

104TH CONGRESS
1ST SESSION

S. 465

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23 (legislative day, FEBRUARY 22), 1995

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Environmental and Public Works

A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization for restrictions on receipt of out-of-State municipal solid waste and 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 **SEC. 101. SHORT TITLE.**

4 This Act may be cited as the “State and Local Gov-
5 ernment Interstate Waste Control Act of 1995”.

1 **SEC. 102. INTERSTATE TRANSPORTATION AND DISPOSAL**
2 **OF MUNICIPAL SOLID WASTE.**

3 Subtitle D of the Solid Waste Disposal Act (42
4 U.S.C. 6941 et seq.) is amended by adding after section
5 4010 the following new section:

6 **“SEC. 4011. INTERSTATE TRANSPORTATION AND DISPOSAL**
7 **OF MUNICIPAL SOLID WASTE.**

8 “(a) RESTRICTION ON RECEIPT OF OUT-OF-STATE
9 WASTE.—

10 “(1) IN GENERAL.—(A) Except as provided in
11 subsections (c), (e), and (h), effective January 1,
12 1996, a landfill or incinerator in a State may not re-
13 ceive for disposal or incineration any out-of-State
14 municipal solid waste unless the owner or operator
15 of such landfill or incinerator obtains explicit author-
16 ization (as part of a host community agreement)
17 from the affected local government to receive the
18 waste.

19 “(B) An authorization granted after enactment
20 of this section pursuant to subparagraph (A) shall—

21 “(i) be granted by formal action at a meet-
22 ing;

23 “(ii) be recorded in writing in the official
24 record of the meeting; and

25 “(iii) remain in effect according to its
26 terms.

1 “(C) An authorization granted pursuant to sub-
2 paragraph (A) may specify terms and conditions, in-
3 cluding an amount of out-of-State waste that an
4 owner or operator may receive and the duration of
5 the authorization.

6 “(D) Promptly, but not later than 90 days after
7 such an authorization is granted, the affected local
8 government shall notify the Governor, contiguous
9 local governments, and any contiguous Indian tribes
10 of an authorization granted under this subsection.

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

19 “(A) A brief description of the facility, in-
20 cluding, with respect to both the facility and
21 any planned expansion of the facility, the size,
22 ultimate waste capacity, and the anticipated
23 monthly and yearly quantities (expressed in
24 terms of volume) of waste to be handled.

1 “(B) A map of the facility site indicating
2 location in relation to the local road system and
3 topography and hydrogeological features. The
4 map shall indicate any buffer zones to be ac-
5 quired by the owner or operator as well as all
6 facility units.

7 “(C) A description of the then current en-
8 vironmental characteristics of the site, a de-
9 scription of ground water use in the area (in-
10 cluding identification of private wells and public
11 drinking water sources), and a discussion of al-
12 terations that may be necessitated by, or occur
13 as a result of, the facility.

14 “(D) A description of environmental con-
15 trols typically required to be used on the site
16 (pursuant to permit requirements), including
17 run on or run off management (or both), air
18 pollution control devices, source separation pro-
19 cedures (if any), methane monitoring and con-
20 trol, landfill covers, liners or leachate collection
21 systems, and monitoring programs. In addition,
22 the description shall include a description of
23 any waste residuals generated by the facility,
24 including leachate or ash, and the planned man-
25 agement of the residuals.

1 “(E) A description of site access controls
2 to be employed, and roadway improvements to
3 be made, by the owner or operator, and an esti-
4 mate of the timing and extent of increased local
5 truck traffic.

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

8 “(G) Estimates of the personnel require-
9 ments of the facility, including information re-
10 garding the probable skill and education levels
11 required for jobs at the facility. To the extent
12 practicable, the information shall distinguish
13 between employment statistics for
14 preoperational and postoperational levels.

15 “(H) Any information that is required by
16 State or Federal law to be provided with re-
17 spect to any violations of environmental laws
18 (including regulations) by the owner, the opera-
19 tor, and any subsidiary of the owner or opera-
20 tor, the disposition of enforcement proceedings
21 taken with respect to the violations, and correc-
22 tive action and rehabilitation measures taken as
23 a result of the proceedings.

24 “(I) Any information that is required by
25 State or Federal law to be provided with re-

1 spect to gifts and contributions made by the
2 owner or operator.

3 “(J) Any information that is required by
4 State or Federal law to be provided with re-
5 spect to compliance by the owner or operator
6 with the State solid waste management plan.

