

108TH CONGRESS  
2D SESSION

# H. R. 4940

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State and foreign municipal solid waste, to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2004

Mr. GILLMOR (for himself, Mr. DINGELL, Mr. GREENWOOD, Mr. ROGERS of Michigan, Mr. STUPAK, Mr. UPTON, Mr. HALL, Mr. STEARNS, Mr. PICKERING, Mr. TAUZIN, Mr. TERRY, Mr. RADANOVICH, Mr. PITTS, Mr. DEAL of Georgia, Mrs. CUBIN, Mrs. MILLER of Michigan, Mr. OXLEY, Mr. BUYER, Mr. BILIRAKIS, Mr. KILDEE, Mr. SULLIVAN, Mr. GREEN of Texas, Mr. BROWN of Ohio, Mr. STRICKLAND, Mr. LEVIN, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State and foreign municipal solid waste, to direct the Administrator of the Environmental Protection Agency to carry out certain authorities under an agreement with Canada respecting the importation of municipal solid waste, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Municipal Solid Waste  
5 Responsibility Act of 2004”.

6 **SEC. 2. INTERSTATE AND INTERNATIONAL TRANSPOR-**  
7 **TATION AND DISPOSAL OF MUNICIPAL SOLID**  
8 **WASTE.**

9       (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
10 posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
11 after section 4010 the following new sections:

12 **“SEC. 4011. INTERSTATE TRANSPORTATION AND DISPOSAL**  
13 **OF MUNICIPAL SOLID WASTE.**

14       “(a) RESTRICTION ON RECEIPT OF OUT-OF-STATE  
15 WASTE.—

16               “(1) IN GENERAL.—

17                       “(A) AUTHORIZATION.—A landfill or incin-  
18 erator in a State may not receive for disposal  
19 or incineration any out-of-State municipal solid  
20 waste unless the owner or operator of such  
21 landfill or incinerator obtains explicit authoriza-  
22 tion (as part of a host community agreement)  
23 from the affected local government to receive  
24 the waste.

1           “(B) REQUIREMENTS FOR AUTHORIZA-  
2           TION.—An authorization granted pursuant to  
3           subparagraph (A) shall—

4                   “(i) be granted by formal action at a  
5                   meeting;

6                   “(ii) be recorded in writing in the offi-  
7                   cial record of the meeting; and

8                   “(iii) remain in effect according to its  
9                   terms.

10           “(C) DISCRETIONARY TERMS AND CONDI-  
11           TIONS.—An authorization granted pursuant to  
12           subparagraph (A) may specify terms and condi-  
13           tions, including an amount of out-of-State  
14           waste that an owner or operator may receive  
15           and the duration of the authorization.

16           “(D) NOTIFICATION.—Promptly, but not  
17           later than 90 days after an authorization is  
18           granted, the affected local government shall no-  
19           tify the Governor, contiguous local govern-  
20           ments, and any contiguous Indian tribes of an  
21           authorization granted under this subsection.

22           “(2) INFORMATION.—Prior to seeking an au-  
23           thorization to receive out-of-State municipal solid  
24           waste pursuant to this subsection, the owner or op-  
25           erator of the facility seeking such authorization shall

1 provide (and make readily available to the Governor,  
2 each contiguous local government and Indian tribe,  
3 and any other interested person for inspection and  
4 copying) the following information:

5 “(A) A brief description of the facility, in-  
6 cluding, with respect to both the facility and  
7 any planned expansion of the facility, the size  
8 and ultimate waste capacity of the facility, and  
9 the anticipated monthly and yearly quantities  
10 (expressed in terms of volume) of waste to be  
11 handled.

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

18 “(C) A description of the then current en-  
19 vironmental characteristics of the site, a de-  
20 scription of ground water use in the area (in-  
21 cluding identification of private wells and public  
22 drinking water sources), and a discussion of al-  
23 terations that may be necessitated by, or occur  
24 as 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  
5           pollution control devices, source separation pro-  
6           cedures (if any), methane monitoring and con-  
7           trol, landfill covers, liners or leachate collection  
8           systems, and monitoring programs. In addition,  
9           the description shall include a description of  
10          any waste residuals generated by the facility,  
11          including leachate or ash, and the planned man-  
12          agement of the residuals.

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

1           between       employment       statistics       for  
2           preoperational and postoperational levels.

