

103^D CONGRESS
2^D SESSION

H. R. 5250

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

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

A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation 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 title may be cited as the “Flow Control Act of
5 1994”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE CON-**
2 **TROL OVER TRANSPORTATION, MANAGE-**
3 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
4 **WASTE.**

5 Subtitle D of the Solid Waste Disposal Act (42
6 U.S.C. 6941 et seq.) is amended by adding at the end
7 the following new section:

8 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**
9 **CONTROL OVER TRANSPORTATION, MANAGE-**
10 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
11 **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)(i) exercise flow control authority for
17 municipal solid waste, incinerator ash from a
18 solid waste incineration unit, construction de-
19 bris, or demolition debris generated within the
20 boundaries of the State or qualified political
21 subdivision if, before May 15, 1994, the State
22 or qualified political subdivision—

23 “(I) adopted a law, ordinance, regula-
24 tion, solid waste management plan, or le-
25 gally binding provision that contains flow
26 control authority and, pursuant to such

1 authority, directs such solid waste, ash, or
2 debris to a proposed or existing waste
3 management facility designated before May
4 15, 1994; or

5 “(II) adopted a law, ordinance, regu-
6 lation, solid waste management plan, or le-
7 gally binding provision that identifies the
8 use of one or more waste management
9 methods that will be necessary for the
10 transportation, management, or disposal of
11 municipal solid waste generated within
12 such boundaries, and committed to the
13 designation of one or more waste manage-
14 ment facilities for such method or meth-
15 ods;

16 “(ii) after the effective date of this section,
17 in the case of a State or qualified political sub-
18 division that adopted such a law, ordinance,
19 regulation, plan, or legally binding provision
20 that meets the requirements of subclause (I) or
21 (II) of clause (i), exercise flow control authority
22 over such solid waste from any existing or fu-
23 ture waste management facility to any other ex-
24 isting or future waste management facility; and

1 “(iii) after the effective date of this sec-
2 tion, in the case of a State or qualified political
3 subdivision that adopted such a law, ordinance,
4 regulation, plan, or legally binding provision
5 that meets the requirements of subclause (I) of
6 clause (i), exercise flow control authority over
7 such solid waste, ash, or debris from any exist-
8 ing waste management facility to any other ex-
9 isting or proposed waste management facility,
10 and may do so without regard to subsection
11 (b)(2); and

12 “(B) exercise flow control authority for
13 voluntarily relinquished recyclable materials
14 generated within the boundaries of the State or
15 qualified political subdivision.

16 “(2) REASONABLE REGULATION OF COM-
17 MERCE.—

18 “(A) A law, ordinance, regulation, solid
19 waste management plan, or legally binding pro-
20 vision of a State or qualified political subdivi-
21 sion, described in paragraph (1), that imple-
22 ments or exercises flow control authority in
23 compliance with this section shall be considered
24 to be a reasonable regulation of commerce and
25 shall not be considered to be an undue burden

1 on or otherwise as impairing, restraining, or
2 discriminating against interstate commerce.

3 “(B) A contract or franchise agreement
4 entered into by a State or political subdivision
5 to provide the exclusive or nonexclusive author-
6 ity for the collection, transportation, or disposal
7 of municipal solid waste, and not otherwise in-
8 volving the exercise of flow control authority de-
9 scribed in paragraph (1), shall be considered to
10 be a reasonable regulation of commerce and
11 shall not be considered to be an undue burden
12 on or otherwise as impairing, restraining, or
13 discriminating against interstate commerce.

14 “(b) LIMITATIONS.—

15 “(1) LIMITATION OF AUTHORITY REGARDING
16 RECYCLABLE MATERIALS.—A State or qualified po-
17 litical subdivision may exercise the authority de-
18 scribed in subsection (a)(1)(B) with respect to recy-
19 clable materials only if—

20 “(A) the generator or owner of the mate-
21 rials voluntarily made the materials available to
22 the State or qualified political subdivision, or
23 the designee of the State or qualified political
24 subdivision, and relinquished any rights to, or
25 ownership of, such materials; and

1 “(B) the State or qualified political sub-
2 division, or the designee of the State or quali-
3 fied political subdivision, assumes such rights
4 to, or ownership of, such materials.