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

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

13 “(B) publish notice of the action in a
14 newspaper of general circulation at least 30
15 days before holding a hearing and again at
16 least 15 days before holding the hearing, except
17 where State law provides for an alternate form
18 of public notification; and

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

22 “(b) ANNUAL STATE REPORT.—

23 “(1) IN GENERAL.—Within 90 days after enact-
24 ment of this section and on April 1 of each year
25 thereafter the owner or operator of each landfill or

1 incinerator receiving out-of-State municipal solid
2 waste shall submit to the affected local government
3 and to the Governor of the State in which the land-
4 fill or incinerator is located information specifying
5 the amount and State of origin of out-of-State mu-
6 nicipal solid waste received for disposal during the
7 preceding calendar year. Within 120 days after en-
8 actment of this section and on July 1 of each year
9 thereafter each such State shall publish and make
10 available to the Administrator, the governor of the
11 State of origin and the public a report containing in-
12 formation on the amount of out-of-State municipal
13 solid waste received for disposal in the State during
14 the preceding calendar year.

15 “(2) CONTENTS.—Each submission referred to
16 in this subsection shall be such as would result in
17 criminal penalties in case of false or misleading in-
18 formation. Such submission shall include the amount
19 of waste received, the State of origin, the identity of
20 the generator, the date of shipment, and the type,
21 of out-of-State municipal solid waste.

22 “(3) LIST.—The Administrator shall publish a
23 list of States that the Administrator has determined
24 have exported out of State in any of the following

1 calendar years an amount of municipal solid waste
2 in excess of—

3 “(A) 3.5 million tons in 1996;

4 “(B) 3.0 million tons in 1997;

5 “(C) 3.0 million tons in 1998;

6 “(D) 2.5 million tons in 1999;

7 “(E) 2.5 million tons in 2000;

8 “(F) 1.5 million tons in 2001;

9 “(G) 1.0 million tons in 2002;

10 “(H) 1.0 million tons in 2003; and

11 “(I) 1.0 million tons in each calendar year

12 after 2003.

13 The list for any calendar year shall be published by
14 June 1 of the following calendar year.

15 “(4) SAVINGS PROVISION.—Nothing in this sub-
16 section shall be construed to preempt any State re-
17 quirement that requires more frequent reporting of
18 information.

19 “(c) FREEZE.—

20 “(1) ANNUAL AMOUNT.—(A) Beginning Janu-
21 ary 1, 1996, except as provided in paragraph (2)
22 and unless it would result in a violation of, or be in-
23 consistent with, a host community agreement or per-
24 mit specifically authorizing the owner or operator of
25 a landfill or incinerator to accept out-of-State mu-

1 nicipal solid waste at such landfill or incinerator,
2 and notwithstanding the absence of a request in
3 writing by the affected local government, a Gov-
4 ernor, in accordance with paragraph (3), may limit
5 the quantity of out-of-State municipal solid waste re-
6 ceived for disposal at each landfill or incinerator cov-
7 ered by the exceptions provided in subsection (e)
8 that is subject to the jurisdiction of the Governor, to
9 an annual amount equal to the quantity of out-of-
10 State municipal solid waste received for disposal at
11 such landfill or incinerator during calendar year
12 1993.

13 “(B) At the request of an affected local govern-
14 ment that has not executed a host community agree-
15 ment, the Governor may limit the amount of out-of-
16 State municipal solid waste received annually for
17 disposal at the landfill or incinerator concerned to
18 the amount described in subparagraph (A). No such
19 limit may conflict with provisions of a permit specifi-
20 cally authorizing the owner or operator to accept, at
21 the facility, out-of-State municipal solid waste.

22 “(C) A limit or prohibition under this section
23 shall be treated as conflicting and inconsistent with
24 a permit or host community agreement if—

1 “(i) the permit or host community agree-
2 ment establishes a higher limit; or

3 “(ii) the permit or host community agree-
4 ment does not establish any limit.

5 “(2) LIMITATION ON GOVERNOR’S AUTHOR-
6 ITY.—A Governor may not exercise the authority
7 granted under this subsection in a manner that
8 would require any owner or operator of a landfill or
9 incinerator covered by the exceptions provided in
10 subsection (e) to reduce the amount of out-of-State
11 municipal solid waste received from any State for
12 disposal at such landfill or incinerator to an annual
13 quantity less than the amount received from such
14 State for disposal at such landfill or incinerator dur-
15 ing calendar year 1993.

16 “(3) UNIFORMITY.—Any limitation imposed by
17 a Governor under paragraph (1)(A)—

18 “(A) shall be applicable throughout the
19 State;

20 “(B) shall not directly or indirectly dis-
21 criminate against any particular landfill or in-
22 cinerator within the State; and

23 “(C) shall not directly or indirectly dis-
24 criminate against any shipments of out-of-State

1 municipal solid waste on the basis of place of
2 origin.

