

In the House of Representatives, U. S.,

October 7, 1994.

Resolved, That the bill from the Senate (S. 2345) entitled “An Act 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”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause, and insert:

1 ***TITLE I—INTERSTATE WASTE***

2 ***SEC. 101. SHORT TITLE.***

3 *This Act may be cited as the “State and Local Govern-*
4 *ment Interstate Waste Control Act of 1994”.*

5 ***SEC. 102. INTERSTATE TRANSPORTATION AND DISPOSAL***
6 ***OF MUNICIPAL SOLID WASTE.***

7 *Subtitle D of the Solid Waste Disposal Act (42 U.S.C.*
8 *6941 et seq.) is amended by adding after section 4010 the*
9 *following new section:*

10 ***“SEC. 4011. INTERSTATE TRANSPORTATION AND DISPOSAL***
11 ***OF MUNICIPAL SOLID WASTE.***

12 ***“(a) RESTRICTION ON RECEIPT OF OUT-OF-STATE***
13 ***WASTE.—***

14 ***“(1) IN GENERAL.—(A) Effective January 1,***
15 ***1995, a landfill or incinerator in a State may not re-***

1 *ceive for disposal or incineration any out-of-State*
2 *municipal solid waste unless the owner or operator of*
3 *such landfill or incinerator obtains explicit authoriza-*
4 *tion (as part of a host community agreement) from*
5 *the affected local government to receive the waste.*

6 *“(B) An authorization granted pursuant to sub-*
7 *paragraph (A) shall—*

8 *“(i) be granted by formal action at a meet-*
9 *ing;*

10 *“(ii) be recorded in writing in the official*
11 *record of the meeting; and*

12 *“(iii) remain in effect according to its*
13 *terms.*

14 *“(C) An authorization granted pursuant to sub-*
15 *paragraph (A) may specify terms and conditions, in-*
16 *cluding an amount of out-of-State waste that an*
17 *owner or operator may receive and the duration of*
18 *the authorization.*

19 *“(D) Promptly, but not later than 90 days after*
20 *such an authorization is granted, the affected local*
21 *government shall notify the Governor, contiguous local*
22 *governments, and any contiguous Indian tribes of an*
23 *authorization granted under this subsection.*

24 *“(2) INFORMATION.—Prior to seeking an author-*
25 *ization to receive out-of-State municipal solid waste*

1 *pursuant to this subsection, the owner or operator of*
2 *the facility seeking such authorization shall provide*
3 *(and make readily available to the Governor, each*
4 *contiguous local government and Indian tribe, and*
5 *any other interested person for inspection and copy-*
6 *ing) the following information:*

7 *“(A) A brief description of the facility, in-*
8 *cluding, with respect to both the facility and any*
9 *planned expansion of the facility, the size, ulti-*
10 *mate waste capacity, and the anticipated month-*
11 *ly and yearly quantities (expressed in terms of*
12 *volume) of waste to be handled.*

13 *“(B) A map of the facility site indicating*
14 *location in relation to the local road system and*
15 *topography and hydrogeological features. The*
16 *map shall indicate any buffer zones to be ac-*
17 *quired by the owner or operator as well as all*
18 *facility units.*

19 *“(C) A description of the then current envi-*
20 *ronmental characteristics of the site, a descrip-*
21 *tion of ground water use in the area (including*
22 *identification of private wells and public drink-*
23 *ing water sources), and a discussion of alter-*
24 *ations that may be necessitated by, or occur as*
25 *a result of, the facility.*

1 “(D) A description of environmental con-
2 trols typically required to be used on the site
3 (pursuant to permit requirements), including
4 run on or run off management (or both), air pol-
5 lution control devices, source separation proce-
6 dures (if any), methane monitoring and control,
7 landfill covers, liners or leachate collection sys-
8 tems, and monitoring programs. In addition, the
9 description shall include a description of any
10 waste residuals generated by the facility, includ-
11 ing leachate or ash, and the planned manage-
12 ment of the residuals.

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

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

20 “(G) Estimates of the personnel require-
21 ments of the facility, including information re-
22 garding the probable skill and education levels
23 required for jobs at the facility. To the extent
24 practicable, the information shall distinguish be-

1 *tween employment statistics for preoperational*
2 *and postoperational levels.*

3 “(H) Any information that is required by
4 State or Federal law to be provided with respect
5 to any violations of environmental laws (includ-
6 ing regulations) by the owner, the operator, and
7 any subsidiary of the owner or operator, the dis-
8 position of enforcement proceedings taken with
9 respect to the violations, and corrective action
10 and rehabilitation measures taken as a result of
11 the proceedings.

12 “(I) Any information that is required by
13 State or Federal law to be provided with respect
14 to gifts and contributions made by the owner or
15 operator.

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

20 “(3) NOTIFICATION.—Prior to taking formal ac-
21 tion with respect to granting authorization to receive
22 out-of-State municipal solid waste pursuant to this
23 subsection, an affected local government shall—

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

1 “(B) publish notice of the action in a news-
2 paper of general circulation at least 30 days be-
3 fore holding a hearing and again at least 15
4 days before holding the hearing, except where
5 State law provides for an alternate form of pub-
6 lic notification; and

7 “(C) provide an opportunity for public
8 comment in accordance with State law, includ-
9 ing at least 1 public hearing.

10 “(b) ANNUAL STATE REPORT.—

11 “(1) IN GENERAL.—Each year the owner or op-
12 erator of each landfill or incinerator receiving out-of-
13 State municipal solid waste shall submit to the af-
14 fected local government and to the Governor of the
15 State in which the landfill or incinerator is located
16 information specifying the amount of out-of-State
17 municipal solid waste received for disposal during the
18 preceding year. Each year each such State shall pub-
19 lish and make available to the public a report con-
20 taining information on the amount of out-of-State
21 municipal solid waste received for disposal in the
22 State during the preceding year. Each year the owner
23 or operator of each landfill or incinerator receiving
24 out-of-State municipal solid waste shall also submit
25 to the Governor of the State of origin of such waste,

1 *and to the Administrator, information specifying the*
2 *amount of out-of-State municipal solid waste received*
3 *for disposal by the owner or operator during the pre-*
4 *ceding year from such State of origin. The submis-*
5 *sions under this paragraph by any owner or operator*
6 *shall all be made at the same time.*

7 “(2) *CONTENTS.*—*Each submission referred to in*
8 *this subsection shall be such as would result in crimi-*
9 *nal penalties in case of false or misleading informa-*
10 *tion. Such submission shall include the amount of*
11 *waste received, place of origin, including the identity*
12 *of the generator, date of shipment, and type of waste.*

13 “(3) *LIST.*—*The Administrator shall publish a*
14 *list of States that the Administrator has determined*
15 *have exported out of State an amount of municipal*
16 *solid waste in excess of 3.5 million tons in calendar*
17 *year 1995, 3.0 million tons in each of calendar years*
18 *1996 and 1997, 2.5 million tons in each of calendar*
19 *years 1998 and 1999, 1.5 million tons in each of cal-*
20 *endar years 2000 and 2001, and 1.0 million tons in*
21 *calendar year 2002 and each year thereafter. The list*
22 *for any calendar year shall be published by March 1*
23 *of the following calendar year.*

24 “(4) *SAVINGS PROVISION.*—*Nothing in this sub-*
25 *section shall be construed to preempt any State re-*

1 *quirement that requires more frequent reporting of in-*
2 *formation.*

3 *“(c) FREEZE.—*

4 *“(1) ANNUAL AMOUNT.—(A) Except as provided*
5 *in paragraph (2) and unless it would result in a vio-*
6 *lation of, or be inconsistent with, a host community*
7 *agreement or permit specifically authorizing the*
8 *owner or operator of a landfill or incinerator to ac-*
9 *cept out-of-State municipal solid waste at such landfill*
10 *or incinerator, and notwithstanding the absence of a*
11 *request in writing by the affected local government, a*
12 *Governor, in accordance with paragraph (3), may*
13 *limit the quantity of out-of-State municipal solid*
14 *waste received for disposal at each landfill or inciner-*
15 *ator covered by the exceptions provided in subsection*
16 *(e) that is subject to the jurisdiction of the Governor,*
17 *to an annual amount equal to the quantity of out-of-*
18 *State municipal solid waste received for disposal at*
19 *such landfill or incinerator during calendar year*
20 *1993.*