5 “(2) LIMITATION OF AUTHORITY REGARDING
6 SOLID WASTE OR RECYCLABLE MATERIALS.—

7 “(A) A State or qualified political subdivi-
8 sion may exercise the authority described in
9 subparagraph (A) or (B) of subsection (a)(1)
10 only if the State or qualified political subdivi-
11 sion establishes a program to separate, or divert
12 at the point of generation, recyclable materials
13 from municipal solid waste, for purposes of re-
14 cycling, reclamation, or reuse, in accordance
15 with any Federal or State law or municipal
16 solid waste planning requirements in effect.

17 “(B) A State or qualified political subdivi-
18 sion may exercise the authority described in
19 clause (i) or (ii) of subsection (a)(1)(A) only if,
20 after conducting one or more public hearings,
21 the State or qualified political subdivision—

22 “(i) finds, on the basis of the record
23 developed at the hearing or hearings, that
24 it is necessary to exercise the authority de-
25 scribed in subparagraph (A) or (B) of sub-

1 section (a)(1) to meet the current solid
2 waste management needs (as of the date of
3 the record) or the anticipated solid waste
4 management needs of the State or quali-
5 fied political subdivision for the manage-
6 ment of municipal solid waste or recyclable
7 materials;

8 “(ii) finds, on the basis of the record
9 developed at the hearing or hearings, in-
10 cluding an analysis of the ability of the pri-
11 vate sector and public bodies to provide
12 short and long term integrated solid waste
13 management services with and without
14 flow control authority, that the exercise of
15 flow control authority is necessary to pro-
16 vide such services in an economically effi-
17 cient and environmentally sound manner;
18 and

19 “(iii) provides a written explanation of
20 the reasons for the findings described
21 clauses (i) and (ii), which may include a
22 finding of a preferred waste management
23 methodology or methodologies for provid-
24 ing such integrated solid waste manage-
25 ment services.

1 “(C) With respect to each designated
2 waste management facility, the authority of
3 subsection (a) shall be effective until completion
4 of the schedule for payment of the capital costs
5 of the waste management facility concerned (as
6 in effect on May 15, 1994), or for the remain-
7 ing useful life of the original waste management
8 facility, whichever is longer. At the end of such
9 period, the authority of subsection (a) shall be
10 effective for any waste management facility for
11 which subparagraph (B) and subsection (c)
12 have been complied with by the State or quali-
13 fied political subdivision, except that no facility,
14 and no State or qualified political subdivision,
15 subject to subsection (a)(1)(A)(i)(I) or sub-
16 section (a)(1)(A)(ii) shall be required to comply
17 with subparagraph (B) for a period of 10 years
18 after the date of enactment of this section. Not-
19 withstanding the provisions of this paragraph,
20 compliance with subparagraph (B) shall not be
21 required where—

22 “(i) a designated waste management
23 facility is required to retrofit or otherwise
24 make significant modifications to meet ap-

1 plicable environmental requirements or
2 safety requirements;

3 “(ii) routine repair or scheduled re-
4 placements of existing equipment or com-
5 ponents of a designated waste management
6 facility is undertaken that does not add to
7 the capacity of the waste management fa-
8 cility; or

9 “(iii) a designated waste management
10 facility expands on land legally or equitably
11 owned, or under option to purchase or
12 lease, by the owner or operator of such fa-
13 cility and the applicable permit includes
14 such land.

15 “(D) Notwithstanding anything to the con-
16 trary in this section, paragraphs (2)(B) and
17 (2)(C) shall not apply to any State (or any of
18 its political subdivisions) that, on or before Jan-
19 uary 1, 1984, enacted regulations pursuant to
20 a State law that required or directed the trans-
21 portation, management, or disposal of solid
22 waste from residential, commercial, institutional
23 and industrial sources as defined by State law
24 to specific waste management facilities and ap-

1 plied those regulations to every political subdivi-
2 sion in the State.

3 “(3) LIMITATION TO APPLIED AUTHORITIES.—

4 The authority described in subsection (a)(1)(A) shall
5 apply only to the specific classes or categories of
6 solid waste to which the authority described in sub-
7 section (a)(1)(A)(i)(I) was applied by the State or
8 qualified political subdivision before May 15, 1994,
9 and to the specific classes or categories of solid
10 waste for which the State or qualified political sub-
11 division committed to the designation of one or more
12 waste management facilities as described in sub-
13 section (a)(1)(A)(i)(II).

