

the consumers of America, and that we have right on our side. And we ask the Lord to give us a little more guidance in regard to these appeals as we move forward.

So I thank everybody concerned who has put up with me, and we will continue to battle on this issue as well as other issues that come up that affect the rights of the people.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me thank all of my colleagues for the fact we finished this bill. It has been 2 weeks and 2 days, but there were a couple of interruptions—the death of former Senator Stennis and other matters. So it was not solid. We probably did it in about 8 or 9 days.

We have had a lot of good debate on both sides. I congratulate all the principal players, Senators HEFLIN and HOLLINGS, also Senator ROCKEFELLER and Senator GORTON, who were on the winning side of this issue. I think they did a remarkable job in keeping a very fragile, narrow coalition together. We broadened the bill with narrow margins. I think we knew at the time those provisions would not be in the bill or we could not obtain the 60 votes we needed for cloture, so adjustments were made. But at least we made a record on medical malpractice, on punitive damages, and on other issues that we believe are very important and we believe will be back before the Senate.

I also wish to thank Senator COVERDELL for his work with outside groups as sort of the coordinator, and my colleague, Senator LOTT of Mississippi, the majority whip, who did an excellent job, along with his staff and members of my staff and others because we had some very difficult votes.

I think we have had a dramatic step forward. The product liability bill has been introduced in every Congress for the last decade. In most cases, however, we could not even muster the votes to consider the legislation. We could not get the 60 votes to even talk about it because we had strong opposition and we had a lot of what we thought were distortions. The other side would say not.

So I think passage today is an important victory for common sense and the American people. It is also important to note that we have just passed a bill that was stronger than bills introduced in previous years, stronger because of the efforts of some of our Members in the Chamber that added small business protections.

I wish to pay tribute to our newest Members, who as a group provided energy, ideas, and determination in this debate. Senators SNOWE and DEWINE made a significant contribution that allowed us to obtain meaningful protection from abusive punitive damages while protecting small businesses.

Senators ABRAHAM and KYL responded to the call of the American people in last year's elections by their

efforts to expand these protections to include volunteer and charitable organizations and to add needed civil justice reforms. Together with Senators KASSEBAUM and MCCONNELL, who introduced medical malpractice reforms, they produced something never before seen on the Senate floor—clearer majorities for broader reform. For various reasons, we could not get the 60 votes to bring debate to a close on these broader reforms, but we have had the opportunity and I think it is certainly important.

Just 3 days ago, I received a letter from the head of the Boy Scouts of America, Mr. Jere Ratcliffe. In just the second line of his letter, Mr. Ratcliffe says something that ought to cause all of us to pause. I quote:

The civil justice system, as it now exists, has consequences which worked a chilling effect on our willingness and ability to continue to pursue activities that are beneficial to all of us. . . . This is particularly so in the case of volunteer service organizations.

That is what he believes. That is what many of us believe. So we have heard from the trial lawyers. They say everything is fine, but the volunteer organizations tell us a different story.

I would just say that we hope to bring up sometime later this year or, if not, next year the McConnell-Lieberman-Kassebaum health care liability bill—hopefully, later this year. The amendment was added by a 53 to 47 vote. In addition, some Senators support medical malpractice reform but voted against that amendment last week because they wanted to pursue only a product liability bill. So we are going to revisit that later in the year. We have a lot of work to do. I do not know how late it is going to be. But in any event, we will be taking a hard look at that legislation, hopefully this year; if not, early next year.

So, again, I thank the managers, Senator GORTON and Senator ROCKEFELLER. This is a bipartisan effort, as are most things in the Senate because without a bipartisan effort, you cannot get the 60 votes to shut off debate and pass the bill. That is the way it works. Some people may not totally understand it, may disagree with it, but that is the way it works. So now we move to another legislative matter, which I would ask the Chair to report.

#### INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The PRESIDING OFFICER. Under the previous order, the hour of noon having arrived, the Senate will now proceed to the consideration of S. 534, which the clerk will now report.

The legislative clerk read as follows:

A bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike

out all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Interstate Transportation of Municipal Solid Waste Act of 1995".

#### TITLE I—INTERSTATE WASTE

##### SEC. 401. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

##### "SEC. 401. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

"(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) Except as provided in paragraph (4), immediately upon the date of enactment of this section if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal solid waste in any landfill or incinerator that is not covered by the exceptions provided in subsection (b) and that is subject to the jurisdiction of the Governor and the affected local government.