21 *“(B) At the request of an affected local govern-*
22 *ment that has not executed a host community agree-*
23 *ment, the Governor may limit the amount of out-of-*
24 *State municipal solid waste received annually for dis-*
25 *posal at the landfill or incinerator concerned to the*

1 *amount described in subparagraph (A). No such limit*
2 *may conflict with provisions of a permit specifically*
3 *authorizing the owner or operator to accept, at the fa-*
4 *ility, out-of-State municipal solid waste.*

5 “(2) *LIMITATION ON GOVERNOR’S AUTHORITY.—*
6 *A Governor may not exercise the authority granted*
7 *under this subsection in a manner that would require*
8 *any owner or operator of a landfill or incinerator*
9 *covered by the exceptions provided in subsection (e) to*
10 *reduce the amount of out-of-State municipal solid*
11 *waste received from any State for disposal at such*
12 *landfill or incinerator to an annual quantity less*
13 *than the amount received from such State for disposal*
14 *at such landfill or incinerator during calendar year*
15 *1993.*

16 “(3) *UNIFORMITY.—Any limitation imposed by*
17 *a Governor under paragraph (1)(A)—*

18 “(A) *shall be applicable throughout the*
19 *State;*

20 “(B) *shall not directly or indirectly dis-*
21 *criminate against any particular landfill or in-*
22 *cinerator within the State; and*

23 “(C) *shall not directly or indirectly dis-*
24 *criminate against any shipments of out-of-State*

1 *municipal solid waste on the basis of State of or-*
2 *igin.*

3 “(d) *RATCHET.*—

4 “(1) *IN GENERAL.*—*Unless it would result in a*
5 *violation of, or be inconsistent with, a host commu-*
6 *nity agreement or permit specifically authorizing the*
7 *owner or operator of a landfill or incinerator to ac-*
8 *cept out-of-State municipal solid waste at such land-*
9 *fill or incinerator, immediately upon the date of pub-*
10 *lication of the list required under subsection (b)(3),*
11 *and notwithstanding the absence of a request in writ-*
12 *ing by the affected local government, a Governor, in*
13 *accordance with paragraph (4), may prohibit the dis-*
14 *posal of out-of-State municipal solid waste, at any*
15 *landfill or incinerator covered by the exceptions in*
16 *subsection (e) that is subject to the jurisdiction of the*
17 *Governor, generated in any State that is determined*
18 *by the Administrator under subsection (b)(3) as hav-*
19 *ing exported, to landfills or incinerators not covered*
20 *by host community agreements, more than any of the*
21 *following:*

22 “(A) *3.5 million tons of municipal solid*
23 *waste in calendar year 1995.*

24 “(B) *3.0 million tons of municipal solid*
25 *waste in calendar year 1996.*

1 “(C) 3.0 million tons of municipal solid
2 waste in calendar year 1997.

3 “(D) 2.5 million tons of municipal solid
4 waste in calendar year 1998.

5 “(E) 2.5 million tons of municipal solid
6 waste in calendar year 1999.

7 “(F) 1.5 million tons of municipal solid
8 waste in calendar year 2000.

9 “(G) 1.5 million tons of municipal solid
10 waste in calendar year 2001.

11 “(H) 1.0 million tons of municipal solid
12 waste in calendar year 2002.

13 “(I) 1.0 million tons of municipal solid
14 waste in each calendar year after 2002.

15 “(2) *ADDITIONAL EXPORT LIMITS.*—No State
16 may export to any one State more than 1.4 million
17 tons of municipal solid waste in calendar year 1995
18 or 90 percent of the 1993 levels exported to a State,
19 whichever is greater, 1.3 million tons in 1996 or 90
20 percent of the 1995 levels exported to a State, which-
21 ever is greater, 1.2 million tons in 1997 or 90 percent
22 of the 1996 levels exported to a State, whichever is
23 greater, 1.1 million tons in 1998 or 90 percent of the
24 1997 levels exported to a State, whichever is greater,
25 1 million tons in 1999, 800,000 tons in 2000, and

1 600,000 tons in 2001 and each year thereafter, to
2 landfills or incinerators not covered by host commu-
3 nity agreements. Governors of importing States may
4 restrict levels of imports to reflect the level of out-of-
5 State municipal solid waste imports referred to in the
6 preceding sentence if—

7 “(A) the Governor of the importing State
8 has notified the Governor of the exporting State
9 and the Administrator 12 months prior to en-
10 forcement of the importing State’s intention to
11 impose the requirements of this section;

12 “(B) the Governor of the importing State
13 has notified the Governor of the exporting State
14 and the Administrator of the violation by the ex-
15 porting State of this section at least 90 days
16 prior to the enforcement of this section; and

17 “(C) the restrictions imposed by the Gov-
18 ernor of the importing State are uniform at all
19 facilities within the State receiving municipal
20 solid waste from the exporting State.

21 “(3) DURATION.—The authority provided by
22 paragraph (1) or (2) or both shall apply for as long
23 as a State exceeds the levels allowable under para-
24 graph (1) or (2), as the case may be.

1 “(4) *UNIFORMITY.*—Any restriction imposed by
2 a State under paragraph (1) or (2)—

3 “(A) shall be applicable throughout the
4 State;

5 “(B) shall not directly or indirectly dis-
6 criminate against any particular landfill or in-
7 cinerator within the State; and

8 “(C) shall not directly or indirectly dis-
9 criminate against any shipments of out-of-State
10 municipal solid waste on the basis of State of or-
11 igin, in the case of States in violation of para-
12 graph (1) or (2).

13 “(e) *AUTHORIZATION NOT REQUIRED FOR CERTAIN*
14 *FACILITIES.*—

15 “(1) *IN GENERAL.*—The prohibition on the dis-
16 posal of out-of-State municipal solid waste under sub-
17 section (a)(1) shall not apply to landfills and inciner-
18 ators in operation on the date of enactment of this
19 section that received during calendar year 1993 docu-
20 mented shipments of out-of-State municipal solid
21 waste.

22 “(2) *AVAILABILITY OF DOCUMENTATION.*—The
23 owner or operator of a landfill or incinerator that is
24 exempt under paragraph (1) of this subsection from
25 the requirements of subsection (a) shall provide to the

1 *State and affected local government, and make avail-*
2 *able for inspection by the public in the affected local*
3 *community, a copy of the host community agreement*
4 *or other documentation required under paragraph*
5 *(1). The owner or operator may omit from such copy*
6 *or other documentation any proprietary information,*
7 *but shall ensure that at least the following informa-*
8 *tion is apparent: the volume of out-of-State municipal*
9 *solid waste received, the place of origin of the waste,*
10 *and the duration of any relevant contract.*

11 “(3) *DENIED OR REVOKED PERMITS.*—A landfill
12 *or incinerator may not receive for disposal or inciner-*
13 *ation out-of-State municipal solid waste in the ab-*
14 *sence of a host community agreement if the operating*
15 *permit or license for the landfill or incinerator (or re-*
16 *newal thereof) was denied or revoked by the appro-*
17 *priate State agency before the date of enactment of*
18 *this section unless such permit or license (or renewal)*
19 *has been reinstated as of such date of enactment.*

20 “(4) *WASTE WITHIN BI-STATE METROPOLITAN*
21 *STATISTICAL AREAS.*—The owner or operator of a
22 *landfill or incinerator in a State may receive out-of-*
23 *State municipal solid waste without obtaining au-*
24 *thorization under subsection (a) from the affected*
25 *local government if the out-of-State waste is generated*

