

# Union Calendar No. 130

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2491

[Report No. 109-235]

To amend the Solid Waste Disposal Act to authorize States to restrict receipt of foreign municipal solid waste and implement the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2005

Mr. GILLMOR (for himself, Mr. ROGERS of Michigan, Mr. DINGELL, Mr. STUPAK, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 27, 2005

Additional sponsors: Mr. SCHWARZ of Michigan, Mr. LEVIN, Mr. HOEKSTRA, Mr. KILDEE, Mrs. MILLER of Michigan, Ms. KILPATRICK of Michigan, Mr. EHLERS, and Mr. CAMP

SEPTEMBER 27, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on May 19, 2005]

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## A BILL

To amend the Solid Waste Disposal Act to authorize States to restrict receipt of foreign municipal solid waste and implement the Agreement Concerning the Transboundary

Movement of Hazardous Waste between the United States and Canada, 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 “International Solid*  
5 *Waste Importation and Management Act of 2005”.*

6 **SEC. 2. INTERNATIONAL TRANSPORTATION AND DISPOSAL**  
7 **OF MUNICIPAL SOLID WASTE.**

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

11 **“SEC. 4011. INTERNATIONAL TRANSPORTATION AND DIS-**  
12 **POSAL OF MUNICIPAL SOLID WASTE.**

13 *“(a) STATE AUTHORITY TO ADDRESS IMPORTATION*  
14 *AND MANAGEMENT OF MUNICIPAL SOLID WASTE.—*

15 *“(1) IN GENERAL.—Until the date on which all*  
16 *final regulations issued by the Administrator to im-*  
17 *plement and enforce the Agreement (including notice*  
18 *and consent provisions of the Agreement) become effec-*  
19 *tive, a State may enact a law or laws or issue regula-*  
20 *tions or orders imposing limitations on the receipt*  
21 *and disposal of foreign municipal solid waste within*  
22 *the State. Laws, regulations, and orders enacted or*  
23 *issued before that date may continue in effect accord-*  
24 *ing to their terms after that date.*

1           “(2) *EFFECT ON INTERSTATE AND FOREIGN COM-*  
2           *MERCE.—No State action taken as authorized by this*  
3           *section shall be considered to impose an undue burden*  
4           *on interstate and foreign commerce or to otherwise*  
5           *impair, restrain, or discriminate against interstate*  
6           *and foreign commerce.*

7           “(3) *TRADE AND TREATY OBLIGATIONS.—Noth-*  
8           *ing in this section affects, replaces, or amends prior*  
9           *law relating to the need for consistency with inter-*  
10           *national trade obligations.*

11          “(b) *AUTHORITY OF ADMINISTRATOR.—*

12           “(1) *IN GENERAL.—Beginning immediately after*  
13           *the date of enactment of this section, the Adminis-*  
14           *trator shall—*

15                   “(A) *perform the functions of the Des-*  
16                   *ignated Authority of the United States described*  
17                   *in the Agreement with respect to the importation*  
18                   *and exportation of municipal solid waste under*  
19                   *the Agreement; and*

20                   “(B) *implement and enforce the notice and*  
21                   *consent and other provisions of the Agreement.*

22           “(2) *REGULATIONS.—Not later than 24 months*  
23           *after the date of enactment of this section, the Admin-*  
24           *istrator shall issue final regulations with respect to*

1 *the Administrator’s responsibilities under paragraph*  
2 *(1).*

3 “(3) *CONSENT TO IMPORTATION.—In considering*  
4 *whether to consent to the importation under article*  
5 *3(c) of the Agreement, the Administrator shall—*

6 “(A) *give substantial weight to the views of*  
7 *the State or States into which the municipal*  
8 *solid waste is to be imported, and consider the*  
9 *views of the local government with jurisdiction*  
10 *over the location where the waste is to be dis-*  
11 *posed;*

12 “(B) *consider the impact of the importation*  
13 *on—*

14 “(i) *continued public support for and*  
15 *adherence to State and local recycling pro-*  
16 *grams;*

17 “(ii) *landfill capacity as provided in*  
18 *comprehensive waste management plans;*

19 “(iii) *air emissions from increased ve-*  
20 *hicular traffic; and*

21 “(iv) *road deterioration from increased*  
22 *vehicular traffic; and*

23 “(C) *consider the impact of the importation*  
24 *on homeland security, public health, and the en-*  
25 *vironment.*

1           “(4) *ACTIONS IN VIOLATION OF THE AGREE-*  
2           *MENT.—No person shall import, transport, or export*  
3           *municipal solid waste for final disposal or for incin-*  
4           *eration in violation of the Agreement.*

5           “(c) *COMPLIANCE ORDERS.—(1) Whenever on the*  
6           *basis of any information the Administrator determines that*  
7           *any person has violated or is in violation of this section,*  
8           *the Administrator may issue an order assessing a civil pen-*  
9           *alty for any past or current violation, requiring compliance*  
10           *immediately or within a specified time period, or both, or*  
11           *the Administrator may commence a civil action in the*  
12           *United States district court in the district in which the vio-*  
13           *lation occurred for appropriate relief, including a tem-*  
14           *porary or permanent injunction.*

15           “(2) *Any order issued pursuant to this subsection shall*  
16           *state with reasonable specificity the nature of the violation.*  
17           *Any penalty assessed in the order shall not exceed \$25,000*  
18           *per day of noncompliance for each violation. In assessing*  
19           *such a penalty, the Administrator shall take into account*  
20           *the seriousness of the violation and any good faith efforts*  
21           *to comply with applicable requirements.*

22           “(d) *PUBLIC HEARING.—Any order issued under this*  
23           *section shall become final unless, not later than 30 days*  
24           *after the order is served, the person or persons named there-*  
25           *in request a public hearing. Upon such request the Adminis-*

