

**LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.**

1619 12<sup>TH</sup> Street, N.W. – Washington, D.C. 20009  
(202) 265-7990 \* (202) 265-7995 FAX

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**U.S. NUCLEAR REGULATORY COMMISSION  
BREIFING ON LOW-LEVEL RADIOACTIVE WASTE**

**APRIL 17, 2009**

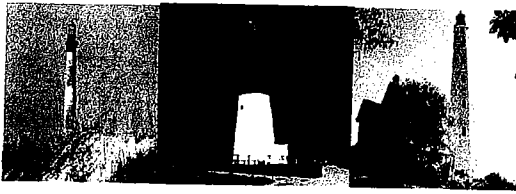
**WRITTEN MATERIALS**

**SUBMITTED BY**

**LEONARD C. SLOSKY**

**CHAIR-ELECT OF THE LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.  
AND  
EXECUTIVE DIRECTOR OF THE ROCKY MOUNTAIN LOW-LEVEL  
RADIOACTIVE WASTE BOARD**

**REPRESENTING THE LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.  
AND  
THE STATES OF SOUTH CAROLINA, UTAH, AND WASHINGTON**



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

February 10, 2009

**Connecticut  
New Jersey  
South Carolina**

**M. K. Batavia, P.E.  
Executive Director  
1201 Main Street  
Suite 1830  
Columbia, SC 29201**

**Phone: 803-737-1879  
Fax: 803-737-5023**

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Commissioner for  
South Carolina*

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For Connecticut*

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Alternate Commissioner  
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-

Mr. C. Earl Hunter  
February 10, 2009

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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 -  
wfb

STATE OF SOUTH CAROLINA  
**State Budget and Control Board**  
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FRANK W. FUSCO  
EXECUTIVE DIRECTOR

P.O. BOX 12444  
COLUMBIA, SOUTH CAROLINA 29211  
(803) 734-2320  
FAX (803) 734-2117

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).

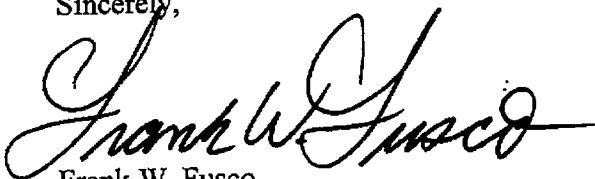
"After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal." Section 48-46-40(A)(6)(a), S.C.C.

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



# STATE OF UTAH

OFFICE OF THE GOVERNOR  
SALT LAKE CITY, UTAH

84114-2220

JON M. HUNTSMAN, JR.  
GOVERNOR

GARY R. HERBERT  
LIEUTENANT GOVERNOR

News Release  
April 23, 2008

Contact: Lisa Roskelley  
Governor's Spokeswoman

Office (801) 538-1503 Cell (801) 560-0137

## **Governor Huntsman Blocks Italian Waste**

**Salt Lake City** – Utah Governor Jon Huntsman decided Tuesday to direct Bill Sinclair, who represents Utah on the Northwest Interstate Low-Level Waste Compact, to vote against any proposals for foreign nuclear waste to come in to Utah. The issue is on the Compact's May 8 agenda.

"As I have always emphatically declared, Utah should not be the world's dumping ground," Governor Huntsman said. "Our country has limited space to store even domestic waste and it would be most appropriate to have a federal policy against the importation of foreign nuclear waste. However, as the federal government is slow to adopt such a policy, Utah will lead the way."

The U.S. Nuclear Regulatory Commission has the authority to approve or disapprove the transport of foreign nuclear waste into the United States. Once allowed by the NRC, the Northwest Compact has the authority to approve or disapprove foreign nuclear waste for facilities in this region. The state impacted by the waste application has the ability to veto importation of foreign waste.

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**Northwest Interstate Compact**

On Low-Level Radioactive Waste Management

P.O. Box 47600. Olympia, Washington 98504-7600. (360) 407-7102. Mike Garner, Executive Director

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**RESOLUTION CLARIFYING THE  
THIRD AMENDED RESOLUTION AND ORDER**

Whereas, the Compact Committee continues to support the Low-Level Radioactive Waste Policy Amendments Act, Public Law 99-240;

Whereas, no facility located in any party state may accept low-level radioactive waste generated outside the region comprised of the party states, prior to an arrangement being adopted by the Compact Committee in accordance with Articles IV and V of the Compact statute;

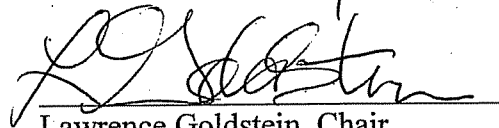
Whereas, the Compact Committee most recently approved on May 1, 2006, the Third Amended Resolution and Order that serves as an arrangement that provides certain access to the region to low-level radioactive wastes generated in unaffiliated states and compacts that meet the requirements of the Third Amended Resolution and Order for disposal at the EnergySolutions facility in Clive, Utah;

Whereas, the Third Amended Resolution and Order does not address foreign low-level radioactive wastes and the Compact Committee has never considered or reviewed the issue of adopting an arrangement that would provide low-level radioactive wastes generated in foreign countries access to the region for disposal at the EnergySolutions facility in Clive, Utah;

BE IT HEREBY RESOLVED AND ORDERED THAT:

The Third Amended Resolution and Order does not serve as an arrangement for disposal of low-level radioactive wastes generated in foreign countries – including foreign-generated waste that is characterized as domestic generated waste by another compact or unaffiliated state, and such an arrangement, as required by Articles IV and V of the Compact statutes, would need to be adopted by the Compact Committee prior to foreign-generated low-level radioactive wastes being provided access to the region for disposal at EnergySolutions facility in Clive, Utah.