14 “(4) EXPIRATION OF AUTHORITY.—The author-
15 ity granted under subsection (a)(1)(A)(i)(II) shall
16 expire if a State or qualified political subdivision has
17 not designated, by law, ordinance, regulation, solid
18 waste management plan, or other legally binding
19 provision, one or more proposed or existing waste
20 management facilities within 3 years after the date
21 of enactment of this section.

22 “(5) LIMITATION ON REVENUE.—A State or
23 qualified political subdivision may exercise the au-
24 thority described in subsection (a) only if the State
25 or qualified political subdivision limits the use of any

1 of its revenues derived from the exercise of such au-
2 thority primarily to solid waste management serv-
3 ices.

4 “(c) COMPETITIVE DESIGNATION PROCESS.—

5 “(1) IN GENERAL.—A State or qualified politi-
6 cal subdivision may exercise the authority described
7 in subsection (a) only if the State or qualified politi-
8 cal subdivision develops and implements a competi-
9 tive designation process, with respect to each waste
10 management facility or each facility for recyclable
11 materials. The process shall—

12 “(A) ensure that the designation process is
13 based on, or is part of, a municipal solid waste
14 management plan that is adopted by the State
15 or qualified political subdivision and that is de-
16 signed to ensure long-term management capac-
17 ity for municipal solid waste or recyclable mate-
18 rials generated within the boundaries of the
19 State or qualified political subdivision;

20 “(B) set forth the goals of the designation
21 process, including at a minimum—

22 “(i) capacity assurance;

23 “(ii) the establishment of provisions to
24 provide that protection of human health
25 and the environment will be achieved; and

1 “(iii) any other goals determined to be
2 relevant by the State or qualified political
3 subdivision;

4 “(C) identify and compare reasonable and
5 available alternatives, options, and costs for
6 designation of the facilities;

7 “(D) provide for public participation and
8 comment;

9 “(E) ensure that the designation of each
10 facility is accomplished through an open com-
11 petitive process during which the State or quali-
12 fied political subdivision—

13 “(i) identifies in writing criteria to be
14 utilized for selection of the facilities, which
15 shall not discriminate unfairly against any
16 particular waste management facility or
17 any method of management, transportation
18 or disposal, and shall not establish quali-
19 fications for selection that can only be met
20 by public bodies;

21 “(ii) provides a fair and equal oppor-
22 tunity for interested public persons and
23 private persons to offer their existing (as
24 of the date of the process) or proposed fa-
25 cilities for designation; and

1 “(iii) evaluates and selects the facili-
2 ties for designation based on the merits of
3 the facilities in meeting the criteria identi-
4 fied; and

5 “(F) base the designation of each such fa-
6 cility on reasons that shall be stated in a public
7 record.

8 “(2) CERTIFICATION.—

9 “(A) IN GENERAL.—A Governor of any
10 State may certify that the laws and regulations
11 of the State in effect on May 15, 1994, satisfy
12 the requirements for a competitive designation
13 process under paragraph (1).

14 “(B) PROCESS.—In making a certification
15 under subparagraph (A), a Governor shall—

16 “(i) publish notice of the proposed
17 certification in a newspaper of general cir-
18 culation and provide such additional notice
19 of the proposed certification as may be re-
20 quired by State law;

21 “(ii) include in the notice of the pro-
22 posed certification or otherwise make read-
23 ily available a statement of the laws and
24 regulations subject to the certification and
25 an explanation of the basis for a conclusion

1 that the laws and regulations satisfy the
2 requirements of paragraph (1);

3 “(iii) provide interested persons an
4 opportunity to comment on the proposed
5 certification, for a period of time not less
6 than 60 days, after publication of the no-
7 tice; and

8 “(iv) publish notice of the final certifi-
9 cation, together with an explanation of the
10 basis for the final certification, in a news-
11 paper of general circulation and provide
12 such additional notice of the final certifi-
13 cation as may be required by State law.

14 “(C) APPEAL.—Within 120 days after
15 publication of the final certification under sub-
16 paragraph (B), any interested person may file
17 an appeal of the final certification in the United
18 States Circuit Court of Appeals for the Federal
19 judicial district of the State, for a judicial de-
20 termination that the certified laws and regula-
21 tions do not satisfy the requirements of para-
22 graph (1) or that the certification process did
23 not satisfy the procedural requirements of sub-
24 paragraph (B). The appeal shall set forth the

1 specific reasons for the appeal of the final cer-
2 tification.

