

**Calendar No. 676**

103D CONGRESS  
2D SESSION

**H. R. 4779**

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**AN ACT**

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State municipal solid waste, and for other purposes.

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SEPTEMBER 28 (legislative day, SEPTEMBER 12), 1994

Received; read twice and placed on the calendar

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**AN ACT**

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “State and Local Gov-  
3 ernment Interstate Waste Control Act of 1994”.

4 **SEC. 2. INTERSTATE TRANSPORTATION AND DISPOSAL OF**  
5 **MUNICIPAL SOLID WASTE.**

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

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

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

13 “(1) IN GENERAL.—

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

22 “(B) REQUIREMENTS FOR AUTHORIZA-  
23 TION.—An authorization granted pursuant to  
24 subparagraph (A) shall—

25 “(i) be granted by formal action at a  
26 meeting;

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

3           “(iii) remain in effect according to its  
4           terms.

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

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

17          “(2) INFORMATION.—Prior to seeking an au-  
18          thorization to receive out-of-State municipal solid  
19          waste pursuant to this subsection, the owner or op-  
20          erator of the facility seeking such authorization shall  
21          provide (and make readily available to the Governor,  
22          each contiguous local government and Indian tribe,  
23          and any other interested person for inspection and  
24          copying) the following information:

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

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

13          “(C) A description of the then current en-  
14          vironmental characteristics of the site, a de-  
15          scription of ground water use in the area (in-  
16          cluding identification of private wells and public  
17          drinking water sources), and a discussion of al-  
18          terations that may be necessitated by, or occur  
19          as a result of, the facility.

20          “(D) A description of environmental con-  
21          trols typically required to be used on the site  
22          (pursuant to permit requirements), including  
23          run on or run off management (or both), air  
24          pollution control devices, source separation pro-  
25          cedures (if any), methane monitoring and con-

1 trol, landfill covers, liners or leachate collection  
2 systems, and monitoring programs. In addition,  
3 the description shall include a description of  
4 any waste residuals generated by the facility,  
5 including leachate or ash, and the planned man-  
6 agement of the residuals.

7 “(E) A description of site access controls  
8 to be employed, and roadway improvements to  
9 be made, by the owner or operator, and an esti-  
10 mate of the timing and extent of increased local  
11 truck traffic.

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

14 “(G) Estimates of the personnel require-  
15 ments of the facility, including information re-  
16 garding the probable skill and education levels  
17 required for jobs at the facility. To the extent  
18 practicable, the information shall distinguish  
19 between employment statistics for preopera-  
20 tional and postoperational levels.

21 “(H) Any information that is required by  
22 State or Federal law to be provided with re-  
23 spect to any violations of environmental laws  
24 (including regulations) by the owner, the opera-  
25 tor, and any subsidiary of the owner or opera-

1           tor, the disposition of enforcement proceedings  
2           taken with respect to the violations, and correc-  
3           tive action and rehabilitation measures taken as  
4           a result of the proceedings.

5           “(I) Any information that is required by  
6           State or Federal law to be provided with re-  
7           spect to gifts and contributions made by the  
8           owner or operator.

9           “(J) Any information that is required by  
10          State or Federal law to be provided with re-  
11          spect to compliance by the owner or operator  
12          with the State solid waste management plan.

13          “(3) NOTIFICATION.—Prior to taking formal  
14          action with respect to granting authorization to re-  
15          ceive out-of-State municipal solid waste pursuant to  
16          this subsection, an affected local government shall—

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

19                 “(B) publish notice of the action in a  
20                 newspaper of general circulation at least 30  
21                 days before holding a hearing and again at  
22                 least 15 days before holding the hearing, except  
23                 where State law provides for an alternate form  
24                 of public notification; and

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

4           “(b) AUTHORIZATION NOT REQUIRED FOR CERTAIN  
5 FACILITIES.—

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

11           “(A) The owner or operator shall provide  
12           either of the following to the Governor of the  
13           State in which the landfill or incinerator is lo-  
14           cated and to the affected local government:

