

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

# H. R. 24

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

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

FEBRUARY 28, 1995

Additional Sponsors: Mr. SAXTON, Mr. TRAFICANT, Mr. MCHUGH, Mr. FOX of Pennsylvania, Mr. FRELINGHUYSEN, Mr. HOLDEN, Mr. GILLMOR, Mr. EHLERS, Mr. CAMP, Mrs. MYRICK, Mr. HOEKSTRA, Mr. ROGERS, and Mr. PETERSON of Minnesota

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## A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization for 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 Act may be cited as the “Community Solvency  
5 Act of 1995”.

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 after section  
7 4010 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.—To the extent consistent  
24 with subsection (a), this section shall not supersede,  
25 abrogate, or otherwise modify any of the 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) PROHIBITION.—No political subdivision may ex-  
8 ercise flow control authority to direct the movement of mu-  
9 nicipal solid waste to any waste management facility for  
10 which a Federal permit was denied twice before the enact-  
11 ment of this section.

12 “(i) DEFINITIONS.—For purposes of this section  
13 only, the following definitions apply:

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

23 “(A) Obtained all required permits for the  
24 construction of such waste management facility  
25 prior to May 15, 1994.

1           “(B) Executed contracts for the construc-  
2           tion of such waste management facility prior to  
3           May 15, 1994.

4           “(C) Presented revenue bonds for sale to  
5           specifically provide revenue for the construction  
6           of such waste management facility prior to May  
7           15, 1994.

8           “(D) Submitted to the appropriate regu-  
9           latory agency or agencies, on or before May 15,  
10          1994, administratively complete permit applica-  
11          tions for the construction and operation of a  
12          waste management facility.

13          “(E) Formed a public authority or a joint  
14          agreement among qualified political subdivi-  
15          sions, pursuant to a law authorizing such for-  
16          mation for the purposes of designating facili-  
17          ties.

18          “(F) Executed a contract or agreement  
19          that obligates or otherwise requires a State or  
20          qualified political subdivision to deliver a mini-  
21          mum quantity of solid waste to a waste man-  
22          agement facility and that obligates or otherwise  
23          requires the State or qualified political subdivi-  
24          sion to pay for that minimum quantity of solid  
25          waste even if the stated minimum quantity of

1 solid waste is not delivered within a required  
2 timeframe, otherwise commonly known as a  
3 ‘put or pay agreement’.

4 “(G) Adopted, pursuant to a State statute  
5 that specifically described the method for des-  
6 ignating by solid waste management districts, a  
7 resolution of preliminary designation that speci-  
8 fies criteria and procedures for soliciting pro-  
9 posals to designate facilities after having com-  
10 pleted a public notice and comment period.

11 “(H) Adopted, pursuant to a State statute  
12 that specifically described the method for des-  
13 ignating by solid waste management districts, a  
14 resolution of intent to establish designation with  
15 a list of facilities for which designation is in-  
16 tended.

17 “(2) DESIGNATION; DESIGNATE.—The terms  
18 ‘designate’, ‘designated’, ‘designation’, or ‘designat-  
19 ing’ mean a requirement of a State or qualified po-  
20 litical subdivision, and the act of a State or qualified  
21 political subdivision, to require that all or any por-  
22 tion of the municipal solid waste that is generated  
23 within the boundaries of the State or qualified politi-  
24 cal subdivision be delivered to a waste management  
25 facility identified by a State or qualified political

1 subdivision, and specifically includes put or pay  
2 agreements of the type described in paragraph  
3 (1)(F).

4 “(3) FLOW CONTROL AUTHORITY.—The term  
5 ‘flow control authority’ means the authority to con-  
6 trol the movement of solid waste or recyclable mate-  
7 rials and direct such waste or recyclable materials to  
8 one or more designated waste management facilities  
9 or facilities for recyclable materials.

10 “(4) INDUSTRIAL SOLID WASTE.—The term ‘in-  
11 dustrial solid waste’ means solid waste generated by  
12 manufacturing or industrial processes, including  
13 waste generated during scrap processing and scrap  
14 recycling, that is not hazardous waste regulated  
15 under subtitle C. The term does not include municip-  
16 al solid waste specified in paragraph (5)(A)(iii).

17 “(5) MUNICIPAL SOLID WASTE.—

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

21 “(i) any solid waste discarded by a  
22 household, including a single or multifam-  
23 ily residence;

1           “(ii) any solid waste that is discarded  
2           by a commercial, institutional, or industrial  
3           source;

4           “(iii) residue remaining after recyclable  
5           materials have been separated or diverted  
6           from municipal solid waste described  
7           in clause (i) or (ii);

8           “(iv) any waste material or waste substance  
9           removed from a septic tank, septic  
10          pit, or cesspool, other than from portable  
11          toilets; and

12          “(v) conditionally exempt small quantity  
13          generator waste under section 3001(d),  
14          if it is collected, processed or disposed with  
15          other municipal solid waste as part of municipal  
16          solid waste services.

17          “(B) EXCLUSIONS.—The term ‘municipal  
18          solid waste’ shall not include any of the following:  
19          ing:

20               “(i) Hazardous waste required to be  
21               managed in accordance with subtitle C  
22               (other than waste described in subparagraph  
23               (A)(v)), solid waste containing a polychlorinated  
24               biphenyl regulated under the  
25               Toxic Substances Control Act (15 U.S.C.

1           2601 et seq.), or medical waste listed in  
2           section 11002.

3           “(ii)(I) A recyclable material.

4           “(II) A material or a product re-  
5           turned from a dispenser or distributor to  
6           the manufacturer or the agent of the man-  
7           ufacturer for credit, evaluation, or reuse  
8           unless such material or product is dis-  
9           carded or abandoned for collection, dis-  
10          posal or combustion.

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

20          “(iii) Any solid waste (including con-  
21          taminated soil and debris) resulting from a  
22          response action taken under section 104 or  
23          106 of the Comprehensive Environmental  
24          Response, Compensation, and Liability Act

1 of 1980 (42 U.S.C. 9604 or 9606) or a  
2 corrective action taken under this Act.

3 “(iv) (I) Industrial solid waste.

4 “(II) Any solid waste that is gen-  
5 erated by an industrial facility and trans-  
6 ported for the purpose of containment,  
7 storage, or disposal to a facility that is  
8 owned or operated by the generator of the  
9 waste, or a facility that is located on prop-  
10 erty owned by the generator.

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

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

1           “(8) SOLID WASTE MANAGEMENT PLAN.—The  
2 term ‘solid waste management plan’ means a plan  
3 for the transportation, treatment, processing,  
4 composting, combustion, disposal or other manage-  
5 ment of municipal solid waste, adopted by a State  
6 or qualified political subdivision pursuant to and  
7 conforming with State law.

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

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

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

