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1ST SESSION

H. R. 424

To establish certain requirements with respect to solid waste and hazardous waste incinerators, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. TOWNS introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 13, 1993

Additional sponsors: Mr. OBERSTAR and Mr. HOLDEN

A BILL

To establish certain requirements with respect to solid waste and hazardous waste incinerators, 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 “Pollution Prevention,
5 Community Recycling, and Incinerator Control Act”.

1 **SEC. 2. MORATORIUM ON MUNICIPAL SOLID WASTE INCIN-**
2 **ERATORS.**

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

6 **“SEC. 4011. MUNICIPAL SOLID WASTE INCINERATORS.**

7 “(a) MORATORIUM.—No municipal solid waste incin-
8 erator may be issued a permit for construction or expan-
9 sion until the year 2000.

10 “(b) REQUIREMENTS.—After December 31, 1999, no
11 Federal agency, State or local government, or other waste
12 management jurisdiction may issue a permit (including a
13 permit under section 129(e) of the Clean Air Act) or other
14 prior approval for the construction or expansion of a mu-
15 nicipal solid waste incinerator, unless the applicant for the
16 permit or other approval demonstrates, and the State
17 finds, that the following requirements are met:

18 “(1) The applicant shall conduct a waste com-
19 position analysis of the solid waste generated in a
20 year within the area to be served by the facility and
21 shall demonstrate that it will continue to conduct
22 such a waste composition analysis annually. Each
23 entity from which the facility plans to accept waste
24 also shall conduct a waste composition analysis of
25 the solid waste generated in a year by the persons
26 from whom the entity collects waste and shall dem-

1 onstrate that it will continue to conduct such a
2 waste composition analysis annually. Any such waste
3 composition analysis shall be conducted in compli-
4 ance with the regulations promulgated under sub-
5 section (c).

6 “(2) Each entity from which the facility plans
7 to accept waste shall demonstrate that it has di-
8 verted during at least one year, and will continue to
9 divert for each subsequent year, to waste manage-
10 ment methods other than incineration and landfilling
11 the following percentages of the total amount of
12 each of the following materials generated annually
13 by the persons from whom the entity collects waste:

14 “(A) Glass, 65 percent.

15 “(B) Newspapers, 65 percent.

16 “(C) Other paper, 65 percent.

17 “(D) Metals, 80 percent.

18 “(E) Plastics, 50 percent.

19 “(F) Yard waste, 90 percent.

20 “(G) Food waste, 10 percent.

21 “(3) The applicant shall demonstrate that—

22 “(A) the facility will not interfere with
23 maintaining the diversion rates set forth in
24 paragraph (2) for each entity from which the
25 facility plans to accept waste; and

1 “(B) in any case in which a diversion rate
2 by an entity from which the facility plans to ac-
3 cept waste is higher than the rate set forth in
4 paragraph (2), the facility will not interfere
5 with maintaining the higher diversion rate.

6 “(4) The applicant shall demonstrate that it is
7 not feasible to manage the remaining solid waste
8 through source reduction, reuse, or recycling.

9 “(5) The applicant shall demonstrate that the
10 facility will not adversely affect the environment or
11 human health as a consequence of—

12 “(A) exposure to air emissions or inciner-
13 ator ash through inhalation;

14 “(B) ingestion of food contaminated by air
15 emissions or incinerator ash as a consequence
16 of incorporation of such ash or emissions into
17 the food chain;

18 “(C) ingestion of potable water or aquatic
19 organisms contaminated by surface water dis-
20 charges, surface runoff, leaching, or percolation
21 of air emissions or incinerator ash into ground
22 water or surface water;

23 “(D) ingestion or inhalation of soil par-
24 ticles contaminated with air emissions or incin-
25 erator ash; or

1 “(E) dermal contact with air emissions or
2 incinerator ash.

3 “(6) The applicant shall demonstrate that the
4 facility is not situated in a nonattainment area (as
5 that term is used in part D of title I of the Clean
6 Air Act (42 U.S.C. 7501 et seq.)).

7 “(7) The applicant shall demonstrate that the
8 facility will not harm the local economy, including a
9 demonstration that it will not negatively affect prop-
10 erty values.