3           “(H) Any information that is required by  
4           State or Federal law to be provided with re-  
5           spect to any violations of environmental laws  
6           (including regulations) by the owner, the oper-  
7           ator, and any subsidiary of the owner or oper-  
8           ator, the disposition of enforcement proceedings  
9           taken with respect to the violations, and correc-  
10          tive action and rehabilitation measures taken as  
11          a result of the proceedings.

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

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

20          “(3) NOTIFICATION.—Prior to taking formal  
21          action with respect to granting authorization to re-  
22          ceive out-of-State municipal solid waste pursuant to  
23          this 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  
2 newspaper of general circulation at least 30  
3 days before holding a hearing and again at  
4 least 15 days before holding the hearing, except  
5 where State law provides for an alternate form  
6 of public 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) AUTHORIZATION NOT REQUIRED FOR CERTAIN  
11 FACILITIES.—

12           “(1) IN GENERAL.—A landfill or incinerator  
13 may receive for disposal or incineration out-of-State  
14 municipal solid waste in the absence of an authoriza-  
15 tion under subsection (a) if each of the following re-  
16 quirements are met:

17           “(A) The owner or operator provides either  
18 of the following to the Governor of the State in  
19 which the landfill or incinerator is located and  
20 to the affected local government:

21           “(i) Information establishing that, be-  
22 fore the date of enactment of this section,  
23 the owner or operator of the landfill or in-  
24 cinerator has entered into a host commu-  
25 nity agreement or received a State permit

1 specifically authorizing the owner or oper-  
2 ator to accept, at the landfill or inciner-  
3 ator, out-of-State municipal solid waste.  
4 This clause shall be effective only if the  
5 owner or operator complies with all of the  
6 terms and conditions of the host commu-  
7 nity agreement or permit and, in the case  
8 of a permit, notifies the affected local gov-  
9 ernment of the permit, as soon as prac-  
10 ticable but not later than 90 days after the  
11 date of enactment of this section.

12 “(ii) Information establishing that  
13 during 1993 the landfill or incinerator re-  
14 ceived shipments of out-of-State municipal  
15 solid waste. Such information shall be in  
16 such documented form as will result in  
17 criminal penalties under State law in case  
18 of false or misleading information. Such  
19 information shall include information  
20 about the date of shipment, place of origin  
21 of the waste, and the type of waste.

22 “(B) In the case of a landfill or incinerator  
23 in operation on the date of enactment of this  
24 section, the landfill or incinerator must be in  
25 compliance as of such date with applicable Fed-

1           eral and State environmental laws (including  
2           regulations), including, in the case of landfills,  
3           applicable laws and regulations relating to de-  
4           sign and location standards, leachate collection,  
5           ground water monitoring, and financial assur-  
6           ance for closure and post-closure care and cor-  
7           rective action.

8           “(2) AMOUNT RECEIVED UNDER PARAGRAPH  
9           (1)(A)(ii).—

10           “(A) STATES NOT EXERCISING RATCHET  
11           AUTHORITY UNDER SUBSECTION (c)(5).—

12           “(i) FACILITIES COVERED.—This sub-  
13           paragraph shall cover only landfills and in-  
14           cinerators in States which do not establish  
15           a limit on out-of-State municipal solid  
16           waste under subsection (c)(5).

17           “(ii) WASTE UNDER CONTRACT.—For  
18           any landfill or incinerator covered by this  
19           subparagraph and authorized to receive  
20           out-of-State municipal solid waste pursu-  
21           ant to paragraph (1), if out-of-State mu-  
22           nicipal solid waste was received at such  
23           landfill or incinerator during 1993 under a  
24           contract, paragraph (1)(A)(ii) shall apply  
25           to the amount of out-of-State municipal

1 solid waste specified in the contract for the  
2 longer of the following periods:

3 “(I) The life of the later of the  
4 contract in effect in 1993 or any sub-  
5 sequent contract in effect as of the  
6 date of enactment of this section.

7 “(II) The period ending 6 years  
8 after the date of enactment of this  
9 section.

10 For purposes of subclause (I), the term  
11 ‘life of the contract’ shall not include any  
12 renewal, novation, or other extension there-  
13 of (as determined under State law).

14 “(iii) SPOT WASTE.—For a landfill or  
15 incinerator covered by this subparagraph  
16 and authorized to receive out-of-State mu-  
17 nicipal solid waste pursuant to paragraph  
18 (1), if out-of-State municipal solid waste  
19 was received at such landfill or incinerator  
20 during 1993 in the absence of a contract,  
21 paragraph (1)(A)(ii) shall apply to the re-  
22 ceipt of out-of-State municipal solid waste  
23 for a period ending 3 years after the date  
24 of enactment of this section.