3 “(d) RATCHET.—

4 “(1) IN GENERAL.—Unless it would result in a
5 violation of, or be inconsistent with, a host commu-
6 nity agreement or permit specifically authorizing the
7 owner or operator of a landfill or incinerator to ac-
8 cept out-of-State municipal solid waste at such land-
9 fill or incinerator, immediately upon the date of pub-
10 lication of the list required under subsection (b)(3),
11 and notwithstanding the absence of a request in
12 writing by the affected local government, a Gov-
13 ernor, in accordance with paragraph (4), may pro-
14 hibit the disposal of out-of-State municipal solid
15 waste, at any landfill or incinerator covered by the
16 exceptions in subsection (e) that is subject to the ju-
17 risdiction of the Governor, generated in any State
18 that is determined by the Administrator under sub-
19 section (b)(3) as having exported, to landfills or in-
20 cinerators not covered by host community agree-
21 ments or permits, in any of the following calendar
22 years an amount of municipal solid waste in excess
23 of the following:

24 “(A) 3.5 million tons in 1996.

25 “(B) 3.0 million tons in 1997.

1 “(C) 3.0 million tons in 1998.

2 “(D) 2.5 million tons in 1999.

3 “(E) 2.5 million tons in 2000.

4 “(F) 1.5 million tons in 2001.

5 “(G) 1.5 million tons in 2002.

6 “(H) 1.0 million tons in 2003.

7 “(I) 1.0 million tons in each calendar year
8 after 2003.

9 “(2) ADDITIONAL EXPORT LIMITS.—

10 “(A) PROHIBITION.—No State may export
11 to any one State more than the following
12 amounts of municipal solid waste in any of the
13 following calendar years:

14 “(i) 1.4 million tons, or 90 percent of
15 the 1993 levels exported to the State,
16 whichever is greater, in 1996;

17 “(ii) 1.3 million tons, or 90 percent of
18 the 1996 levels exported to the State,
19 whichever is greater, in 1997;

20 “(iii) 1.2 million tons, or 90 percent
21 of the 1997 levels exported to a State,
22 whichever is greater, in 1998;

23 “(iv) 1.1 million tons, or 90 percent of
24 the 1998 levels exported to a State, which-
25 ever is greater, in 1999;

- 1 “(v) 1 million tons in 2000;
2 “(vi) 800,000 tons in 2001;
3 “(vii) 600,000 tons in 2002; or
4 “(viii) 600,000 tons in any year after
5 2002,

6 to landfills or incinerators not covered by host
7 community agreements or permits authorizing
8 receipt of out-of-State municipal solid waste.

9 “(B) ACTION BY GOVERNOR.—The Gov-
10 ernor of an importing State may restrict levels
11 of imports of municipal solid waste into that
12 State to reflect the levels specified in subpara-
13 graph (A) if—

14 “(i) the Governor of the importing
15 State has notified the Governor of the ex-
16 porting State and the Administrator 12
17 months prior to enforcement of the import-
18 ing State’s intention to impose the require-
19 ments of this section;

20 “(ii) the Governor of the importing
21 State has notified the Governor of the ex-
22 porting State and the Administrator of the
23 violation by the exporting State of this sec-
24 tion at least 90 days prior to the enforce-
25 ment of this section; and

1 “(iii) the restrictions imposed by the
2 Governor of the importing State are uni-
3 form at all facilities within the State re-
4 ceiving municipal solid waste from the ex-
5 porting State.

6 “(3) DURATION.—The authority provided by
7 paragraph (1) or (2) or both shall apply for as long
8 as a State exceeds the levels allowable under para-
9 graph (1) or (2), as the case may be.

10 “(4) UNIFORMITY.—Any restriction imposed by
11 a State under paragraph (1) or (2)—

12 “(A) shall be applicable throughout the
13 State;

14 “(B) shall not directly or indirectly dis-
15 criminate against any particular landfill or in-
16 cinerator within the State; and

17 “(C) shall not directly or indirectly dis-
18 criminate against any shipments of out-of-State
19 municipal solid waste on the basis of State of
20 origin, in the case of States in violation of para-
21 graph (1) or (2).

