CHAPTER 46

Atlantic Interstate Low‑Level Radioactive Waste Compact Implementation Act

**SECTION 48‑46‑10.** Citation of chapter.

 This chapter may be cited as the “Atlantic Interstate Low‑Level Radioactive Waste Compact Implementation Act”.

HISTORY: 2000 Act No. 357, Section 1.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

Editor’s Note

2000 Act No. 357, Section 4, provides as follows:

“The provisions of this act are to be liberally construed to effectuate its purpose. If any provisions of this act shall be determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, such provision shall be severable from the remaining portions of this chapter and shall not invalidate the remaining provisions of this chapter, which shall continue in full force and effect. If any provision of this act shall be determined by a court of competent jurisdiction to be in conflict with any other provision of this act, and particularly the provisions of the Northeast Interstate Low‑Level Radioactive Waste Management Compact, P.L. 99‑240, Section 227, 99 Stat. 1909 (1985), the provisions of the compact shall govern.”

**SECTION 48‑46‑20.** Purpose.

 The purpose of this act is to establish South Carolina as a member of the Atlantic Low‑Level Radioactive Waste Compact, known in federal statute as the “Northeast Interstate Low‑Level Radioactive Waste Management Compact” and to authorize and direct specific processes and procedures that are necessary to implement South Carolina’s responsibilities in the compact.

HISTORY: 2000 Act No. 357, Section 1.

Federal Aspects

Provisions of Section 5 of P.L. 99‑240, see 42 U.S.C.A. Section 2021e.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

United States Supreme Court Annotations

Breach of interstate compact for low‑level radioactive waste compact, repudiation, good faith and fair dealing, see Alabama v. North Carolina, 2010, 130 S.Ct. 2295, 560 U.S. 330, 176 L.Ed.2d 1070.

**SECTION 48‑46‑30.** Definitions.

 As used in this chapter, unless the context clearly requires a different construction:

 (1) “Allowable costs” means costs to a disposal site operator of operating a regional disposal facility. These costs are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations.

 (2) “Atlantic Compact” means the Northeast Interstate Low‑Level Radioactive Waste Management Compact as defined in the “Omnibus Low‑Level Radioactive Waste Compact Consent Act of 1985”, Public Law 99‑240, Title II. Use of the term “Atlantic Compact” does not change in any way the substance of and is to be considered identical to the Northeast Interstate Low‑Level Radioactive Waste Management Compact.

 (3) “Atlantic Compact Commission” or “compact commission” means the governing body of the Atlantic Compact, consisting of voting members appointed by the governors of Connecticut, New Jersey, and South Carolina.

 (4) “Decommissioning trust fund” means the trust fund established pursuant to a Trust Agreement dated March 4, 1981, among Chem‑Nuclear Systems, Inc. (grantor), the State Fiscal Accountability Authority (beneficiary as the successor in interest to the South Carolina Budget and Control Board), and the South Carolina State Treasurer (trustee), whose purpose is to assure adequate funding for decommissioning of the disposal site, or any successor fund with a similar purpose.

 (5) “Office” means the Office of Regulatory Staff.

 (6) “Disposal rates” means the price paid by customers of a regional disposal facility for disposal of waste, including any price schedule or breakdown of the price into discrete elements or cost components.

 (7) “Extended care maintenance fund” means the “escrow fund for perpetual care” that is used for custodial, surveillance, and maintenance costs during the period of institutional control and any post‑closure observation period specified by the Department of Health and Environmental Control and for activities associated with closure of the site as provided for in Section 13‑7‑30(4).

 (8) “Facility operator” means a public or private organization, corporation, or agency that operates a regional disposal facility in South Carolina.

 (9) “Generator” means a person, organization, institution, private corporation, and government agency that produces Class A, B, or C radioactive waste.

 (10) “Maintenance” means active maintenance activities as specified by the Department of Health and Environmental Control, including pumping and treatment of groundwater and the repair and replacement of disposal unit covers.

 (11) “Nonregional generator” means a waste generator who produces waste within a state that is not a member of the Atlantic Compact, whether or not this waste is sent to facilities located within the Atlantic Compact region for purposes of consolidation, treatment, or processing for disposal.

