

S. 710, AS REPORTED
BY THE SUBCOMMITTEE ON ENVIRONMENT AND
THE ECONOMY ON JULY 26, 2012

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hazardous Waste
3 Electronic Manifest Establishment Act”.

4 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**
5 **TEM.**

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

9 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**
10 **SYSTEM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BOARD.—The term ‘Board’ means the
13 Hazardous Waste Electronic Manifest System Advi-
14 sory Board established under subsection (f).

15 “(2) FUND.—The term ‘Fund’ means the Haz-
16 arduous Waste Electronic Manifest System Fund es-
17 tablished by subsection (d).

1 “(3) PERSON.—The term ‘person’ includes an
2 individual, corporation (including a Government cor-
3 poration), company, association, firm, partnership,
4 society, joint stock company, trust, municipality,
5 commission, Federal agency, State, political subdivi-
6 sion of a State, or interstate body.

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

10 “(5) USER.—The term ‘user’ means a haz-
11 arduous waste generator, a hazardous waste trans-
12 porter, an owner or operator of a hazardous waste
13 treatment, storage, recycling, or disposal facility, or
14 any other person that—

15 “(A) is required to use a manifest to com-
16 ply with any Federal or State requirement to
17 track the shipment, transportation, and receipt
18 of hazardous waste or other material that is
19 shipped from the site of generation to an off-
20 site facility for treatment, storage, disposal, or
21 recycling; and

22 “(B)(i) elects to use the system to com-
23 plete and transmit an electronic manifest for-
24 mat; or

1 “(ii) submits to the system for data proc-
2 essing purposes a paper copy of the manifest
3 (or data from such a paper copy), in accordance
4 with such regulations as the Administrator may
5 promulgate to require such a submission.

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

10 “(c) USER FEES.—

11 “(1) IN GENERAL.—In accordance with para-
12 graph (4), the Administrator may impose on users
13 such reasonable service fees as the Administrator de-
14 termines to be necessary to pay costs incurred in de-
15 veloping, operating, maintaining, and upgrading the
16 system, including any costs incurred in collecting
17 and processing data from any paper manifest sub-
18 mitted to the system after the date on which the sys-
19 tem enters operation.

20 “(2) COLLECTION OF FEES.—The Adminis-
21 trator shall—

22 “(A) collect the fees described in para-
23 graph (1) from the users in advance of, or as
24 reimbursement for, the provision by the Admin-
25 istrator of system-related services; and

1 “(B) deposit the fees in the Fund.

2 “(3) FEE STRUCTURE.—

3 “(A) IN GENERAL.—The Administrator, in
4 consultation with information technology ven-
5 dors, shall determine through the contract
6 award process described in subsection (e) the
7 fee structure that is necessary to recover the
8 full cost to the Administrator of providing sys-
9 tem-related services, including—

10 “(i) contractor costs relating to—

11 “(I) materials and supplies;

12 “(II) contracting and consulting;

13 “(III) overhead;

14 “(IV) information technology (in-
15 cluding costs of hardware, software,
16 and related services);

17 “(V) information management;

18 “(VI) collection of service fees;

19 “(VII) reporting and accounting;

20 and

21 “(VIII) project management; and

22 “(ii) costs of employment of direct
23 and indirect Government personnel dedi-
24 cated to establishing, managing, and main-
25 taining the system.

1 “(B) ADJUSTMENTS IN FEE AMOUNT.—

2 “(i) IN GENERAL.—The Adminis-
3 trator, in consultation with the Board,
4 shall increase or decrease the amount of a
5 service fee determined under the fee struc-
6 ture described in subparagraph (A) to a
7 level that will—

8 “(I) result in the collection of an
9 aggregate amount for deposit in the
10 Fund that is sufficient and not more
11 than reasonably necessary to cover
12 current and projected system-related
13 costs (including any necessary system
14 upgrades); and

15 “(II) minimize, to the maximum
16 extent practicable, the accumulation
17 of unused amounts in the Fund.