1 *trator shall promptly conduct a public hearing. In connec-*  
2 *tion with any proceeding under this section the Adminis-*  
3 *trator may issue subpoenas for the attendance and testi-*  
4 *mony of witnesses and the production of relevant papers,*  
5 *books, and documents, and may promulgate rules for dis-*  
6 *covery procedures.*

7       “(e) *VIOLATION OF COMPLIANCE ORDERS.—If a viola-*  
8 *tor fails to take corrective action within the time specified*  
9 *in a compliance order, the Administrator may assess a civil*  
10 *penalty of not more than \$25,000 for each day of continued*  
11 *noncompliance with the order.*

12       “(f) *DEFINITIONS.—For purposes of this section:*

13               “(1) *AGREEMENT.—The term ‘Agreement’*  
14 *means—*

15                       “(A) *the Agreement Concerning the*  
16 *Transboundary Movement of Hazardous Waste*  
17 *between the United States and Canada, signed at*  
18 *Ottawa on October 28, 1986 (TIAS 11099) and*  
19 *amended on November 25, 1992; and*

20                       “(B) *any regulations promulgated and or-*  
21 *ders issued to implement and enforce that Agree-*  
22 *ment.*

23               “(2) *FOREIGN MUNICIPAL SOLID WASTE.—The*  
24 *term ‘foreign municipal solid waste’ means municipal*  
25 *solid waste generated outside of the United States.*

1           “(3) *MUNICIPAL SOLID WASTE.*—

2                   “(A) *WASTE INCLUDED.*—*Except as pro-*  
3 *vided in subparagraph (B), the term ‘municipal*  
4 *solid waste’ means—*

5                           “(i) *all waste materials discarded for*  
6 *disposal by households, including single and*  
7 *multifamily residences, and hotels and mo-*  
8 *tels; and*

9                           “(ii) *all waste materials discarded for*  
10 *disposal that were generated by commercial,*  
11 *institutional, municipal, and industrial*  
12 *sources, to the extent such materials—*

13                                   “(I) *are essentially the same as*  
14 *materials described in clause (i); and*

15                                   “(II) *were collected and disposed*  
16 *of with other municipal solid waste de-*  
17 *scribed in clause (i) or subclause (I) of*  
18 *this clause as part of normal munic-*  
19 *ipal solid waste collection services, ex-*  
20 *cept that this subclause does not apply*  
21 *to hazardous materials other than haz-*  
22 *ardous materials that, pursuant to reg-*  
23 *ulations issued under section 3001(d),*  
24 *are not subject to regulation under sub-*  
25 *title C.*

1           *Examples of municipal solid waste include*  
2           *food and yard waste, paper, clothing, appli-*  
3           *ances, consumer product packaging, dispos-*  
4           *able diapers, office supplies, cosmetics, glass*  
5           *and metal food containers, and household*  
6           *hazardous waste. Such term shall include*  
7           *debris resulting from construction, remod-*  
8           *eling, repair, or demolition of structures.*

9           “(B) WASTE NOT INCLUDED.—*The term*  
10          *‘municipal solid waste’ does not include any of*  
11          *the following:*

12                 “(i) *Any solid waste identified or listed*  
13                 *as a hazardous waste under section 3001,*  
14                 *except for household hazardous waste.*

15                 “(ii) *Any solid waste, including con-*  
16                 *taminated soil and debris, resulting from—*

17                         “(I) *a response action taken under*  
18                         *section 104 or 106 of the Comprehen-*  
19                         *sive Environmental Response, Com-*  
20                         *ensation, and Liability Act (42*  
21                         *U.S.C. 9604 or 9606);*

22                         “(II) *a response action taken*  
23                         *under a State law with authorities*  
24                         *comparable to the authorities of such*  
25                         *section 104 or 106; or*

1                   “(III) a corrective action taken  
2                   under this Act.

3                   “(iii) Recyclable materials that have  
4                   been separated, at the source of the waste,  
5                   from waste otherwise destined for disposal  
6                   or that have been managed separately from  
7                   waste destined for disposal.

8                   “(iv) Scrap rubber to be used as a fuel  
9                   source.

10                  “(v) Materials and products returned  
11                  from a dispenser or distributor to the man-  
12                  ufacturer or an agent of the manufacturer  
13                  for credit, evaluation, and possible reuse.

14                  “(vi) Any solid waste that is—

15                         “(I) generated by an industrial  
16                         facility; and

17                         “(II) transported for the purpose  
18                         of treatment, storage, or disposal to a  
19                         facility or unit thereof that is owned or  
20                         operated by the generator of the waste,  
21                         located on property owned by the gen-  
22                         erator or a company with which the  
23                         generator is affiliated, or the capacity  
24                         of which is contractually dedicated ex-  
25                         clusively to a specific generator, so

1                    *long as the disposal area complies with*  
2                    *local and State land use and zoning*  
3                    *regulations applicable to the disposal*  
4                    *site.*

5                    *“(vii) Any medical waste that is seg-*  
6                    *regated from or not mixed with solid waste.*

7                    *“(viii) Sewage sludge and residuals*  
8                    *from any sewage treatment plant.*

9                    *“(ix) Combustion ash generated by re-*  
10                    *source recovery facilities or municipal in-*  
11                    *cinerators, or waste from manufacturing or*  
12                    *processing (including pollution control) op-*  
13                    *erations not essentially the same as waste*  
14                    *normally generated by households.”.*

15                    *(b) TABLE OF CONTENTS AMENDMENT.—The table of*  
16                    *contents of the Solid Waste Disposal Act (42 U.S.C. prec.*  
17                    *6901) is amended by adding after the item relating to sec-*  
18                    *tion 4010 the following new item:*

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



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