1 *within, and the landfill or incinerator is located*
2 *within, the same bi-State level A metropolitan statis-*
3 *tical area (as defined by the Office of Management*
4 *and Budget and as listed by the Office of Manage-*
5 *ment and Budget as of the date of enactment of this*
6 *section) that contains two contiguous major cities*
7 *each of which is in a different State.*

8 *“(f) NEEDS DETERMINATION.—Any comprehensive*
9 *solid waste management plan adopted by an affected local*
10 *government pursuant to Federal or State law may take into*
11 *account local and regional needs for solid waste disposal*
12 *capacity. Any implementation of such plan through the*
13 *State permitting process may take into account local and*
14 *regional needs for solid waste disposal capacity only in a*
15 *manner that is not inconsistent with the provisions of this*
16 *section. Nothing in this subsection shall be construed to pro-*
17 *hibit or preclude any State government or solid waste man-*
18 *agement district, as defined under State law from requiring*
19 *any affected local government to site, construct, or modify*
20 *any solid waste facility.*

21 *“(g) COST RECOVERY SURCHARGE.—*

22 *“(1) AUTHORITY.—Both of the States directly af-*
23 *ected by the decision of the Supreme Court in the*
24 *case of Oregon Waste Systems, Inc. v. Department of*
25 *Environmental Quality, 114 S. Ct. 1345 (1994) may*

1 *impose and collect a cost recovery surcharge on the*
2 *combustion or disposal in a landfill or incinerator of*
3 *out-of-State municipal solid waste in such State.*

4 “(2) *LIMITATION.*—*During the period beginning*
5 *on the date of enactment of this section and ending*
6 *on December 31, 1996, no such State may impose or*
7 *collect a cost recovery surcharge from a facility on*
8 *any out-of-State municipal solid waste that meets*
9 *both of the following conditions:*

10 “(A) *The waste is being received at the fa-*
11 *cility under one or more contracts entered into*
12 *before the date of enactment of this section.*

13 “(B) *The amount of waste being received in*
14 *a calendar year under the contract or contracts*
15 *does not exceed the amount of waste received at*
16 *the facility during calendar year 1993.*

17 “(3) *AMOUNT OF SURCHARGE.*—*The amount of*
18 *the cost recovery surcharge may be no greater than*
19 *the amount necessary to recover those costs deter-*
20 *mined in conformance with paragraph (5) and in no*
21 *event may exceed \$2 per ton of waste.*

22 “(4) *USE OF SURCHARGE COLLECTED.*—*All cost*
23 *recovery surcharges collected by a State covered by*
24 *this subsection shall be used to fund those solid waste*
25 *management programs administered by the State or*

1 *its political subdivisions that incur costs for which*
2 *the surcharge is collected.*

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

8 *“(i) the State demonstrates a cost to the*
9 *State arising from the combustion or disposal*
10 *within the State of a volume of municipal solid*
11 *waste from a source outside the State;*

12 *“(ii) the surcharge is based on those costs to*
13 *the State demonstrated under subparagraph (A)*
14 *that, if not paid for through the surcharge, would*
15 *otherwise have to be paid or subsidized by the*
16 *State; and*

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

19 *“(B) In no event shall a cost recovery surcharge*
20 *be imposed by a State to the extent that the cost for*
21 *which recovery is sought is otherwise recovered by any*
22 *other fee or tax assessed against the generation, trans-*
23 *portation, treatment, combustion, or disposal of solid*
24 *waste.*

1 “(C) *The grant of a subsidy by a State with re-*
2 *spect to entities disposing of waste generated within*
3 *the State does not constitute discrimination for pur-*
4 *poses of subparagraph (A)(iii).*

5 “(6) *BURDEN OF PROOF.*—*In any proceeding in*
6 *which a State invokes this subsection to justify a cost*
7 *recovery surcharge on the combustion or disposal*
8 *within the State of out-of-State municipal solid*
9 *waste, the State shall bear the burden of establishing*
10 *that the cost recovery surcharge satisfies the condi-*
11 *tions set forth in paragraph (5).*

12 “(h) *IMPLEMENTATION AND ENFORCEMENT.*—*Any*
13 *State may adopt such laws and regulations, not inconsis-*
14 *tent with this section, as are necessary to implement and*
15 *enforce this section, including provisions for penalties.*

16 “(i) *CONSTRUCTION AND DEMOLITION WASTE.*—

17 “(1) *LIMIT.*—*Any State may establish, pursuant*
18 *to this paragraph, a limit on the amount of out-of-*
19 *State construction and demolition waste for disposal*
20 *at landfills in the State. A limit under this para-*
21 *graph may be imposed consistent with each of the fol-*
22 *lowing:*

23 “(A) *By January 1, 1996, each State seek-*
24 *ing to limit under this paragraph the receipt of*
25 *out-of-State construction and demolition waste*

1 *shall establish and implement a mechanism for*
2 *measuring the amount of construction and demo-*
3 *lition waste generated within the State, disposed*
4 *of within the State, imported into the State and*
5 *exported for disposal.*

6 “(B) *By March 1, 1998, each State seeking*
7 *to limit under this paragraph the receipt of con-*
8 *struction and demolition waste shall establish the*
9 *amount of out-of-State construction and demoli-*
10 *tion waste received during calendar years 1996*
11 *and 1997 and report the tonnage received to the*
12 *Governor of each exporting State.*

13 “(2) *AMOUNT.—For each calendar year begin-*
14 *ning after January 1, 1998, the amount of out-of-*
15 *State construction and demolition waste received at*
16 *any facility within an importing State may be lim-*
17 *ited to the average of the amounts received in cal-*
18 *endar years 1996 and 1997.*

19 “(3) *DEFINITION.—For purposes of this sub-*
20 *section, the term ‘construction and demolition waste’*
21 *means debris resulting from construction, remodeling,*
22 *repair, or demolition of structures other than debris*
23 *that is not otherwise commingled with other municipi-*
24 *pal solid waste and has been determined by the gener-*
25 *ator, to be contaminated. For purposes of determining*

1 *whether any such debris is contaminated, the genera-*
2 *tor shall conduct representative sampling and analy-*
3 *sis of such debris, the results of which shall be submit-*
4 *ted to the affected local government for recordkeeping*
5 *purposes only, unless not required by the affected*
6 *local government. Any such debris that has been de-*
7 *termined to be contaminated shall be disposed of in*
8 *a landfill that meets, at a minimum, the require-*
9 *ments of this subtitle.*

10 *“(j) SAVINGS CLAUSE.—Nothing in this section shall*
11 *be interpreted or construed to have any effect on State law*
12 *relating to contracts.*

13 *“(k) DEFINITIONS.—As used in this section:*

14 *“(1) AFFECTED LOCAL GOVERNMENT.—(A) For*
15 *any landfill or incinerator, the term ‘affected local*
16 *government’ means—*

17 *“(i) the public body authorized by State law*
18 *to plan for the management of municipal solid*
19 *waste, a majority of the members of which are*
20 *elected officials, for the area in which the landfill*
21 *or incinerator is located or proposed to be*
22 *located; or*

23 *“(ii) if there is no such body created by*
24 *State law—*

1 “(I) the elected officials of the city,
2 town, township, borough, county, or parish
3 selected by the Governor and exercising pri-
4 mary responsibility over municipal solid
5 waste management or the use of land in the
6 jurisdiction in which the facility is located
7 or is proposed to be located; or

8 “(II) if a Governor fails to make a se-
9 lection under subclause (I), and publish a
10 notice regarding the selection, within 90
11 days after the date of enactment of this sec-
12 tion, the elected officials of the city, town,
13 township, borough, county, parish, or other
14 public body created pursuant to State law
15 with primary jurisdiction over the land or
16 the use of land on which the facility is lo-
17 cated or is proposed to be located.