"(2) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(D) and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may limit the quantity of out-of-State municipal solid waste received for disposal at each landfill or incinerator covered by the exceptions provided in subsection (b) that is subject to the jurisdiction of the Governor, to an annual amount equal to or greater than the quantity of out-of-State municipal solid waste received for disposal at such landfill or incinerator during calendar year 1993.

"(3)(A) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(E), and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may prohibit or limit the amount of out-of-State municipal solid waste disposed of at any landfill or incinerator covered by the exceptions in subsection (b) that is subject to the jurisdiction of the Governor, generated in any State that is determined by the Administrator under paragraph (6)(E) as having having exported, to landfills or incinerators not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste, more than—

"(i) 3,500,000 tons of municipal solid waste in calendar year 1996;

"(ii) 3,000,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

"(iii) 2,500,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

"(iv) 1,500,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

"(v) 1,000,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

"(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

"(I) In calendar year 1996, the greater of 1,400,000 tons or 90 percent of the amount exported to the State in calendar year 1993.

"(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

"(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.

"(IV) In calendar year 1999, the greater of 1,100,000 tons or 90 percent of the amount exported to the State in calendar year 1998.

“(V) In calendar year 2000, 1,000,000 tons.

“(VI) In calendar year 2001, 800,000 tons.

“(VII) In calendar year 2002 or any calendar year thereafter, 600,000 tons.

“(ii) The Governor of an importing State may take action to restrict levels of imports to reflect the appropriate level of out-of-State municipal solid waste imports if—

“(I) the Governor of the importing State has notified the Governor of the exporting State and the Administrator, 12 months prior to taking any such action, of the importing State's intention to impose the requirements of this section;

“(II) the Governor of the importing State has notified the Governor of the exporting State and the Administrator of the violation by the exporting State of this section at least 90 days prior to taking any such action; and

“(III) the restrictions imposed by the Governor of the importing State are uniform at all facilities.

“(C) The authority provided by subparagraphs (A) and (B) shall apply for as long as a State exceeds the permissible levels as determined by the Administrator under paragraph (6)(E).

“(4)(A) A Governor may not exercise the authority granted under this section if such action would result in the violation of, or would otherwise be inconsistent with, the terms of a host community agreement or a permit issued from the State to receive out-of-State municipal solid waste.

“(B) Except as provided in paragraph (3), a Governor may not exercise the authority granted under this section in a manner that would require any owner or operator of a landfill or incinerator covered by the exceptions provided in subsection (b) to reduce the amount of out-of-State municipal solid waste received from any State for disposal at such landfill or incinerator to an annual quantity less than the amount received from such State for disposal at such landfill or incinerator during calendar year 1993.

“(5) Any limitation imposed by a Governor under paragraph (2) or (3)—

“(A) shall be applicable throughout the State;

“(B) shall not directly or indirectly discriminate against any particular landfill or incinerator within the State; and

“(C) shall not directly or indirectly discriminate against any shipments of out-of-State municipal solid waste on the basis of place of origin and all such limitations shall be applied to all States in violation of paragraph (3).

“(6) ANNUAL STATE REPORT.—

“(A) IN GENERAL.—Within 90 days after enactment of this section and on April 1 of each year thereafter the owner or operator of each landfill or incinerator receiving out-of-State municipal solid waste shall submit to the affected local government and to the Governor of the State in which the landfill or incinerator is located, information specifying the amount and State of origin of out-of-State municipal solid waste received for disposal during the preceding calendar year. Within 120 days after enactment of this section and on July 1 of each year thereafter each State shall publish and make available to the Administrator, the Governor of the State of origin and the public, a report containing information on the amount of out-of-State municipal solid waste received for disposal in the State during the preceding calendar year.

“(B) CONTENTS.—Each submission referred to in this section shall be such as would result in criminal penalties in case of false or misleading information. Such information shall include the amount of waste received, the State of origin, the identity of the gener-

ator, the date of the shipment, and the type of out-of-State municipal solid waste.

“(C) LIST.—The Administrator shall publish a list of States that the Administrator has determined have exported out-of-State in any of the following calendar years an amount of municipal solid waste in excess of—

“(i) 3,500,000 tons in 1996;

“(ii) 3,000,000 tons in 1997;

“(iii) 3,000,000 tons in 1998;

“(iv) 2,500,000 tons in 1999;

“(v) 2,500,000 tons in 2000;

“(vi) 1,500,000 tons in 2001;

“(vii) 1,500,000 tons in 2002;

“(viii) 1,000,000 tons in 2003; and

“(ix) 1,000,000 tons in each calendar year after 2003.