11 “(8) The applicant shall demonstrate that the
12 full cost of the facility over its entire life, including
13 capital costs, debt service, liability insurance, reme-
14 diation, and long-term operation and maintenance
15 expenses, will be less costly than reducing, recycling,
16 or composting waste.

17 “(9) The Federal agency, State or local govern-
18 ment, or other waste management jurisdiction shall
19 conduct a full public participation process, including
20 public hearings, to address the proposed facility. As
21 part of the process, the applicant shall provide to
22 local community groups concerned about the project
23 a technical assistance grant of at least \$50,000. The
24 applicant shall renew the grant every six months
25 after the initial grant is made until the date on

1 which final action is completed by each Federal
2 agency, State or local government, or other waste
3 management jurisdiction on each permit for con-
4 struction or expansion of the facility.

5 “(10) The proposed construction or expansion
6 must be approved by the unit of local government in
7 whose boundaries the facility would be sited.

8 “(11) The applicant shall demonstrate the fol-
9 lowing with respect to the applicant, any firm en-
10 gaged to operate the facility, the parent firm of the
11 applicant and any firm engaged to operate the facil-
12 ity, and any firms controlled by the parent firm or
13 the operating firm or the applicant:

14 “(A) Each such entity is in compliance
15 with Federal and State environmental and pub-
16 lic health statutes and regulations.

17 “(B) Each such entity has paid all out-
18 standing fines or penalties for violations of such
19 statutes or regulations.

20 “(C) Each such entity has made available
21 to the public at the site, and at local public li-
22 braries in the jurisdiction where the facility
23 would be sited, a disclosure statement. The dis-
24 closure statement shall include the following in-
25 formation with respect to the entity:

1 “(i) A list of each conviction of fraud
2 or any criminal offense during the previous
3 10 years in connection with obtaining or
4 attempting to obtain a contract.

5 “(ii) A list of each conviction of a vio-
6 lation of a State or Federal anti-trust law
7 during the previous 10 years, including
8 convictions relating to unlawful price-fix-
9 ing, allocation of customers among com-
10 petitors, and bid-rigging.

11 “(iii) A list of each citation for a per-
12 mit violation under a Federal, State, or
13 local environmental statute during the pre-
14 vious 5 years.

15 “(iv) A list of each citation for failure
16 to conduct proper cleanup, reclamation, or
17 closure of a site or forfeiture of a bond for
18 such a failure during the previous 5 years.

19 “(12) The applicant shall complete, after public
20 notice and comment, an environmental impact state-
21 ment. Such statement shall be conducted in the
22 same manner and in conformance with the same
23 standards required for environmental impact state-
24 ments under the National Environmental Policy Act

1 (42 U.S.C. 4321 et seq.) and must be approved by
2 the State.

3 “(c) WASTE COMPOSITION ANALYSIS REGULA-
4 TIONS.—(1) Not later than January 1, 1995, the Adminis-
5 trator shall promulgate regulations containing standards
6 for the conduct of waste composition analyses under sub-
7 section (b)(1). In the regulations, the Administrator shall
8 define the term ‘waste composition analysis’ to mean—

9 “(A) an identification of all materials that fall
10 within standard categories and subcategories of ma-
11 terials set forth by the Administrator, including, at
12 a minimum, glass, newspapers, other paper, metals,
13 plastics, yard waste, and food waste; and

14 “(B) a measurement of the quantities of those
15 materials, using a method established by the Admin-
16 istrator.

17 “(2) The regulations also shall include procedures
18 for—

19 “(A) certification of the accuracy of a waste
20 composition analysis by the entity carrying out the
21 analysis; and

22 “(B) verification by the Administrator of the
23 accuracy of a waste composition analysis.

24 “(d) AUTHORITY TO IMPOSE HIGHER DIVERSION
25 RATES.—The Administrator shall assess periodically, but

1 not less often than at least once every 3 years, whether
2 the achievement of higher diversion rates under subsection
3 (b)(2) is feasible. If the Administrator concludes that a
4 higher rate is feasible for one or more materials listed in
5 subsection (b)(2), the Administrator may by rule require
6 such higher rate for the material under such subsection.