18 The Governor shall publish a notice regarding the se-
19 lection described in clause (ii).

20 “(B) Notwithstanding subparagraph (A), for
21 purposes of host community agreements entered into
22 before the date of enactment of this section (or before
23 the date of publication of notice, in the case of sub-
24 paragraph (A)(ii)), the term shall mean either the
25 public body described in clause (i) or the elected offi-

1 *cials of the city, town, township, borough, county, or*
2 *parish exercising primary responsibility for the use of*
3 *land on which the facility is located or proposed to*
4 *be located.*

5 *“(C) Two or more Governors of adjoining States*
6 *may use the authority provided in section 1005(b) to*
7 *enter into an agreement under which contiguous units*
8 *of local government located in each of the adjoining*
9 *States may act jointly as the affected local govern-*
10 *ment for purposes of providing authorization under*
11 *subsection (a) for municipal solid waste generated in*
12 *one of such counties and received for disposal or*
13 *incineration in another.*

14 *“(2) HOST COMMUNITY AGREEMENT.—The term*
15 *‘host community agreement’ means a written, legally*
16 *binding document or documents executed by duly au-*
17 *thorized officials of the affected local government that*
18 *specifically authorizes a landfill or incinerator to re-*
19 *ceive municipal solid waste generated out-of-State,*
20 *but does not include any agreement to pay host com-*
21 *munity fees for receipt of waste unless additional ex-*
22 *press authorization to receive out-of-State municipal*
23 *solid waste is also included.*

24 *“(3) MUNICIPAL SOLID WASTE.—The term ‘mu-*
25 *nicipal solid waste’ means refuse (and refuse-derived*

1 *fuel) generated by the general public, from a residen-*
2 *tial source, or from a commercial, institutional, or*
3 *industrial source (or any combination thereof) to the*
4 *extent such waste is essentially the same as waste nor-*
5 *mally generated by households or was collected and*
6 *disposed of with other municipal solid waste as part*
7 *of normal municipal solid waste collection services,*
8 *and regardless of when generated, would be considered*
9 *conditionally exempt small quantity generator waste*
10 *under section 3001(d), such as paper, food, wood,*
11 *yard wastes, plastics, leather, rubber, appliances, or*
12 *other combustible or noncombustible materials such as*
13 *metal or glass (or any combination thereof). The term*
14 *‘municipal solid waste’ does not include any of the*
15 *following:*

16 *“(A) Any solid waste identified or listed as*
17 *a hazardous waste under section 3001.*

18 *“(B) Any solid waste, including contami-*
19 *nated soil and debris, resulting from a response*
20 *action taken under section 104 or 106 of the*
21 *Comprehensive Environmental Response, Com-*
22 *ensation, and Liability Act of 1980 (42 U.S.C.*
23 *9604 or 9606) or a corrective action taken under*
24 *this Act.*

1 “(C) *Recyclable materials that have been*
2 *separated, at the source of the waste, from waste*
3 *otherwise destined for disposal or that have been*
4 *managed separately from waste destined for*
5 *disposal.*

6 “(D) *Any solid waste that is—*

7 “(i) *generated by an industrial facil-*
8 *ity; and*

9 “(ii) *transported for the purpose of*
10 *treatment, storage, or disposal to a facility*
11 *that is owned or operated by the generator*
12 *of the waste, or is located on property*
13 *owned by the generator of the waste, or is*
14 *located on property owned by a company*
15 *with which the generator is affiliated.*

16 “(E) *Any solid waste generated incident to*
17 *the provision of service in interstate, intrastate,*
18 *foreign, or overseas air transportation.*

19 “(F) *Sewage sludge and residuals from any*
20 *sewage treatment plant, including any sewage*
21 *treatment plant required to be constructed in the*
22 *State of Massachusetts pursuant to any court*
23 *order issued against the Massachusetts Water*
24 *Resources Authority.*

1 “(G) Combustion ash generated by resource
2 recovery facilities or municipal incinerators, or
3 waste from manufacturing or processing (includ-
4 ing pollution control) operations not essentially
5 the same as waste normally generated by
6 households.

7 “(H) Any medical waste that is segregated
8 from or not mixed with municipal solid waste
9 (as otherwise defined in this paragraph).

10 “(I) Any material or product returned from
11 a dispenser or distributor to the manufacturer
12 for credit, evaluation, or possible reuse.

13 “(4) *OUT-OF-STATE MUNICIPAL SOLID WASTE.*—
14 The term ‘out-of-State municipal solid waste’ means,
15 with respect to any State, municipal solid waste gen-
16 erated outside of the State. Unless the President deter-
17 mines it is not consistent with the North American
18 Free Trade Agreement and the General Agreement on
19 Tariffs and Trade, the term shall include municipal
20 solid waste generated outside of the United States.

21 “(5) *SPECIFICALLY AUTHORIZED.*—The term
22 ‘specifically authorizes’ refers to an explicit author-
23 ization, contained in a host community agreement or
24 permit, to import waste from outside the State. Such
25 authorization may include a reference to a fixed ra-

1 *dus surrounding the landfill or incinerator that in-*
 2 *cludes an area outside the State or a reference to ‘any*
 3 *place of origin’, reference to specific places outside the*
 4 *State, or use of such phrases as ‘regardless of origin’*
 5 *or ‘outside the State’. The language for such author-*
 6 *ization may vary as long as it clearly and affirma-*
 7 *tively states the approval or consent of the affected*
 8 *local government or State for receipt of municipal*
 9 *solid waste from sources or locations outside the State*
 10 *from which the owner or operator of a landfill or in-*
 11 *cinerator proposes to import it.”.*

12 **SEC. 103. TABLE OF CONTENTS AMENDMENT.**

13 *The table of contents in section 1001 of the Solid Waste*
 14 *Disposal Act (42 U.S.C. prec. 6901) is amended by adding*
 15 *after the item relating to section 4010 the following new*
 16 *item:*

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

17 **TITLE II—FLOW CONTROL**

18 **SEC. 201. SHORT TITLE.**

19 *This title may be cited as the “Flow Control Act of*
 20 *1994”.*

1 **SEC. 202. CONGRESSIONAL AUTHORIZATION OF STATE**
 2 **CONTROL OVER TRANSPORTATION, MANAGE-**
 3 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
 4 **WASTE.**

5 *Subtitle D of the Solid Waste Disposal Act (42 U.S.C.*
 6 *6941 et seq.) (as amended by section 102) is further amend-*
 7 *ed by adding after section 4011 the following new section:*

8 **“SEC. 4012. CONGRESSIONAL AUTHORIZATION OF STATE**
 9 **CONTROL OVER TRANSPORTATION, MANAGE-**
 10 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
 11 **WASTE.**

12 *“(a) AUTHORITY.—*

13 *“(1) IN GENERAL.—Each State and each quali-*
 14 *fied political subdivision may, in accordance with*
 15 *this section—*

16 *“(A)(i) exercise flow control authority for*
 17 *municipal solid waste, incinerator ash from a*
 18 *solid waste incineration unit, construction de-*
 19 *bris, or demolition debris generated within the*
 20 *boundaries of the State or qualified political sub-*
 21 *division if, before May 15, 1994, the State or*
 22 *qualified political subdivision—*

23 *“(I) adopted a law, ordinance, regula-*
 24 *tion, solid waste management plan, or le-*
 25 *gally binding provision that contains flow*
 26 *control authority and, pursuant to such au-*

1 *thority, directs such solid waste, ash, or de-*
2 *bris to a proposed or existing waste man-*
3 *agement facility designated before May 15,*
4 *1994; or*

5 *“(II) adopted a law, ordinance, regula-*
6 *tion, solid waste management plan, or le-*
7 *gally binding provision that identifies the*
8 *use of one or more waste management meth-*
9 *ods that will be necessary for the transpor-*
10 *tation, management, or disposal of munici-*
11 *pal solid waste generated within such*
12 *boundaries, and committed to the designa-*
13 *tion of one or more waste management fa-*
14 *cilities for such method or methods;*

