

Calendar No. 1039

110TH CONGRESS
2^D SESSION

S. 3109

[Report No. 110-478]

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2008

Mr. THUNE (for himself, Mr. CARDIN, Mr. LAUTENBERG, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Reported by Mrs. BOXER, without amendment

A BILL

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

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 “Hazardous Waste
5 Electronic Manifest Establishment Act”.

1 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**
2 **TEM.**

3 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-
4 posal Act (42 U.S.C. 6921 et seq.) is amended by adding
5 at the end the following:

6 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**
7 **SYSTEM.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) BOARD.—The term ‘Board’ means the
10 Hazardous Waste Electronic Manifest System Gov-
11 erning Board established under subsection (f).

12 “(2) FUND.—The term ‘Fund’ means the Haz-
13 ardoous Waste Electronic Manifest System Fund es-
14 tablished by subsection (d).

15 “(3) PERSON.—The term ‘person’ includes an
16 individual, corporation (including a Government cor-
17 poration), company, association, firm, partnership,
18 society, joint stock company, trust, municipality,
19 commission, Federal agency, State, political subdivi-
20 sion of a State, or interstate body.

21 “(4) SYSTEM.—The term ‘system’ means the
22 hazardous waste electronic manifest system estab-
23 lished under subsection (b).

24 “(5) USER.—The term ‘user’ means a haz-
25 ardoous waste generator, a hazardous waste trans-
26 porter, an owner or operator of a hazardous waste

1 treatment, storage, recycling, or disposal facility, or
2 any other person that—

3 “(A) is required to use a manifest to com-
4 ply with any Federal or State requirement to
5 track the shipment, transportation, and receipt
6 of hazardous waste or other material that is
7 shipped from the site of generation to an off-
8 site facility for treatment, storage, disposal, or
9 recycling; and

10 “(B)(i) elects to use the system to com-
11 plete and transmit an electronic manifest for-
12 mat; or

13 “(ii) submits to the system for data proc-
14 essing purposes a paper copy of the manifest
15 (or data from such a paper copy), in accordance
16 with such regulations as the Administrator may
17 promulgate to require such a submission.

18 “(b) ESTABLISHMENT.—Not later than 3 years after
19 the date of enactment of this section, the Administrator
20 shall establish a hazardous waste electronic manifest sys-
21 tem that may be used by any user.

22 “(c) USER FEES.—

23 “(1) IN GENERAL.—The Administrator may im-
24 pose on users such reasonable service fees as the Ad-
25 ministrator determines to be necessary to pay costs

1 incurred in developing, operating, maintaining, and
2 upgrading the system, including any costs incurred
3 in collecting and processing data from any paper
4 manifest submitted to the system after the date on
5 which the system enters operation.

6 “(2) COLLECTION OF FEES.—The Adminis-
7 trator shall—

8 “(A) collect the fees described in para-
9 graph (1) from the users in advance of, or as
10 reimbursement for, the provision by the Admin-
11 istrator of system-related services; and

12 “(B) deposit the fees in the Fund for use
13 in accordance with this subsection.

14 “(3) FEE STRUCTURE.—

15 “(A) IN GENERAL.—The Administrator, in
16 consultation with information technology ven-
17 dors, shall determine through the contract
18 award process described in subsection (e) the
19 fee structure that is necessary to recover the
20 full cost to the Administrator of providing sys-
21 tem-related services, including costs relating
22 to—

23 “(i) materials and supplies;

24 “(ii) contracting and consulting;

25 “(iii) overhead;

1 “(iv) information technology (includ-
2 ing costs of hardware, software, and re-
3 lated services);

4 “(v) information management;

5 “(vi) collection of service fees;

6 “(vii) investment of any unused serv-
7 ice fees;

8 “(viii) reporting and accounting;

9 “(ix) employment of direct and indi-
10 rect Government personnel dedicated to es-
11 tablishing and maintaining the system; and

12 “(x) project management.

13 “(B) ADJUSTMENTS IN FEE AMOUNT.—

14 “(i) IN GENERAL.—The Administrator
15 shall increase or decrease amount of a
16 service fee determined under the fee struc-
17 ture described in subparagraph (A) to a
18 level that will—

19 “(I) result in the collection of an
20 aggregate amount for deposit in the
21 Fund that is sufficient to cover cur-
22 rent and projected system-related
23 costs (including any necessary system
24 upgrades); and

1 “(II) minimize, to the maximum
2 extent practicable, the accumulation
3 of unused amounts in the Fund.

