

103^D CONGRESS
2^D SESSION

H.R. 4661

To establish congressional findings and amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal of municipal solid waste, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1994

Mr. SMITH of New Jersey (for himself, Mr. ZIMMER and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish congressional findings and amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal 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 “Flow Control Act of
5 1994”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE CON-**
2 **TROL OVER TRANSPORTATION AND DIS-**
3 **POSAL OF MUNICIPAL SOLID WASTE.**

4 (a) CONGRESSIONAL FINDINGS.—The Congress finds
5 that—

6 (1) the improper transportation and disposal of
7 municipal solid waste impacts adversely on human
8 health and the environment;

9 (2) the growing shortage of landfill space and
10 other viable municipal solid waste management op-
11 tions has placed increasing fiscal burdens on State
12 and local governments' efforts to effectively plan and
13 manage municipal solid waste in a long-term and en-
14 vironmentally sound manner;

15 (3) the long-term management of municipal
16 solid waste in an environmentally sound and cost-ef-
17 fective manner is dependent upon the ability of State
18 and local governments to control the transportation
19 and disposal of municipal solid waste to designated
20 waste management facilities;

21 (4) existing State and local government laws,
22 regulations, legislative and administrative provisions,
23 including solid waste management plans, relating to
24 the transportation and disposal of municipal solid
25 waste at existing and planned waste management fa-
26 cilities are in the public interest; and

1 (5) existing State and local government regula-
2 tions and controls relating to the transportation and
3 disposal of municipal solid waste at existing and
4 planned waste management facilities are permissible
5 regulations of commerce.

6 (b) CONGRESSIONAL PURPOSE AND INTENT.—This
7 Act is intended to—

8 (1) authorizes States and qualified political sub-
9 divisions to regulate and control the transportation
10 and disposal of municipal solid waste derived from
11 residential, commercial, institutional, and industrial
12 sources;

13 (2) authorizes States and qualified political sub-
14 divisions to require that municipal solid waste be
15 transported to one or more existing or planned des-
16 ignated waste management facilities;

17 (3) preserve the viability of existing municipal
18 solid waste management systems of States and
19 qualified political subdivisions which depend on en-
20 suring a consistent supply of municipal solid waste
21 generated from residential, commercial, institutional,
22 and industrial sources; and

23 (4) recognize as reasonable existing laws, regu-
24 lations, ordinances, contracts and other legislative or
25 administrative provisions or mechanisms of States

1 and qualified political subdivisions relating to the
2 transportation or disposal of municipal solid waste
3 generated from residential, commercial, institutional,
4 and industrial sources to existing and planned waste
5 management facilities.

6 (c) IN GENERAL.—Subtitle D of the Solid Waste Dis-
7 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
8 at the end the following new section:

9 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**
10 **CONTROL OVER TRANSPORTATION AND DIS-**
11 **POSAL OF MUNICIPAL SOLID 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) direct, limit, regulate, or prohibit the
17 transportation of municipal solid waste gen-
18 erated from household sources (as described in
19 subsection (g)(2)(A)(i)) within the boundaries
20 of the State or subdivision and designate each
21 waste management facility to which any such
22 municipal solid waste shall be transported; and

23 “(B) direct, limit, regulate, or prohibit the
24 transportation or disposal of municipal solid
25 waste, as defined in subsection (g)(2), including

1 incinerator ash from a solid waste incinerator
2 unit or construction debris or demolition debris,
3 generated within the boundaries of the State or
4 qualified political subdivision and designate
5 waste management facilities to which any such
6 municipal solid waste shall be transported or
7 disposed, if, before May 15, 1994—

8 (i) the State or qualified political sub-
9 division adopted a law, ordinance, regula-
10 tion, or legislative or administrative provi-
11 sion, including a solid waste management
12 plan, that pertains to the transportation or
13 disposal of municipal solid waste generated
14 within the boundaries, and

15 (ii) directed, limited, regulated, or
16 prohibited the transportation or disposal of
17 municipal solid waste under the law, ordi-
18 nance, regulation or legislative or adminis-
19 trative provision.

20 Any State or qualified political subdivision
21 meeting the requirements of this subsection
22 (a)(1)(B) (i) and (ii) may also, after the effec-
23 tive date of this amendment, direct, limit, regu-
24 late or prohibit the transportation and disposal
25 of municipal solid waste from any existing or

1 future waste management facility to any other
2 existing or future waste management facility,
3 without regard to subsections (b) or (c); and

4 “(C) direct, limit, regulate, or prohibit the
5 transportation of recyclable materials generated
6 within the boundaries of the State or subdivi-
7 sion and designate each facility to which any
8 such materials shall be transported.