1                   “(iv) CONTRACT AND SPOT WASTE.—  
2                   For any landfill or incinerator covered by  
3                   this subparagraph and authorized to re-  
4                   ceive out-of-State municipal solid waste  
5                   pursuant to paragraph (1), if out-of-State  
6                   municipal solid waste was received at such  
7                   landfill or incinerator during 1993 both  
8                   under a contract and otherwise, clause (ii)  
9                   shall apply with respect to the waste re-  
10                  ceived under the contract and clause (iii)  
11                  shall apply to the other municipal solid  
12                  waste received at the landfill or inciner-  
13                  ator.

14                  “(B) STATES EXERCISING RATCHET AU-  
15                  THORITY UNDER SUBSECTION (c)(5).—

16                   “(i) FACILITIES COVERED.—This sub-  
17                   paragraph shall cover only landfills and in-  
18                   cinerators in States which establish a limit  
19                   on out-of-State municipal solid waste  
20                   under subsection (c)(5).

21                   “(ii) WASTE UNDER CONTRACT.—For  
22                   any landfill or incinerator covered by this  
23                   subparagraph and authorized to receive  
24                   out-of-State municipal solid waste pursu-  
25                   ant to paragraph (1), if out-of-State mu-

1           municipal solid waste was received at such  
2           landfill or incinerator during 1993 under a  
3           contract, paragraph (1)(A)(ii) shall apply  
4           to the amount of out-of-State municipal  
5           solid waste specified in the contract for the  
6           longer of the following periods:

7                   “(I) The life of the later of the  
8                   contract in effect in 1993 or any sub-  
9                   sequent contract in effect as of the  
10                  date of enactment of this section.

11                  “(II) The period ending January  
12                  1, 2007.

13           For purposes of subclause (I), the term  
14           ‘life of the contract’ shall not include any  
15           renewal, novation, or other extension there-  
16           of (as determined under State law).

17                  “(iii) SPOT WASTE.—For a landfill or  
18                  incinerator covered by this subparagraph  
19                  and authorized to receive out-of-State mu-  
20                  nicipal solid waste pursuant to paragraph  
21                  (1), if out-of-State municipal solid waste  
22                  was received at such landfill or incinerator  
23                  during 1993 in the absence of a contract,  
24                  paragraph (1)(A)(ii) shall apply to the re-

1 receipt of out-of-State municipal solid waste  
2 for a period ending January 1, 2007.

3 “(iv) CONTRACT AND SPOT WASTE.—  
4 For any landfill or incinerator covered by  
5 this subparagraph and authorized to re-  
6 ceive out-of-State municipal solid waste  
7 pursuant to paragraph (1), if out-of-State  
8 municipal solid waste was received at such  
9 landfill or incinerator during 1993 both  
10 under a contract and otherwise, clause (ii)  
11 shall apply with respect to the waste re-  
12 ceived under the contract and clause (iii)  
13 shall apply to the other municipal solid  
14 waste received at the landfill or inciner-  
15 ator.

16 “(3) AVAILABILITY OF DOCUMENTATION.—The  
17 owner or operator of a landfill or incinerator which  
18 is exempt under paragraph (1) of this subsection  
19 from the requirements of subsection (a) shall provide  
20 to the State and affected local government, and  
21 make available for inspection by the public in the af-  
22 fected local community, a copy of the host commu-  
23 nity agreement or other documentation required  
24 under paragraph (1). The owner or operator may  
25 omit any proprietary information contained in the

1 contracts, but shall ensure that at least the following  
2 information is apparent: the volume of out-of-State  
3 municipal solid waste to be received, the source of  
4 the waste, and the duration of the contract.

5 “(4) DENIED OR REVOKED PERMITS.—A land-  
6 fill or incinerator may not receive for disposal or in-  
7 cineration out-of-State municipal solid waste in the  
8 absence of a host community agreement if the oper-  
9 ating permit or license for the landfill or incinerator  
10 (or renewal thereof) was denied or revoked by the  
11 appropriate State agency before the date of enact-  
12 ment of this section unless such permit or license (or  
13 renewal) has been reinstated as of such date of en-  
14 actment.

15 “(5) WASTE WITHIN BI-STATE METROPOLITAN  
16 STATISTICAL AREAS.—The owner or operator of a  
17 landfill or incinerator in a State may receive out-of-  
18 State municipal solid waste without obtaining au-  
19 thorization under subsection (a) from the affected  
20 local government if the out-of-State waste is gen-  
21 erated within, and the landfill or incinerator is lo-  
22 cated within, the same bi-State level A metropolitan  
23 statistical area (as defined by the Office of Manage-  
24 ment and Budget and as listed by the Office of  
25 Management and Budget as of the date of enact-

1       ment of this section) which contains two contiguous  
2       major cities each of which is in a different State.