4 “(ii) TIMING OF ADJUSTMENTS.—Ad-
5 justments to service fees described in
6 clause (i) shall be made—

7 “(I) initially, at the time at
8 which initial development costs of the
9 system have been recovered by the
10 Administrator such that the service
11 fee may be reduced to reflect the
12 elimination of the system development
13 component of the fee; and

14 “(II) periodically thereafter, upon
15 receipt and acceptance of the findings
16 of any annual accounting or auditing
17 report under subsection (d)(6), if the
18 report discloses a significant disparity
19 for a fiscal year between the funds
20 collected from service fees under this
21 subsection for the fiscal year and ex-
22 penditures made for the fiscal year to
23 provide system-related services.

24 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST
25 SYSTEM FUND.—

1 “(1) ESTABLISHMENT.—There is established in
2 the Treasury of the United States a revolving fund,
3 to be known as the ‘Hazardous Waste Electronic
4 Manifest System Fund’, consisting of—

5 “(A) such amounts as are appropriated to
6 the Fund under paragraph (2); and

7 “(B) any interest earned on investment of
8 amounts in the Fund under paragraph (4).

9 “(2) TRANSFERS TO FUND.—There are appro-
10 priated to the Fund amounts equivalent to amounts
11 collected as fees and received by the Administrator
12 under subsection (c).

13 “(3) EXPENDITURES FROM FUND.—

14 “(A) IN GENERAL.—Subject to paragraph
15 (2), on request by the Administrator, the Sec-
16 retary of the Treasury shall transfer from the
17 Fund to the Administrator such amounts as the
18 Administrator determines to be necessary to
19 pay costs incurred in developing, operating,
20 maintaining, and upgrading the system under
21 subsection (c).

22 “(B) USE OF FUNDS.—

23 “(i) IN GENERAL.—Fees collected by
24 the Administrator and deposited in the
25 Fund under this section shall be available

1 to the Administrator for use in accordance
2 with this section without fiscal year limita-
3 tion and without further appropriation.

4 “(ii) OVERSIGHT.—The Administrator
5 shall carry out all necessary measures to
6 ensure that amounts in the Fund are used
7 only to carry out the goals of establishing,
8 operating, maintaining, upgrading, man-
9 aging, supporting, and overseeing the sys-
10 tem.

11 “(4) INVESTMENT OF AMOUNTS.—

12 “(A) IN GENERAL.—The Secretary of the
13 Treasury shall invest such portion of the Fund
14 as is not, in the judgment of the Secretary of
15 the Treasury and the Administrator, required
16 to meet current withdrawals.

17 “(B) INTEREST-BEARING OBLIGATIONS.—

18 Investments may be made only in—

19 “(i) interest-bearing obligations of the
20 United States; or

21 “(ii) obligations, participations, or
22 other instruments that are lawful invest-
23 ments for fiduciaries, trusts, or public
24 funds, as determined by the Secretary of
25 the Treasury.

1 “(C) ACQUISITION OF OBLIGATIONS.—For
2 the purpose of investments under paragraph
3 (1), obligations may be acquired—

4 “(i) on original issue at the issue
5 price; or

6 “(ii) by purchase of outstanding obli-
7 gations at the market price.

8 “(D) SALE OF OBLIGATIONS.—Any obliga-
9 tion acquired by the Fund may be sold by the
10 Secretary of the Treasury at the market price.

11 “(E) CREDITS TO FUND.—The interest on,
12 and the proceeds from the sale or redemption
13 of, any obligations held in the Fund shall be
14 credited to, and form a part of, the Fund.

15 “(5) TRANSFERS OF AMOUNTS.—

16 “(A) IN GENERAL.—The amounts required
17 to be transferred to the Fund under this sub-
18 section shall be transferred at least monthly
19 from the general fund of the Treasury to the
20 Fund on the basis of estimates made by the
21 Secretary of the Treasury.

22 “(B) ADJUSTMENTS.—Proper adjustment
23 shall be made in amounts subsequently trans-
24 ferred to the extent prior estimates were in ex-

1 cess of or less than the amounts required to be
2 transferred.

3 “(6) ACCOUNTING AND AUDITING.—

4 “(A) ACCOUNTING.—For each 2-fiscal-year
5 period, the Administrator shall prepare and
6 submit to Congress a report that includes—

7 “(i) an accounting of the fees paid to
8 the Administrator under subsection (c) and
9 disbursed from the Fund for the period
10 covered by the report, as reflected by fi-
11 nancial statements provided in accordance
12 with—

13 “(I) the Chief Financial Officers
14 Act of 1990 (Public Law 101–576;
15 104 Stat. 2838) and amendments
16 made by that Act; and

17 “(II) the Government Manage-
18 ment Reform Act of 1994 (Public
19 Law 103–356; 108 Stat. 3410) and
20 amendments made by that Act; and

21 “(ii) an accounting describing actual
22 expenditures from the Fund for the period
23 covered by the report for costs described in
24 subsection (c)(1).

25 “(B) AUDITING.—

1 “(i) IN GENERAL.—For the purpose
2 of section 3515(c) of title 31, United
3 States Code, the Fund shall be considered
4 a component of an Executive agency.