3 “(D) LIMITATION TO RECORD.—Any judi-
4 cial proceeding brought under subparagraph
5 (C) shall be limited to the administrative record
6 developed in connection with the procedures de-
7 scribed in subparagraph (B).

8 “(E) COSTS OF LITIGATION.—In any judi-
9 cial proceeding brought under subparagraph
10 (C), the court shall award costs of litigation (in-
11 cluding reasonable attorney fees) to any prevail-
12 ing party whenever the court determines that
13 such award is appropriate.

14 “(F) LIMITATION ON REVIEW OF CERTIFI-
15 CATIONS.—If no appeal is taken within 120
16 days after the publication of the final certifi-
17 cation, or if the final certification by the Gov-
18 ernor of any State is upheld by the United
19 States Circuit Court of Appeals and no party
20 seeks review by the Supreme Court (within ap-
21 plicable time requirements), the final certifi-
22 cation shall not be subject to judicial review.

23 “(G) LIMITATION ON REVIEW OF DESIGNA-
24 TIONS.—Designations made after the final cer-
25 tification and pursuant to the certified laws and

1 regulations shall not be subject to judicial re-
2 view for failure to satisfy the requirements of
3 paragraph (1).

4 “(d) OWNERSHIP OF RECYCLABLE MATERIALS.—

5 “(1) PROHIBITION ON REQUIRED TRANS-
6 FERS.—Nothing in this section shall authorize any
7 State or qualified political subdivision, or any des-
8 ignee of the State or qualified political subdivision,
9 to require any generator or owner of recyclable ma-
10 terials to transfer any recyclable materials to such
11 State or qualified political subdivision unless the
12 generator or owner of the recyclable materials volun-
13 tarily made the materials available to the State or
14 qualified political subdivision and relinquished any
15 rights to, or ownership of, such materials.

16 “(2) OTHER TRANSACTIONS.—Nothing in this
17 section shall prohibit any person from selling, pur-
18 chasing, accepting, conveying, or transporting any
19 recyclable materials for purposes of transformation
20 or remanufacture into usable or marketable mate-
21 rials, unless a generator or owner voluntarily made
22 the materials available to the State or qualified po-
23 litical subdivision and relinquished any rights to, or
24 ownership of, such materials.

1 “(e) RETAINED AUTHORITY.—Upon the request of
2 any generator of municipal solid waste affected by this
3 section, the State or political subdivision may authorize
4 the diversion of all or a portion of the solid wastes gen-
5 erated by the generator making such request to a solid
6 waste facility, other than the facility or facilities originally
7 designated by the political subdivision, where the purpose
8 of such request is to provide a higher level of protection
9 for human health and the environment and reduce poten-
10 tial future liability under Federal or State law of such gen-
11 erator for the management of such wastes. Requests shall
12 include information on the environmental suitability of the
13 proposed alternative treatment or disposal facility and
14 method, compared to that of the designated facility and
15 method. In making such a determination the State or po-
16 litical subdivision may consider the ability and willingness
17 of both the designated and alternative disposal facility or
18 facilities to indemnify the generator against any cause of
19 action under State or Federal environmental statutes and
20 against any cause of action for nuisance, personal injury,
21 or property loss under any State law.

22 “(f) EXISTING LAWS AND CONTRACTS.—

23 “(1) IN GENERAL.—This section shall not su-
24 percede, abrogate, or otherwise modify any of the
25 following:

1 “(A) Any contract or other agreement (in-
2 cluding any contract containing an obligation to
3 repay the outstanding indebtedness on any pro-
4 posed or existing waste management facility or
5 facility for recyclable materials) entered into be-
6 fore May 15, 1994, by a State or qualified po-
7 litical subdivision in which such State or quali-
8 fied political subdivision has designated a pro-
9 posed or existing waste management facility, or
10 facility for recyclable materials, for the trans-
11 portation, management or disposal of municipal
12 solid waste, incinerator ash from a solid waste
13 incineration unit, construction debris or demoli-
14 tion debris, or recyclable materials, pursuant to
15 a law, ordinance, regulation, solid waste man-
16 agement plan, or legally binding provision
17 adopted by such State or qualified political sub-
18 division before May 15, 1994, if, in the case of
19 a contract or agreement relating to recyclable
20 materials, the generator or owner of the mate-
21 rials, and the State or qualified political sub-
22 division, have met the appropriate conditions in
23 subsection (b)(1) with respect to the materials.