7 “(e) DEFINITIONS.—For purposes of this section, the
8 following definitions apply:

9 “(1) The term ‘municipal solid waste inciner-
10 ator’ means a distinct operating unit of any facility
11 which combusts any solid waste material from com-
12 mercial or industrial establishments or the general
13 public (including single and multiple residences, ho-
14 tels, and motels). Such term does not include (i) in-
15 cinerators or other units required to have a permit
16 under section 3005; (ii) materials recovery facilities
17 (including primary or secondary smelters) which
18 combust waste for the primary purpose of recovering
19 metals; (iii) qualifying small power production facili-
20 ties, as defined in section 3(17)(C) of the Federal
21 Power Act (16 U.S.C. 769(17)(C), which burn ho-
22 mogeneous waste (other than refuse-derived fuel) for
23 the production of electric energy; (iv) air curtain in-
24 cinerators provided that such incinerators only burn
25 wood wastes, yard wastes, and clean lumber and

1 that such air curtain incinerators comply with opac-
2 ity limitations to be established by the Administrator
3 by rule; or (v) incinerators or other units that burn
4 only infectious medical waste.

5 “(2) The term ‘waste management jurisdiction’
6 means a governmental entity which issues permits
7 for construction or expansion of municipal solid
8 waste incinerators within its boundaries.

9 “(f) REGULATIONS.—The Administrator shall pro-
10 mulgate regulations to carry out this section.”.

11 (b) TECHNICAL AMENDMENT.—The table of contents
12 for subtitle D of such Act (contained in section 1001 of
13 such Act) is amended by adding at the end the following
14 new item:

“Sec. 4011. Municipal solid waste incinerators.”.

15 **SEC. 3. MUNICIPAL SOLID WASTE INCINERATOR ASH MAN-**
16 **AGEMENT.**

17 Section 3001 of the Solid Waste Disposal Act (42
18 U.S.C. 6921) is amended by adding at the end the follow-
19 ing new subsection:

20 “(j) ASH FROM MUNICIPAL SOLID WASTE INCINER-
21 ATORS.—(1) Notwithstanding section 306 of the Clean Air
22 Act Amendments of 1990 (Public Law 101–549; 104 Stat.
23 2584), ash from municipal solid waste incinerators shall
24 be considered to be a hazardous waste and shall be subject
25 to this subtitle.

1 “(2) Ash from municipal solid waste incinerators
2 shall be managed in a monofill that contains only ash from
3 such incinerators and that includes, at a minimum, the
4 following design components:

5 “(A) A double liner system designed, operated,
6 and constructed of materials to prevent the migra-
7 tion of any constituent into the liners during the pe-
8 riod such facility remains in operation (including
9 any postclosure monitoring period). The double liner
10 system shall consist of one flexible membrane liner
11 and one composite liner, with a leachate collection
12 system above and between such liners. For purposes
13 of this subsection, the term ‘flexible membrane liner’
14 means a liner that consists of high density poly-
15 ethylene or equivalent material that is at least 60
16 mils thick and a layer of recompacted clay or other
17 natural materials at least 3 feet thick with hydraulic
18 conductivity of no more than 1×10^{-7} centimeter per
19 second.

20 “(B) Upon closure, a final composite cover sys-
21 tem designed, operated, and constructed of materials
22 to prevent the infiltration of precipitation into such
23 cover during any closure or post-closure monitoring
24 period. For purposes of this section, the term ‘com-
25 posite cover’ means a cover which consists of high

1 density polyethylene or equivalent material that is at
2 least 40 mils thick and a layer of recompactd clay
3 or other natural materials at least 2 feet thick with
4 hydraulic conductivity of no more than 1×10^{-7} cen-
5 timeter per second.

6 “(3) Municipal solid waste incinerators in existence
7 on the date of the enactment of the Pollution Prevention,
8 Community Recycling, and Incinerator Control Act shall
9 meet the requirements of paragraph (2) not later than 3
10 years after such date of enactment.

11 “(4) As of the date of the enactment of the Pollution
12 Prevention, Community Recycling, and Incinerator Con-
13 trol Act, the utilization of municipal solid waste inciner-
14 ator ash for any purpose is prohibited.

