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SOUTH CAROLINA ENERGY OFFICE  
1200 SENATE STREET, 408 WADE HAMPTON BUILDING  
COLUMBIA, SOUTH CAROLINA 29201  
(803) 737-8030 Toll-free 1-800-851-8899  
Fax (803) 737-9846

April 22, 2009

The Honorable Dale Klein  
Chairman  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Klein:

Thank you and the Commission for webcasting the April 17 briefing on low-level radioactive waste. The meeting was informative and interesting.

We want to respond more fully to a question you posed to the panel regarding the concern of facility host states for the proper attribution of waste generators in containers received from waste processing facilities. Since at least 1982, South Carolina has required all waste generators to obtain a transport permit from the State for waste shipped to the Barnwell site, whether or not they use a broker for delivery of the waste, and whether or not the waste is treated or processed en route to disposal. (Please see May 1, 1986, memo, attached.)

Regardless of any policies to the contrary in Tennessee or elsewhere, South Carolina will continue to require documentation that certifies the identity of the generator of all waste received, as a condition of access to the Barnwell site.

This policy was an important part of the State's regulatory reforms that were adopted contemporaneously with the adoption of 10 CFR 61. The primary purpose of the policy is to provide financial assurance. Documentation identifying generators is necessary to establish liability and responsibility for the material should it ever become necessary to seek compensation in the event of an accident or environmental contamination. A secondary purpose, at least since 2000, is to ensure financial responsibility in the event that the waste broker or processor goes out of business or fails to pay for services provided.

Attribution of waste to the original generator has been one of the pillars of regulatory policy on low-level radioactive waste. When SEG, Inc., first proposed a supercompactor in the State of Tennessee, representatives of the company visited South Carolina to ensure the State that they were supportive of the policy and would identify all generators whose waste contributed to comingled packages. For purposes of federal surcharge rebates in the early 1990s, the Department of Energy required that waste shipped through brokers and processors provide a breakdown of volumes in all comingled packages.

We continue to believe that documentation accurately attributing waste to the original generators is an important regulatory policy and know of no constructive purpose that would be served in omitting such information on shipping manifests. We believe that the NRC can take a lead role in ensuring consistency in its implementation of this policy among the states.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Newberry', with a long horizontal stroke extending to the right.

William Newberry  
Manager  
Radioactive Waste Disposal Program

A handwritten signature in black ink, appearing to read 'Richard A. Haynes', with a long horizontal stroke extending to the right.

Richard A. Haynes, P.E., Director  
Division of Waste Management  
Bureau of Land and Waste Management  
S.C. Dept. of Health and Environmental Control

Enclosure: As stated

South Carolina Department of Health  
and Environmental Control  
Bureau of Radiological Health

May 1, 1986

Guidelines for Implementation of the Low-Level Waste Policy  
Amendments Act of 1985 and Compliance with the State of South  
Carolina Waste Transport Permitting Requirements.

REFERENCES

1. Low-Level Radioactive Waste Policy Amendments Act of 1985  
(P.L. 99-240)
2. Southeast Interstate Low-Level Radioactive Waste Management  
Compact
3. Department Regulation 61-83, Transportation of Radioactive  
Waste Into or Within South Carolina
4. Act 429, South Carolina Radioactive Waste Transportation and  
Disposal Act (Section 13-7-110, et seq. 1976 S.C. Code of Laws  
as amended)
5. S.C. Radioactive Material License No. 097, Chem-Nuclear  
Systems, Inc.

REGULATORY POSITION

As the host state authority mandated to assure compliance with all legislative requirements and milestones specified in the LLW Waste Policy Amendments Act of 1985 and applicable provisions of the Southeast Interstate Low-Level Radioactive Waste Management Compact, it shall be the position of the S.C. Department of Health and Environmental Control that all low-level radioactive waste received for storage or disposal at the regional disposal site located in Barnwell, S.C., operated by Chem-Nuclear Systems, Inc., be traceable to the original generators and states, and that appropriate allocations, surcharges, and penalties be applied regardless of whether the waste was shipped directly from the point of origin or generation, or to a licensed service facility for recycling, processing, compacting, incinerating, collecting, brokering, or whatever the case may be.