22 “(e) AUTHORIZATION NOT REQUIRED FOR CERTAIN
23 FACILITIES.—

24 “(1) IN GENERAL.—The prohibition on the dis-
25 posal of out-of-State municipal solid waste in sub-

1 section (a) shall not apply to landfills and inciner-
2 ators that—

3 “(A) were in operation on the date of en-
4 actment of this section and received during cal-
5 endar year 1993 documented shipments of out-
6 of-State municipal solid waste, or

7 “(B) before the date of enactment of this
8 section, the owner or operator entered into a
9 host community agreement or received a permit
10 specifically authorizing the owner or operator to
11 accept at the landfill or incinerator municipal
12 solid waste generated outside the State in which
13 it is or will be located.

14 “(2) AVAILABILITY OF DOCUMENTATION.—The
15 owner or operator of a landfill or incinerator that is
16 exempt under paragraph (1) of this subsection from
17 the requirements of subsection (a) shall provide to
18 the State and affected local government, and make
19 available for inspection by the public in the affected
20 local community, a copy of the host community
21 agreement or permit referenced in paragraph (1).
22 The owner or operator may omit from such copy or
23 other documentation any proprietary information,
24 but shall ensure that at least the following informa-
25 tion is apparent: the volume of out-of-State municipi-

1 pal solid waste received, the place of origin of the
2 waste, and the duration of any relevant contract.

3 “(3) DENIED OR REVOKED PERMITS.—A land-
4 fill or incinerator may not receive for disposal or in-
5 cineration out-of-State municipal solid waste in the
6 absence of a host community agreement if the oper-
7 ating permit or license for the landfill or incinerator
8 (or renewal thereof) was denied or revoked by the
9 appropriate State agency before the date of enact-
10 ment of this section unless such permit or license (or
11 renewal) has been reinstated as of such date of en-
12 actment.

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

1 “(f) NEEDS DETERMINATION.—Any comprehensive
2 solid waste management plan adopted by an affected local
3 government pursuant to Federal or State law may take
4 into account local and regional needs for solid waste dis-
5 posal capacity. Any implementation of such plan through
6 the State permitting process may take into account local
7 and regional needs for solid waste disposal capacity only
8 in a manner that is not inconsistent with the provisions
9 of this section. Nothing in this subsection shall be con-
10 strued to prohibit or preclude any State government or
11 solid waste management district, as defined under State
12 law, from requiring any affected local government to site,
13 construct, expand, or require the installation of environ-
14 mental equipment at, any solid waste facility.

15 “(g) IMPLEMENTATION AND ENFORCEMENT.—Any
16 State may adopt such laws and regulations, not inconsis-
17 tent with this section, as are necessary to implement and
18 enforce this section, including provisions for penalties.

19 “(h) SAVINGS CLAUSE.—Nothing in this section shall
20 be interpreted or construed to have any effect on State
21 law relating to contracts or to authorize or result in the
22 violation or failure to perform the terms of a written, le-
23 gally binding contract entered into before enactment of
24 this section during the life of the contract as determined
25 under State law.

1 “(i) DEFINITIONS.—As used in this section:

2 “(1) AFFECTED LOCAL GOVERNMENT.—(A)

3 For any landfill or incinerator, the term ‘affected
4 local government’ means—

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

11 “(ii) if there is no such body created by
12 State law—

13 “(I) the elected officials of the city,
14 town, township, borough, county, or parish
15 selected by the Governor and exercising
16 primary responsibility over municipal solid
17 waste management or the use of land in
18 the jurisdiction in which the facility is lo-
19 cated or is proposed to be located; or

20 “(II) if a Governor fails to make a se-
21 lection under subclause (I), and publish a
22 notice regarding the selection, within 90
23 days after the date of enactment of this
24 section, the elected officials of the city,
25 town, township, borough, county, parish, or

1 other public body created pursuant to
2 State law with primary jurisdiction over
3 the land or the use of land on which the
4 facility is located or is proposed to be lo-
5 cated.

6 The Governor shall publish a notice regarding the
7 selection described in clause (ii).

8 “(B) Notwithstanding subparagraph (A), for
9 purposes of host community agreements entered into
10 before the date of enactment of this section (or be-
11 fore the date of publication of notice, in the case of
12 subparagraph (A)(ii)), the term shall mean either
13 the public body described in clause (i) or the elected
14 officials of the city, town, township, borough, county,
15 or parish exercising primary responsibility for mu-
16 nicipal solid waste management or the use of land
17 on which the facility is located or proposed to be lo-
18 cated.

19 “(C) Two or more Governors of adjoining
20 States may use the authority provided in section
21 1005(b) to enter into an agreement under which
22 contiguous units of local government located in each
23 of the adjoining States may act jointly as the af-
24 fected local government for purposes of providing
25 authorization under subsection (a) for municipal

1 solid waste generated in one of the jurisdictions de-
2 scribed in subparagraph (A) and received for dis-
3 posal or incineration in another.