5 “(ii) COMPONENTS OF AUDIT.—The
6 annual audit required in accordance with
7 sections 3515(b) and 3521 of title 31,
8 United States Code, of the financial state-
9 ments of activities carried out using
10 amounts from the Fund shall include an
11 analysis of—

12 “(I) the fees collected and dis-
13 bursed under this section;

14 “(II) the reasonableness of the
15 fee structure in place as of the date of
16 the audit to meet current and pro-
17 jected costs of the system;

18 “(III) the level of use of the sys-
19 tem by users; and

20 “(IV) the success to date of the
21 system in operating on a self-sus-
22 taining basis and improving the effi-
23 ciency of tracking waste shipments
24 and transmitting waste shipment
25 data.

1 “(iii) FEDERAL RESPONSIBILITY.—

2 The Inspector General of the Environ-
3 mental Protection Agency shall—

4 “(I) conduct the annual audit de-
5 scribed in clause (ii); and

6 “(II) submit to the Administrator
7 a report that describes the findings
8 and recommendations of the Inspector
9 General resulting from the audit.

10 “(e) CONTRACTS.—

11 “(1) AUTHORITY TO ENTER INTO CONTRACTS
12 FUNDED BY SERVICE FEES.—The Administrator
13 may enter into 1 or more information technology
14 contracts with entities determined to be appropriate
15 by the Administrator (referred to in this subsection
16 as ‘contractors’) under which—

17 “(A) the Administrator agrees to award a
18 contract for the provision of system-related
19 services; and

20 “(B) the contractor agrees to assume the
21 initial risk of the information technology invest-
22 ment, and to obtain reimbursement for invest-
23 ment costs, operating costs, and other fees, by
24 receiving as payment an agreed-upon share of

1 the amounts collected as fees by the Adminis-
2 trator under subsection (c).

3 “(2) TERM OF CONTRACT.—A contract awarded
4 under this subsection shall have a term of not more
5 than 10 years.

6 “(3) ACHIEVEMENT OF GOALS.—The Adminis-
7 trator shall ensure, to the maximum extent prac-
8 ticable, that a contract awarded under this sub-
9 section—

10 “(A) is performance-based;

11 “(B) identifies objective outcomes; and

12 “(C) contains performance standards that
13 may be used to measure achievement and goals
14 to evaluate the success of a contractor in per-
15 forming under the contract and the right of the
16 contractor to payment for services under the
17 contract, taking into consideration that a pri-
18 mary measure of successful performance shall
19 be the development of a hazardous waste elec-
20 tronic manifest system that—

21 “(i) meets the needs of the user com-
22 munity (including States that rely on data
23 contained in manifests); and

1 “(ii) attracts sufficient user participa-
2 tion and service fee revenues to ensure the
3 viability of the system.

4 “(4) PAYMENT STRUCTURE.—Each contract
5 awarded under this subsection shall include a provi-
6 sion that specifies—

7 “(A) the service fee structure of the con-
8 tractor that will form the basis for payments to
9 the contractor;

10 “(B) the fixed-share ratio of monthly serv-
11 ice fee revenues from which the Administrator
12 shall reimburse the contractor for system-re-
13 lated development, operation, and maintenance
14 costs and provide an additional profit or fee
15 commensurate with the risk undertaken by the
16 contractor in performing in accordance with the
17 contract;

18 “(C) the amount of additional trans-
19 actional costs attributed to—

20 “(i) the ancillary costs of the Admin-
21 istrator in implementing and managing the
22 system, including the costs of integrating
23 the applications of the contractor with the
24 central data exchange architecture of the
25 Environmental Protection Agency;

1 “(ii) the direct and indirect personnel
2 costs incurred by the Administrator to em-
3 ploy personnel dedicated to the implemen-
4 tation and management of the system; and

5 “(iii) expenses incurred in procuring
6 any independent contractor services to as-
7 sist staff of the Administrator in the prep-
8 aration of financial statements and reports
9 and the conduct of regular user group and
10 governance meetings necessary for the
11 oversight of the system.

12 “(5) CANCELLATION AND TERMINATION.—

13 “(A) IN GENERAL.—If the Administrator
14 determines that sufficient funds are not made
15 available for the continuation in a subsequent
16 fiscal year of a contract entered into under this
17 subsection, the Administrator shall cancel or
18 terminate the contract.

19 “(B) COSTS.—The costs of cancellation or
20 termination under subparagraph (A) may be
21 paid using—

22 “(i) appropriations available for per-
23 formance of the contract;

1 “(ii) unobligated appropriations avail-
2 able for acquisition of the information
3 technology procured under the contract; or

4 “(iii) funds subsequently appropriated
5 for payment of costs of the cancellation or
6 termination.