15           “(i) Information establishing that, be-  
16           fore the date of the enactment of this sec-  
17           tion, the owner or operator of the landfill  
18           or incinerator has entered into a host com-  
19           munity agreement or received a State per-  
20           mit, specifically authorizing the owner or  
21           operator to accept, at the landfill or incin-  
22           erator, out-of-State municipal solid waste.  
23           This clause shall be effective only if the  
24           owner or operator complies with all of the  
25           terms and conditions of the host commu-

1 nity agreement or permit and, in the case  
2 of a permit, notifies the affected local gov-  
3 ernment of the permit, as soon as prac-  
4 ticable but not later than 90 days after the  
5 date of enactment of this section.

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

16 “(B) In the case of a landfill or incinerator  
17 in operation on the date of the enactment of  
18 this section, the landfill or incinerator must be  
19 in compliance as of such date with applicable  
20 Federal and State environmental laws (includ-  
21 ing regulations), including, in the case of land-  
22 fills, applicable laws and regulations relating to  
23 design and location standards, leachate collec-  
24 tion, ground water monitoring, and financial as-

1           surance for closure and post-closure care and  
2           corrective action.

3           “(2) AMOUNT RECEIVED UNDER PARAGRAPH  
4           (1)(A)(ii).—

5                   “(A) STATES NOT EXERCISING RATCHET  
6           AUTHORITY UNDER (c)(5).—

7                           “(i) FACILITIES COVERED.—This sub-  
8                           paragraph shall cover only landfills and in-  
9                           cinerators in States which do not establish  
10                          a limit on out-of-State municipal solid  
11                          waste under subsection (c)(5).

12                           “(ii) WASTE UNDER CONTRACT.—For  
13                          any landfill or incinerator covered by this  
14                          subparagraph and authorized to receive  
15                          out-of-State municipal solid waste pursu-  
16                          ant to paragraph (1)(A)(ii), if out-of-State  
17                          municipal solid waste was received at such  
18                          landfill or incinerator during 1993 under a  
19                          contract, paragraph (1)(A)(ii) shall apply  
20                          to the amount of out-of-State municipal  
21                          solid waste specified in the contract for the  
22                          longer of the following periods:

23                                   “(I) The life of the contract.

24                                   “(II) The period ending 6 years  
25                                  after the enactment of this section.

1 For purposes of subclause (I), the term  
2 'life of the contract' shall not include any  
3 renewal, novation, or other extension there-  
4 of (as determined under State law).

5 “(iii) SPOT WASTE.—For a landfill or  
6 incinerator covered by this subparagraph  
7 and authorized to receive out-of-State mu-  
8 nicipal solid waste pursuant to paragraph  
9 (1)(A)(ii), if out-of-State municipal solid  
10 waste was received at such landfill or in-  
11 cinerator during 1993 in the absence of a  
12 contract, paragraph (1)(A)(ii) shall apply  
13 to the receipt of out-of-State municipal  
14 solid waste for a period ending 3 years  
15 after the enactment of this section.

16 “(iv) CONTRACT AND SPOT WASTE.—  
17 For any landfill or incinerator covered by  
18 this subparagraph and authorized to re-  
19 ceive out-of-State municipal solid waste  
20 pursuant to paragraph (1)(A)(ii), if out-of-  
21 State municipal solid waste was received at  
22 such landfill or incinerator during 1993  
23 both under a contract and otherwise,  
24 clause (ii) shall apply with respect to the  
25 waste received under the contract and

1 clause (iii) shall apply to the other municipi-  
2 pal solid waste received at the landfill or  
3 incinerator.

4 “(B) STATES EXERCISING RATCHET AU-  
5 THORITY UNDER (c)(5).—

6 “(i) FACILITIES COVERED.—This sub-  
7 paragraph shall cover only landfills and in-  
8 cinerators in States which establish a limit  
9 on out-of-State municipal solid waste  
10 under subsection (c)(5).