4 “(2) HOST COMMUNITY AGREEMENT.—The
5 term ‘host community agreement’ means a written,
6 legally binding document or documents executed by
7 duly authorized officials of the affected local govern-
8 ment that specifically authorizes a landfill or inciner-
9 ator to receive municipal solid waste generated out-
10 of-State, but does not include any agreement to pay
11 host community fees for receipt of waste unless ad-
12 ditional express authorization to receive out-of-State
13 municipal solid waste is also included.

14 “(3) MUNICIPAL SOLID WASTE.—The term
15 ‘municipal solid waste’ means refuse (and refuse-de-
16 rived fuel) generated by the general public, from a
17 residential source, or from a commercial, institu-
18 tional, or industrial source (or any combination
19 thereof) to the extent such waste is essentially the
20 same as waste normally generated by households or
21 was collected and disposed of with other municipal
22 solid waste as part of normal municipal solid waste
23 collection services, and regardless of when generated,
24 would be considered conditionally exempt small
25 quantity generator waste under section 3001(d),

1 such as paper, food, wood, yard wastes, plastics,
2 leather, rubber, appliances, or other combustible or
3 noncombustible materials such as metal or glass (or
4 any combination thereof). The term ‘municipal solid
5 waste’ does not include any of the following:

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

8 “(B) Any solid waste, including contami-
9 nated soil and debris, resulting from a response
10 action taken under section 104 or 106 of the
11 Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C.
13 9604 or 9606) or a corrective action taken
14 under this Act.

15 “(C) Recyclable materials that have been
16 separated, at the source of the waste, from
17 waste otherwise destined for disposal or that
18 have been managed separately from waste des-
19 tined for disposal.

20 “(D) Any solid waste that is—

21 “(i) generated by an industrial facil-
22 ity; and

23 “(ii) transported for the purpose of
24 treatment, storage, or disposal to a facility
25 that is owned or operated by the generator

1 of the waste, or is located on property
2 owned by the generator of the waste, or is
3 located on property owned by a company
4 with which the generator is affiliated.

5 “(E) Any solid waste generated incident to
6 the provision of service in interstate, intrastate,
7 foreign, or overseas air transportation.

8 “(F) Sewage sludge and residuals from
9 any sewage treatment plant, including any sew-
10 age treatment plant required to be constructed
11 in the State of Massachusetts pursuant to any
12 court order issued against the Massachusetts
13 Water Resources Authority.

14 “(G) Combustion ash generated by re-
15 source recovery facilities or municipal inciner-
16 ators, or waste from manufacturing or process-
17 ing (including pollution control) operations not
18 essentially the same as waste normally gen-
19 erated by households.

20 “(H) Any medical waste that is segregated
21 from or not mixed with municipal solid waste
22 (as otherwise defined in this paragraph).

23 “(I) Any material or product returned
24 from a dispenser or distributor to the manufac-
25 turer for credit, evaluation, or possible reuse.

1 “(4) OUT-OF-STATE MUNICIPAL SOLID
2 WASTE.—The term ‘out-of-State municipal solid
3 waste’ means, with respect to any State, municipal
4 solid waste generated outside of the State. Unless
5 the President determines it is not consistent with
6 the North American Free Trade Agreement and the
7 General Agreement on Tariffs and Trade, the term
8 shall include municipal solid waste generated outside
9 of the United States.

10 “(5) SPECIFICALLY AUTHORIZED; SPECIFI-
11 CALLY AUTHORIZES.—The terms ‘specifically au-
12 thorized’ and ‘specifically authorizes’ refer to an ex-
13 plicit authorization, contained in a host community
14 agreement or permit, to import waste from outside
15 the State. Such authorization may include a ref-
16 erence to a fixed radius surrounding the landfill or
17 incinerator that includes an area outside the State
18 or a reference to ‘any place of origin’, reference to
19 specific places outside the State, or use of such
20 phrases as ‘regardless of origin’ or ‘outside the
21 State’. The language for such authorization may
22 vary as long as it clearly and affirmatively states the
23 approval or consent of the affected local government
24 or State for receipt of municipal solid waste from
25 sources or locations outside the State.”.

1 **SEC. 103. TABLE OF CONTENTS AMENDMENT.**

2 The table of contents in section 1001 of the Solid
3 Waste Disposal Act (42 U.S.C. prec. 6901) is amended
4 by adding after the item relating to section 4010 the fol-
5 lowing new item:

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



S 465 IS—2