce

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 ardous 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

costs (including any necessary system upgrades); and

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

“(ii) EXCEPTION FOR INITIAL PERIOD OF OPERATION.—The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

“(iii) TIMING OF ADJUSTMENTS.—Adjustments to service fees described in clause (i) shall be made—

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

“(II) periodically thereafter, upon 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-

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

“(B) USE OF FUNDS.—

“(i) IN GENERAL.—Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator for use in accordance with this section without fiscal year limitation and without further appropriation.

“(ii) OVERSIGHT.—The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

“(4) INVESTMENT OF AMOUNTS.—

“(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund 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:

NANCY ERICKSON,

Secretary.