 (12) “Nonregional waste” means waste produced by a nonregional generator.

 (13) “Person” means an individual, corporation, business enterprise, or other legal entity, either public or private, and expressly includes states.

 (14) “Price schedule” means disposal rates.

 (15) “PSC” means the South Carolina Public Service Commission.

 (16) “Receipts” means the total amount of money collected by the site operator for waste disposal over a given period of time.

 (17) “Regional disposal facility” means a disposal facility that has been designated or accepted by the Atlantic Compact Commission as a regional disposal facility.

 (18) “Regional generator” means a waste generator who produces waste within the Atlantic Compact, whether or not this waste is sent to facilities outside the Atlantic Compact region for purposes of consolidation, treatment, or processing for disposal.

 (19) “Regional waste” means waste generated within a member state of the Atlantic Compact. Consistent with the regulatory position of the Department of Health and Environmental Control, Bureau of Radiological Health, dated May 1, 1986, some waste byproducts shipped for disposal that are derived from wastes generated within the Atlantic Compact region, such as residues from recycling, processing, compacting, incineration, collection, and brokering facilities located outside the Atlantic Compact region may also be considered regional waste.

 (20) “Site operator” means a facility operator.

 (21) “South Carolina generator” means a waste generator that produces waste within the boundaries of the State of South Carolina, whether or not this waste is sent to facilities outside South Carolina for purposes of consolidation, treatment, or processing for disposal.

 (22) “Waste” means Class A, B, or C low‑level radioactive waste, as defined in Title I of Public Law 99‑240 and Department of Health and Environmental Control Regulation 61‑63, 7.2.22, that is eligible for acceptance for disposal at a regional disposal facility.

HISTORY: 2000 Act No. 357, Section 1; 2014 Act No. 121 (S.22), Pt V, Section 7.EE, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.EE, deleted former paragraph (4), definition of “board”; redesignated former paragraph (5) as (4); in paragraph (4), substituted “State Fiscal Accountability Authority (beneficiary as the successor in interest to the South Carolina Budget and Control Board)” for “South Carolina Budget and Control Board State Fiscal Accountability Authority (beneficiary)”; and added paragraph (5), “office” defined.

**SECTION 48‑46‑40.** Fees for disposal of regional and nonregional radioactive waste in regional disposal facilities; disposition of fees; Higher Education Scholarship Grants.

 (A)(1) The office shall approve disposal rates for low‑level radioactive waste disposed at any regional disposal facility located within the State. The approval of disposal rates pursuant to this chapter is neither a regulation nor the promulgation of a regulation as those terms are specially used in Title 1, Chapter 23.

 (2) The office shall adopt a maximum uniform rate schedule for regional generators containing disposal rates that include the administrative surcharges specified in Section 48‑46‑60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13‑7‑30(4) and that do not exceed the approximate disposal rates, excluding any access fees and including a specification of the methodology for calculating fees for large components, generally applicable to regional generators on September 7, 1999. Any disposal rates contained in a valid written agreement that were applicable to a regional generator on September 7, 1999, that differ from rates in the maximum uniform rate schedule will continue to be honored through the term of such agreement. The maximum uniform rate schedule approved under this section becomes effective immediately upon South Carolina’s membership in the Atlantic Compact. The maximum uniform rate schedule shall be the rate schedule applicable to regional waste whenever it is not superseded by an adjusted rate approved by the office pursuant to paragraph (3) of this subsection or by special disposal rates approved pursuant to paragraphs (5) or (6)(e) of this subsection.

 (3) The office may at any time of its own initiative, at the request of a site operator, or at the request of the compact commission, adjust the disposal rate or the relative proportions of the individual components that constitute the overall rate schedule. Except as adjusted for inflation in subsection (4), rates adjusted in accordance with this section, that include the administrative surcharges specified in Section 48‑46‑60(B) and surcharges for the extended custody and maintenance of the facility pursuant to Section 13‑7‑30(4), may not exceed initial disposal rates set by the office pursuant to subsection (2).

 (4) In March of each year the office shall adjust the rate schedule based on the most recent changes in the most nearly applicable Producer Price Index published by the Bureau of Labor Statistics as chosen by the office or a successor index.