9 “(2) APPLICATION.—A State or qualified politi-
10 cal subdivision may exercise the authority described
11 in paragraph (1)(C) with respect to recyclable mate-
12 rials only if—

13 “(A) the generator or owner of the mate-
14 rials voluntarily made the materials available to
15 the State or qualified political subdivision and
16 relinquished any rights to, or ownership of,
17 such materials; and

18 “(B) the State or qualified political sub-
19 division, or the designee of the State or quali-
20 fied political subdivision, assumes such rights
21 to, or ownership of, such materials.

22 “(b) LIMITATIONS.—A State or qualified political
23 subdivision may exercise the authority provided by sub-
24 section (a)(1)(A) or (a)(1)(C) only if the State or qualified
25 political subdivision—

1 “(1) establishes a program to separate or divert
2 the materials described in subsection (g)(4) from the
3 municipal solid waste, for purposes of recycling, rec-
4 lamation, or reuse, in accordance with any State law
5 or municipal solid waste planning requirements in
6 effect;

7 “(2) develops and implements a process de-
8 scribed in subsection (c) for the designation of waste
9 management facilities; and

10 “(3) after conducting 1 or more public hear-
11 ings—

12 “(A) finds, on the basis of the record de-
13 veloped at the hearing or hearings that it is
14 necessary to exercise the authority to meet the
15 current solid waste management needs (as of
16 the date of the record) or the anticipated solid
17 waste management needs of the State or quali-
18 fied political subdivision for management of
19 municipal solid waste or recyclable materials;
20 and

21 “(B) provides a written explanation of the
22 reasons for the finding described in subpara-
23 graph (A).

24 “(c) COMPETITIVE DESIGNATION PROCESS—In de-
25 veloping and implementing the designation process de-

1 scribed in subsection (b)(2) with respect to waste manage-
2 ment facilities and facilities for recyclable materials, the
3 State or qualified political subdivision shall—

4 “(1) provide that the designation process is
5 based on, or is part of, a municipal solid waste man-
6 agement plan that is adopted by the State or quali-
7 fied political subdivision and that is designed to en-
8 sure long-term management capacity for municipal
9 solid waste or recyclable materials generated within
10 the boundaries of the State or subdivision;

11 “(2) set forth the goals of the designation proc-
12 ess, including at a minimum—

13 “(A) capacity assurance;

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

17 “(C) any other goals determined to be rel-
18 evant by the State or qualified political subdivi-
19 sion;

20 “(3) identify and compare reasonable and avail-
21 able alternatives and options for designation of the
22 facilities;

23 “(4) provide for public participation and com-
24 ment;

1 “(5) provide that the designation of the facili-
2 ties is accomplished through an open competitive
3 process during which the State or qualified political
4 subdivision—

5 “(A) identifies in writing the criteria to be
6 utilized for selection of the facilities;

7 “(B) provides an opportunity for interested
8 public persons and private persons to offer their
9 existing (as of the date of the process) or pro-
10 posed facilities for designation; and

11 “(C) evaluates and selects the facilities for
12 designation based on the merits of the facilities
13 in meeting the criteria identified; and

14 “(6) base the designation of each such facility
15 on reasons that shall be stated in a public record.

16 “(d) OWNERSHIP OF RECYCLABLE MATERIALS.—

17 “(1) PROHIBITION ON REQUIRED TRANS-
18 FERS.—Except as provided in paragraph (3), noth-
19 ing in this section shall authorize any State or quali-
20 fied political subdivision to require any generator or
21 owner of recyclable materials to transfer any recycla-
22 ble materials (other than abandoned or discarded
23 materials) to such State or qualified political sub-
24 division.

1 “(2) PROHIBITION ON PROHIBITED TRANS-
2 ACTIONS.—Except as provided in paragraph (3),
3 nothing in this section shall prohibit any generator
4 or owner of recyclable materials from selling, pur-
5 chasing, accepting, conveying, or transporting any
6 recyclable materials for purposes of transportation
7 or remanufacture into usable or marketable mate-
8 rials, unless the generator or owner voluntarily made
9 the materials available to the State or qualified po-
10 litical subdivision and relinquished any rights to, or
11 ownership of, such materials.

12 “(3) LAW AND CONTRACTS.—A contract, law,
13 ordinance, regulation, or provision described in sub-
14 section (e)(1) may contain an authorization de-
15 scribed in paragraph (1) or a prohibition described
16 in paragraph (2).