3       “(c) AUTHORITY OF STATE TO RESTRICT OUT-OF-  
4 STATE MUNICIPAL SOLID WASTE.—

5               “(1) LIMITATIONS ON AMOUNT OF WASTE RE-  
6 CEIVED.—

7                       “(A) LIMIT FOR ALL FACILITIES IN THE  
8 STATE.—A State may limit the amount of out-  
9 of-State municipal solid waste received annually  
10 for disposal at each landfill or incinerator in the  
11 State to the limitation amount described in  
12 paragraph (2), except as provided in this sub-  
13 section. No such limit may conflict—

14                               “(i) with provisions of a permit spe-  
15 cifically authorizing the owner or operator  
16 to accept, at the facility, out-of-State mu-  
17 nicipal solid waste; or

18                               “(ii) with a host community agree-  
19 ment entered into between the owner or  
20 operator of any such landfill or incinerator  
21 and the affected local government.

22                       “(B) CONFLICT.—A limit referred to in  
23 subparagraph (A) shall be treated as conflicting  
24 with a permit or host community agreement  
25 if—

1           “(i) the permit or host community  
2           agreement establishes a higher limit; or

3           “(ii) the permit or host community  
4           agreement does not establish any limit,  
5           on the amount of out-of-State municipal solid  
6           waste which may be received annually at the fa-  
7           cility.

8           “(C) LIMIT FOR PARTICULAR FACILI-  
9           TIES.—At the request of an affected local gov-  
10          ernment that has not executed a host commu-  
11          nity agreement, the State may limit the amount  
12          of out-of-State municipal solid waste received  
13          annually for disposal at a particular landfill or  
14          incinerator to the limitation amount described  
15          in paragraph (2). No such limit may conflict  
16          with provisions of a permit specifically author-  
17          izing the owner or operator to accept, at the fa-  
18          cility, out-of-State municipal solid waste.

19          “(D) EFFECT ON OTHER LAWS.—Nothing  
20          in this subsection shall be interpreted or con-  
21          strued to have any effect on any State law re-  
22          lating to contracts.

23          “(2) LIMITATION AMOUNT.—For any landfill or  
24          incinerator that commenced receiving documented  
25          out-of-State municipal solid waste before the date of

1 enactment of this section, the limitation amount re-  
2 ferred to in paragraph (1) for any year shall be  
3 equal to the amount of out-of-State municipal solid  
4 waste received for disposal at the landfill or inciner-  
5 ator concerned during calendar year 1993. The doc-  
6 umentation referred to in this paragraph shall be  
7 such as would result in criminal penalties in case of  
8 false or misleading information. Such documentation  
9 shall include the amount of waste received, place of  
10 origin, including the identity of the generator, date  
11 of shipment, and type of waste.

12 “(3) OTHER LIMITATION AMOUNT.—(A) Except  
13 as provided in subparagraph (B), the limitation  
14 amount referred to in paragraph (1) shall be zero  
15 for a landfill or incinerator authorized to receive out-  
16 of-State municipal solid waste solely by reason of re-  
17 ceipt in calendar year 1993 of municipal solid waste  
18 that was not received under a contract, permit, or  
19 host community agreement.

20 “(B) The limitation amount of zero referred to  
21 in subparagraph (A) shall not be applicable to re-  
22 ceipt of any out-of-State municipal solid waste by  
23 the landfill or incinerator if the owner or operator,  
24 on the date of enactment of this section, owned the

1 land on which the facility that received such waste  
2 is located.

3 “(4) NO DISCRIMINATION.—In establishing a  
4 limitation under this subsection, a State shall act in  
5 a consistent manner that does not discriminate  
6 against any shipments of out-of-State municipal  
7 solid waste on the basis of State of origin.

8 “(5) ADDITIONAL LIMIT FOR MUNICIPAL  
9 WASTE.—(A) Any State that imported more than  
10 750,000 tons of out-of-State municipal solid waste  
11 in 1993 (in this paragraph referred to as an ‘import-  
12 ing State’) may establish a limit under this para-  
13 graph on the amount of out-of-State municipal solid  
14 waste received pursuant to the authority of sub-  
15 section (b)(1) for disposal at landfills and inciner-  
16 ators in the importing State. A limit under this  
17 paragraph may be in addition to, or in lieu of, any  
18 other limit imposed under this subsection. A limit  
19 under this paragraph may be imposed only if each  
20 of the following requirements are met:

21 “(i) The limit shall not conflict (within the  
22 meaning of paragraph (1)(B)) with any permit  
23 or host community agreement authorizing the  
24 receipt of out-of-State municipal solid waste.