7 “(C) NEGOTIATION OF AMOUNTS.—The
8 amount payable in the event of cancellation or
9 termination of a contract entered into under
10 this subsection shall be negotiated with the con-
11 tractor at the time at which the contract is
12 awarded.

13 “(D) AUTHORITY TO ENTER INTO CON-
14 TRACTS.—The Administrator may enter into a
15 contract under this subsection for any fiscal
16 year, regardless of whether funds are made spe-
17 cifically available for the full costs of cancella-
18 tion or termination of the contract, if—

19 “(i) funds are available at the time at
20 which the contract is awarded to make
21 payments with respect to a contingent li-
22 ability in an amount equal to at least 75
23 percent of the estimated costs of a can-
24 cellation or termination during the first

1 fiscal year of the contract, as determined
2 by the Administrator; or

3 “(ii) funds described in clause (i) are
4 not available as described in that clause,
5 but the contractor—

6 “(I) is informed of the amount of
7 any unfunded contingent liability; and

8 “(II) agrees to perform the con-
9 tract despite the unfunded contingent
10 liability.

11 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST
12 SYSTEM GOVERNING BOARD.—

13 “(1) ESTABLISHMENT.—Not later than 3 years
14 after the date of enactment of this section, the Ad-
15 ministrator shall establish a board to be known as
16 the ‘Hazardous Waste Electronic Manifest System
17 Governing Board’.

18 “(2) COMPOSITION.—The Board shall be com-
19 posed of 7 members, of which—

20 “(A) 1 member shall be the Administrator
21 (or a designee), who shall serve as Chairperson
22 of the Board; and

23 “(B) 6 members shall be individuals ap-
24 pointed by the Administrator—

1 “(i) at least 1 of whom shall have ex-
2 pertise in information technology;

3 “(ii) at least 1 of whom shall have ex-
4 perience in using the manifest system to
5 track the transportation of hazardous
6 waste under this subtitle (or an equivalent
7 State program); and

8 “(iii) at least 1 of whom shall be a
9 State representative responsible for proc-
10 essing those manifests.

11 “(3) DUTIES.—The Board shall meet annually
12 to discuss, evaluate the effectiveness of, and provide
13 recommendations to the Administrator relating to,
14 the system.

15 “(g) REGULATIONS.—

16 “(1) PROMULGATION.—

17 “(A) IN GENERAL.—Not later than 1 year
18 after the date of enactment of this section, the
19 Administrator shall promulgate regulations to
20 carry out this section.

21 “(B) INCLUSIONS.—The regulations pro-
22 mulgated pursuant to subparagraph (A) may
23 include such requirements as the Administrator
24 determines to be necessary to facilitate the
25 transition from the use of paper manifests to

1 the use of electronic manifests, or to accommo-
2 date the processing of data from paper mani-
3 fests in the electronic manifest system, includ-
4 ing a requirement that users of paper manifests
5 submit to the system copies of the paper mani-
6 fests for data processing purposes.

7 “(C) REQUIREMENTS.—The regulations
8 promulgated pursuant to subparagraph (A)
9 shall ensure that each electronic manifest pro-
10 vides, to the same extent as paper manifests
11 under applicable Federal and State law, for—

12 “(i) the ability to track and maintain
13 accountability of—

14 “(I) the person that certifies that
15 the information provided in the mani-
16 fest is accurately described; and

17 “(II) the person that acknowl-
18 edges receipt of the manifest;

19 “(ii) if the manifest is electronically
20 submitted, State authority to access paper
21 copies of manifest; and

22 “(iii) access to all publicly-available
23 information contained in the manifest.

24 “(2) EFFECTIVE DATE OF REGULATIONS.—Any
25 regulation promulgated by the Administrator under

1 paragraph (1) and in accordance with section 3003
 2 relating to electronic manifesting of hazardous waste
 3 shall take effect in each State as of the effective
 4 date specified in the regulation.

5 “(3) ADMINISTRATION.—The Administrator
 6 shall carry out regulations promulgated under this
 7 subsection in each State unless the State program is
 8 fully authorized to carry out those regulations in lieu
 9 of the Administrator.

10 “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT
 11 TO CERTAIN STATES.—In any case in which the State in
 12 which waste is generated, or the State in which waste will
 13 be transported to a designated facility, requires that the
 14 waste be tracked through a hazardous waste manifest, the
 15 designated facility that receives the waste shall, regardless
 16 of the State in which the facility is located—

17 “(1) complete the facility portion of the applica-
 18 ble manifest;

19 “(2) sign and date the facility certification; and

20 “(3) submit to the system a final copy of the
 21 manifest for data processing purposes.”.

22 (b) CONFORMING AMENDMENT.—The table of con-
 23 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)
 24 is amended by inserting at the end of the items relating
 25 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.

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