24 “(B) Any other contract or agreement en-
25 tered into before May 15, 1994, for the trans-

1 portation, management or disposal of municipal
2 solid waste, incinerator ash from a solid waste
3 incineration unit, or construction debris or dem-
4 olition debris.

5 “(C)(i) Any law, ordinance, regulation,
6 solid waste management plan, or legally binding
7 provision—

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

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

14 “(III) under which a State or quali-
15 fied political subdivision, prior to May 15,
16 1994, directed, limited, regulated, or pro-
17 hibited the transportation, management, or
18 disposal of municipal solid waste, or incin-
19 erator ash from, a solid waste incineration
20 unit, or construction debris or demolition
21 debris, generated within the boundaries;

22 if the law, ordinance, regulation, solid waste
23 management plan, or legally binding provision
24 is applied to the transportation of solid waste
25 described in subclause (III), to a proposed or

1 existing waste management facility designated
2 before May 15, 1994, or to the management or
3 disposal of such solid waste at such a facility,
4 under such law, ordinance, regulation, solid
5 waste management plan, or legally binding pro-
6 vision.

7 “(ii) Any law, ordinance, regulation, solid
8 waste management plan, or legally binding pro-
9 vision—

10 “(I) that is adopted before May 15,
11 1994; and

12 “(II) that pertains to the transpor-
13 tation or management of recyclable mate-
14 rials generated within the boundaries of a
15 State or qualified political subdivision;

16 if the law, ordinance, regulation, solid waste
17 management plan, or legally binding provision
18 is applied to the transportation of recyclable
19 materials that are generated within the bound-
20 aries, and with respect to which the generator
21 or owner of the materials, and the State or
22 qualified political subdivision, have met the ap-
23 propriate conditions described in subsection
24 (b)(1), to a proposed or existing facility for re-
25 cyclable materials designated before May 15,

1 1994, or to the management of such materials,
2 under such law, ordinance, regulation, solid
3 waste management plan, or legally binding pro-
4 vision.

5 “(2) CONTRACT INFORMATION.—A party to a
6 contract or other agreement that is described in sub-
7 paragraph (A) or (B) of paragraph (1) shall provide
8 a copy of the contract or agreement to the State or
9 qualified political subdivision on request. Any propri-
10 etary information contained in the contract or agree-
11 ment may be omitted in the copy, but the informa-
12 tion that appears in the copy shall include at least
13 the date that the contract or agreement was signed,
14 the volume of municipal solid waste or recyclable
15 materials covered by the contract or agreement with
16 respect to which the State or qualified political sub-
17 division could otherwise exercise authority under
18 subsection (a) or paragraph (1)(C), the source of the
19 waste or materials, the destination of the waste or
20 materials, the duration of the contract or agreement,
21 and the parties to the contract or agreement.

22 “(3) EFFECT ON INTERSTATE COMMERCE.—
23 Any contract or agreement described in subpara-
24 graph (A) or (B) of paragraph (1), and any law, or-
25 dinance, regulation, solid waste management plan,

1 or legally binding provision described in subpara-
2 graph (C) of paragraph (1), shall be considered to
3 be a reasonable regulation of commerce by a State
4 or qualified political subdivision, retroactive to the
5 effective date of the contract or agreement, or to the
6 date of adoption of any such law, ordinance, regula-
7 tion, solid waste management plan, or legally bind-
8 ing provision, and shall not be considered to be an
9 undue burden on or otherwise as impairing, restrain-
10 ing, or discriminating against interstate commerce.

11 “(4) LIMITATION.—Any designation by a State
12 or qualified political subdivision of any waste man-
13 agement facility or facility for recyclable materials
14 after the date of enactment of this section shall be
15 made in compliance with subsection (c). Nothing in
16 this paragraph shall affect any designation made be-
17 fore the date of enactment of this section, and any
18 such designation shall be deemed to satisfy the re-
19 quirements of subsection (c).

