



ATLANTIC INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT COMMISSION

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

March 19, 2007

The Honorable Mark Sanford
Chairman, South Carolina Budget & Control Board
Columbia, South Carolina 29211

Re: ***Barnwell LLW Facility Update - Viability Post-2008***

Dear Governor Sanford:

Recently, it has come to the attention of the Atlantic Compact Commission that the volume of low-level nuclear waste to be disposed at the Barnwell, South Carolina nuclear waste disposal facility may not generate sufficient operating income during years after 2008, absent changes in the cost structure or income stream for the operations. Accordingly, and reserving the full Compact Commission's right to comment on any changes under consideration by the Board, I write pursuant to § 48-46-40(B)(7)(a) of the Atlantic Compact Act of 2000 (the "Act") to outline a number of options that the Board may wish to consider to remedy this projected shortfall.

As a preface to these options, let me emphasize that the anticipated shortfall in operating funds at the Barnwell site is not the crisis that some have portrayed it to be. Citing such a crisis, the sponsors of H. 3545 are seeking to amend § 48-46-40 to allow an increase in the import of non-regional nuclear waste by 600,000 cubic feet over 15 years, from FY 2008 through FY 2023. The bill's sponsors and the national nuclear waste lobby have claimed that, absent such a drastic amendment to the Act, the revenue shortfall at the Barnwell site will soon become insurmountable.

These claims are overstated. The Act *already* contemplates reduced operating volume beginning in 2008, and it *already* prescribes procedures that the Board must follow to ensure the continuing economic viability of the Barnwell site. Indeed, these procedures were an integral part of the historic compromise that resulted in the passage of the Act. To disregard those procedures now—without subjecting the estimates of the Barnwell site's operator to the scrutiny that the Act demands—would be to abandon the sound public policy that allowed South Carolina finally to shed its role as the nation's "nuclear waste dump."

As Chairman of the Atlantic Compact Commission and South Carolina's Commissioner since its inception in 2000, I reiterate that H. 3545 should not be passed by the General Assembly - and in any event should be vetoed - because it is against South Carolina's best interests. Instead, the Board should invoke the procedures already contained in the Act and consider a number of much less drastic—and more responsible—options that will ensure the economic viability of the Barnwell site.

Background

South Carolina would not have initiated the events that led to the formation of the Atlantic Compact and its new partnership with Connecticut and New Jersey if our State could not have been assured of its hard-earned right to restrict out-of-region waste beginning in 2008. The Act represented a compromise to keep Barnwell open in a reduced role after 2008. It rejected a more extreme, but politically palatable, position to close the site altogether, instead opting to preserve the limited remaining space for South Carolina's own reactor decommissioning needs. South Carolina's entry into a small, Congressionally-approved Compact served this overarching purpose. Importantly, the Act afforded the Barnwell community nearly \$13 million in development money and gave both the Barnwell area and the nuclear waste industry 9 years to plan for their future needs.

Perhaps as well as anyone, you know of the tireless efforts of Governors Riley, Campbell, Beasley and Hodges to deal with the recurring issue of South Carolina's nuclear waste problem. The permanent solution to that problem marked by the 2000 Act represented a major achievement of our State's political leadership. But the Act calls for continued leadership now—through a transition phase that the affected parties are naturally resisting.

I believe the environmental community has a strong case to make that the 2000 compromise was overly generous to the industry. After the Act was passed, it was discovered that high-level, spent nuclear fuel was "most likely" buried at the Barnwell site, according to a Nuclear Regulatory Commission investigative report. Burial of spent fuel is a serious violation of federal regulations and the South Carolina DHEC operating license. To my knowledge, no enforcement action was taken by South Carolina against the utility that shipped the waste to Barnwell, in spite of investigative results showing a lack of care on the part of the waste shipper. And no enforcement action was taken against the disposal site operator, which buried the waste apparently without any way to verify the contents of the waste package against the shipping paperwork.

I also believe that, as a practical matter, the site operator has sought and received leniency from regulators based on the belief that national-scale disposal

operations would end in 2008. When the site underwent re-licensing starting in 2004, environmental protection measures were rejected by regulators based on the operator's assurances that waste volumes would be "dramatically reduced" after 2008 because of the Act. It is disappointing that the site's operator resisted safety changes before on the premise that operations are winding down, yet now asks to increase its volume by 400% for the next 15 years.