The list for any calendar year shall be published by June 1 of the following calendar year.

“(D) SAVINGS PROVISION.—Nothing in this subsection shall be construed to preempt any State requirement that requires more frequent reporting of information.

“(7) Any affected local government that intends to submit a request under paragraph (1) or take formal action to enter into a host community agreement after the date of enactment of this subsection shall, prior to taking such action—

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

“(B) publish notice of the action in a newspaper of general circulation at least 30 days before taking such action;

“(C) provide an opportunity for public comment; and

“(D) following notice and comment, take formal action on any proposed request or action at a public meeting.

“(8) Any owner or operator seeking a host community agreement after the date of enactment of this subsection shall provide to the affected local government the following information, which shall be made available to the public from the affected local government:

“(A) A brief description of the planned facility, including a description of the facility size, ultimate waste capacity, and anticipated monthly and yearly waste quantities to be handled.

“(B) A map of the facility site that indicates the location of the facility in relation to the local road system and topographical and hydrological features and any buffer zones and facility units to be acquired by the owner or operator of the facility.

“(C) A description of the existing environmental conditions at the site, and any violations of applicable laws or regulations.

“(D) A description of environmental controls to be utilized at the facility.

“(E) A description of the site access controls to be employed, and roadway improvements to be made, by the owner or operator, and an estimate of the timing and extent of increased local truck traffic.

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

“(G) Any information that is required by State or Federal law to be provided with respect to any violations of environmental laws (including regulations) by the owner and operator, the disposition of enforcement proceedings taken with respect to the violations, and corrective measures taken as a result of the proceedings.

“(H) Any information that is required by State or Federal law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

“(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The authority to prohibit the disposal of

out-of-State municipal solid waste provided under subsection (a)(1) shall not apply to landfills and incinerators in operation on the date of enactment of this section that—

“(A) received during calendar year 1993 documented shipments of out-of-State municipal solid waste; and

“(B)(i) in the case of landfills, are in compliance with all applicable Federal and State laws and regulations relating to operation, design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action; or

“(ii) in the case of incinerators, are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429) and applicable State laws and regulations relating to facility design and operations.

“(2) A Governor may not prohibit the disposal of out-of-State municipal solid waste pursuant to subsection (a)(1) at facilities described in this subsection that are not in compliance with applicable Federal and State laws and regulations unless disposal of municipal solid waste generated within the State at such facilities is also prohibited.

“(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) In any case in which an affected local government is considering entering into, or has entered into, a host community agreement and the disposal or incineration of out-of-State municipal solid waste under such agreement would preclude the use of municipal solid waste management capacity described in paragraph (2), the Governor of the State in which the affected local government is located may prohibit the execution of such host community agreement with respect to that capacity.

“(2) The municipal solid waste management capacity referred to in paragraph (1) is that capacity—

“(A) that is permitted under Federal or State law;

“(B) that is identified under the State plan; and

“(C) for which a legally binding commitment between the owner or operator and another party has been made for its use for disposal or incineration of municipal solid waste generated within the region (identified under section 4006(a)) in which the local government is located.

“(d) COST RECOVERY SURCHARGE.—

“(1) AUTHORITY.—A State described in paragraph (2) may adopt a law and impose and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

“(2) APPLICABILITY.—The authority to impose a cost recovery surcharge under this subsection applies to any State that on or before April 3, 1994, imposed and collected a special fee on the processing or disposal of out-of-State municipal solid waste pursuant to a State law.

“(3) LIMITATION.—No such State may impose or collect a cost recovery surcharge from a facility on any out-of-State municipal solid waste that is being received at the facility under 1 or more contracts entered into after April 3, 1994, and before the date of enactment of this section.

“(4) AMOUNT OF SURCHARGE.—The amount of the cost recovery surcharge may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (6) and in no event may exceed \$1.00 per ton of waste.

“(5) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State covered by this subsection shall be used to

fund those solid waste management programs administered by the State or its political subdivision that incur costs for which the surcharge is collected.

“(6) CONDITIONS.—(A) Subject to subparagraphs (B) and (C), a State covered by this subsection may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

“(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

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

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

“(B) In no event shall a cost recovery surcharge be imposed by a State to the extent that the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax assessed against or voluntarily paid to the State or its political subdivision in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

“(C) The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A)(iii).