11 “(ii) WASTE UNDER CONTRACT.—For  
12 any landfill or incinerator covered by this  
13 subparagraph and authorized to receive  
14 out-of-State municipal solid waste pursu-  
15 ant to paragraph (1)(A)(ii), if out-of-State  
16 municipal solid waste was received at such  
17 landfill or incinerator during 1993 under a  
18 contract, paragraph (1)(A)(ii) shall apply  
19 to the amount of out-of-State municipal  
20 solid waste specified in the contract for the  
21 longer of the following periods:

22 “(I) The life of the contract.

23 “(II) The period ending January  
24 1, 2000.

1 For purposes of subclause (I), the term  
2 'life of the contract' shall not include any  
3 renewal, novation, or other extension there-  
4 of (as determined under State law).

5 “(iii) SPOT WASTE.—For a landfill or  
6 incinerator covered by this subparagraph  
7 and authorized to receive out-of-State mu-  
8 nicipal solid waste pursuant to paragraph  
9 (1)(A)(ii), if out-of-State municipal solid  
10 waste was received at such landfill or in-  
11 cinerator during 1993 in the absence of a  
12 contract, paragraph (1)(A)(ii) shall apply  
13 to the receipt of out-of-State municipal  
14 solid waste for a period ending January 1,  
15 2000.

16 “(iv) CONTRACT AND SPOT WASTE.—  
17 For any landfill or incinerator covered by  
18 this subparagraph and authorized to re-  
19 ceive out-of-State municipal solid waste  
20 pursuant to paragraph (1)(A)(ii), if out-of-  
21 State municipal solid waste was received at  
22 such landfill or incinerator during 1993  
23 both under a contract and otherwise,  
24 clause (ii) shall apply with respect to the  
25 waste received under the contract and

1 clause (iii) shall apply to the other municipi-  
2 pal solid waste received at the landfill or  
3 incinerator.

4 “(3) AVAILABILITY OF DOCUMENTATION.—The  
5 owner or operator of a landfill or incinerator which  
6 is exempt under paragraph (1) of this subsection  
7 from the requirements of subsection (a) shall provide  
8 to the State and affected local government, and  
9 make available for inspection by the public in the af-  
10 fected local community, a copy of the host commu-  
11 nity agreement or other documentation required  
12 under paragraph (1). The owner or operator may  
13 omit any proprietary information contained in the  
14 contracts, but shall ensure that at least the following  
15 information is apparent: the volume of out-of-State  
16 municipal solid waste to be received, the source of  
17 the waste, and the duration of the contract.

18 “(4) DENIED OR REVOKED PERMITS.—A land-  
19 fill or incinerator may not receive for disposal or in-  
20 cineration out-of-State municipal solid waste in the  
21 absence of a host community agreement if the oper-  
22 ating permit or license for the landfill or incinerator  
23 (or renewal thereof) was denied or revoked by the  
24 appropriate State agency before the date of enact-  
25 ment of this section unless such permit or license (or

1 renewal) has been reinstated as of such date of en-  
2 actment.

3 “(5) WASTE WITHIN BI-STATE METROPOLITAN  
4 STATISTICAL AREAS.—The owner or operator of a  
5 landfill or incinerator in a State may receive out-of-  
6 State municipal solid waste without obtaining au-  
7 thorization under subsection (a) from the affected  
8 local government if the out-of-State waste is gen-  
9 erated within, and the landfill or incinerator is lo-  
10 cated within, the same bi-State level A metropolitan  
11 statistical area (as defined by the Office of Manage-  
12 ment and Budget and as listed by the Office of  
13 Management and Budget as of the date of enact-  
14 ment of this section) which contains two contiguous  
15 major cities each of which is in a different State.