15 “(5) For purposes of this subsection, the following
16 definitions apply:

17 “(A) The term ‘ash from municipal solid waste
18 incinerators’ means the residues resulting from the
19 combustion of municipal solid waste in a municipal
20 solid waste incinerator.

21 “(B) The term ‘municipal solid waste inciner-
22 ator’ means a distinct operating unit of any facility
23 which combusts any solid waste material from com-
24 mercial or industrial establishments or the general
25 public (including single and multiple residences, ho-

1 tels, and motels). Such term does not include (i) in-
2 cinerators or other units required to have a permit
3 under section 3005; (ii) materials recovery facilities
4 (including primary or secondary smelters) which
5 combust waste for the primary purpose of recovering
6 metals; (iii) qualifying small power production facili-
7 ties, as defined in section 3(17)(C) of the Federal
8 Power Act (16 U.S.C. 769(17)(C), which burn ho-
9 mogeneous waste (other than refuse-derived fuel) for
10 the production of electric energy; (iv) air curtain in-
11 cinerators provided that such incinerators only burn
12 wood wastes, yard wastes and clean lumber and that
13 such air curtain incinerators comply with opacity
14 limitations to be established by the Administrator by
15 rule; or (v) incinerators or other units that burn
16 only infectious medical waste.”.

17 **SEC. 4. PROHIBITION ON INCINERATION OF CERTAIN MA-**
18 **TERIALS.**

19 (a) PROHIBITION.—Section 3001 of the Solid Waste
20 Disposal Act (42 U.S.C. 6921) is further amended by add-
21 ing at the end the following new subsection:

22 “(k) PROHIBITION ON INCINERATION OF CERTAIN
23 MATERIALS.—The following materials and products may
24 not be incinerated in a municipal solid waste incinerator:

25 “(1) Household hazardous waste.

1 “(2) Batteries.

2 “(3) Chlorinated plastics.

3 “(4) Consumer electronics.

4 “(5) Yard waste.”.

5 (b) EFFECTIVE DATE.—Subsection (k) of section
6 3001 of the Solid Waste Disposal Act (as added by sub-
7 section (a)) shall take effect 18 months after the date of
8 the enactment of this Act.

9 **SEC. 5. REQUIREMENTS RELATING TO HAZARDOUS WASTE**
10 **INCINERATORS.**

11 (a) AMENDMENT TO SUBTITLE C.—Subtitle C of the
12 Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is
13 amended by adding at the end the following new section:

14 **“SEC. 3021. HAZARDOUS WASTE INCINERATORS.**

15 “(a) GENERAL REQUIREMENTS.—Effective on the
16 date of the enactment of the Pollution Prevention, Com-
17 munity Recycling, and Incinerator Control Act, no Federal
18 agency, State or local government, or any other waste
19 management jurisdiction may issue a permit or other prior
20 approval for the construction or expansion of a hazardous
21 waste incinerator unless the following requirements are
22 met:

23 “(1) The applicant for the permit or other prior
24 approval, and all generators of waste expected to be
25 incinerated at the facility, shall conduct waste com-

1 position analyses that identify and quantify all the
2 waste expected to be incinerated at the facility, in-
3 cluding all toxic or hazardous substances in the
4 waste.

5 “(2) The applicant shall demonstrate that the
6 toxics use reduction requirements of subsection (b)
7 have been met.

8 “(3) The applicant shall demonstrate that the
9 facility will not interfere with, divert resources from,
10 or otherwise serve as a disincentive to, aggressive
11 implementation of the toxics use reduction require-
12 ments of subsection (b).

13 “(4) The applicant shall demonstrate that the
14 facility will not adversely affect the environment or
15 human health as a consequence of—

16 “(A) exposure to air emissions or inciner-
17 ator ash through inhalation;

18 “(B) ingestion of food contaminated by air
19 emissions or incinerator ash as a consequence
20 of incorporation of such ash or emissions into
21 the food chain;

22 “(C) ingestion of potable water or aquatic
23 organisms contaminated by surface water dis-
24 charges, surface runoff, leaching, or percolation

1 of air emissions or incinerator ash into ground
2 water or surface water;

3 “(D) ingestion or inhalation of soil par-
4 ticles contaminated with air emissions or incin-
5 erator ash; or

6 “(E) dermal contact with air emissions or
7 incinerator ash.

