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S. 710

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

MARCH 31, 2011

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hazardous Waste Electronic Manifest Establishment Act''.

SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

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

"SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

''(a) DEFINITIONS.—In this section:

''(1) BOARD.—The term 'Board' means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

''(2) FUND.—The term 'Fund' means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

''(3) PERSON.—The term 'person' includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

''(4) SYSTEM.—The term 'system' means the hazardous waste electronic manifest system established under subsection (b).

''(5) USER.—The term 'user' means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste

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

"(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

"(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

"(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

"(b) ESTABLISHMENT.—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

"(c) USER FEES.—

"(1) IN GENERAL.—The Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs

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

''(2) COLLECTION OF FEES.—The Administrator shall—

''(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

''(B) deposit the fees in the Fund for use in accordance with this subsection.

''(3) FEE STRUCTURE.—

''(A) IN GENERAL.—The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including costs relating to—

''(i) materials and supplies;

''(ii) contracting and consulting;

''(iii) overhead;

''(iv) information technology (including costs of hardware, software, and related services);

''(v) information management;

''(vi) collection of service fees;

''(vii) investment of any unused service fees;

''(viii) reporting and accounting;

''(ix) employment of direct and indirect Government personnel dedicated to establishing and maintaining the system; and

''(x) project management.

''(B) ADJUSTMENTS IN FEE AMOUNT.—

''(i) IN GENERAL.—The Administrator, in consultation with the Board, shall increase or decrease amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

''(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient to cover current and projected system-related costs (including any necessary system upgrades); and

''(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

''(ii) EXCEPTION FOR INITIAL PERIOD OF OPERATION.—The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed $2,000,000, during the 3-year period beginning on the date on which the system enters operation.

''(iii) TIMING OF ADJUSTMENTS.—Adjustments to service fees described in clause (i) shall be made—

''(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and

''(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(6), if the

report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

''(d) HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM FUND.—

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

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

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

''(2) TRANSFERS TO FUND.—There are appropriated to the Fund amounts equivalent to amounts collected as fees and received by the Administrator under subsection (c).

''(3) EXPENDITURES FROM FUND.—

''(A) IN GENERAL.—Subject to paragraph (2), on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator such amounts as the

Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

''(B) USE OF FUNDS.—

''(i) IN GENERAL.—Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator for use in accordance with this section without fiscal year limitation and without further appropriation.

''(ii) OVERSIGHT.—The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

''(4) INVESTMENT OF AMOUNTS.—

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

"(B) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in—

"(i) interest-bearing obligations of the United States; or

"(ii) obligations, participations, or other instruments that are lawful investments for fiduciaries, trusts, or public funds, as determined by the Secretary of the Treasury.

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

"(i) on original issue at the issue price; or

"(ii) by purchase of outstanding obligations at the market price.

"(D) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

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

"(5) TRANSFERS OF AMOUNTS.—

''(A) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

''(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(6) ACCOUNTING AND AUDITING.—

''(A) ACCOUNTING.—For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes—

''(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

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

"(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act; and

"(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

"(B) AUDITING.—

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

"(ii) COMPONENTS OF AUDIT.—The annual audit required in accordance with sections 3515(b) and 3521 of title 31, United States Code, of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

"(I) the fees collected and disbursed under this section;

"(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;

"(III) the level of use of the system by users; and

"(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

"(iii) FEDERAL RESPONSIBILITY.—The Inspector General of the Environmental Protection Agency shall—

"(I) conduct the annual audit described in clause (ii); and

"(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

"(e) CONTRACTS.—

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

''(A) the Administrator agrees to award a contract for the provision of system-related services; and

''(B) the contractor agrees to assume the initial risk of the information technology investment, and to obtain reimbursement for investment costs, operating costs, and other fees, by receiving as payment an agreed-upon share of the amounts collected as fees by the Administrator under subsection (c).

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

''(3) ACHIEVEMENT OF GOALS.—The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

''(A) is performance-based;

''(B) identifies objective outcomes; and

''(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

''(i) meets the needs of the user community (including States that rely on data contained in manifests);

''(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

''(iii) decreases the administrative burden on the user community; and

''(iv) provides the waste receipt data applicable to the biennial reports required by section 3002(a)(6).

''(4) PAYMENT STRUCTURE.—Each contract awarded under this subsection shall include a provision that specifies—

''(A) the service fee structure of the contractor that will form the basis for payments to the contractor;

''(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs and provide an additional profit or fee commensurate with the risk undertaken by the contractor in performing in accordance with the contract;

''(C) the amount of additional transactional costs attributed to—

''(i) the ancillary costs of the Administrator in implementing and managing the system, including the costs of integrating the applications of the contractor with the central data exchange architecture of the Environmental Protection Agency;

''(ii) the direct and indirect personnel costs incurred by the Administrator to employ personnel dedicated to the implementation and management of the system; and

''(iii) expenses incurred in procuring any independent contractor services to as-

sist staff of the Administrator in the preparation of financial statements and reports and the conduct of regular user group and governance meetings necessary for the oversight of the system.

''(5) CANCELLATION AND TERMINATION.—

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

''(B) COSTS.—The costs of cancellation or termination under subparagraph (A) may be paid using—

''(i) appropriations available for performance of the contract;

''(ii) unobligated appropriations available for acquisition of the information technology procured under the contract; or

''(iii) funds subsequently appropriated for payment of costs of the cancellation or termination.

''(C) NEGOTIATION OF AMOUNTS.—The amount payable in the event of cancellation or

termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

''(D) AUTHORITY TO ENTER INTO CONTRACTS.—The Administrator may enter into a contract under this subsection for any fiscal year, regardless of whether funds are made specifically available for the full costs of cancellation or termination of the contract, if—

''(i) funds are available at the time at which the contract is awarded to make payments with respect to a contingent liability in an amount equal to at least 100 percent of the estimated costs of a cancellation or termination during the first fiscal year of the contract, as determined by the Administrator; or

''(ii) funds described in clause (i) are not available as described in that clause, but the contractor—

''(I) is informed of the amount of any unfunded contingent liability; and

''(II) agrees to perform the contract despite the unfunded contingent liability.

''(6) NO EFFECT ON OWNERSHIP.—Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

''(f) HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM ADVISORY BOARD.—

''(1) ESTABLISHMENT.—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a board to be known as the 'Hazardous Waste Electronic Manifest System Advisory Board'.

''(2) COMPOSITION.—The Board shall be composed of 9 members, of which—

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

''(B) 8 members shall be individuals appointed by the Administrator—

''(i) at least 2 of whom shall have expertise in information technology;

''(ii) at least 3 of whom shall have experience in using or represent users of the

manifest system to track the transportation of hazardous waste under this subtitle (or an equivalent State program); and

''(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

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

''(g) REGULATIONS.—

''(1) PROMULGATION.—

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

''(B) INCLUSIONS.—The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests

submit to the system copies of the paper manifests for data processing purposes.

''(C) REQUIREMENTS.—The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—

''(i) the ability to track and maintain legal accountability of—

''(I) the person that certifies that the information provided in the manifest is accurately described; and

''(II) the person that acknowledges receipt of the manifest;

''(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and

''(iii) access to all publicly available information contained in the manifest.

''(2) EFFECTIVE DATE OF REGULATIONS.—Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 3003 relating to electronic manifesting of hazardous waste

shall take effect in each State as of the effective date specified in the regulation.

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

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

''(1) complete the facility portion of the applicable manifest;

''(2) sign and date the facility certification; and

''(3) submit to the system a final copy of the manifest for data processing purposes.''.

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

''Sec. 3024. Hazardous waste electronic manifest system.''.

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