Just last month, when DHEC first reported that the remaining capacity at the site is substantially less than previously believed, DHEC simply noted that a design concept proposed by the site operator "would increase" capacity by 1 million feet. It is not so simple; this is one of the most dangerous landfills in the United States. The license amendment process will require extensive studies and public participation. Naturally, the public is concerned by the operator's proposal to return to national-scale burial operations.

Balanced against these serious environmental concerns, the 2000 compromise reflects South Carolina's desire to preserve the remaining capacity at Barnwell for decommissioning South Carolina's 7 nuclear reactors – and for facilities yet to be built - and for limited additional waste from our fellow Compact members. But H. 3545 would nullify this compromise. I am confident that South Carolina citizens would not want the valuable remaining landfill capacity at Barnwell - already earmarked for our children's generation - to be squandered for the benefit of States like North Carolina, Illinois, Ohio, Pennsylvania and Texas who unwisely abandoned their own programs to develop new waste disposal sites.

Indeed, there is concern among the Atlantic Compact states that the remaining licensed capacity at Barnwell of 1.2 million cubic feet may not even be sufficient for the Compact's own needs. South Carolina's entry into the Compact included our binding agreement to set aside 800,000 cubic feet of capacity for Connecticut and New Jersey, and leaving the site open for non-region waste may seriously hinder our ability to honor that agreement.

To be sure, even if there were abundant capacity, South Carolina declared in no uncertain terms in 2000 that the Barnwell site will be closing to non-Atlantic states in 2008 and that South Carolina would no longer represent the path of least resistance to the responsible disposal of nuclear waste. Now, our State's national reputation is on the line. South Carolina is the butt of jokes at national waste conferences because of its past propensity to cave-in to the nuclear waste industry and its money. As the Act demands, we can and should hold firm this time. And as the options below demonstrate, we can afford to do so.

Economics of Atlantic Compact Operations After 2008

The Barnwell site can operate successfully on at least a break-even basis after 2008. All parties realized in 2000 that the Barnwell site would be operating at reduced volumes after 2008. That is why Connecticut and New Jersey provided nearly \$13 million in compensation money to Barnwell County.

The new out-of-state owners of the company that operates the Barnwell site are engaged in an extensive public relations effort to amend the 2000 Act and allow non-Atlantic waste after 2008. The operator has announced that state revenues from disposal have been over \$400 million since 1995, but neglects to say that, from here on, the state can expect no more than \$9 million per year, even if 40,000 cubic feet of waste were authorized.

Knowing that the Atlantic Compact, Budget and Control Board, and Public Service Commission have not completed their assessments for post-2008 operations, the new operator has communicated misleading information concerning the future viability of the Barnwell site, contending that the operation will lose \$3.6 million per year after 2008. This is simply not true.

The Atlantic Compact, Budget and Control Board and Public Service Commission should follow the Act's built-in process to address the economics of a low-volume operation post 2008. I expect that those processes will yield a number of viable options for the Board and for the full Compact Commission to consider, as follows:

Step One - PSC Cost Review Process. First, please know that the reported projections of a potential shortfall of \$3.6 million post-2008 are based on the operator's own un-reviewed operating cost estimate of \$7.65 million. This cost figure would most likely be reduced upon rigorous examination by the Office of Regulatory Staff and other parties, as part of the Public Service Commission's statutory review of operating costs for modified operations. It will be no surprise to anyone that - based on expected annual volume of 8,000 to 10,000 cubic feet of waste after 2008 - the PSC will likely cause the operator to pursue new business models, perhaps including part-time disposal operations.

Revenue Assurances - Volume Hold Incentive Program. Even considering the operator's high cost estimates, South Carolina is already securing business commitments from regional generators for *FY 2009* that should by themselves allow Barnwell to operate in the black. This has been accomplished through South Carolina's Volume Hold Incentive Program, which provides inducements to regional generators to stage shipments of stored items after Fiscal Year 2008 to help South Carolina ensure an appropriate income stream.

Existing Extended Care Fund. In addition, because some 95% of the site will be in closure status after 2008, significant parts of the claimed operating/maintenance costs will be properly recoverable under the Extended Care Fund as has been planned for several years. Through your leadership, that Fund is now more than well-funded according to the experts. *The site operator has already identified \$1.37 million in annual costs associated with the closed portions of the site that are properly recoverable through payment from the Extended Care Fund, and this will further reduce any shortfall.* The Board and Atlantic Compact staff would use their own experts to determine the sums recoverable through the Extended Care Fund.