20 “(g) SAVINGS CLAUSE.—

21 “(1) FEDERAL OR STATE ENVIRONMENTAL
22 LAWS.—Nothing in this section is intended to super-
23 sede, amend, or otherwise modify Federal or State
24 environmental laws (including regulations) that
25 apply to the disposal or management of solid waste

1 or recyclable materials at waste management facili-
2 ties or facilities for recyclable materials.

3 “(2) STATE LAW.—Nothing in this section shall
4 be interpreted to authorize a qualified political sub-
5 division to exercise the authority granted by this sec-
6 tion in a manner inconsistent with State law.

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

9 “(1) COMMITTED TO THE DESIGNATION OF ONE
10 OR MORE WASTE MANAGEMENT FACILITIES.—The
11 term ‘committed to the designation of one or more
12 waste management facilities’ means that a State or
13 qualified political subdivision was legally bound to
14 designate one or more existing or future waste man-
15 agement facilities or performed or caused to be per-
16 formed one or more of the following actions for the
17 purpose of designating one or more such facilities:

18 “(A) Obtained all required permits for the
19 construction of such waste management facility
20 prior to May 15, 1994.

21 “(B) Executed contracts for the construc-
22 tion of such waste management facility prior to
23 May 15, 1994.

24 “(C) Presented revenue bonds for sale to
25 specifically provide revenue for the construction

1 of such waste management facility prior to May
2 15, 1994.

3 “(D) Submitted to the appropriate regu-
4 latory agency or agencies, on or before May 15,
5 1994, administratively complete permit applica-
6 tions for the construction and operation of a
7 waste management facility.

8 “(E) Formed a public authority or a joint
9 agreement among qualified political subdivi-
10 sions, pursuant to a law authorizing such for-
11 mation for the purposes of designating facili-
12 ties.

13 “(F) Executed a contract or agreement
14 which obligates or otherwise requires a State or
15 qualified political subdivision to deliver a mini-
16 mum quantity of solid waste to a waste man-
17 agement facility and which obligates or other-
18 wise requires the State or qualified political
19 subdivision to pay for that minimum quantity
20 of solid waste even if the stated minimum quan-
21 tity of solid waste is not delivered within a re-
22 quired timeframe, otherwise commonly known
23 as a ‘put or pay agreement’.

24 “(G) Adopted, pursuant to a State statute
25 which specifically described the method for des-

1 ignating by solid waste management districts, a
2 resolution of preliminary designation that speci-
3 fies criteria and procedures for soliciting pro-
4 posals to designate facilities after having com-
5 pleted a public notice and comment period.

6 “(H) Adopted, pursuant to a State statute
7 which specifically described the method for des-
8 ignating by solid waste management districts, a
9 resolution of intent to establish designation with
10 a list of facilities for which designation is in-
11 tended.

12 “(2) DESIGNATION; DESIGNATE.—The terms
13 ‘designate’, ‘designated’, ‘designation’ or ‘designat-
14 ing’ mean a requirement of a State or qualified po-
15 litical subdivision, and the act of a State or qualified
16 political subdivision, to require that all or any por-
17 tion of the municipal solid waste that is generated
18 within the boundaries of the State or qualified politi-
19 cal subdivision be delivered to a waste management
20 facility identified by a State or qualified political
21 subdivision, and specifically includes put or pay
22 agreements of the type described in paragraph
23 (1)(F).

24 “(3) FLOW CONTROL AUTHORITY.—The term
25 ‘flow control authority’ means the authority to con-

1 trol the movement of solid waste or recyclable mate-
2 rials and direct such waste or recyclable materials to
3 one or more designated waste management facilities
4 or facilities for recyclable materials.

5 “(4) INDUSTRIAL SOLID WASTE.—The term ‘in-
6 dustrial solid waste’ means solid waste generated by
7 manufacturing or industrial processes, including
8 waste generated during scrap processing and scrap
9 recycling, that is not hazardous waste regulated
10 under subtitle C. ‘Industrial solid waste’ does not in-
11 clude municipal solid waste specified in paragraph
12 (5)(A)(iii).