“(7) DEFINITIONS.—As used in this section:

“(A) The term ‘costs’ means the costs incurred by the State for the implementation of its laws governing the processing or disposal of municipal solid waste, limited to the issuance of new permits and renewal of or modification of permits, inspection and compliance monitoring, enforcement, and costs associated with technical assistance, data management, and collection of fees.

“(B) The term ‘processing’ means any activity to reduce the volume of solid waste or alter its chemical, biological or physical state, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

“(e) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed—

“(i) to have any effect on State law relating to contracts; or

“(2) to affect the authority of any State or local government to protect public health and the environment through laws, regulations, and permits, including the authority to limit the total amount of municipal solid waste that landfill or incinerator owners or operators within the jurisdiction of a State may accept during a prescribed period, provided that such limitations do not discriminate between in-State and out-of-State municipal solid waste, except to the extent authorized by this section.

“(f) DEFINITIONS.—As used in this section:

“(I)(A) The term ‘affected local government’, used with respect to a landfill or incinerator, means—

“(i) the public body created by State law with responsibility to plan for municipal solid waste management, a majority of the members of which are elected officials, for the area in which the facility is located or proposed to be located; or

“(ii) the elected officials of the city, town, township, borough, county, or parish exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or is proposed to be located.

“(B)(i) Within 90 days after the date of enactment of this section, a Governor may designate and publish notice of which entity listed in clause (i) or (ii) of subparagraph (A)

shall serve as the affected local government for actions taken under this section and after publication of such notice.

“(ii) If a Governor fails to make and publish notice of such a designation, the affected local government shall be the elected officials of the city, town, township, borough, county, parish, or other public body created pursuant to State law with primary jurisdiction over the land or the use of land on which the facility is located or is proposed to be located.

“(C) For purposes of host community agreements entered into before the date of publication of the notice, the term means either a public body described in subparagraph (A)(i) or the elected officials of any of the public bodies described in subparagraph (A)(ii).

“(2) HOST COMMUNITY AGREEMENT.—The term ‘host community agreement’ means a written, legally binding document or documents executed by duly authorized officials of the affected local government that specifically authorizes a landfill or incinerator to receive municipal solid waste generated out of State, but does not include any agreement to pay host community fees for receipt of waste unless additional express authorization to receive out-of-State waste is also included.

“(3) The term ‘out-of-State municipal solid waste’ means, with respect to any State, municipal solid waste generated outside of the State. To the extent that the President determines it is consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal solid waste generated outside of the United States.

“(4) The term ‘municipal solid waste’ means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term ‘municipal solid waste’ does not include—

“(A) any solid waste identified or listed as a hazardous waste under section 3001;

“(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

“(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal solid waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

“(D) any solid waste that is—

“(i) generated by an industrial facility; and  
“(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator of the waste, or is located on property owned by a company with which the generator is affiliated;

“(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

“(F) any industrial waste that is not identical to municipal solid waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

“(G) any medical waste that is segregated from or not mixed with municipal solid waste (as otherwise defined in this paragraph); or

“(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

“(5) The term ‘compliance’ means a pattern or practice of adhering to and satisfying standards and requirements promulgated by the Federal or a State government for the purpose of preventing significant harm to human health and the environment. Actions undertaken in accordance with compliance schedules for remediation established by Federal or State enforcement authorities shall be considered compliance for purposes of this section.

“(6) The terms ‘specifically authorized’ and ‘specifically authorizes’ refer to an explicit authorization, contained in a host community agreement or permit, to import waste from outside the State. Such authorization may include a reference to a fixed radius surrounding the landfill or incinerator that includes an area outside the State or a reference to any place of origin, reference to specific places outside the State, or use of such phrases as ‘regardless of origin’ or ‘outside the State’. The language for such authorization may vary as long as it clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from sources outside the State.”.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

“Sec. 4011. Interstate transportation of municipal solid waste.”.

## TITLE II—FLOW CONTROL

### SEC. 201. SHORT TITLE.

This title may be cited as the “Municipal Solid Waste Flow Control Act of 1995”.