 (5) In consultation with the site operator, the office or its designee, on a case‑by‑case basis, may approve special disposal rates for regional waste that differ from the disposal rate schedule for regional generators set by the office pursuant to subsections (2) and (3). Requests by the site operator for such approval shall be in writing to the office. In approving such special rates, the office or its designee, shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, or other relevant factors; provided, however, that the office shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the office under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or the request for proposal containing the special rate is accepted by the regional generator; provided, however, that such special rates when accepted by a regional generator shall be disclosed to the compact commission and to all other regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing this special rate is accepted by the regional generator. Within one business day of a special disposal rate’s acceptance, the site operator shall notify the office, the compact commission, and the regional generators of each special rate that has been accepted by a regional generator, and the office, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the office for a regional generator is lower than a disposal rate approved by the office for regional generators pursuant to subsections (2) and (3) for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the regional generator. Regional generators may enter into contracts for waste disposal at such special rates and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the office and the compact commission each month that no regional generator’s disposal rate exceeds any other regional generator’s special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the office and the compact commission.

 (6)(a) To the extent authorized by the compact commission, the office on behalf of the State of South Carolina may enter into agreements with any person in the United States or its territories or any interstate compact, state, U.S. territory, or U.S. Department of Defense military installation abroad for the importation of waste into the region for purposes of disposal at a regional disposal facility within South Carolina. No waste from outside the Atlantic Compact region may be disposed at a regional disposal facility within South Carolina, except to the extent that the office is authorized by the compact commission to enter into agreements for importation of waste.

 The office shall authorize the importation of nonregional waste into the region for purposes of disposal at the regional disposal facility in South Carolina so long as nonregional waste would not result in the facility accepting more than the following total volumes of all waste:

 (i) 160,000 cubic feet in fiscal year 2001;

 (ii) 80,000 cubic feet in fiscal year 2002;

 (iii) 70,000 cubic feet in fiscal year 2003;

 (iv) 60,000 cubic feet in fiscal year 2004;

 (v) 50,000 cubic feet in fiscal year 2005;

 (vi) 45,000 cubic feet in fiscal year 2006;

 (vii) 40,000 cubic feet in fiscal year 2007;

 (viii) 35,000 cubic feet in fiscal year 2008.

 After Fiscal Year 2008, the office shall not authorize the importation of nonregional waste for purposes of disposal.

 (b) The office may approve disposal rates applicable to nonregional generators. In approving disposal rates applicable to nonregional generators, the office may consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors.

 (c) Absent action by the office under subsection (b) above to establish disposal rates for nonregional generators, rates applicable to these generators must be equal to those contained in the maximum uniform rate schedule approved by the office pursuant to paragraph (2) or (3) of this subsection for regional generators unless these rates are superseded by special disposal rates approved by the office pursuant to paragraph (6)(e) of this subsection.

 (d) Regional generators shall not pay disposal rates that are higher than disposal rates for nonregional generators in any fiscal quarter.

 (e) In consultation with the site operator, the office or its designee, on a case‑by‑case basis, may approve special disposal rates for nonregional waste that differ from the disposal rate schedule for nonregional generators set by the office. Requests by the site operator for such approval shall be in writing to the office. In approving such special rates, the office or its designee shall consider available disposal capacity, demand for disposal capacity, the characteristics of the waste, the potential for generating revenue for the State, and other relevant factors; provided, however, that the office shall not approve any special rate for an entity owned by or affiliated with the site operator. Special disposal rates approved by the office under this subsection shall be in writing and shall be kept confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional generator; provided, however, that such special rates when accepted by a nonregional generator shall be disclosed to the compact commission and to all regional generators, which shall, to the extent permitted by applicable law, keep them confidential as proprietary business information for one year from the date when the bid or request for proposal containing the special rate is accepted by the nonregional generator. Within one business day of a special disposal rate’s acceptance, the site operator shall notify the office, the compact commission, and the regional generators in writing of each special rate that has been accepted by a nonregional generator, and the office, the compact commission, and regional generators may communicate with each other about such special rates. If any special rate approved by the office for a nonregional generator is lower than a disposal rate approved by the office for regional generators for waste that is generally similar in characteristics and volume, the disposal rate for all regional generators shall be revised to equal the special rate for the nonregional generator. Regional generators may enter into contracts for waste disposal at such special rate and on comparable terms for a period of not less than six months. An officer of the site operator shall certify in writing to the office and the compact commission each month that no regional generator disposal rate exceeds any nonregional generator’s special rate for waste that is generally similar in characteristics and volume, and such certification shall be subject to periodic audit by the office and the compact commission.