13 “(5) MUNICIPAL SOLID WASTE.—

14 “(A) IN GENERAL.—Subject to the limita-
15 tions of subsection (b)(3), the term ‘municipal
16 solid waste’ means—

17 “(i) any solid waste discarded by a
18 household, including a single or multifam-
19 ily residence;

20 “(ii) any solid waste that is discarded
21 by a commercial, institutional, or industrial
22 source;

23 “(iii) residue remaining after recycla-
24 ble materials have been separated or di-

1 verted from municipal solid waste de-
2 scribed in clause (i) or (ii);

3 “(iv) any waste material or waste sub-
4 stance removed from a septic tank, septic
5 pit, or cesspool, other than from portable
6 toilets; and

7 “(v) conditionally exempt small quan-
8 tity generator waste under section 3001(d),
9 if it is collected, processed or disposed with
10 other municipal solid waste as part of mu-
11 nicipal solid waste services.

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

15 “(i) Hazardous waste required to be
16 managed in accordance with subtitle C
17 (other than waste described in subpara-
18 graph (A)(v)), solid waste containing a pol-
19 ychlorinated biphenyl regulated under the
20 Toxic Substances Control Act (15 U.S.C.
21 2601 et seq.), or medical waste listed in
22 section 11002.

23 “(ii) (I) A recyclable material.

24 “(II) A material or a product re-
25 turned from a dispenser or distributor to

1 the manufacturer or the agent of the man-
2 ufacturer for credit, evaluation, or reuse
3 unless such material or product is dis-
4 carded or abandoned for collection, dis-
5 posal or combustion.

6 “(III) A material or product that is
7 an out-of-date or unmarketable material or
8 product, or is a material or product that
9 does not conform to specifications, and
10 that is returned to the manufacturer or the
11 agent of the manufacturer for credit, eval-
12 uation, or reuse unless such material or
13 product is discarded or abandoned for col-
14 lection, disposal or combustion.

15 “(iii) Any solid waste (including con-
16 taminated soil and debris) resulting from a
17 response action taken under section 104 or
18 106 of the Comprehensive Environmental
19 Response, Compensation, and Liability Act
20 of 1980 (42 U.S.C. 9604 or 9606) or a
21 corrective action taken under this Act.

22 “(iv)(I) Industrial solid waste.

23 “(II) Any solid waste that is gen-
24 erated by an industrial facility and trans-
25 ported for the purpose of containment,

1 storage, or disposal to a facility that is
2 owned or operated by the generator of the
3 waste, or a facility that is located on prop-
4 erty owned by the generator.

5 “(6) QUALIFIED POLITICAL SUBDIVISION.—The
6 term ‘qualified political subdivision’ means a govern-
7 mental entity or political subdivision of a State, as
8 authorized by the State, to plan for, or determine
9 the methods to be utilized for, the collection, trans-
10 portation, disposal or other management of municipi-
11 pal solid waste generated within the boundaries of
12 the area served by the governmental entity or politi-
13 cal subdivision.

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

20 “(8) SOLID WASTE MANAGEMENT PLAN.—The
21 term ‘solid waste management plan’ means a plan
22 for the transportation, treatment, processing,
23 composting, combustion, disposal or other manage-
24 ment of municipal solid waste, adopted by a State

1 or qualified political subdivision pursuant to and
2 conforming with State law.

3 “(9) WASTE MANAGEMENT FACILITY.—The
4 term ‘waste management facility’ means any facility
5 or facilities in which municipal solid waste, inciner-
6 ator ash from a solid waste incineration unit, or con-
7 struction debris or demolition debris is separated,
8 stored, transferred, treated, processed, combusted,
9 deposited or disposed.

10 “(10) EXISTING WASTE MANAGEMENT FACIL-
11 ITY.—The term ‘existing waste management facility’
12 means a facility under construction or in operation
13 as of May 15, 1994.

14 “(11) PROPOSED WASTE MANAGEMENT FACIL-
15 ITY.—The term ‘proposed waste management facil-
16 ity’ means a facility that has been specifically identi-
17 fied and designated, but which was not under con-
18 struction, as of May 15, 1994.

19 “(12) FUTURE WASTE MANAGEMENT FACIL-
20 ITY.—The term ‘future waste management facility’
21 means any other waste management facility.”

22 **SEC. 3. TABLE OF CONTENTS AMENDMENT.**

23 The table of contents in section 1001 of the Solid
24 Waste Disposal Act (42 U.S.C. prec. 6901) is amended

- 1 by adding after the item relating to section 4010 the fol-
- 2 lowing new item:

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



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HR 5250 IH—3