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

18 “(1) LIMITATIONS ON AMOUNT OF WASTE RE-  
19 CEIVED.—

20 “(A) LIMIT FOR ALL FACILITIES IN THE  
21 STATE.—A State may limit the amount of out-  
22 of-State municipal solid waste received annually  
23 for disposal at each landfill or incinerator in the  
24 State to the limitation amount described in

1 paragraph (2), except as provided in this sub-  
2 section. No such limit may conflict—

3 “(i) with provisions of a permit spe-  
4 cifically authorizing the owner or operator  
5 to accept, at the facility, out-of-State mu-  
6 nicipal solid waste, or

7 “(ii) with a host community agree-  
8 ment entered into between the owner or  
9 operator of any such landfill or incinerator  
10 and the affected local government.

11 “(B) CONFLICT.—A limit referred to in  
12 subparagraph (A) shall be treated as conflicting  
13 with a permit or host community agreement  
14 if—

15 “(i) the permit or host community  
16 agreement establishes a higher limit, or

17 “(ii) the permit or host community  
18 agreement does not establish any limit,

19 on the amount of out-of-State municipal solid  
20 waste which may be received annually at the  
21 facility.

22 “(C) LIMIT FOR PARTICULAR FACILI-  
23 TIES.—At the request of an affected local gov-  
24 ernment that has not executed a host commu-  
25 nity agreement, the State may limit the amount

1 of out-of-State municipal solid waste received  
2 annually for disposal at the landfill or inciner-  
3 ator concerned to the limitation amount de-  
4 scribed in paragraph (2). No such limit may  
5 conflict with provisions of a permit specifically  
6 authorizing the owner or operator to accept, at  
7 the facility, out-of-State municipal solid waste.

8 “(D) EFFECT ON OTHER LAWS.—Nothing  
9 in this subsection shall be interpreted or con-  
10 strued to have any effect on any State law re-  
11 lating to contracts.

12 “(2) LIMITATION AMOUNT.—For any landfill or  
13 incinerator that commenced receiving documented  
14 out-of-State municipal solid waste before the date of  
15 enactment of this section, the limitation amount re-  
16 ferred to in paragraph (1) for any year shall be  
17 equal to the amount of out-of-State municipal solid  
18 waste received for disposal at the landfill or inciner-  
19 ator concerned during calendar year 1993. The doc-  
20 umentation referred to in this subparagraph shall be  
21 such as would result in criminal penalties in case of  
22 false or misleading information. Such documentation  
23 shall include the amount of waste received, place of  
24 origin, including the identity of the generator, date  
25 of shipment, and type of waste.

1           “(3) OTHER LIMITATION AMOUNT.—(A) Except  
2 as provided in subparagraph (B), the limitation  
3 amount referred to in paragraph (1) shall be zero  
4 for a landfill or incinerator authorized to receive out-  
5 of-State municipal solid waste solely by reason of re-  
6 ceipt in calendar year 1993 of municipal solid waste  
7 that was not received under contract or otherwise  
8 authorized under this section.

9           “(B) The limitation amount of zero referred to  
10 in subparagraph (A) shall not be applicable to re-  
11 ceipt of any out-of-State municipal solid waste by  
12 the landfill or incinerator if the owner or operator,  
13 on the date of enactment of this section, owned the  
14 land on which the facility that received such waste  
15 is located.

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

21           “(5) ADDITIONAL LIMIT FOR MUNICIPAL  
22 WASTE.—(A) Any State (hereinafter in this para-  
23 graph referred to as an ‘importing State’) that im-  
24 ported more than 750,000 tons of out-of-State mu-  
25 nicipal solid waste in 1993 may establish a limit

1 under this paragraph on the amount of out-of-State  
2 municipal solid waste received pursuant to the au-  
3 thority of subsection (b)(1)(A)(ii) for disposal at  
4 landfills and incinerators in the importing State. A  
5 limit under this paragraph shall be in addition to, or  
6 in lieu of, any other limit imposed under this sub-  
7 section. A limit under this paragraph may be im-  
8 posed only if each of the following requirements are  
9 met:

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

14 “(ii) The importing State shall notify the  
15 Governor of the exporting State or States of the  
16 proposed limit at least 12 months before im-  
17 position of the limit.