 (B)(1) Effective upon the implementation of initial disposal rates by the office under Section 48‑46‑40(A), the PSC is authorized and directed to identify allowable costs for operating a regional low‑level radioactive waste disposal facility in South Carolina.

 (2) In identifying the allowable costs for operating a regional disposal facility, the PSC shall:

 (a) prescribe a system of accounts, using generally accepted accounting principles, for disposal site operators, using as a starting point the existing system used by site operators;

 (b) assess penalties against disposal site operators if the PSC determines that they have failed to comply with regulations pursuant to this section; and

 (c) require periodic reports from site operators that provide information and data to the PSC and parties to these proceedings. The Office of Regulatory Staff shall obtain and audit the books and records of the site operators associated with disposal operations as determined applicable by the PSC.

 (3) Allowable costs include the costs of those activities necessary for:

 (a) the receipt of waste;

 (b) the construction of disposal trenches, vaults, and overpacks;

 (c) construction and maintenance of necessary physical facilities;

 (d) the purchase or amortization of necessary equipment;

 (e) purchase of supplies that are consumed in support of waste disposal activities;

 (f) accounting and billing for waste disposal;

 (g) creating and maintaining records related to disposed waste;

 (h) the administrative costs directly associated with disposal operations including, but not limited to, salaries, wages, and employee benefits;

 (i) site surveillance and maintenance required by the State of South Carolina, other than site surveillance and maintenance costs covered by the balance of funds in the decommissioning trust fund or the extended care maintenance fund;

 (j) compliance with the license, lease, and regulatory requirements of all jurisdictional agencies;

 (k) administrative costs associated with collecting the surcharges provided for in subsections (B) and (C) of Section 48‑46‑60;

 (l) taxes other than income taxes;

 (m) licensing and permitting fees; and

 (n) any other costs directly associated with disposal operations determined by the PSC to be allowable.

 Allowable costs do not include the costs of activities associated with lobbying and public relations, clean‑up and remediation activities caused by errors or accidents in violation of laws, regulations, or violations of the facility operating license or permits, activities of the site operator not directly in support of waste disposal, and other costs determined by the PSC to be unallowable.

 (4) Within ninety days following the end of a fiscal year, a site operator may file an application with the PSC to adjust the level of an allowable cost under subsection (3), or to allow a cost not previously designated an allowable cost. A copy of the application must be provided to the Office of Regulatory Staff. The PSC shall process such application in accordance with its procedures. If such application is approved by the PSC, the PSC shall authorize the site operator to adjust allowable costs for the current fiscal year so as to compensate the site operator for revenues lost during the previous fiscal year.

 (5) A private operator of a regional disposal facility in South Carolina is authorized to charge an operating margin of twenty‑nine percent. The operating margin for a given period must be determined by multiplying twenty‑nine percent by the total amount of allowable costs as determined in this subsection, excluding allowable costs for taxes and licensing and permitting fees paid to governmental entities.

 (6) The site operator shall prepare and file with the PSC a Least Cost Operating Plan. The plan must be filed within forty‑five days of enactment of this chapter and must be revised annually. The plan shall include information concerning anticipated operations over the next ten years and shall evaluate all options for future staffing and operation of the site to ensure least cost operation, including information related to the possible interim suspension of operations in accordance with subsection (B)(7). A copy of the plan must be provided to the Office of Regulatory Staff.

