

# **A**TLANTIC INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT COMMISSION

February 10, 2009

**Connecticut  
New Jersey  
South Carolina**

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For New Jersey*

*The Atlantic Compact  
was formerly known as  
the Northeast Compact*

Mr. C. Earl Hunter, Commissioner  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

Dear Commissioner Hunter:

On September 26, 2008, Richard Haynes, Director of the Division of Waste Management, expressed concerns to the Atlantic Compact Commission that organizations outside the Atlantic Compact region might move radioactive materials into the region and then attempt somehow to re-manifest the materials as "Atlantic Compact waste" in order to qualify for access to the Barnwell LLRW facility. Mr. Haynes provided a follow-up briefing on this and other matters related to the definition of regional waste at our Commission's most recent meeting on October 23. We are grateful to Mr. Haynes for raising these concerns.

Mr. Haynes cited two primary concerns. First, there is the possibility for movement of non-region waste into member states New Jersey or Connecticut and then its re-manifestation as regional waste in circumstances where SC DHEC does not have a mechanism to determine the true origin of waste from facilities licensed within these other Atlantic Compact states. Second, Mr. Haynes expressed concern that a processing facility might locate within a region state and gain authority from that state to list itself as the "generator" of the treated waste for purposes of disposal at Barnwell, and to then send that waste to Barnwell even though the waste was originally generated outside the Atlantic region.

As you know, waste generated from outside the Atlantic Region may not be shipped to the Barnwell regional facility without the approval of both the Atlantic Compact Commission and the State of South Carolina, as the host state. Both the Commission and South Carolina have declared by force of law that no waste generated outside the region may be sent to Barnwell after July 1, 2008. By his attached letter dated May 12, 2008, Frank Fusco, Director of the South Carolina Budget and Control Board, rejected the prospect of "domestication" by the re-manifestation or re-processing of waste originally generated from outside the region.

Still, DHEC raises practical questions regarding actual policing of the packages sent to Barnwell and the understandable concern that all member states should be on the same page regarding who is considered a "regional generator." We share DHEC's concern that all waste received at the Barnwell disposal facility must be legitimately generated within the Compact region, and is not simply waste from other regions or foreign

nations that was re-manifested or re-processed within one of our three Compact states for the purpose of gaining access to Barnwell.

As to DHEC's first concern, current laws and practices already address the handling of wastes through manifests, and wastes from South Carolina and from the other member states are handled in the same way: in both instances, manifests detailing the original generators are required by law, and in neither instance is it practical physically to open the package and actually verify the origin of the waste by inspection.

Importation of radioactive material from other states or nations for the purpose of re-manifesting it as Atlantic waste for disposal at Barnwell would violate current laws, regulations and policies. There may be legitimate instances where radioactive material entering the Atlantic Compact region – on a case-by-case basis and after careful analysis – is determined to be waste with no actual or residual value. It is clear, however, that routinely importing radioactive material from other states for the purpose of re-manifesting it as Atlantic “waste” would be illegal.

The regulatory practices for tracking waste through brokers, processors and shippers back to the original generator date back to South Carolina laws directing DHEC to require permits of all waste generators. For at least 25 years, waste shippers have been required to provide documentation listing the generators whose waste contributed to the contents of comingled containers. This has included pro-rating the volume and curie content of containers to individual generators even in instances where the chemical form of the waste has been altered by processing techniques. This far-sighted legislation ensured that there would be documentation identifying the original generator of the waste for purposes of liability, even where the waste had been re-processed at another location en route to the Barnwell site.

Of course, under South Carolina law, as of July 1, 2008, it will no longer be appropriate physically to combine region and non-region waste in the same packaging if the regional waste is intended for disposal at Barnwell.

If and to the extent there are enforcement concerns regarding the origin of waste, it seems that these can be addressed by South Carolina through its current enforcement regime. Generators from South Carolina, Connecticut and New Jersey must have a permit from DHEC before sending waste for disposal at Barnwell, and this is so even if the waste is shipped through a processor or broker. In addition, all waste arriving at Barnwell must have a shipping manifest that declares, among other things, the original source and generator of the waste. We presume that DHEC's licensing and certification process already submits all generators to the laws and courts of the State of South Carolina for any violations. My further understanding is that there would be severe penalties in South Carolina if any generator, whether in-state or out-of-state, misrepresents the true origin of waste coming from facilities licensed within any of the Atlantic Compact states.

If not already in place, it seems that a Sarbanes-Oxley type certification from a responsible company official regarding the original source and characteristics of waste sent for disposal in South Carolina would be a useful compliance tool. Because the waste that contributes to co-

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mingled waste containers for disposal at Barnwell was itself originally manifested for transport into the waste consolidation or processing facility, there should be a trail of documentation that identifies the original generator of the waste. Like all such systems where physical verification can be difficult, there should be meaningful penalties for abuses of the system.