### SEC. 202. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.), as amended by section 101, is amended by adding after section 4011 the following new section:

### “SEC. 4012. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

“(a) DEFINITIONS.—In this section:

“(I) DESIGNATE; DESIGNATION.—The terms ‘designate’ and ‘designation’ refer to an authorization by a State or political subdivision, and the act of a State or political subdivision in requiring or contractually committing, that all or any portion of the municipal solid waste or recyclable material that is generated within the boundaries of the State or political subdivision be delivered to waste management facilities or facilities for recyclable material or a public service authority identified by the State or political subdivision.

“(2) FLOW CONTROL AUTHORITY.—The term ‘flow control authority’ means the authority to control the movement of municipal solid waste or voluntarily relinquished recyclable material and direct such solid waste or voluntarily relinquished recyclable material to a designated waste management facility or facility for recyclable material.

“(3) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means—

“(A) solid waste generated by the general public or from a residential, commercial, institutional, or industrial source, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible material and noncombustible material such as metal and glass, including residue remaining after recyclable material has been separated from

waste destined for disposal, and including waste material removed from a septic tank, septic pit, or cesspool (other than from portable toilets); but

“(B) does not include—

“(i) waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

“(ii) waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606) or any corrective action taken under this Act;

“(iii) medical waste listed in section 11002;

“(iv) industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling;

“(v) recyclable material; or

“(vi) sludge.

“(4) PUBLIC SERVICE AUTHORITY.—The term ‘public service authority’ means—

“(A) an authority or authorities created pursuant to State legislation to provide individually or in combination solid waste management services to political subdivisions; or

“(B) an authority that was issued a certificate of incorporation by a State corporation commission established by a State constitution.

“(5) RECYCLABLE MATERIAL.—The term ‘recyclable material’ means material that has been separated from waste otherwise destined for disposal (at the source of the waste or at a processing facility) or has been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic material such as food and yard waste, or reuse (other than for the purpose of incineration).

“(6) WASTE MANAGEMENT FACILITY.—The term ‘waste management facility’ means a facility that collects, separates, stores, transports, transfers, treats, processes, combusts, or disposes of municipal solid waste.

“(b) AUTHORITY.—

“(1) IN GENERAL.—Each State and each political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction by directing the municipal solid waste or recyclable material to a waste management facility or facility for recyclable material, if such flow control authority—

“(A) is imposed pursuant to a law, ordinance, regulation, or other legally binding provision of the State or political subdivision in effect on May 15, 1994; and

“(B) has been implemented by designating before May 15, 1994, the particular waste management facilities or public service authority to which the municipal solid waste or recyclable material is to be delivered, the substantial construction of which facilities was performed after the effective date of that law, ordinance, regulation, or other legally binding provision and which facilities were in operation as of May 15, 1994.

“(2) LIMITATION.—The authority of this section extends only to the specific classes or categories of municipal solid waste to which flow control authority requiring a movement to a waste management facility was actually applied on or before May 15, 1994 (or, in the case of a State or political subdivision that qualifies under subsection (c), to the specific classes or categories of municipal solid waste for which the State or political subdivision prior to May 15, 1994, had committed to the designation of a waste management facility).

“(3) LACK OF CLEAR IDENTIFICATION.—With regard to facilities granted flow control authority under subsection (c), if the specific classes or categories of municipal solid waste are not clearly identified, the authority of this section shall apply only to municipal solid waste generated by households.

“(4) DURATION OF AUTHORITY.—With respect to each designated waste management facility, the authority of this section shall be effective until the later of—

“(A) the end of the remaining life of a contract between the State or political subdivision and any other person regarding the movement or delivery of municipal solid waste or voluntarily relinquished recyclable material to a designated facility (as in effect May 15, 1994);

“(B) completion of the schedule for payment of the capital costs of the facility concerned (as in effect May 15, 1994); or

“(C) the end of the remaining useful life of the original facility, as that remaining life may be extended by—

“(i) retrofitting of equipment or the making of other significant modifications to meet applicable environmental requirements or safety requirements;

“(ii) routine repair or scheduled replacement of equipment or components that does not add to the capacity of a waste management facility; or

“(iii) expansion of the facility on land that is—

“(I) legally or equitably owned, or under option to purchase or lease, by the owner or operator of the facility; and

“(II) covered by the permit for the facility (as in effect May 15, 1994).