 (7)(a) If the office, upon the advice of the compact commission or the site operator, concludes based on information provided to the office, that the volume of waste to be disposed during a forthcoming period of time does not appear sufficient to generate receipts that will be adequate to reimburse the site operator for its costs of operating the facility and its operating margin, then the office shall direct the site operator to propose to the compact commission plans including, but not necessarily limited to, a proposal for discontinuing acceptance of waste until such time as there is sufficient waste to cover the site operator’s operating costs and operating margin. Any proposal to suspend operations must detail plans of the site operator to minimize its costs during the suspension of operations. Any such proposal to suspend operations must be approved by the Department of Health and Environmental Control with respect to safety and environmental protection.

 (b) Allowable costs applicable to any period of suspended operations must be approved by the PSC according to procedures similar to those provided herein for allowable operating costs. During any such suspension of operations, the site operator must be reimbursed by the office from the extended care maintenance fund for its allowable costs and its operating margin. During the suspension funding to reimburse the office, the PSC, and the State Treasurer under Section 48‑46‑60(B) and funding of the compact commission under Section 48‑46‑60(C) must also be allocated from the extended care maintenance fund as approved by the office based on revised budgets submitted by the PSC, State Treasurer, and the compact commission.

 (c) Notwithstanding any disbursements from the extended care maintenance fund in accordance with any provision of this act, the office shall continue to ensure, in accordance with Section 13‑7‑30, that the fund remains adequate to defray the costs for future maintenance costs or custodial and maintenance obligations of the site and other obligations imposed on the fund by this chapter.

 (d) The PSC may promulgate regulations and policies necessary to execute the provisions of this section.

 (8) The PSC may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of identifying allowable costs associated with waste disposal. The PSC may consider standards, precedents, findings, and decisions in other jurisdictions that regulate allowable costs for radioactive waste disposal.

 (9) In all proceedings held pursuant to this section, the office shall participate as a party representing the interests of the State of South Carolina, and the compact commission may participate as a party representing the interests of the compact states. The Executive Director of the Office of Regulatory Staff and the Attorney General of the State of South Carolina shall be parties to any such proceeding. Representatives from the Department of Health and Environmental Control shall participate in proceedings where necessary to determine or define the activities that a site operator must conduct in order to comply with the regulations and license conditions imposed by the department. Other parties may participate in the PSC’s proceedings upon satisfaction of standing requirements and compliance with the PSC’s procedures. Any site operator submitting records and information to the PSC may request that the PSC treat such records and information as confidential and not subject to disclosure in accordance with the PSC’s procedures.

 (10) In all respects in which the PSC has power and authority under this chapter, it shall conduct its proceedings under the South Carolina Administrative Procedures Act and the PSC’s rules and regulations. The PSC is authorized to compel attendance and testimony of a site operator’s directors, officers, agents, or employees.

 (11) At any time the compact commission, the office, or any generator subject to payment of rates set pursuant to this chapter may file a petition against a site operator alleging that allowable costs identified pursuant to this chapter are not in conformity with the directives of this chapter or the directives of the PSC or that the site operator is otherwise not acting in conformity with the requirements of this chapter or directives of the PSC. Upon filing of the petition, the PSC shall cause a copy of the petition to be served upon the site operator. The petitioning party has the burden of proving that allowable costs or the actions of the site operator do not conform. The hearing shall conform to the rules of practice and procedure of the PSC for other cases.

 (12) The PSC shall encourage alternate forms of dispute resolution including, but not limited to, mediation or arbitration to resolve disputes between a site operator and any other person regarding matters covered by this chapter.

 (C) The operator of a regional disposal facility shall submit to the South Carolina Department of Revenue, the PSC, and the Office of Regulatory Staff, and the office within thirty days following the end of each quarter a report detailing actual revenues received in the previous fiscal quarter and allowable costs incurred for operation of the disposal facility.

 (D)(1) Within thirty days following the end of the fiscal year the operator of a regional disposal facility shall submit a payment made payable to the South Carolina Department of Revenue in an amount that is equal to the total revenues received for waste disposed in that fiscal year (with interest accrued on cash flows in accordance with instructions from the State Treasurer) minus allowable costs, operating margin, and any payments already made from such revenues pursuant to Section 48‑46‑60(B) and (C) for reimbursement of administrative costs to state agencies and the compact commission. The Department of Revenue shall deposit the payment with the State Treasurer.