18 “(ii) EXCEPTION FOR INITIAL PERIOD
19 OF OPERATION.—The requirement de-
20 scribed in clause (i)(II) shall not apply to
21 any additional fees that accumulate in the
22 Fund, in an amount that does not exceed
23 \$2,000,000, during the 3-year period be-
24 ginning on the date on which the system
25 enters operation.

1 “(iii) TIMING OF ADJUSTMENTS.—Ad-
2 justments to service fees described in
3 clause (i) shall be made—

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

11 “(II) periodically thereafter, upon
12 receipt and acceptance of the findings
13 of any annual accounting or auditing
14 report under subsection (d)(3), if the
15 report discloses a significant disparity
16 for a fiscal year between the funds
17 collected from service fees under this
18 subsection for the fiscal year and ex-
19 penditures made for the fiscal year to
20 provide system-related services.

21 “(4) CREDITING AND AVAILABILITY OF FEES.—
22 Fees authorized under this section shall be collected
23 and available for obligation only to the extent and in
24 the amount provided in advance in appropriations
25 Acts.

1 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST
2 SYSTEM FUND.—

3 “(1) ESTABLISHMENT.—There is established in
4 the Treasury of the United States a revolving fund,
5 to be known as the ‘Hazardous Waste Electronic
6 Manifest System Fund’, consisting of such amounts
7 as are deposited in the Fund under subsection
8 (e)(2)(B).

9 “(2) EXPENDITURES FROM FUND.—

10 “(A) IN GENERAL.—Only to the extent
11 provided in advance in appropriations Acts, on
12 request by the Administrator, the Secretary of
13 the Treasury shall transfer from the Fund to
14 the Administrator amounts appropriated to pay
15 costs incurred in developing, operating, main-
16 taining, and upgrading the system under sub-
17 section (e).

18 “(B) USE OF FUNDS BY ADMINIS-
19 TRATOR.—Fees collected by the Administrator
20 and deposited in the Fund under this section
21 shall be available to the Administrator subject
22 to appropriations Acts for use in accordance
23 with this section without fiscal year limitation.

24 “(C) OVERSIGHT OF FUNDS.—The Admin-
25 istrator shall carry out all necessary measures

1 to ensure that amounts in the Fund are used
2 only to carry out the goals of establishing, oper-
3 ating, maintaining, upgrading, managing, sup-
4 porting, and overseeing the system.

5 “(3) ACCOUNTING AND AUDITING.—

6 “(A) ACCOUNTING.—For each 2-fiscal-year
7 period, the Administrator shall prepare and
8 submit to the Committee on Environment and
9 Public Works and the Committee on Appropria-
10 tions of the Senate and the Committee on En-
11 ergy and Commerce and the Committee on Ap-
12 propriations of the House of Representatives a
13 report that includes—

14 “(i) an accounting of the fees paid to
15 the Administrator under subsection (c) and
16 disbursed from the Fund for the period
17 covered by the report, as reflected by fi-
18 nancial statements provided in accordance
19 with—

20 “(I) the Chief Financial Officers
21 Act of 1990 (Public Law 101–576;
22 104 Stat. 2838) and amendments
23 made by that Act; and

24 “(II) the Government Manage-
25 ment Reform Act of 1994 (Public

1 Law 103–356; 108 Stat. 3410) and
2 amendments made by that Act; and

3 “(ii) an accounting describing actual
4 expenditures from the Fund for the period
5 covered by the report for costs described in
6 subsection (c)(1).

7 “(B) AUDITING.—

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

12 “(ii) COMPONENTS OF AUDIT.—The
13 annual audit required in accordance with
14 sections 3515(b) and 3521 of title 31,
15 United States Code, of the financial state-
16 ments of activities carried out using
17 amounts from the Fund shall include an
18 analysis of—

19 “(I) the fees collected and dis-
20 bursed under this section;

21 “(II) the reasonableness of the
22 fee structure in place as of the date of
23 the audit to meet current and pro-
24 jected costs of the system;

1 “(III) the level of use of the sys-
2 tem by users; and

3 “(IV) the success to date of the
4 system in operating on a self-sus-
5 taining basis and improving the effi-
6 ciency of tracking waste shipments
7 and transmitting waste shipment
8 data.