“(5) ADDITIONAL AUTHORITY.—Notwithstanding anything to the contrary in this section, but subject to subsection (j), a State or political subdivision of a State that, on or before January 1, 1984, adopted regulations under State law that required or directed the transportation, management, or disposal of solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities and applied those regulations to every political subdivision of the State may—

“(A) designate any waste management facility in the State that—

“(i) was designated prior to May 15, 1994, and meets the requirements of subsection (c); or

“(ii) meets the requirements of paragraph (1); and

“(B) continue to exercise flow control authority for the remaining useful life of that facility over all classes and categories of solid waste that were subject to flow control on May 15, 1994.

“(c) COMMITMENT TO CONSTRUCTION.—

“(1) IN GENERAL.—Notwithstanding subsection (b)(1) (A) and (B), any political subdivision of a State may exercise flow control authority under subsection (b), if—

“(A) the law, ordinance, regulation, or other legally binding provision specifically provides for flow control authority for municipal solid waste generated within its boundaries and was in effect prior to May 15, 1994; and

“(B) prior to May 15, 1994, the political subdivision committed to the designation of a waste management facility to which municipal solid waste is to be transported or at which municipal solid waste is to be disposed of under that law, ordinance, regulation, plan, or legally binding provision.

“(2) FACTORS DEMONSTRATING COMMITMENT.—A commitment to the designation of a waste management facility is demonstrated by 1 or more of the following factors:

“(A) CONSTRUCTION PERMITS.—All permits required for the substantial construction of the facility were obtained prior to May 15, 1994.

“(B) CONTRACTS.—All contracts for the substantial construction of the facility were in effect prior to May 15, 1994.

“(C) REVENUE BONDS.—Prior to May 15, 1994, revenue bonds were presented for sale to specifically provide revenue for the construction of the facility.

“(D) CONSTRUCTION AND OPERATING PERMITS.—The State or political subdivision submitted to the appropriate regulatory agency or agencies, on or before May 15, 1994, substantially complete permit applications for the construction and operation of the facility.

“(d) CONSTRUCTED AND OPERATED.—

“(I) IN GENERAL.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if—

“(A) prior to May 15, 1994, the political subdivision—

“(i) contracted with a public service authority or with its operator to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or is within or under the control of the political subdivision, in order to support revenue bonds issued by and in the name of the public service authority for waste management facilities; or

“(ii) entered into contracts with a public service authority to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or within the control of the political subdivision, which imposed flow control pursuant to a law, ordinance, regulation, or other legally binding provision and where outstanding revenue bonds were issued in the name of public service authorities for waste management facilities; and

“(B) prior to May 15, 1994, the public service authority—

“(i) issued the revenue bonds for the construction of municipal solid waste facilities to which the political subdivision’s municipal solid waste is transferred or disposed; and

“(ii) commenced operation of the facilities.

“(2) DURATION OF AUTHORITY.—Authority under this subsection may be exercised by a political subdivision qualifying under paragraph (1)(A)(ii) only until the expiration of the contract or the life of the bond, whichever is earlier.

“(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

“(1) was mandated by State law to provide for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the county;

“(2) is currently required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

“(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through a law, ordinance, regulation, contract, or other legally binding provision; and

“(4) had incurred significant financial expenditures to comply with the mandates under State law and to repay outstanding

revenue bonds that were issued for the construction of solid waste management facilities to which the political subdivision's waste was designated.

**"(f) RETAINED AUTHORITY.—**

"(I) REQUEST.—On the request of a generator of municipal solid waste affected by this section, a State or political subdivision may authorize the diversion of all or a portion of the solid waste generated by the generator making the request to an alternative solid waste treatment or disposal facility, if the purpose of the request is to provide a higher level of protection for human health and the environment or reduce potential future liability of the generator under Federal or State law for the management of such waste, unless the State or political subdivision determines that the facility to which the municipal solid waste is proposed to be diverted does not provide a higher level of protection for human health and the environment or does not reduce the potential future liability of the generator under Federal or State law for the management of such waste.

"(2) CONTENTS.—A request under paragraph (I) shall include information on the environmental suitability of the proposed alternative treatment or disposal facility and method, compared to that of the designated facility and method.

"(g) LIMITATIONS ON REVENUE.—A State or political subdivision may exercise flow control authority under subsection (b), (c), or (d) only if the State or political subdivision certifies that the use of any of its revenues derived from the exercise of that authority will be used for solid waste management services.