 (2) If in any fiscal year total revenues do not cover allowable costs plus the operating margin, the office must reimburse the site operator its allowable costs and operating margin from the extended care maintenance fund within thirty days after the end of the fiscal year. The office shall as soon as practicable authorize a surcharge on waste disposed in an amount that will fully compensate the fund for the reimbursement to the site operator. In the event that total revenues for a fiscal year do not cover allowable costs plus the operating margin, or quarterly reports submitted pursuant to subsection (C) indicate that such annual revenue may be insufficient, the office shall consult with the compact commission and the site operator as early as practicable on whether the provisions of Section 48‑46‑40(B)(7) pertaining to suspension of operations during periods of insufficient revenues should be invoked.

 (E) Revenues received pursuant to item (1) of subsection (D) must be allocated as follows:

 (1) The South Carolina State Treasurer shall distribute the first two million dollars received for waste disposed during a fiscal year to the County Treasurer of Barnwell County for distribution to each of the parties to and beneficiaries of the order of the United States District Court in C.A. No. 1:90‑2912‑6 on the same schedule of allocation as is established within that order for the distribution of “payments in lieu of taxes” paid by the United States Department of Energy.

 (2) All revenues in excess of two million dollars received from waste disposed during the previous fiscal year must be deposited in a fund called the “Nuclear Waste Disposal Receipts Distribution Fund”. Any South Carolina waste generator whose disposal fees contributed to the fund during the previous fiscal year may submit a request for a rebate of 33.33 percent of the funds paid by the generator during the previous fiscal year for disposal of waste at a regional disposal facility. These requests along with invoices or other supporting material must be submitted in writing to the State Treasurer within fifteen days of the end of the fiscal year. For this purpose disposal fees paid by the generator must exclude any fees paid pursuant to Section 48‑46‑60(C) for compact administration and fees paid pursuant to Section 48‑46‑60(B) for reimbursement of the PSC, the Office of Regulatory Staff, the State Treasurer, and the office for administrative expenses under this chapter. Upon validation of the request and supporting documentation by the State Treasurer, the State Treasurer shall issue a rebate of the applicable funds to qualified waste generators within sixty days of the receipt of the request. If funds in the Nuclear Waste Disposal Receipts Distribution Fund are insufficient to provide a rebate of 33.33 percent to each generator, then each generator’s rebate must be reduced in proportion to the amount of funds in the account for the applicable fiscal year.

 (3) All funds deposited in the Nuclear Waste Disposal Receipts Distribution Fund for waste disposed for each fiscal year, less the amount needed to provide generators rebates pursuant to item (2), shall be deposited by the State Treasurer in the “Children’s Education Endowment Fund”. Thirty percent of these monies must be allocated to Higher Education Scholarship Grants and used as provided in Section 59‑143‑30, and seventy percent of these monies must be allocated to Public School Facility Assistance and used as provided in Chapter 144, Title 59.

 (F) Effective beginning fiscal year 2001‑2002, there is appropriated annually from the general fund of the State to the Higher Education Scholarship Grants share of the Children’s Education Endowment whatever amount is necessary to credit to the Higher Education Scholarship Grants share an amount not less than the amount credited to that portion of the endowment in fiscal year 1999‑2000. Revenues credited to the endowment pursuant to this subsection, for purposes of Section 59‑143‑10, are deemed to be received by the endowment pursuant to the former provisions of Section 48‑48‑140(C).

HISTORY: 2000 Act No. 357, Section 1; 2006 Act No. 318, Section 230; 2014 Act No. 121 (S.22), Pt V, Section 7.FF, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.FF, substituted “office” for “board” throughout, and made other nonsubstantive changes.

CROSS REFERENCES

Department of Health and Environmental Control, generally, see Section 44‑1‑20 et seq.

Financing of Environmental Scholars Endowment Fund through deposit of fines and penalties collected pursuant to this chapter, see Section 59‑111‑720.

Federal Aspects

Provisions of 42 U.S.C. 2021(b) as amended, see 42 U.S.C.A. Section 2021(b).