As approved by the Northwest Interstate Compact on Low-Level Radioactive Waste Management, I execute this Resolution on the 12<sup>th</sup> day of May 2008.



Lawrence Goldstein, Chair  
Northwest Interstate Compact on  
Low-Level Radioactive Waste Management



**Northwest Interstate Compact**

On Low-Level Radioactive Waste Management

P.O. Box 47600. Olympia, Washington 98504-7600. (360) 407-7102. Mike Garner, Executive Director

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June 11, 2008

Ms. Kathryn Haynes, Executive Director  
Southeast Interstate Compact  
21 Glenwood Avenue, Suite 207  
Raleigh, NC 27603

Dear Ms. Haynes:

I am writing on behalf of the working group formed by the Northwest Compact committee at its May 8, 2008, meeting. We are tasked with attempting to resolve concerns our committee has with the practice that allows certain Southeast Compact processors to claim another generator's waste, following processing only, as their own waste. This practice compromises the ability of the Northwest Compact to effectively exercise its exclusionary authority as provided by federal law.

The Northwest Compact's Third Amended Resolution and Order (Resolution) (attached) serves as an arrangement as required by Articles IV and V of our compact statutes with out-of-region unaffiliated states and compacts. The Resolution provides access to the region for disposal of certain low-level wastes at the EnergySolutions' facility in Clive, Utah. At the end of March 2008 the Northwest Compact became aware that waste not intended to be provided access to our region under the requirements of the Resolution was being shipped to EnergySolutions' facility for disposal. The waste in question was imported from Monserco Limited located in Ontario, Canada to the Duratek, Inc. facility located in Tennessee. The U.S. Nuclear Regulatory Commission solicited comments from the Southeast Compact and the state of Tennessee, but not the Northwest Compact, on this import application (IW017).

Duratek incinerated a portion of the Canadian waste. As a result of a change to its operating license that took effect approximately two years ago, Duratek claimed the ash resulting from the incineration of waste generated in Canada as its own waste. The ash resulting from incineration of the Canadian waste was then shipped as Duratek (Tennessee) waste to EnergySolutions' Utah facility for disposal.

The Northwest Compact wants to make it clear the Resolution does not serve as an arrangement for foreign low-level waste. At its May 8, 2008, meeting the committee adopted a Clarifying Resolution (attached) specifying that an arrangement does not exist for foreign waste, including foreign generated waste that is characterized as domestic generated waste by an out-of-region state or compact. Therefore, Canadian waste incinerated at the Duratek facility and then claimed as Duratek waste is not provided access to our region for disposal at EnergySolutions' Utah facility.

*ALASKA . HAWAII . IDAHO . MONTANA . OREGON . UTAH . WASHINGTON . WYOMING*

Page 2  
Ms. Haynes  
June 11, 2008

The practice of allowing Duratek and other facilities to characterize other generator's waste as their own waste following processing appears to be contrary to the intent of the Low-Level Radioactive Policy Amendments Act of 1985. The Low-Level Waste Handbook – A User's Guide to the Low-Level Radioactive Waste Policy Amendments Act of 1985 addresses the term "generate" on pages three and four (attached).

On page three it states:

... "For example, low-level radioactive waste that is processed for volume reduction or other purposes would not after such processing be considered to have been newly generated by that process."...

On page four it states:

..."However, in the case of intermediate wastes, the wastes so processed or handled would be considered the primary product – not a byproduct – of the activity, and therefore, these activities would generate low-level radioactive wastes only to the extent that certain equipment uses (sic) in the activity became contaminated as a result of contact with the low-level radioactive waste being processed."...

This practice appears to be inconsistent with the definition of "generator" found within the statutes of the Northwest Compact.

"Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste. (attached)

The Northwest Compact has concerns with the practice that allows a processor, following processing only, to claim another generator's waste as its own waste. It compromises our ability to effectively exercise our exclusionary authority as we are unable to identify where the waste was originally generated. This applies to both foreign and domestic low-level wastes. The working group would like to work with representatives of the Southeast Compact to resolve this issue. I will be calling you the week of June 9, 2008, and explore options for initiating a dialogue on this issue.

Should you have any questions please call me at (360) 407-7102.

Sincerely,



Mike Garner, Executive Director  
Northwest Interstate Compact

cc: Northwest Compact Committee  
Attachments