"(h) REASONABLE REGULATION OF COMMERCE.—A law, ordinance, regulation, or other legally binding provision or official act of a State or political subdivision, as described in subsection (b), (c), or (d), that implements flow control authority in compliance with this section shall be considered to be a reasonable regulation of commerce retroactive to its date of enactment or effective date and shall not be considered to be an undue burden on or otherwise considered as impairing, restraining, or discriminating against interstate commerce.

**"(i) EFFECT ON EXISTING LAWS AND CONTRACTS.—**

"(I) ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to have any effect on any other law relating to the protection of human health and the environment or the management of municipal solid waste or recyclable material.

"(2) STATE LAW.—Nothing in this section shall be construed to authorize a political subdivision of a State to exercise the flow control authority granted by this section in a manner that is inconsistent with State law.

**"(3) OWNERSHIP OF RECYCLABLE MATERIAL.—**Nothing in this section—

"(A) authorizes a State or political subdivision of a State to require a generator or owner of recyclable material to transfer recyclable material to the State or political subdivision;

"(B) prohibits a generator or owner of recyclable material from selling, purchasing, accepting, conveying, or transporting recyclable material for the purpose of transformation or remanufacture into usable or marketable material, unless the generator or owner voluntarily made the recyclable material available to the State or political subdivision and relinquished any right to, or ownership of, the recyclable material.

"(j) REPEAL.—(I) Notwithstanding any provision of this title, authority to flow control by directing municipal solid waste or recyclable materials to a waste management facility shall terminate on the date that is 30

years after the date of enactment of this Act.

"(2) This section and the item relating to this section in the table of contents for subtitle D of the Solid Waste Disposal Act are repealed effective as of the date that is 30 years after the date of enactment of this Act."

**SEC. 203. TABLE OF CONTENTS AMENDMENT.**

The table of contents for subtitle D in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901), as amended by section 101(b), is amended by adding after the item relating to section 4011 the following new item:

"Sec. 4012. State and local government control of movement of municipal solid waste and recyclable material."

**TITLE III—GROUND WATER MONITORING**

**SEC. 301. GROUND WATER MONITORING.**

**(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—**Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C. 6949a(c)) is amended—

(1) by striking "CRITERIA.—Not later" and inserting the following: "CRITERIA.—

"(1) IN GENERAL.—Not later"; and

(2) by adding at the end the following new paragraph:

"(2) ADDITIONAL REVISIONS.—Subject to paragraph (2), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

"(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

"(B) the municipal solid waste landfill unit or expansion serves—

"(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

"(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

"(3) PROTECTION OF GROUND WATER RESOURCES.—

"(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

"(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

"(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

"(4) REMOTE ALASKA NATIVE VILLAGES.—Upon certification by the Governor of the State of Alaska that application of the requirements of the criteria described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) would be infeasible, would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the unit shall be exempt from those requirements."

**(b) REINSTATEMENT OF REGULATORY EXEMPTION.—**It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

Mr. DOLE. Mr. President, I understand the distinguished Democratic leader wants to speak for a few moments on product liability, and so he will be here momentarily. But I would say, as we start S. 534, keep in mind it came out of the committee by a vote of 16 to 0. And I hope this is something we can complete before the week is out, sometime by late Friday afternoon. I know there are amendments. We can dispose of amendments. But I hope that in many cases the amendments can be resolved by agreement, by working them out. And I know we have reasonable managers on both sides of the aisle.

This is important legislation, and I am happy to have it before the Senate. I hope we can complete action on it before the week is out because next week we will go to the budget and, hopefully, following that to telecommunications. So we have our next 2 or 3 weeks laid out for us before a very brief Memorial Day recess.

I will also be sending a letter to Senator DASCHLE today with reference to the August recess, and unless we can reach some accommodation, I then will announce in the next week whether or not there will be an August recess and, if so, the length of that recess.

Mr. CHAFEE. I wonder if the leader would yield to a question.

I heard the ominous words "a very brief Memorial Day recess." What does that mean?

Mr. DOLE. It is a week.

Mr. CHAFEE. That is fine.

Mr. DOLE. It may be longer than the August recess.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

**THE PRODUCT LIABILITY BILL**

Mr. DASCHLE. Mr. President, I want to commend so many Senators on both sides of the aisle for their efforts over the last couple of weeks on product liability. This has been a vigorous debate, and a debate that obviously has required a good deal of compromise and concession on both sides.

I believe there was another opportunity that we could have had to reach greater consensus on the bill, and I am sorry we missed that opportunity in the final days of this debate.

But I do believe that as a result of the decisions made by this body over