1           “(ii) The importing State shall notify the  
 2           Governor of the exporting State or States of the  
 3           proposed limit at least 12 months before im-  
 4           position of the limit.

5           “(iii) The importing State shall notify the  
 6           Governor of the exporting State or States of the  
 7           proposed limit at least 90 days before enforce-  
 8           ment of the limit.

9           “(iv) The percentage reduction in the  
 10          amount of out-of-State municipal solid waste  
 11          which is received at each facility in the import-  
 12          ing State at which a limit may be established  
 13          under this paragraph shall be uniform for all  
 14          such facilities.

15          “(B) The limit established under this para-  
 16          graph shall be a percentage of the amount of out-  
 17          of-State municipal solid waste generated in the ex-  
 18          porting State during calendar year 1993 and re-  
 19          ceived at facilities in the importing State in which  
 20          a limit is established under this paragraph. For any  
 21          calendar year after 2003, the percentage shall be as  
 22          specified in the following table:

<b>“Calendar year:</b>	<b>Applicable percentage:</b>
2004 .....	85
2005 .....	75
2006 .....	65
2007 .....	55
2008 and thereafter .....	50.

1       “(d) NEEDS DETERMINATION.—Any comprehensive  
2 solid waste management plan approved under Federal or  
3 State law and any implementation of such plan through  
4 the State permitting process may take into account local  
5 and regional needs for solid waste disposal capacity. An  
6 affected local government may make a determination that  
7 there is no local or regional need for a new landfill or in-  
8 cinerator or major modification to an existing facility in  
9 the area under the jurisdiction of the affected local govern-  
10 ment. Such determination shall be based on a finding that  
11 the proposed facility does not have a host community  
12 agreement or is inconsistent with the capacity needs estab-  
13 lished in the comprehensive solid waste management plan  
14 adopted by the affected local government pursuant to  
15 State law. No comprehensive solid waste management plan  
16 may expressly prohibit the importation of municipal solid  
17 waste from out of State.

18       “(e) IMPLEMENTATION AND ENFORCEMENT.—Any  
19 State may adopt such laws and regulations, not incon-  
20 sistent with this section, as are necessary to implement  
21 and enforce this section, including provisions for penalties.

22       “(f) EFFECT ON INTERSTATE COMMERCE.—No  
23 State limitation established as provided in subsection (c),  
24 no State planning and permitting process referred to in  
25 subsection (d), and no State law or regulation referred to

1 in subsection (e) shall be considered to impose an undue  
2 burden on interstate commerce or to otherwise impair, re-  
3 strain, or discriminate against interstate commerce.

4 “(g) ANNUAL STATE REPORT.—Each year the owner  
5 or operator of each landfill or incinerator receiving out-  
6 of-State municipal solid waste shall submit to the Gov-  
7 ernor of the State in which the landfill or incinerator is  
8 located information specifying the amount of out-of-State  
9 municipal solid waste received for disposal during the pre-  
10 ceding year. Each year each such State shall publish and  
11 make available to the public a report containing informa-  
12 tion on the amount of out-of-State municipal solid waste  
13 received for disposal in the State during the preceding  
14 year.

15 “(h) DEFINITIONS.—For purposes of this section:

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

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

1           “(ii) if there is no such body created by  
2           State law, the elected officials of the city, town,  
3           township, borough, county, or parish exercising  
4           primary responsibility for the use of land on  
5           which the facility is located or proposed to be  
6           located.

7           No host community agreement that is entered into  
8           by the elected officials described in clause (ii) may  
9           be overturned by an act of a public body described  
10          in clause (i) if such body is created by State law  
11          after the execution of such host community agree-  
12          ment.

13          “(B) Two or more Governors of adjoining  
14          States may use the authority provided in section  
15          1005(b) to enter into an agreement under which  
16          contiguous units of local government located in each  
17          of the adjoining States may act jointly as the af-  
18          fected local government for purposes of providing  
19          authorization for municipal solid waste generated in  
20          the jurisdiction of one of such units of local govern-  
21          ment and received for disposal or incineration in an-  
22          other.