9 “(iii) FEDERAL RESPONSIBILITY.—
10 The Inspector General of the Environ-
11 mental Protection Agency shall—

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

14 “(II) submit to the Administrator
15 a report that describes the findings
16 and recommendations of the Inspector
17 General resulting from the audit.

18 “(e) CONTRACTS.—

19 “(1) AUTHORITY TO ENTER INTO CONTRACTS
20 FUNDED BY SERVICE FEES.—The Administrator
21 may enter into 1 or more information technology
22 contracts with entities determined to be appropriate
23 by the Administrator (referred to in this subsection
24 as ‘contractors’) for the provision of system-related
25 services.

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

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

8 “(A) is performance-based;

9 “(B) identifies objective outcomes; and

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

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

22 “(ii) attracts sufficient user participa-
23 tion and service fee revenues to ensure the
24 viability of the system;

1 “(iii) decreases the administrative
2 burden on the user community; and

3 “(iv) provides the waste receipt data
4 applicable to the biennial reports required
5 by section 3002(a)(6).

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

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

12 “(B) the fixed-share ratio of monthly serv-
13 ice fee revenues from which the Administrator
14 shall reimburse the contractor for system-re-
15 lated development, operation, and maintenance
16 costs.

17 “(5) CANCELLATION AND TERMINATION.—

18 “(A) IN GENERAL.—If the Administrator
19 determines that sufficient funds are not made
20 available for the continuation in a subsequent
21 fiscal year of a contract entered into under this
22 subsection, the Administrator may cancel or
23 terminate the contract.

24 “(B) NEGOTIATION OF AMOUNTS.—The
25 amount payable in the event of cancellation or

1 termination of a contract entered into under
2 this subsection shall be negotiated with the con-
3 tractor at the time at which the contract is
4 awarded.

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

9 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST
10 SYSTEM ADVISORY BOARD.—

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

16 “(2) COMPOSITION.—The Board shall be com-
17 posed of 9 members, of which—

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

21 “(B) 8 members shall be individuals ap-
22 pointed by the Administrator—

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

1 “(ii) at least 3 of whom shall have ex-
2 perience in using or represent users of the
3 manifest system to track the transpor-
4 tation of hazardous waste under this sub-
5 title (or an equivalent State program); and

6 “(iii) at least 3 of whom shall be a
7 State representative responsible for proc-
8 essing those manifests.

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

13 “(g) REGULATIONS.—

14 “(1) PROMULGATION.—

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

19 “(B) INCLUSIONS.—The regulations pro-
20 mulgated pursuant to subparagraph (A) may
21 include such requirements as the Administrator
22 determines to be necessary to facilitate the
23 transition from the use of paper manifests to
24 the use of electronic manifests, or to accommo-
25 date the processing of data from paper mani-

1 feats in the electronic manifest system, includ-
2 ing a requirement that users of paper manifests
3 submit to the system copies of the paper mani-
4 fests for data processing purposes.

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

10 “(i) the ability to track and maintain
11 legal accountability of—

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

15 “(II) the person that acknowl-
16 edges receipt of the manifest;

17 “(ii) if the manifest is electronically
18 submitted, State authority to access paper
19 printout copies of the manifest from the
20 system; and

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

23 “(2) EFFECTIVE DATE OF REGULATIONS.—Any
24 regulation promulgated by the Administrator under
25 paragraph (1) and in accordance with section 3003

1 relating to electronic manifesting of hazardous waste
2 shall take effect in each State as of the effective
3 date specified in the regulation.

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

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

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

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

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

21 “(i) AUTHORIZATION FOR START-UP ACTIVITIES.—
22 There are authorized to be appropriated \$2,000,000 for
23 each of fiscal years 2013 through 2015 for start-up activi-
24 ties to carry out this section, to be offset by collection of
25 user fees under subsection (c) such that all such appro-

1 priated funds are offset by fees as provided in subsection
2 (c).”.

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

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