17 “(e) EXISTING LAWS AND CONTRACTS.—

18 “(1) IN GENERAL.—This section shall not su-
19 perseded, abrogate, or otherwise modify any of the
20 following:

21 “(A) Any contract or other agreement (in-
22 cluding any contract containing an obligation to
23 repay the outstanding indebtedness on any pro-
24 posed or existing waste management facility or
25 facility for recyclable materials) entered into be-

1 fore May 15, 1994, by a State or qualified po-
2 litical subdivision in which such State or quali-
3 fied political subdivision has designated a pro-
4 posed or existing waste management facility, or
5 facility for recyclable materials, for the manage-
6 ment of municipal solid waste or recyclable ma-
7 terials pursuant to a law, ordinance, regulation,
8 legislative or administrative provision adopted
9 by such State or qualified political subdivision
10 before May 15, 1994.

11 “(B) Any other contract or agreement en-
12 tered into before May 15, 1994, for the man-
13 agement of municipal solid waste.

14 “(C)(i) Any law, ordinance, regulation, or
15 legislative or administrative provision—

16 “(I) that is adopted before May 15,
17 1994; and

18 “(II) that pertains to the transpor-
19 tation or disposal of municipal solid waste
20 generated within the boundaries of a State
21 or qualified political subdivision; provided
22 that the law, ordinance, regulation, legisla-
23 tive or administrative provision is applied
24 to the transportation or disposal of munici-
25 pal solid waste, generated from household

1 sources (as described in subsection
2 (g)(2)(A)(i)) within the boundaries, to a
3 proposed or existing waste management fa-
4 cility designated before May 15, 1994
5 under such law, ordinance, regulation, leg-
6 islative or administrative provision.

7 “(ii) Any law, ordinance, regulation or leg-
8 islative or administrative provision—

9 “(I) that is adopted before May 15,
10 1994;

11 “(II) that pertains to the transpor-
12 tation or disposal of municipal solid waste
13 generated within the boundaries of a State
14 or qualified political subdivision; and

15 “(III) under which a State or quali-
16 fied political subdivision, prior to May 15,
17 1994, directed, limited, regulated, or pro-
18 hibited the transportation or disposal of
19 municipal solid waste that is generated, or
20 is commingled with municipal solid waste
21 that is generated, from commercial, insti-
22 tutional, or industrial sources within the
23 boundaries, or that is incinerator ash from
24 a solid waste incineration unit, or con-

1 construction debris or demolition debris, gen-
2 erated within the boundaries:

3 *Provided*, That the law, ordinance, regulation,
4 legislative or administrative provision is applied
5 to the transportation or disposal of municipal
6 solid waste described in subclause (III), to a
7 proposed or existing waste management facility
8 designated before May 15, 1994 under such
9 law, ordinance, regulation, legislative or admin-
10 istrative provision.

11 “(iii) Any law, ordinance, regulation, or
12 legislative or administrative provision—

13 “(I) that is adopted before May 15,
14 1994; and

15 “(II) that pertains to the transpor-
16 tation of recyclable materials generated
17 within the boundaries of a State or quali-
18 fied political subdivision: *Provided*, That
19 the law, ordinance, regulation, legislative
20 or administrative provision is applied to
21 the transportation or recyclable materials,
22 that are generated within the boundaries
23 and with respect to which the generator or
24 owner of the materials, and the State or
25 qualified political subdivision, have met the

1 appropriate conditions described in sub-
2 section (a)(2), to a facility designated be-
3 fore May 15, 1994 under such law, ordi-
4 nance, regulation, legislative or administra-
5 tive provision.

6 “(iv) Any law, ordinance, regulation, or
7 legislative or administrative provisions—

8 “(I) that is adopted before May 15,
9 1994;

10 “(II) that pertains to the transportation of
11 recyclable materials generated within the
12 boundaries of a State or qualified political sub-
13 division; and

14 “(III) under which a State or qualified po-
15 litical subdivision, prior to May 15, 1994, di-
16 rected, limited, regulated, or prohibited the
17 transportation of recyclable materials that are
18 not materials with respect to which the genera-
19 tor or owner of the materials, and the State or
20 qualified political subdivision, have met the ap-
21 propriate conditions described in subsection
22 (a)(2) and that—

23 “(aa) are generated from house-
24 hold sources (as described in sub-

1 section (g)(2)(A)(i) within the bound-
2 aries; or

3 “(bb) are generated from com-
4 mercial, institutional, or industrial
5 sources within the boundaries:

6 *Provided*, That the law, ordinance, regula-
7 tion, legislative or administrative provision
8 is applied to the transportation of recycla-
9 ble materials, described in subclause (III),
10 to a facility designated before May 15,
11 1994 under such law, ordinance, regula-
12 tion, legislative or administrative provision,
13 and is applied to the same class of mate-
14 rials described in item (aa) or (bb) of
15 subclause (III) to which the law, ordi-
16 nance, regulation, legislative or administra-
17 tive provision applied before such date.