23          “(2) HOST COMMUNITY AGREEMENT.—The  
24          term ‘host community agreement’ means a written,  
25          legally binding agreement, lawfully entered into be-

1       tween an owner or operator of a landfill or inciner-  
2       ator and an affected local government that specifi-  
3       cally authorizes the landfill or incinerator to receive  
4       out-of-State municipal solid waste.

5               “(3) MUNICIPAL SOLID WASTE.—

6                       “(A) WASTE INCLUDED.—Except as pro-  
7                       vided in subparagraph (B), the term ‘municipal  
8                       solid waste’ means—

9                               “(i) all waste materials discarded for  
10                              disposal by households, including single  
11                              and multifamily residences, and hotels and  
12                              motels; and

13                             “(ii) all waste materials discarded for  
14                             disposal that were generated by commer-  
15                             cial, institutional, municipal, and industrial  
16                             sources, to the extent such materials—

17                                       “(I) are essentially the same as  
18                                       materials described in clause (i); and

19                                       “(II) were collected and disposed  
20                                       of with other municipal solid waste  
21                                       described in clause (i) or subclause (I)  
22                                       of this clause as part of normal mu-  
23                                       nicipal solid waste collection services,  
24                                       except that this subclause does not  
25                                       apply to hazardous materials other

1 than hazardous materials that, pursu-  
2 ant to regulations issued under sec-  
3 tion 3001(d), are not subject to regu-  
4 lation under subtitle C.

5 Examples of municipal solid waste include food  
6 and yard waste, paper, clothing, appliances,  
7 consumer product packaging, disposable dia-  
8 pers, office supplies, cosmetics, glass and metal  
9 food containers, and household hazardous  
10 waste. Such term shall include debris resulting  
11 from construction, remodeling, repair, or demo-  
12 lition of structures.

13 “(B) WASTE NOT INCLUDED.—The term  
14 ‘municipal solid waste’ does not include any of  
15 the following:

16 “(i) Any solid waste identified or list-  
17 ed as a hazardous waste under section  
18 3001, except for household hazardous  
19 waste.

20 “(ii) Any solid waste, including con-  
21 taminated soil and debris, resulting from—

22 “(I) a response action taken  
23 under section 104 or 106 of the Com-  
24 prehensive Environmental Response,

1 Compensation, and Liability Act (42  
2 U.S.C. 9604 or 9606);

3 “(II) a response action taken  
4 under a State law with authorities  
5 comparable to the authorities of such  
6 section 104 or 106; or

7 “(III) a corrective action taken  
8 under this Act.

9 “(iii) Recyclable materials that have  
10 been separated, at the source of the waste,  
11 from waste otherwise destined for disposal  
12 or that have been managed separately from  
13 waste destined for disposal.

14 “(iv) Scrap rubber to be used as a  
15 fuel source.

16 “(v) Materials and products returned  
17 from a dispenser or distributor to the man-  
18 ufacturer or an agent of the manufacturer  
19 for credit, evaluation, and possible reuse.

20 “(vi) Any solid waste that is—

21 “(I) generated by an industrial  
22 facility; and

23 “(II) transported for the purpose  
24 of treatment, storage, or disposal to a  
25 facility or unit thereof that is owned

1 or operated by the generator of the  
2 waste, located on property owned by  
3 the generator or a company with  
4 which the generator is affiliated, or  
5 the capacity of which is contractually  
6 dedicated exclusively to a specific gen-  
7 erator, so long as the disposal area  
8 complies with local and State land use  
9 and zoning regulations applicable to  
10 the disposal site.

11 “(vii) Any medical waste that is seg-  
12 regated from or not mixed with solid  
13 waste.

14 “(viii) Sewage sludge and residuals  
15 from any sewage treatment plant.

16 “(ix) Combustion ash generated by re-  
17 source recovery facilities or municipal in-  
18 cinerators, or waste from manufacturing or  
19 processing (including pollution control) op-  
20 erations not essentially the same as waste  
21 normally generated by households.

22 “(4) OUT-OF-STATE MUNICIPAL SOLID  
23 WASTE.—The term ‘out-of-State municipal solid  
24 waste’, means, with respect to any State, municipal  
25 solid waste generated outside of the State. The term

1 also includes municipal solid waste generated outside  
2 of the United States.