15 *“(ii) after the effective date of this section,*
16 *in the case of a State or qualified political sub-*
17 *division that adopted such a law, ordinance, reg-*
18 *ulation, plan, or legally binding provision that*
19 *meets the requirements of subclause (I) or (II) of*
20 *clause (i), exercise flow control authority over*
21 *such solid waste from any existing or future*
22 *waste management facility to any other existing*
23 *or future waste management facility; and*

24 *“(iii) after the effective date of this section,*
25 *in the case of a State or qualified political sub-*

1 *division that adopted such a law, ordinance, reg-*
2 *ulation, plan, or legally binding provision that*
3 *meets the requirements of subclause (I) of clause*
4 *(i), exercise flow control authority over such solid*
5 *waste, ash, or debris from any existing waste*
6 *management facility to any other existing or*
7 *proposed waste management facility, and may*
8 *do so without regard to subsection (b)(2); and*

9 *“(B) exercise flow control authority for vol-*
10 *untarily relinquished recyclable materials gen-*
11 *erated within the boundaries of the State or*
12 *qualified political subdivision.*

13 *“(2) REASONABLE REGULATION OF COM-*
14 *MERCE.—*

15 *“(A) A law, ordinance, regulation, solid*
16 *waste management plan, or legally binding pro-*
17 *vision of a State or qualified political subdivi-*
18 *sion, described in paragraph (1), that imple-*
19 *ments or exercises flow control authority in com-*
20 *pliance with this section shall be considered to be*
21 *a reasonable regulation of commerce and shall*
22 *not be considered to be an undue burden on or*
23 *otherwise as impairing, restraining, or discrimi-*
24 *nating against interstate commerce.*

1 “(B) A contract or franchise agreement en-
2 tered into by a State or political subdivision to
3 provide the exclusive or nonexclusive authority
4 for the collection, transportation, or disposal of
5 municipal solid waste, and not otherwise involv-
6 ing the exercise of flow control authority de-
7 scribed in paragraph (1), shall be considered to
8 be a reasonable regulation of commerce and shall
9 not be considered to be an undue burden on or
10 otherwise as impairing, restraining, or discrimi-
11 nating against interstate commerce.

12 “(b) LIMITATIONS.—

13 “(1) LIMITATION OF AUTHORITY REGARDING RE-
14 CYCLABLE MATERIALS.—A State or qualified political
15 subdivision may exercise the authority described in
16 subsection (a)(1)(B) with respect to recyclable mate-
17 rials only if—

18 “(A) the generator or owner of the materials
19 voluntarily made the materials available to the
20 State or qualified political subdivision, or the
21 designee of the State or qualified political sub-
22 division, and relinquished any rights to, or own-
23 ership of, such materials; and

24 “(B) the State or qualified political subdivi-
25 sion, or the designee of the State or qualified po-

1 *litical subdivision, assumes such rights to, or*
2 *ownership of, such materials.*

3 “(2) *LIMITATION OF AUTHORITY REGARDING*
4 *SOLID WASTE OR RECYCLABLE MATERIALS.—*

5 “(A) *A State or qualified political subdivi-*
6 *sion may exercise the authority described in sub-*
7 *paragraph (A) or (B) of subsection (a)(1) only*
8 *if the State or qualified political subdivision es-*
9 *tablishes a program to separate, or divert at the*
10 *point of generation, recyclable materials from*
11 *municipal solid waste, for purposes of recycling,*
12 *reclamation, or reuse, in accordance with any*
13 *Federal or State law or municipal solid waste*
14 *planning requirements in effect.*

15 “(B) *A State or qualified political subdivi-*
16 *sion may exercise the authority described in*
17 *clause (i) or (ii) of subsection (a)(1)(A) only if,*
18 *after conducting one or more public hearings, the*
19 *State or qualified political subdivision—*

20 “(i) *finds, on the basis of the record de-*
21 *veloped at the hearing or hearings, that it*
22 *is necessary to exercise the authority de-*
23 *scribed in subparagraph (A) or (B) of sub-*
24 *section (a)(1) to meet the current solid*
25 *waste management needs (as of the date of*

1 *the record) or the anticipated solid waste*
2 *management needs of the State or qualified*
3 *political subdivision for the management of*
4 *municipal solid waste or recyclable*
5 *materials;*

6 “(ii) finds, on the basis of the record
7 developed at the hearing or hearings, in-
8 cluding an analysis of the ability of the pri-
9 vate sector and public bodies to provide
10 short and long term integrated solid waste
11 management services with and without flow
12 control authority, that the exercise of flow
13 control authority is necessary to provide
14 such services in an economically efficient
15 and environmentally sound manner; and

16 “(iii) provides a written explanation of
17 the reasons for the findings described clauses
18 (i) and (ii), which may include a finding
19 of a preferred waste management methodol-
20 ogy or methodologies for providing such in-
21 tegrated solid waste management services.

22 “(C) With respect to each designated waste
23 management facility, the authority of subsection
24 (a) shall be effective until completion of the
25 schedule for payment of the capital costs of the

1 waste management facility concerned (as in ef-
2 fect on May 15, 1994), or for the remaining use-
3 ful life of the original waste management facil-
4 ity, whichever is longer. At the end of such pe-
5 riod, the authority of subsection (a) shall be ef-
6 fective for any waste management facility for
7 which subparagraph (B) and subsection (c) have
8 been complied with by the State or qualified po-
9 litical subdivision, except that no facility, and
10 no State or qualified political subdivision, sub-
11 ject to subsection (a)(1)(A)(i)(I) or subsection
12 (a)(1)(A)(ii) shall be required to comply with
13 subparagraph (B) for a period of 10 years after
14 the date of enactment of this section. Notwith-
15 standing the provisions of this paragraph, com-
16 pliance with subparagraph (B) shall not be re-
17 quired where—

18 “(i) a designated waste management
19 facility is required to retrofit or otherwise
20 make significant modifications to meet ap-
21 plicable environmental requirements or safe-
22 ty requirements;

23 “(ii) routine repair or scheduled re-
24 placements of existing equipment or compo-
25 nents of a designated waste management fa-

1 *cility is undertaken that does not add to the*
2 *capacity of the waste management facility;*
3 *or*

4 *“(iii) a designated waste management*
5 *facility expands on land legally or equitably*
6 *owned, or under option to purchase or lease,*
7 *by the owner or operator of such facility*
8 *and the applicable permit includes such*
9 *land.*

10 *“(D) Notwithstanding anything to the con-*
11 *trary in this section, paragraphs (2)(B) and*
12 *(2)(C) shall not apply to any State (or any of*
13 *its political subdivisions) that, on or before Jan-*
14 *uary 1, 1984, enacted regulations pursuant to a*
15 *State law that required or directed the transpor-*
16 *tation, management, or disposal of solid waste*
17 *from residential, commercial, institutional and*
18 *industrial sources as defined by State law to spe-*
19 *cific waste management facilities and applied*
20 *those regulations to every political subdivision in*
21 *the State.*

22 *“(3) LIMITATION TO APPLIED AUTHORITIES.—*
23 *The authority described in subsection (a)(1)(A) shall*
24 *apply only to the specific classes or categories of solid*
25 *waste to which the authority described in subsection*

1 (a)(1)(A)(i)(I) was applied by the State or qualified
2 political subdivision before May 15, 1994, and to the
3 specific classes or categories of solid waste for which
4 the State or qualified political subdivision committed
5 to the designation of one or more waste management
6 facilities as described in subsection (a)(1)(A)(i)(II).

7 “(4) EXPIRATION OF AUTHORITY.—The author-
8 ity granted under subsection (a)(1)(A)(i)(II) shall ex-
9 pire if a State or qualified political subdivision has
10 not designated, by law, ordinance, regulation, solid
11 waste management plan, or other legally binding pro-
12 vision, one or more proposed or existing waste man-
13 agement facilities within 3 years after the date of en-
14 actment of this section.