18 “(2) CONTRACT INFORMATION.—A party to a
19 contract or other agreement that is described in sub-
20 paragraph (e)(1)(A) or (e)(1)(B) shall provide a
21 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 informa-
25 tion that appears in the copy shall include at least

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

10 “(3) EFFECT ON INTERSTATE COMMERCE.—
11 Any contract or agreement described in subsection
12 (e)(1)(A) or (e)(1)(B), any any law, ordinance, regu-
13 lation, or legislative or administrative provision de-
14 scribed in subsection (e)(1)(C), shall be a reasonable
15 regulation of commerce by any State or qualified po-
16 litical subdivision, retroactive to the effective date of
17 the contract or agreement, or to the date of adoption
18 of any such law, ordinance, regulation, or legislative
19 or administrative provision.

20 “(4) EFFECT ON STATE PROCUREMENT
21 LAWS.—

22 “(A) IN GENERAL.—Nothing in this sec-
23 tion shall supersede or modify—

24 “(i) any State law or State regulation
25 concerning the procurement of municipal

1 solid waste services or facilities by qualified
2 political subdivisions; or

3 “(ii) any State law or regulation con-
4 cerning competitive bidding for such serv-
5 ices or facilities.

6 “(f) SAVINGS CLAUSE.—Nothing in this section is in-
7 tended to supersede, amend, or otherwise modify Federal
8 or State environmental standards that apply to the dis-
9 posal or management of solid waste at waste management
10 facilities and facilities for recyclable materials.

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

12 “(1) INDUSTRIAL SOLID WASTE.—The term ‘in-
13 dustrial solid waste’ means solid waste generated by
14 manufacturing or industrial processes, including
15 waste generated during scrap processing and recy-
16 cling, that is not hazardous waste regulated under
17 subtitle C.

18 “(2) MUNICIPAL SOLID WASTE.—

19 “(A) IN GENERAL.—The term ‘municipal
20 solid waste’—

21 “(i) means any waste generated by a
22 household, including a single or multifam-
23 ily residence, an apartment, a condomin-
24 ium, a hotel, and a motel;

1 “(ii) includes waste generated by a
2 commercial, institutional, or industrial
3 source; and

4 “(iii) includes residue remaining after
5 recyclable materials have been separated,
6 or diverted at the point of generation, from
7 municipal solid waste described in clause
8 (i) or (ii).

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

12 “(i) Hazardous waste required to be
13 managed in accordance with subtitle C,
14 solid waste containing a polychlorinated
15 biphenyl regulated under the Toxic Sub-
16 stances Control Act (15 U.S.C. 2601 et
17 seq.), or regulated medical waste.

18 “(ii) (I) A recyclable material.

19 “(II) A material or a product re-
20 turned from a dispenser or distributor to
21 the manufacturer or the agent of the man-
22 ufacturer for credit, evaluation, or reuse.

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

1 does not conform to specifications, and
2 that is returned to the manufacturer or the
3 agent of the manufacturer for credit, eval-
4 uation, or reuse.

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

12 “(iv)(I) Industrial solid waste.

13 “(II) Any industrial solid waste that
14 is generated by an industrial facility and
15 transported for the purpose of contain-
16 ment, storage, or disposal to a facility that
17 is owned or operated by the generator of
18 the waste, or a facility that is located on
19 property owned by the generator or a com-
20 pany with which the generator is affiliated.

21 “(3) QUALIFIED POLITICAL SUBDIVISION.—The
22 term ‘qualified political subdivision’ means a govern-
23 mental entity or political subdivision of a State, as
24 authorized by the State, to plan for, or determine
25 the methods to be utilized for, the collection, trans-

1 portation, disposal or other management of municipi-
2 pal solid waste generated within the boundaries of
3 the governmental entity or political subdivision.

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

10 “(5) WASTE MANAGEMENT FACILITY.—The
11 term ‘waste management facility’ means any facility
12 in which solid waste is collected, separated, stored,
13 transferred, treated, processed, deposited or dis-
14 posed”.

15 (b) TABLE OF CONTENTS.—The table of contents for
16 such subtitle D is amended by adding after the item relat-
17 ing to section 4010 the following new item:

“Sec. 4011. Congressional authorization of state control over transportation and
disposal of municipal solid waste”.

○

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