3 “(5) SPECIFIC AUTHORIZATION.—The term  
4 ‘specifically authorizes’ refers to an explicit author-  
5 ization, contained in a host community agreement or  
6 permit, to import waste from outside the State.  
7 Such authorization may include a reference to a  
8 fixed radius surrounding the landfill or incinerator  
9 which includes an area outside the State or a ref-  
10 erence to ‘any place of origin’, reference to specific  
11 places outside the State, or use of such phrases as  
12 ‘regardless of origin’ or ‘outside the State’. The lan-  
13 guage for such authorization may vary as long as it  
14 clearly and affirmatively states the approval or con-  
15 sent of the affected local government or State for re-  
16 ceipt of municipal solid waste from sources or loca-  
17 tions outside the State from which the owner or op-  
18 erator of a landfill or incinerator proposes to import  
19 it. The authorization shall not include general ref-  
20 erences to the receipt of waste outside the jurisdic-  
21 tion of the affected local government.

22 “(i) COST RECOVERY SURCHARGE.—

23 “(1) AUTHORITY.—A State may impose and  
24 collect a cost recovery surcharge on the combustion

1 or disposal in a landfill or incinerator of out-of-State  
2 municipal solid waste in such State.

3 “(2) LIMITATION.—During the period begin-  
4 ning on the date of enactment of this section and  
5 ending on December 31, 2006, a State may not im-  
6 pose or collect a cost recovery surcharge from a fa-  
7 cility on any out-of-State municipal solid waste that  
8 meets both of the following conditions:

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

12 “(B) The amount of waste being received  
13 in a calendar year under the contract or con-  
14 tracts does not exceed the amount of waste re-  
15 ceived at the facility during calendar year 2003.

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

21 “(4) USE OF SURCHARGE COLLECTED.—All  
22 cost recovery surcharges collected by a State shall be  
23 used to fund those solid waste management pro-  
24 grams administered by the State or its political sub-

1 divisions that incur costs for which the surcharge is  
2 collected.

3 “(5) CONDITIONS.—(A) Subject to subpara-  
4 graphs (B) and (C), a State may impose and collect  
5 a cost recovery surcharge on the combustion or dis-  
6 posal within the State of out-of-State municipal solid  
7 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  
13 to the State demonstrated under clause (i) that,  
14 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  
22 any other fee or tax assessed against the generation,  
23 transportation, treatment, combustion, or disposal of  
24 solid 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  
7           cost recovery surcharge on the combustion or dis-  
8           posal within the State of out-of-State municipal solid  
9           waste, the State shall bear the burden of estab-  
10          lishing that the cost recovery surcharge satisfies the  
11          conditions set forth in paragraph (5).

12   **“SEC. 4012. INTERNATIONAL TRANSPORTATION AND DIS-**  
13                   **POSAL OF MUNICIPAL SOLID WASTE.**

14          “(a) AUTHORITY.—Consistent with section 4011, a  
15          State may enact a law or laws imposing limitations (in-  
16          cluding a prohibition) on the receipt and disposal of for-  
17          eign municipal solid waste.

18          “(b) EFFECT ON INTERSTATE AND FOREIGN COM-  
19          MERCE.—No State action taken as authorized by this sec-  
20          tion shall be considered to impose an undue burden on  
21          interstate and foreign commerce or to otherwise impair,  
22          restrain, or discriminate against interstate and foreign  
23          commerce.

24          “(c) DEFINITIONS.—For purposes of this section:



1 ipal solid waste under article 3(c) of such agreement, the  
2 Administrator shall—

3 “(1) give substantial weight to the views of the  
4 State or States into which the municipal solid waste  
5 is to be imported, and consider the views of the local  
6 government with jurisdiction over the location where  
7 the waste is to be disposed; and

8 “(2) consider the impact of the importation  
9 on—

10 “(A) continued public support for and ad-  
11 herence to State and local recycling programs;

12 “(B) landfill capacity as provided in com-  
13 prehensive waste management plans;

14 “(C) air emissions from increased vehicular  
15 traffic;

16 “(D) road deterioration from increased ve-  
17 hicular traffic; and

18 “(E) public health and the environment.

19 “(c) COMPLIANCE ORDERS.—(1) Whenever on the  
20 basis of any information the Administrator determines  
21 that any person has violated or is in violation of this sec-  
22 tion, the Administrator may issue an order assessing a  
23 civil penalty for any past or current violation, requiring  
24 compliance immediately or within a specified time period,  
25 or both, or the Administrator may commence a civil action

1 in the United States district court in the district in which  
2 the violation occurred for appropriate relief, including a  
3 temporary or permanent injunction.