8 “(5) The applicant shall demonstrate that the
9 facility will not harm the local economy, including a
10 demonstration that it will not negatively affect prop-
11 erty values.

12 “(6) The applicant shall demonstrate that there
13 is no safer disposal or treatment technology available
14 for any of the wastes.

15 “(7) The Federal agency, State or local govern-
16 ment, or other waste management jurisdiction shall
17 conduct a full public participation process, including
18 public hearings, to address the proposed facility. As
19 part of the process, the applicant shall provide to
20 local community groups concerned about the project
21 a technical assistance grant of at least \$50,000. The
22 applicant shall renew the grant every six months
23 after the initial grant is made until the date final ac-
24 tion is completed by each Federal agency, State or
25 local government, or other waste management juris-

1 diction on each permit for construction or expansion
2 of the facility.

3 “(8) The proposed construction or expansion
4 must be approved by the unit of local government in
5 whose boundaries the facility would be sited.

6 “(9) The applicant shall demonstrate the fol-
7 lowing with respect to the applicant, any firm en-
8 gaged to operate the facility, the parent firm of the
9 applicant and any firm engaged to operate the facil-
10 ity, and any firms controlled by the parent firm or
11 the operating firm or the applicant:

12 “(A) Each such entity is in compliance
13 with Federal and State environmental and pub-
14 lic health statutes and regulations.

15 “(B) Each such entity has paid all out-
16 standing fines or penalties for violations of such
17 statutes or regulations.

18 “(C) Each such entity has made available
19 to the public at the site, and at local public li-
20 braries in the jurisdiction where the facility
21 would be sited, a disclosure statement. The dis-
22 closure statement shall include the following in-
23 formation with respect to the entity:

24 “(i) A list of each conviction of fraud
25 or any criminal offense during the previous

1 10 years in connection with obtaining or
2 attempting to obtain a contract.

3 “(ii) A list of each conviction of a vio-
4 lation of a State or Federal anti-trust law
5 during the previous 10 years, including
6 convictions relating to unlawful price-fix-
7 ing, allocation of customers among com-
8 petitors, and bid-rigging.

9 “(iii) A list of each citation for a per-
10 mit violation under a Federal, State, or
11 local environmental statute during the pre-
12 vious 5 years.

13 “(iv) A list of each citation for failure
14 to conduct proper cleanup, reclamation, or
15 closure of a site or forfeiture of a bond for
16 such a failure during the previous 5 years.

17 “(10) The applicant shall complete, after public
18 notice and comment, an environmental impact state-
19 ment. Such statement shall be conducted in the
20 same manner and in conformance with the same
21 standards required for environmental impact state-
22 ments under the National Environmental Policy Act
23 (42 U.S.C. 4321 et seq.) and must be approved by
24 the State.

1 “(b) TOXICS USE REDUCTION REQUIREMENTS.—(1)
2 For purposes of subsection (a)(2), an applicant for a per-
3 mit, and each generator of waste expected to be inciner-
4 ated at the facility, shall demonstrate that each such gen-
5 erator has completed and made available to the public, and
6 intends to complete and make available each subsequent
7 year, a report on the use of toxic or hazardous substances
8 at the generator’s facility and the reduction of the use of
9 such substances during the preceding year at the genera-
10 tor’s facility. The report shall include, at a minimum, the
11 following:

12 “(A) A materials accounting for each toxic or
13 hazardous substance used in each production unit of
14 the generator’s facility and for the facility as a
15 whole.

16 “(B) An evaluation of options for reducing the
17 use of toxic and hazardous substances in each pro-
18 duction unit of the generator’s facility.

19 “(C) Two- and five-year goals, by toxic and
20 hazardous substance, for reducing the use of each
21 substance in each production unit of the generator’s
22 facility and in the facility as a whole.

23 “(D) A schedule for implementing the goals re-
24 ferred to in subparagraph (C).

1 “(E) A statement signed by an independent ex-
2 pert certifying that, to the expert’s best knowledge
3 and belief, the report prepared by the generator is
4 true, complete, accurate, and prepared under a prop-
5 er data accounting and planning system.