The Department has no control over, nor does it recognize contractual agreements and title transfers of waste between waste generators and brokers, collectors, processors, recyclers, compacters or other such waste services.

However, sludges, concentrates, lint, liquids, filter media, etc., generated at service facilities from laundering or decontaminating activities, and any low-level radioactive waste produced from operating or decommissioning such facilities, shall be considered waste generated by that facility and attributable to that state where the facility is located.

- Further, any person whose activities result in the generation of radioactive waste has the primary responsibility to obtain a S.C. Radioactive Waste Transport Permit in accordance with applicable requirements of Department Regulation 61-83, Transportation of Radioactive Waste Into or Within South Carolina, and provide evidence of financial liability by means of a cash or corporate surety bond, or a valid certificate of liability insurance.

Any variance from this regulatory position shall be considered by the Department on a case-by-case basis.

#### REGULATORY PROCEDURES

##### Allocation of Disposal Capacity

- Disposal capacity shall be obtained directly from the site operator, Chem-Nuclear Systems, Inc., by either the original waste generator, or on behalf of the waste generator by an authorized broker or agent.
- When applicable, waste brokers, collectors, compactors, recyclers, etc., shall have prior authorization from the waste generators to utilize their assigned volume allocations or disposal space for shipments of waste to the burial facility.
- Commercial nuclear power reactor waste received for disposal at the regional burial facility from either the generator's site or a waste processor (recycler), shall be deducted from the allocated disposal capacity authorized by the Waste Policy Amendments Act.
- The Department will monitor disposals by commercial reactors and other generators and enter usage into the national LLW data base for compliance with allocations authorized by LLW Amendments Act.

##### Surcharges and Penalty Surcharges

- Current surcharges (\$10.00 per cubic foot) will be assessed and collected from waste generators located outside the Southeast, Northwest, and Rocky Mountain regions. Chem-Nuclear Systems will bill generators as a part of each generator's regular invoice. Penalty surcharges will be collected in addition to regular surcharges for those generators located in states which fail to meet legislative milestones.
- Surcharges and penalty surcharges may be paid by brokers, collectors, processors, etc., on behalf of their clients.

### Advance Notification of Waste Shipments and Manifests

1. Written advance notifications of waste shipments shall continue to be made in accordance with current Department Regulation 61-83, and reported on Department Form DHEC-802. However, brokers, collectors, recyclers, compactors, etc., making waste shipments on behalf of their clients shall provide the following additional information as an addendum to the prior notification for each separate waste generator within the shipment: (a) Original Waste Generator (b) Location and State (c) S.C. Waste Transport Permit No. (d) Number of Packages (e) Total Cubic Feet (f) Total Radioactivity per radionuclide (g) Waste Description, and (h) Waste Class (A,B, or C).
2. All shipping manifests (Chem-Nuclear Radioactive Shipment Manifest Form) and documents required for waste shipments received at the disposal facility shall contain pertinent information to determine the original waste generator and the amount of waste (cubic feet) attributable to that particular generator to determine applicable surcharges, penalties, allocations, and sanctions for failure of the generator's state to meet legislated milestones. All waste received must be trackable to the original generator and state.

All waste brokers, collectors, recyclers, etc. will be subject to audit and verification of their waste receipt and shipping records.

### South Carolina Waste Transport Permit

1. Pursuant to Section 13-7-140, S.C. Code of Laws, and Department Regulation 61-83, each waste generator to include federal and state waste generators, regardless of whether he utilizes a broker, collector, processor, recycler, etc., will be responsible to obtain a S.C. Radioactive Waste Transport Permit and comply with all applicable provisions of Department Regulation 61-83. All waste shipped into or within South Carolina shall be under the authority of the applicable permit.
2. Waste brokers, collectors, processors, etc. licensed by the NRC or an Agreement State, may obtain a transport permit for the purpose of shipping or transporting waste on behalf of their clients or waste produced from legitimate activities of the waste service facility. Enforcement actions, when warranted for noncompliance with applicable regulations and requirements, will be determined on a case-by-case basis; however, nothing relieves the waste generator from compliance with Department Regulation 61-83. Waste generators shall not assign their responsibility mandated by law to a waste service company or third party.