New Revenue Measures. Beyond the year 2010, the South Carolina Budget and Control Board and the Atlantic Compact Commission will be exploring a number of options to ensure that there is adequate income to cover regional operations. Without committing for the full Commission as to any particular option, these alternatives include:

- *Voluntary Contributions.* South Carolina can ask for voluntary contributions from the region's 13 nuclear power plants (7 in South Carolina and 6 in Connecticut and New Jersey) in the range of \$200,000 to \$300,000 per year. If there is broad participation, this would be a small figure compared to their overall operating costs and would amount to pennies per year to their ratepayers, all while ensuring a reliable disposal option for their facilities.
- *Coordinated Disposal.* Continuing to schedule the disposal of some 12 to 15 steam generators stored in the region. These are generally low radioactivity and would produce significant income. These large components will have to be disposed at Barnwell eventually, so the period after Fiscal Year 2008 would be an ideal time.
- *Export Fee.* The Atlantic Compact could impose a surcharge on waste that is sent out of region for disposal, as other radioactive waste compacts currently do. This invariably is Class A waste that is lower radioactivity and less of a burden on the land than Class B or C. Since 2000, Atlantic Compact generators have exported an average of 500,000 cubic feet of Class A waste per year. An export fee of just of just \$2 per cubic foot would increase revenues by \$1 million.
- *Disposal Rates.* Increase the disposal charges at Barnwell. Currently, in region generators pay between \$300 and \$400 for disposal of most types of waste, while the average disposal charge

at Barnwell is twice that amount. After 2008, there will no longer be any reason to offer regional waste generators sharp discounts for disposal at the Barnwell site. Ending these price discounts after 2008 could increase disposal revenues by \$1 million or more.

- *Recovery of Payments.* South Carolina sent at least \$10 million to the Southeast Compact in the 1990's which was deposited into a separate dedicated account for the North Carolina disposal facility project. Since that project has been terminated, that money should be returned and could be used to cover Barnwell operating costs, if necessary. The Budget and Control Board should request that this money be returned to South Carolina.

New Regional Disposal Assurance Fund. The Act also allows for creation of the Regional Disposal Assurance Fund to serve as a cushion during the post-2008 transition phase. For Fiscal Years 2007 and 2008, we expect the net income to South Carolina to be \$7 million each year, for a total of \$14 million. This money can be deposited into an account and used to cover any shortfalls after 2008, and the money can be released to the State Treasurer at any time the Board determines the funds are no longer needed. This fund would avoid the need to tap the Barnwell Extended Care Fund, as described in State law, to cover any shortfalls in operating costs that might occur during the transition phase. If the Board wishes to pursue this measure, a draft Memorandum of Understanding that the Board and the Compact Commission might each consider is attached to this letter.

Conclusion

It is regrettable that the proponents of H. 3545 would call into question the viability of the Barnwell site without following current law by working with the Atlantic Compact, the Budget and Control Board and the Public Service Commission to plan to operate the site on a regional basis after 2008. But the pending legislation is not really about protecting the South Carolina's best interests. If the objective were simply to cover an annual \$3.65 million shortfall – and if *not one* of the cost-saving or revenue-producing measures were adopted – this could be done by accepting just 750 to 1,000 cubic feet of waste from outside the Atlantic Compact region, not the 40,000 cubic feet called for in the bill.

The 2000 Act contemplated that the status quo would change. The parties are expected to work together cooperatively to make the Barnwell operation a success for in-region needs. If the parties choose not to cooperate and fail to adapt to a low volume operation post-2008, then South Carolina has the right to close the Barnwell site and terminate its relationships with Connecticut and New Jersey upon payment of \$1 million to each state. This amount has already been set aside in an interest-bearing account by the Budget and Control Board from the original

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entry fee paid by Connecticut and New Jersey, and would not have to be appropriated from general funds.

But let's not give up too soon. South Carolina is finally in control after so many years. There are numerous ways the Barnwell facility can operate successfully for the benefit of South Carolina as well as Connecticut and New Jersey.

We shall appreciate your continued leadership and in particular your guidance through the Budget and Control Board processes as our many good options are evaluated.

Thank you very much.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ben Johnson". The signature is written in a cursive, flowing style.

Benjamin A. Johnson
Chairman

Enclosure

BAJ/wkh

cc: Atlantic Compact Commissioners