6 “(2) For purposes of subsection (a)(2), an applicant
7 for a permit shall demonstrate that the State in which
8 the facility is located, and each State in which generators
9 of waste expected to be incinerated at the facility are lo-
10 cated, has established and is implementing a toxics use
11 reduction program that includes, at a minimum, the fol-
12 lowing requirements:

13 “(A) The program must be designed to achieve,
14 within 5 years after the date the program is estab-
15 lished, at least a 50 percent reduction, from the base
16 year, in the amount of toxic or hazardous substances
17 entering the hazardous waste stream prior to treat-
18 ment, recycling, handling, disposal, or release.

19 “(B) The program must require generators of
20 hazardous waste to develop a plan for reducing their
21 toxic or hazardous substance use.

22 “(C) The program must require each generator
23 of hazardous waste to publicly report on materials
24 accounting for each production unit of the genera-
25 tor’s facility and the facility as a whole.

1 “(c) APPLICABILITY.—This section applies to any fa-
2 cility that burns hazardous waste, including cement kilns
3 and other industrial furnaces and boilers.

4 “(d) DEFINITIONS.—For purposes of this section, the
5 following definitions apply:

6 “(1) The term ‘base year’ means any calendar
7 year, not earlier than 1989, for which a State has
8 complete and adequate information on the genera-
9 tion of toxic or hazardous substances entering the
10 hazardous waste stream, prior to treatment, recy-
11 cling, handling, disposal, or release.

12 “(2) The term ‘toxic or hazardous substance’
13 means—

14 “(A) a substance on the list described in
15 section 313(c) of the Emergency Planning and
16 Community Right-To-Know Act of 1986 (42
17 U.S.C. 11023(c));

18 “(B) any chemical for which a Federal or
19 State law requires reporting similar to section
20 313 of such Act but which is not otherwise cov-
21 ered under subparagraph (A);

22 “(C) any hazardous constituent of hazard-
23 ous wastes identified under regulations promul-
24 gated under this subtitle and listed in sections
25 261.33(e), 261.33(f), and Appendix VIII of

1 part 261 of title 40 of the Code of Federal Reg-
2 ulations; and

3 “(D) any priority pollutant listed under
4 regulations relating to steam electric power
5 point source pollutants under the Federal
6 Water Pollution Control Act (33 U.S.C. 1311 et
7 seq.) (as listed in Appendix A of section 423 of
8 title 40 of the Code of Federal Regulations).

9 “(3)(A) The term ‘toxics use reduction’ means
10 any change in a production process or activity, raw
11 material, or product, that reduces or eliminates the
12 use of any toxic or hazardous substance, or the
13 amount of any toxic or hazardous substance entering
14 any waste stream or otherwise released to the envi-
15 ronment (including fugitive emissions and hazardous
16 secondary materials), prior to recycling, treatment,
17 disposal, handling, or release, without creating or in-
18 creasing risks to the public health, workers, consum-
19 ers, or the environment. The term includes produc-
20 tion equipment or technology modifications, reformu-
21 lation or redesign of products, substitution of raw
22 materials, changes in production processes or proce-
23 dures, and improvements in housekeeping, mainte-
24 nance, training, or inventory control.

1 “(B) The term does not include (i) any waste
2 management or pollution control activity, or any
3 other practice which alters the physical, chemical, or
4 biological characteristics, or the volume, of a toxic or
5 hazardous substance through a process or activity
6 which itself is not integral to and necessary for the
7 production of a product or the providing of a service;
8 (ii) recycling without the use of in-process, in-line, or
9 closed-loop recycling methods according to standard
10 engineering practices and that is not integral to and
11 necessary for the production of the product within
12 the original production unit; or (iii) the use of a by-
13 product as hazardous secondary material, as a prod-
14 uct, or as a constituent of a product.”.

15 (b) TECHNICAL AMENDMENT.—The table of contents
16 for subtitle C of such Act (contained in section 1001 of
17 such Act) is amended by adding at the end the following
18 new item:

“Sec. 3021. Hazardous waste incinerators.”.

○

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