15 “(5) LIMITATION ON REVENUE.—A State or
16 qualified political subdivision may exercise the au-
17 thority described in subsection (a) only if the State or
18 qualified political subdivision limits the use of any of
19 its revenues derived from the exercise of such author-
20 ity primarily to solid waste management services.

21 “(c) COMPETITIVE DESIGNATION PROCESS.—

22 “(1) IN GENERAL.—A State or qualified political
23 subdivision may exercise the authority described in
24 subsection (a) only if the State or qualified political
25 subdivision develops and implements a competitive

1 *designation process, with respect to each waste man-*
2 *agement facility or each facility for recyclable mate-*
3 *rials. The process shall—*

4 *“(A) ensure that the designation process is*
5 *based on, or is part of, a municipal solid waste*
6 *management plan that is adopted by the State or*
7 *qualified political subdivision and that is de-*
8 *signed to ensure long-term management capacity*
9 *for municipal solid waste or recyclable materials*
10 *generated within the boundaries of the State or*
11 *qualified political subdivision;*

12 *“(B) set forth the goals of the designation*
13 *process, including at a minimum—*

14 *“(i) capacity assurance;*

15 *“(ii) the establishment of provisions to*
16 *provide that protection of human health*
17 *and the environment will be achieved; and*

18 *“(iii) any other goals determined to be*
19 *relevant by the State or qualified political*
20 *subdivision;*

21 *“(C) identify and compare reasonable and*
22 *available alternatives, options, and costs for des-*
23 *ignation of the facilities;*

24 *“(D) provide for public participation and*
25 *comment;*

1 “(E) ensure that the designation of each fa-
2 cility is accomplished through an open competi-
3 tive process during which the State or qualified
4 political subdivision—

5 “(i) identifies in writing criteria to be
6 utilized for selection of the facilities, which
7 shall not discriminate unfairly against any
8 particular waste management facility or
9 any method of management, transportation
10 or disposal, and shall not establish quali-
11 fications for selection that can only be met
12 by public bodies;

13 “(ii) provides a fair and equal oppor-
14 tunity for interested public persons and pri-
15 vate persons to offer their existing (as of the
16 date of the process) or proposed facilities for
17 designation; and

18 “(iii) evaluates and selects the facilities
19 for designation based on the merits of the
20 facilities in meeting the criteria identified;
21 and

22 “(F) base the designation of each such facil-
23 ity on reasons that shall be stated in a public
24 record.

25 “(2) CERTIFICATION.—

1 “(A) *IN GENERAL.*—A Governor of any
2 State may certify that the laws and regulations
3 of the State in effect on May 15, 1994, satisfy the
4 requirements for a competitive designation proc-
5 ess under paragraph (1).

6 “(B) *PROCESS.*—In making a certification
7 under subparagraph (A), a Governor shall—

8 “(i) publish notice of the proposed cer-
9 tification in a newspaper of general circula-
10 tion and provide such additional notice of
11 the proposed certification as may be re-
12 quired by State law;

13 “(ii) include in the notice of the pro-
14 posed certification or otherwise make read-
15 ily available a statement of the laws and
16 regulations subject to the certification and
17 an explanation of the basis for a conclusion
18 that the laws and regulations satisfy the re-
19 quirements of paragraph (1);

20 “(iii) provide interested persons an op-
21 portunity to comment on the proposed cer-
22 tification, for a period of time not less than
23 60 days, after publication of the notice; and

24 “(iv) publish notice of the final certifi-
25 cation, together with an explanation of the

1 *basis for the final certification, in a news-*
2 *paper of general circulation and provide*
3 *such additional notice of the final certifi-*
4 *cation as may be required by State law.*

5 “(C) *APPEAL.*—*Within 120 days after pub-*
6 *lication of the final certification under subpara-*
7 *graph (B), any interested person may file an ap-*
8 *peal of the final certification in the United*
9 *States Circuit Court of Appeals for the Federal*
10 *judicial district of the State, for a judicial deter-*
11 *mination that the certified laws and regulations*
12 *do not satisfy the requirements of paragraph (1)*
13 *or that the certification process did not satisfy*
14 *the procedural requirements of subparagraph*
15 *(B). The appeal shall set forth the specific rea-*
16 *sons for the appeal of the final certification.*

17 “(D) *LIMITATION TO RECORD.*—*Any judi-*
18 *cial proceeding brought under subparagraph (C)*
19 *shall be limited to the administrative record de-*
20 *veloped in connection with the procedures de-*
21 *scribed in subparagraph (B).*

22 “(E) *COSTS OF LITIGATION.*—*In any judi-*
23 *cial proceeding brought under subparagraph (C),*
24 *the court shall award costs of litigation (includ-*
25 *ing reasonable attorney fees) to any prevailing*

1 *party whenever the court determines that such*
2 *award is appropriate.*

3 “(F) *LIMITATION ON REVIEW OF CERTIFI-*
4 *CATIONS.—If no appeal is taken within 120 days*
5 *after the publication of the final certification, or*
6 *if the final certification by the Governor of any*
7 *State is upheld by the United States Circuit*
8 *Court of Appeals and no party seeks review by*
9 *the Supreme Court (within applicable time re-*
10 *quirements), the final certification shall not be*
11 *subject to judicial review.*

12 “(G) *LIMITATION ON REVIEW OF DESIGNA-*
13 *TIONS.—Designations made after the final cer-*
14 *tification and pursuant to the certified laws and*
15 *regulations shall not be subject to judicial review*
16 *for failure to satisfy the requirements of para-*
17 *graph (1).*

18 “(d) *OWNERSHIP OF RECYCLABLE MATERIALS.—*

19 “(1) *PROHIBITION ON REQUIRED TRANSFERS.—*
20 *Nothing in this section shall authorize any State or*
21 *qualified political subdivision, or any designee of the*
22 *State or qualified political subdivision, to require any*
23 *generator or owner of recyclable materials to transfer*
24 *any recyclable materials to such State or qualified*
25 *political subdivision unless the generator or owner of*

1 *the recyclable materials voluntarily made the mate-*
2 *rials available to the State or qualified political sub-*
3 *division and relinquished any rights to, or ownership*
4 *of, such materials.*

5 *“(2) OTHER TRANSACTIONS.—Nothing in this*
6 *section shall prohibit any person from selling, pur-*
7 *chasing, accepting, conveying, or transporting any re-*
8 *cyclable materials for purposes of transformation or*
9 *remanufacture into usable or marketable materials,*
10 *unless a generator or owner voluntarily made the ma-*
11 *terials available to the State or qualified political*
12 *subdivision and relinquished any rights to, or owner-*
13 *ship of, such materials.*

14 *“(e) RETAINED AUTHORITY.—Upon the request of any*
15 *generator of municipal solid waste affected by this section,*
16 *the State or political subdivision may authorize the diver-*
17 *sion of all or a portion of the solid wastes generated by*
18 *the generator making such request to a solid waste facility,*
19 *other than the facility or facilities originally designated by*
20 *the political subdivision, where the purpose of such request*
21 *is to provide a higher level of protection for human health*
22 *and the environment and reduce potential future liability*
23 *under Federal or State law of such generator for the man-*
24 *agement of such wastes. Requests shall include information*
25 *on the environmental suitability of the proposed alternative*

1 *treatment or disposal facility and method, compared to that*
2 *of the designated facility and method. In making such a*
3 *determination the State or political subdivision may con-*
4 *sider the ability and willingness of both the designated and*
5 *alternative disposal facility or facilities to indemnify the*
6 *generator against any cause of action under State or Fed-*
7 *eral environmental statutes and against any cause of action*
8 *for nuisance, personal injury, or property loss under any*
9 *State law.*

10 *“(f) EXISTING LAWS AND CONTRACTS.—*

11 *“(1) IN GENERAL.—To the extent consistent with*
12 *subsection (a), this section shall not supersede, abro-*
13 *gate, or otherwise modify any of the following:*