4 “(2) Any order issued pursuant to this subsection  
5 shall state with reasonable specificity the nature of the vio-  
6 lation. Any penalty assessed in the order shall not exceed  
7 \$25,000 per day of noncompliance for each violation. In  
8 assessing such a penalty, the Administrator shall take into  
9 account the seriousness of the violation and any good faith  
10 efforts to comply with applicable requirements.

11 “(d) PUBLIC HEARING.—Any order issued under this  
12 section shall become final unless, not later than 30 days  
13 after the order is served, the person or persons named  
14 therein request a public hearing. Upon such request the  
15 Administrator shall promptly conduct a public hearing. In  
16 connection with any proceeding under this section the Ad-  
17 ministrator may issue subpoenas for the attendance and  
18 testimony of witnesses and the production of relevant pa-  
19 pers, books, and documents, and may promulgate rules for  
20 discovery procedures.

21 “(e) VIOLATION OF COMPLIANCE ORDERS.—If a vio-  
22 lator fails to take corrective action within the time speci-  
23 fied in a compliance order, the Administrator may assess  
24 a civil penalty of not more than \$25,000 for each day of  
25 continued noncompliance with the order.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table  
2 of contents of the Solid Waste Disposal Act (42 U.S.C.  
3 prec. 6901) is amended by adding after the item relating  
4 to section 4010 the following new items:

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

“Sec. 4012. International transportation and disposal of municipal solid waste.

“Sec. 4013. Canadian transboundary movement of municipal solid waste.”.

5 **SEC. 3. TREATMENT AND REUSE OF AGRICULTURAL**  
6 **WASTES.**

7 Subtitle H of the Solid Waste Disposal Act (42  
8 U.S.C. 6981 et seq.) is amended—

9 (1) in section 8005—

10 (A) by striking “and” at the end of sub-  
11 section (a)(9);

12 (B) by striking the period at the end of  
13 subsection (a)(10) and inserting “; and”;

14 (C) by adding at the end of subsection (a)  
15 the following:

16 “(11) the benefits of alternatives to open field  
17 disposal of agricultural solid wastes (including bio-  
18 mass).

19 If a municipality or an intermunicipality contains  
20 3,000,000 or more people, the Administrator shall work  
21 with that State and its municipal and intermunicipal pol-  
22 lution control agencies and the agricultural waste genera-  
23 tors in those States to address pollution reduction or pub-  
24 lic health needs, where new treatment and disposal options

1 referred to in paragraph (11) will reduce risks to public  
2 health, improve environmental quality, and conserve land-  
3 fill capacity, demonstrate the value of alternatives to agri-  
4 cultural solid waste disposal, and develop commercially  
5 feasible, environmentally beneficial alternatives and make  
6 those methods and means known. For purposes of the pre-  
7 ceding sentence and paragraph (11) only, agricultural  
8 wastes shall not include urban and forest wood products,  
9 and shall include field and seed crop residues, including  
10 straws from rice and wheat, and fruit and nut crop resi-  
11 dues, including orchard and vineyard pruning and remov-  
12 als.”; and

13 (D) by adding at the end the following new  
14 subsection:

15 “(d) DEFINITION.—For the purposes if this section,  
16 the term ‘pollution control agency’ means—

17 “(1) a single State agency designated by the  
18 Governor of that State as the official State pollution  
19 control agency for purposes of this Act;

20 “(2) an agency established by two or more  
21 States and having substantial powers or duties per-  
22 taining to the prevention and control of pollution;

23 “(3) a city, county, or other local government  
24 health authority, or, in the case of any city, county,  
25 or other local government in which there is an agen-

1       cy other than the health authority charged with re-  
2       sponsibility for enforcing ordinances or laws relating  
3       to the prevention and control of pollution, such other  
4       agency;

5           “(4) an agency of two or more municipalities lo-  
6       cated in the same State or in different States and  
7       having substantial powers or duties pertaining to the  
8       prevention and control of pollution; or

9           “(5) an agency of an Indian tribe responsible  
10      for pollution control.”; and

11           (2) in section 8007—

12           (A) by inserting “(a)” before “There are”;

13           and

14           (B) by adding at the end the following:

15           “(b)(1) Notwithstanding the limitations provided in  
16      section 8006(f), the Administrator may implement a dem-  
17      onstration project relating to the subject described in sec-  
18      tion 8005(a)(11), pursuant to section 8005(b).

19           “(2) There are authorized to be appropriated for gen-  
20      erators of diverted agricultural waste \$6,000,000 to carry  
21      out the demonstration program described in paragraph  
22      (1). Such amounts shall be matched with non-Federal  
23      funding on a one-to-one basis.”.

○