18 “(iii) The importing State shall notify the  
19 Governor of the exporting State or States of the  
20 proposed limit at least 90 days before enforce-  
21 ment of the limit.

22 “(iv) The percentage reduction in the  
23 amount of out-of-State municipal solid waste  
24 which is received at each facility in the import-  
25 ing State at which a limit may be established

1 under this paragraph shall be uniform for all  
 2 such facilities.

3 “(B) The limit established under this para-  
 4 graph shall be a percentage of the amount of out-  
 5 of-State municipal solid waste generated in the ex-  
 6 porting State during calendar year 1993 and re-  
 7 ceived at facilities in the importing State in which  
 8 a limit is established under this paragraph. For any  
 9 calendar year after 1994, the percentage shall be as  
 10 specified in the following table:

<b>“Calendar year:</b>	<b>Applicable Percentage:</b>
1996 .....	85
1997 .....	75
1998 .....	65
1999 .....	55
after 1999 .....	50.

11 “(d) NEEDS DETERMINATION.—Any comprehensive  
 12 solid waste management plan approved under Federal or  
 13 State law and any implementation of such plan through  
 14 the State permitting process may take into account local  
 15 and regional needs for solid waste disposal capacity. An  
 16 affected local government may make a determination that  
 17 there is no local or regional need for a new landfill or in-  
 18 cinerator or major modification to an existing facility in  
 19 the area under the jurisdiction of the affected local govern-  
 20 ment. Such determination shall be based on a finding that  
 21 the proposed facility does not have a host community  
 22 agreement or is inconsistent with the capacity needs estab-

1 lished in the comprehensive solid waste management plan  
2 adopted by the affected local government pursuant to  
3 State law. No comprehensive solid waste management plan  
4 may expressly prohibit the importation of municipal solid  
5 waste from out of State.

6 “(e) IMPLEMENTATION AND ENFORCEMENT.—Any  
7 State may adopt such laws and regulations, not inconsis-  
8 tent with this section, as are necessary to implement and  
9 enforce this section, including provisions for penalties.

10 “(f) EFFECT ON INTERSTATE COMMERCE.—No  
11 State limitation established as provided in subsection (c),  
12 no State planning and permitting process referred to in  
13 subsection (d), and no State law or regulation referred to  
14 in subsection (e) shall be considered to impose an undue  
15 burden on interstate commerce or to otherwise impair, re-  
16 strain, or discriminate against interstate commerce.

17 “(g) ANNUAL STATE REPORT.—Each year the owner  
18 or operator of each landfill or incinerator receiving out-  
19 of-State municipal solid waste shall submit to the Gov-  
20 ernor of the State in which the landfill or incinerator is  
21 located information specifying the amount of out-of-State  
22 municipal solid waste received for disposal during the pre-  
23 ceding year. Each year each such State shall publish and  
24 make available to the public, a report containing informa-  
25 tion on the amount of out-of-State municipal solid waste

1 received for disposal in the State during the preceding  
2 year.

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

4 “(1) AFFECTED LOCAL GOVERNMENT.—(A)  
5 For any landfill or incinerator, the term ‘affected  
6 local government’ shall mean—

7 “(i) the public body authorized by State  
8 law to plan for the management of municipal  
9 solid waste, a majority of the members of which  
10 are elected officials, for the area in which the  
11 landfill or incinerator is located or proposed to  
12 be located, or

13 “(ii) if there is no such body created by  
14 State law, the elected officials of the city, town,  
15 township, borough, county, or parish exercising  
16 primary responsibility for the use of land on  
17 which the facility is located or proposed to be  
18 located,

19 except that for purposes of host community agree-  
20 ments entered into before the date of enactment of  
21 this section, the term shall mean either the public  
22 body described in subparagraph (A) or the elected  
23 officials of the city, town, township, borough, county,  
24 or parish exercising primary responsibility for the  
25 use of land on which the facility is located or pro-

1 posed to be located. No host community agreement  
2 that is entered into by the elected officials described  
3 in clause (ii) may be overturned by an act of a pub-  
4 lic body described in clause (i) if such body is cre-  
5 ated by State law after the execution of such host  
6 community agreement.