14 *“(A) Any contract or other agreement (in-*
15 *cluding any contract containing an obligation to*
16 *repay the outstanding indebtedness on any pro-*
17 *posed or existing waste management facility or*
18 *facility for recyclable materials) entered into be-*
19 *fore May 15, 1994, by a State or qualified politi-*
20 *cal subdivision in which such State or qualified*
21 *political subdivision has designated a proposed*
22 *or existing waste management facility, or facil-*
23 *ity for recyclable materials, for the transpor-*
24 *tation, management or disposal of municipal*
25 *solid waste, incinerator ash from a solid waste*

1 *incineration unit, construction debris or demoli-*
2 *tion debris, or recyclable materials, pursuant to*
3 *a law, ordinance, regulation, solid waste man-*
4 *agement plan, or legally binding provision*
5 *adopted by such State or qualified political sub-*
6 *division before May 15, 1994, if, in the case of*
7 *a contract or agreement relating to recyclable*
8 *materials, the generator or owner of the mate-*
9 *rials, and the State or qualified political sub-*
10 *division, have met the appropriate conditions in*
11 *subsection (b)(1) with respect to the materials.*

12 *“(B) Any other contract or agreement en-*
13 *tered into before May 15, 1994, for the transpor-*
14 *tation, management or disposal of municipal*
15 *solid waste, incinerator ash from a solid waste*
16 *incineration unit, or construction debris or dem-*
17 *olition debris.*

18 *“(C)(i) Any law, ordinance, regulation,*
19 *solid waste management plan, or legally binding*
20 *provision—*

21 *“(I) that is adopted before May 15,*
22 *1994;*

23 *“(II) that pertains to the transpor-*
24 *tation, management, or disposal of solid*

1 *waste generated within the boundaries of a*
2 *State or qualified political subdivision; and*
3 *“(III) under which a State or qualified*
4 *political subdivision, prior to May 15,*
5 *1994, directed, limited, regulated, or prohib-*
6 *ited the transportation, management, or*
7 *disposal of municipal solid waste, or incin-*
8 *erator ash from, a solid waste incineration*
9 *unit, or construction debris or demolition*
10 *debris, generated within the boundaries;*
11 *if the law, ordinance, regulation, solid waste*
12 *management plan, or legally binding provision*
13 *is applied to the transportation of solid waste*
14 *described in subclause (III), to a proposed or ex-*
15 *isting waste management facility designated be-*
16 *fore May 15, 1994, or to the management or dis-*
17 *posal of such solid waste at such a facility,*
18 *under such law, ordinance, regulation, solid*
19 *waste management plan, or legally binding pro-*
20 *vision.*
21 *“(ii) Any law, ordinance, regulation, solid*
22 *waste management plan, or legally binding pro-*
23 *vision—*
24 *“(I) that is adopted before May 15,*
25 *1994; and*

1 “(II) that pertains to the transpor-
2 tation or management of recyclable mate-
3 rials generated within the boundaries of a
4 State or qualified political subdivision;
5 if the law, ordinance, regulation, solid waste
6 management plan, or legally binding provision
7 is applied to the transportation of recyclable ma-
8 terials that are generated within the boundaries,
9 and with respect to which the generator or owner
10 of the materials, and the State or qualified polit-
11 ical subdivision, have met the appropriate condi-
12 tions described in subsection (b)(1), to a pro-
13 posed or existing facility for recyclable materials
14 designated before May 15, 1994, or to the man-
15 agement of such materials, under such law, ordi-
16 nance, regulation, solid waste management plan,
17 or legally binding provision.

18 “(2) CONTRACT INFORMATION.—A party to a
19 contract or other agreement that is described in sub-
20 paragraph (A) or (B) of paragraph (1) shall provide
21 a copy of the contract or agreement to the State or
22 qualified political subdivision on request. Any propri-
23 etary information contained in the contract or agree-
24 ment may be omitted in the copy, but the information
25 that appears in the copy shall include at least the

1 *date that the contract or agreement was signed, the*
2 *volume of municipal solid waste or recyclable mate-*
3 *rials covered by the contract or agreement with re-*
4 *spect to which the State or qualified political subdivi-*
5 *sion could otherwise exercise authority under sub-*
6 *section (a) or paragraph (1)(C), the source of the*
7 *waste or materials, the destination of the waste or*
8 *materials, the duration of the contract or agreement,*
9 *and the parties to the contract or agreement.*

10 “(3) *EFFECT ON INTERSTATE COMMERCE.*—Any
11 *contract or agreement described in subparagraph (A)*
12 *or (B) of paragraph (1), and any law, ordinance, reg-*
13 *ulation, solid waste management plan, or legally*
14 *binding provision described in subparagraph (C) of*
15 *paragraph (1), shall be considered to be a reasonable*
16 *regulation of commerce by a State or qualified politi-*
17 *cal subdivision, retroactive to the effective date of the*
18 *contract or agreement, or to the date of adoption of*
19 *any such law, ordinance, regulation, solid waste man-*
20 *agement plan, or legally binding provision, and shall*
21 *not be considered to be an undue burden on or other-*
22 *wise as impairing, restraining, or discriminating*
23 *against interstate commerce.*

24 “(4) *LIMITATION.*—Any designation by a State
25 *or qualified political subdivision of any waste man-*

1 *agement facility or facility for recyclable materials*
2 *after the date of enactment of this section shall be*
3 *made in compliance with subsection (c). Nothing in*
4 *this paragraph shall affect any designation made be-*
5 *fore the date of enactment of this section, and any*
6 *such designation shall be deemed to satisfy the re-*
7 *quirements of subsection (c).*

8 *“(g) SAVINGS CLAUSE.—*

9 *“(1) FEDERAL OR STATE ENVIRONMENTAL*
10 *LAWS.—Nothing in this section is intended to super-*
11 *sede, amend, or otherwise modify Federal or State en-*
12 *vironmental laws (including regulations) that apply*
13 *to the disposal or management of solid waste or recy-*
14 *clable materials at waste management facilities or fa-*
15 *cilities for recyclable materials.*

16 *“(2) STATE LAW.—Nothing in this section shall*
17 *be interpreted to authorize a qualified political sub-*
18 *division to exercise the authority granted by this sec-*
19 *tion in a manner inconsistent with State law.*

20 *“(h) PROHIBITION.—No political subdivision may ex-*
21 *ercise flow control authority to direct the movement of mu-*
22 *nicipal solid waste to any waste management facility for*
23 *which a Federal permit was denied twice before the enact-*
24 *ment of this section.*

1 “(i) *DEFINITIONS.*—For purposes of this section only,
2 the following definitions apply:

3 “(1) *COMMITTED TO THE DESIGNATION OF ONE*
4 *OR MORE WASTE MANAGEMENT FACILITIES.*—The
5 term ‘committed to the designation of one or more
6 waste management facilities’ means that a State or
7 qualified political subdivision was legally bound to
8 designate one or more existing or future waste man-
9 agement facilities or performed or caused to be per-
10 formed one or more of the following actions for the
11 purpose of designating one or more such facilities:

12 “(A) *Obtained all required permits for the*
13 *construction of such waste management facility*
14 *prior to May 15, 1994.*

15 “(B) *Executed contracts for the construction*
16 *of such waste management facility prior to May*
17 *15, 1994.*

18 “(C) *Presented revenue bonds for sale to*
19 *specifically provide revenue for the construction*
20 *of such waste management facility prior to May*
21 *15, 1994.*

22 “(D) *Submitted to the appropriate regu-*
23 *latory agency or agencies, on or before May 15,*
24 *1994, administratively complete permit applica-*

1 *tions for the construction and operation of a*
2 *waste management facility.*

3 *“(E) Formed a public authority or a joint*
4 *agreement among qualified political subdivi-*
5 *sions, pursuant to a law authorizing such forma-*
6 *tion for the purposes of designating facilities.*

7 *“(F) Executed a contract or agreement that*
8 *obligates or otherwise requires a State or quali-*
9 *fied political subdivision to deliver a minimum*
10 *quantity of solid waste to a waste management*
11 *facility and that obligates or otherwise requires*
12 *the State or qualified political subdivision to*
13 *pay for that minimum quantity of solid waste*
14 *even if the stated minimum quantity of solid*
15 *waste is not delivered within a required time-*
16 *frame, otherwise commonly known as a “put or*
17 *pay agreement”.*

18 *“(G) Adopted, pursuant to a State statute*
19 *that specifically described the method for des-*
20 *ignating by solid waste management districts, a*
21 *resolution of preliminary designation that speci-*
22 *fies criteria and procedures for soliciting propos-*
23 *als to designate facilities after having completed*
24 *a public notice and comment period.*

1 “(H) Adopted, pursuant to a State statute
2 that specifically described the method for des-
3 ignating by solid waste management districts, a
4 resolution of intent to establish designation with
5 a list of facilities for which designation is in-
6 tended.