As to the second concern raised by Mr. Haynes, regarding the re-manifestation of processed waste, we are aware of published reports that the State of Tennessee may have allowed waste processors to exclude information about the original generators, even foreign generators, when the treatment residue from the waste was re-manifested for shipment to other states. While this is a new and novel approach, we urge DHEC to continue the traditional policy of requiring identification of the generators whose waste originally contributed to the packages received for disposal at the Barnwell site. This information is necessary for billing, accounting, and liability purposes, and of course since July 1, 2008 this information is necessary to determine whether the package contains exclusively regional waste and is thus eligible for disposal at Barnwell at all.

If South Carolina cannot be assured of the original waste sources, then it would most certainly reconsider its involvement as host state for the Compact. As the host state, South Carolina reserved the right to withdraw from the Compact and to close the Barnwell facility for any reason, including for conduct that violates the agreement to limit Barnwell to regional waste only after July 1, 2008. Our partner states and regional generators value our continued association, and I do not foresee any issue among us regarding the need to adhere to the host state's requirements regarding non-region waste. New Jersey and Connecticut concur in South Carolina's approach to identifying the original generator of the waste.

DHEC should continue its strict policy of requiring identification of the generators whose waste originally contributed to the packages received for disposal at the Barnwell site. And if DHEC cannot be assured that all waste received at Barnwell was originally generated in-region, and prior to any processing, then the waste should be rejected.

We appreciate the efforts of DHEC's staff to keep us informed and in ensuring responsible accountability for waste received at the Barnwell site.

Sincerely,



Benjamin A. Johnson, Chairman  
Atlantic Compact Commission

cc: Atlantic Compact Commissioners  
Mr. Frank Fusco  
Mr. Richard Haynes  
Mr. James Latham

Rec'd 5/19/08 -  
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STATE OF SOUTH CAROLINA  
**State Budget and Control Board**  
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May 12, 2008

Mr. Benjamin Johnson, Esq.  
Chairman  
Atlantic Compact Commission  
1201 Main Street, Suite 1830  
Columbia, South Carolina 29201

Re: Notice Regarding Ban on Importation of Waste for Purposes of Disposal

Dear Mr. Johnson:

By resolution on March 12, 2002, the Atlantic Compact Commission granted South Carolina, as the Compact's host state, limited authority to allow importation of waste into the region for purposes of disposal at the regional disposal facility in Barnwell County through June 30, 2008.

The purpose of this letter is to provide the Compact Commission and other interested parties public notice on behalf of the board that the board, effective July 1, 2008, no longer authorizes importation for purposes of disposal at the Barnwell site. "Importation," for these purposes, means the acceptance at the regional disposal facility of any waste that was generated in any foreign country or any state or territory of the United States other than Connecticut, New Jersey and South Carolina.

"After January 1, 1986, no person shall deposit at a regional facility waste generated outside the region, and further, no regional facility shall accept waste generated outside the region unless approved by the Commission and the affected host state." Federal Compact Law, P.L. 99-240, Title II, Section 227, Article III(A)(2); also Section 48-46-70, South Carolina Code of Laws.

"'Region' means the entire area of the party states." Compact Law... Article II(m).

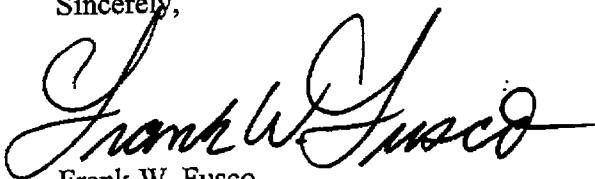
"After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal." Section 48-46-40(A)(6)(a), S.C.C.

Waste generated within the Atlantic Compact region that is shipped to facilities outside the Atlantic Compact region for purposes of treatment or processing en route to disposal at Barnwell is considered waste generated within the Atlantic Compact region, as long as the treatment residue is not commingled in the same package with residue generated by organizations outside the Atlantic Compact region. Decontamination residue generated from radioactive materials owned by Atlantic Compact organizations may be considered Atlantic Compact waste, whether or not the decontamination process takes place within the Atlantic Compact region.

Sealed sources or other radioactive materials shipped from outside the Atlantic Compact region to waste brokering facilities or other facilities within the Atlantic Compact region for purposes of packaging or consolidation are not considered wastes generated within the Atlantic Compact region. The Barnwell site may not accept radioactive material or waste that has been transported into the Atlantic Compact region and re-manifested as radioactive waste solely for purposes of establishing eligibility for disposal at the Barnwell site as Atlantic Compact waste.

We believe that these guidelines are consistent with State and Federal laws, longstanding federal practices, and the regulations of the South Carolina Department of Health and Environmental Control (DHEC) at Chapter 61-63, RHA 3.2.98 and RHA 3.55. If you have any questions regarding this Notice, please do not hesitate to contact Bill Newberry, Manager, Radioactive Waste Disposal Program, at 803-737-8037. If you have any questions regarding DHEC regulations related to identifying and manifesting radioactive waste shipped to the Barnwell facility, please contact Richard Haynes, Director, Division of Waste Management, DHEC, at 803-896-4070.

Sincerely,



Frank W. Fusco  
Executive Director

cc: Bo Aughtry, Chairman, DHEC Board  
Daphne Neel, Chief, BLWM, DHEC