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

16 “(2) HOST COMMUNITY AGREEMENT.—The  
17 term ‘host community agreement’ means a written,  
18 legally binding agreement, lawfully entered into be-  
19 tween an owner or operator of a landfill or inciner-  
20 ator and an affected local government that specifi-  
21 cally authorizes the landfill or incinerator to receive  
22 out-of-State municipal solid waste.

23 “(3) MUNICIPAL SOLID WASTE.—The term  
24 ‘municipal solid waste’ means all waste materials  
25 discarded for disposal by households, including sin-

1       gle and multifamily residences, and hotels and mo-  
2       tels. The term also includes waste materials gen-  
3       erated by commercial, institutional, and industrial  
4       sources, to the extent such wastes are essentially the  
5       same as waste normally generated by households or  
6       were collected and disposed of with other municipal  
7       solid waste as part of normal municipal solid waste  
8       collection services, and regardless of when generated,  
9       would be considered conditionally exempt small  
10      quantity generator waste under section 3001(d). Ex-  
11      amples of municipal solid waste include food and  
12      yard waste, paper, clothing, appliances, consumer  
13      product packaging, disposable diapers, office sup-  
14      plies, cosmetics, glass and metal food containers, ele-  
15      mentary or secondary school science laboratory  
16      waste, and household hazardous waste. Such term  
17      shall include debris resulting from construction, re-  
18      modeling, repair, or demolition of structures other  
19      than debris that is not otherwise commingled with  
20      other municipal solid waste and has been determined  
21      by the generator, to be contaminated. For purposes  
22      of determining whether any such debris is contami-  
23      nated, the generator shall conduct representative  
24      sampling and analysis of such debris, the results of  
25      which shall be submitted to the affected local gov-

1 ernment for record keeping purposes only, unless not  
2 required by the affected local government. Any such  
3 debris that has been determined to be contaminated  
4 shall be disposed of in a landfill that meets, at a  
5 minimum, the requirements of this subtitle. The  
6 term does not include any of the following:

7 “(A) Any solid waste identified or listed as  
8 a hazardous waste under section 3001.

9 “(B) Any solid waste, including contami-  
10 nated soil and debris, resulting from—

11 “(i) a response action taken under  
12 section 104 or 106 of the Comprehensive  
13 Environmental Response, Compensation,  
14 and Liability Act (42 U.S.C. 9604 or  
15 9606),

16 “(ii) a response action taken under a  
17 State law with authorities comparable to  
18 the authorities of section 104 or 106, or

19 “(iii) a corrective action taken under  
20 this Act.

21 “(C) Recyclable materials that have been  
22 separated, at the source of the waste, from  
23 waste otherwise destined for disposal or that  
24 have been managed separately from waste des-  
25 tined for disposal.

1           “(D) Materials and products returned  
2 from a dispenser or distributor to the manufac-  
3 turer or an agent of the manufacturer for cred-  
4 it, evaluation, and possible reuse.

5           “(E) Any solid waste that is—

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

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

14           “(F) Any medical waste that is segregated  
15 from or not mixed with solid waste.

16           “(G) Sewage sludge and residuals from  
17 any sewage treatment plant, including any sew-  
18 age treatment plant required to be constructed  
19 in the State of Massachusetts pursuant to any  
20 court order issued against the Massachusetts  
21 Water Resources Authority.

22           “(H) Combustion ash generated by re-  
23 source recovery facilities or municipal inciner-  
24 ators, or waste from manufacturing or process-  
25 ing (including pollution control) operations not

1           essentially the same as waste normally gen-  
2           erated by households.