7 “(2) DESIGNATION; DESIGNATE.—The terms ‘des-
8 ignate’, ‘designated’, ‘designation’ or ‘designating’
9 mean a requirement of a State or qualified political
10 subdivision, and the act of a State or qualified politi-
11 cal subdivision, to require that all or any portion of
12 the municipal solid waste that is generated within the
13 boundaries of the State or qualified political subdivi-
14 sion be delivered to a waste management facility
15 identified by a State or qualified political subdivi-
16 sion, and specifically includes put or pay agreements
17 of the type described in paragraph (1)(F).

18 “(3) FLOW CONTROL AUTHORITY.—The term
19 ‘flow control authority’ means the authority to control
20 the movement of solid waste or recyclable materials
21 and direct such waste or recyclable materials to one
22 or more designated waste management facilities or fa-
23 cilities for recyclable materials.

24 “(4) INDUSTRIAL SOLID WASTE.—The term ‘in-
25 dustrial solid waste’ means solid waste generated by

1 *manufacturing or industrial processes, including*
2 *waste generated during scrap processing and scrap*
3 *recycling, that is not hazardous waste regulated under*
4 *subtitle C. 'Industrial solid waste' does not include*
5 *municipal solid waste specified in paragraph*
6 *(5)(A)(iii).*

7 *“(5) MUNICIPAL SOLID WASTE.—*

8 *“(A) IN GENERAL.—Subject to the limita-*
9 *tions of subsection (b)(3), the term ‘municipal*
10 *solid waste’ means—*

11 *“(i) any solid waste discarded by a*
12 *household, including a single or multifamily*
13 *residence;*

14 *“(ii) any solid waste that is discarded*
15 *by a commercial, institutional, or indus-*
16 *trial source;*

17 *“(iii) residue remaining after recyc-la-*
18 *ble materials have been separated or di-*
19 *verted from municipal solid waste described*
20 *in clause (i) or (ii);*

21 *“(iv) any waste material or waste sub-*
22 *stance removed from a septic tank, septage*
23 *pit, or cesspool, other than from portable*
24 *toilets; and*

1 “(v) conditionally exempt small quan-
2 tity generator waste under section 3001(d),
3 if it is collected, processed or disposed with
4 other municipal solid waste as part of mu-
5 nicipal solid waste services.

6 “(B) EXCLUSIONS.—The term ‘municipal
7 solid waste’ shall not include any of the follow-
8 ing:

9 “(i) Hazardous waste required to be
10 managed in accordance with subtitle C
11 (other than waste described in subpara-
12 graph (A)(v)), solid waste containing a pol-
13 ychlorinated biphenyl regulated under the
14 Toxic Substances Control Act (15 U.S.C.
15 2601 et seq.), or medical waste listed in sec-
16 tion 11002.

17 “(ii)(I) A recyclable material.

18 “(II) A material or a product returned
19 from a dispenser or distributor to the man-
20 ufacturer or the agent of the manufacturer
21 for credit, evaluation, or reuse unless such
22 material or product is discarded or aban-
23 doned for collection, disposal or combustion.

24 “(III) A material or product that is an
25 out-of-date or unmarketable material or

1 *product, or is a material or product that*
2 *does not conform to specifications, and that*
3 *is returned to the manufacturer or the agent*
4 *of the manufacturer for credit, evaluation,*
5 *or reuse unless such material or product is*
6 *discarded or abandoned for collection, dis-*
7 *posal or combustion.*

8 *“(iii) Any solid waste (including con-*
9 *taminated soil and debris) resulting from a*
10 *response action taken under section 104 or*
11 *106 of the Comprehensive Environmental*
12 *Response, Compensation, and Liability Act*
13 *of 1980 (42 U.S.C. 9604 or 9606) or a cor-*
14 *rective action taken under this Act.*

15 *“(iv) (I) Industrial solid waste.*

16 *“(II) Any solid waste that is generated*
17 *by an industrial facility and transported*
18 *for the purpose of containment, storage, or*
19 *disposal to a facility that is owned or oper-*
20 *ated by the generator of the waste, or a fa-*
21 *ility that is located on property owned by*
22 *the generator.*

23 *“(6) QUALIFIED POLITICAL SUBDIVISION.—The*
24 *term ‘qualified political subdivision’ means a govern-*
25 *mental entity or political subdivision of a State, as*

1 *authorized by the State, to plan for, or determine the*
2 *methods to be utilized for, the collection, transpor-*
3 *tation, disposal or other management of municipal*
4 *solid waste generated within the boundaries of the*
5 *area served by the governmental entity or political*
6 *subdivision.*

7 “(7) *RECYCLABLE MATERIAL.*—*The term ‘recy-*
8 *clable material’ means any material (including any*
9 *metal, glass, plastic, textile, wood, paper, rubber, or*
10 *other material) that has been separated, or diverted at*
11 *the point of generation, from solid waste for the pur-*
12 *pose of recycling, reclamation, or reuse.*

13 “(8) *SOLID WASTE MANAGEMENT PLAN.*—*The*
14 *term ‘solid waste management plan’ means a plan for*
15 *the transportation, treatment, processing, composting,*
16 *combustion, disposal or other management of munici-*
17 *pal solid waste, adopted by a State or qualified polit-*
18 *ical subdivision pursuant to and conforming with*
19 *State law.*

20 “(9) *WASTE MANAGEMENT FACILITY.*—*The term*
21 *‘waste management facility’ means any facility or fa-*
22 *ilities in which municipal solid waste, incinerator*
23 *ash from a solid waste incineration unit, or construc-*
24 *tion debris or demolition debris is separated, stored,*

1 *transferred, treated, processed, combusted, deposited or*
 2 *disposed.*

3 “(10) *EXISTING WASTE MANAGEMENT FACIL-*
 4 *ITY.—The term ‘existing waste management facility’*
 5 *means a facility under construction or in operation*
 6 *as of May 15, 1994.*

7 “(11) *PROPOSED WASTE MANAGEMENT FACIL-*
 8 *ITY.—The term ‘proposed waste management facility’*
 9 *means a facility that has been specifically identified*
 10 *and designated, but that was not under construction,*
 11 *as of May 15, 1994.*

12 “(12) *FUTURE WASTE MANAGEMENT FACILITY.—*
 13 *The term ‘future waste management facility’ means*
 14 *any other waste management facility.’”.*

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

16 *The table of contents in section 1001 of the Solid Waste*
 17 *Disposal Act (42 U.S.C. prec. 6901) (as amended by section*
 18 *103) is further amended by adding after the item relating*
 19 *to section 4011 the following new item:*

*“Sec. 4012. Congressional authorization of State control over transportation, man-
 agement and disposal of municipal solid waste.”.*

20 Amend the title so as to read: “A bill to amend the
 21 Solid Waste Disposal Act to provide congressional author-
 22 ization for restrictions on receipt of out-of-State municipal

- 1 solid waste and for State control over transportation of
- 2 municipal solid waste, and for other purposes.”.

Attest:

Clerk.

103RD CONGRESS
2^D SESSION

S. 2345

AMENDMENTS