3           “(4)    OUT-OF-STATE    MUNICIPAL    SOLID  
4           WASTE.—The term ‘out-of-State municipal solid  
5           waste’, means, with respect to any State, municipal  
6           solid waste generated outside of the State. The term  
7           includes municipal solid waste generated outside of  
8           the United States.

9           “(5) SPECIFIC AUTHORIZATION.—For purposes  
10          of this section, the term ‘specifically authorizes’ re-  
11          fers to an explicit authorization, contained in a host  
12          community agreement or permit, to import waste  
13          from outside the State. Such authorization may in-  
14          clude a reference to a fixed radius surrounding the  
15          landfill or incinerator which includes an area outside  
16          the State or a reference to ‘any place of origin’, ref-  
17          erence to specific places outside the State, or use of  
18          such phrases as ‘regardless of origin’ or ‘outside the  
19          State’. The language for such authorization may  
20          vary as long as it clearly and affirmatively states the  
21          approval or consent of the affected local government  
22          or State for receipt of municipal solid waste from  
23          sources or locations outside the State from which the  
24          owner or operator of a landfill or incinerator pro-  
25          poses to import it. The authorization shall not in-

1       clude general references to the receipt of waste out-  
2       side the jurisdiction of the affected local government.

3       “(i) COST RECOVERY SURCHARGE.—

4               “(1) AUTHORITY.—A State may impose and  
5       collect a cost recovery surcharge on the combustion  
6       or disposal in a landfill or incinerator of out-of-State  
7       municipal solid waste in such State.

8               “(2) LIMITATION.—During the period begin-  
9       ning on the date of the enactment of this section  
10       and ending on December 31, 1996, a State may not  
11       impose or collect a cost recovery surcharge from a  
12       facility on any out-of-State municipal solid waste  
13       that meets both of the following conditions:

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

17                   “(B) The amount of waste being received  
18                   in a calendar year under the contract or con-  
19                   tracts does not exceed the amount of waste re-  
20                   ceived at the facility during calendar year 1993.

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

1           “(4) USE OF SURCHARGE COLLECTED.—All  
2 cost recovery surcharges collected by a State shall be  
3 used to fund those solid waste management pro-  
4 grams administered by the State or its political sub-  
5 divisions that incur costs for which the surcharge is  
6 collected.

7           “(5) CONDITIONS.—(A) Subject to subpara-  
8 graphs (B) and (C), a State may impose and collect  
9 a cost recovery surcharge on the combustion or dis-  
10 posal within the State of out-of-State municipal solid  
11 waste if—

12                   “(i) the State demonstrates a cost to the  
13 State arising from the combustion or disposal  
14 within the State of a volume of municipal solid  
15 waste from a source outside the State;

16                   “(ii) the surcharge is based on those costs  
17 to the State demonstrated under subparagraph  
18 (A) that, if not paid for through the surcharge,  
19 would otherwise have to be paid or subsidized  
20 by the State; and

21                   “(iii) the surcharge is compensatory and is  
22 not discriminatory.

23           “(B) In no event shall a cost recovery surcharge  
24 be imposed by a State to the extent that the cost for  
25 which recovery is sought is otherwise recovered by

1 any other fee or tax assessed against the generation,  
2 transportation, treatment, combustion, or disposal of  
3 solid waste.

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

8 “(6) BURDEN OF PROOF.—In any proceeding in  
9 which a State invokes this subsection to justify a  
10 cost recovery surcharge on the combustion or dis-  
11 posal within the State of out-of-State municipal solid  
12 waste, the State shall bear the burden of establish-  
13 ing that the cost recovery surcharge satisfies the  
14 conditions set forth in paragraph (5).”.

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

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

Passed the House of Representatives September 28,  
1994.

Attest: DONNALD K. ANDERSON,  
*Clerk.*

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