Provisions of the Federal Low‑Level Radioactive Waste Policy Amendments Act of 1985 (P.L. 99‑240), see 42 U.S.C.A. Sections 2021b et seq.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

United States Supreme Court Annotations

Breach of interstate compact for low‑level radioactive waste compact, repudiation, good faith and fair dealing, see Alabama v. North Carolina, 2010, 130 S.Ct. 2295, 560 U.S. 330, 176 L.Ed.2d 1070.

**SECTION 48‑46‑50.** Appointment of commissioners, alternate commissioners, and technical representatives from certain state agencies to Atlantic Compact Commission; restrictions on voting authority of commissioners.

 (A) The Governor shall appoint two commissioners to the Atlantic Compact Commission and may appoint up to two alternate commissioners. These alternate commissioners may participate in meetings of the compact commission in lieu of and upon the request of a South Carolina commissioner. Technical representatives from the Department of Health and Environmental Control, the office, the PSC, and other state agencies may participate in relevant portions of meetings of the compact commission upon the request of a commissioner, alternate commissioner, or staff of the compact commission, or as called for in the compact commission bylaws.

 (B) South Carolina commissioners or alternate commissioners to the compact commission may not vote affirmatively on any motion to admit new member states to the compact unless that state volunteers to host a regional disposal facility.

 (C) Compact commissioners or alternate commissioners to the Atlantic Compact Commission may not vote to approve a regional management plan or any other plan or policy that allows for acceptance at the Barnwell regional disposal facility of more than a total of 800,000 cubic feet of waste from Connecticut and New Jersey.

 (D) South Carolina’s commissioners or alternate commissioners to the compact commission shall cast any applicable votes on the compact commission in a manner that authorizes the importation of waste into the region for purposes of disposal at a regional disposal facility in South Carolina so long as importation would not result in the facility accepting more than the following total volumes of all waste:

 (1) 160,000 cubic feet in fiscal year 2001;

 (2) 80,000 cubic feet in fiscal year 2002;

 (3) 70,000 cubic feet in fiscal year 2003;

 (4) 60,000 cubic feet in fiscal year 2004;

 (5) 50,000 cubic feet in fiscal year 2005;

 (6) 45,000 cubic feet in fiscal year 2006;

 (7) 40,000 cubic feet in fiscal year 2007;

 (8) 35,000 cubic feet in fiscal year 2008.

 South Carolina’s commissioners or alternate commissioners shall not vote to approve the importation of waste into the region for purposes of disposal in any fiscal year after 2008.

HISTORY: 2000 Act No. 357, Section 1; 2014 Act No. 121 (S.22), Pt V, Section 7.GG, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.GG, in subsection (A), substituted “the office” for “the board”.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

United States Supreme Court Annotations

Breach of interstate compact for low‑level radioactive waste compact, repudiation, good faith and fair dealing, see Alabama v. North Carolina, 2010, 130 S.Ct. 2295, 560 U.S. 330, 176 L.Ed.2d 1070.

**SECTION 48‑46‑60.** Governor and office authorized to take actions to join Atlantic Compact; effective date; conditions; administrative expenses; assessment of compact convention costs and expenses.

 (A) The Governor and the office are authorized to take such actions as are necessary to join the Atlantic Compact including, but not limited to, petitioning the Compact Commission for membership and participating in any and all rulemaking processes. South Carolina’s membership in the Atlantic Compact pursuant to this chapter is effective July 1, 2000, if by that date the Governor certifies to the General Assembly that the Compact Commission has taken each of the actions specified below. If the Compact Commission by July 1, 2000, has not taken each of the actions specified below, then South Carolina’s membership shall become effective as soon thereafter as the Governor certifies that the Atlantic Compact Commission has taken these actions:

 (1) adopted a binding regulation or policy in accordance with Article VII(e) of the compact establishing conditions for admission of a party state that are consistent with this act and ordered that South Carolina be declared eligible to be a party state consistent with those conditions;

 (2) adopted a binding regulation or policy in accordance with Article IV(i)(11) of the Atlantic Compact authorizing a host state to enter into agreements on behalf of the compact and consistent with criteria established by the compact commission and consistent with the provisions of Section 48‑46‑40(A)(6)(a) and Section 48‑46‑50(D) with any person for the importation of waste into the region for purposes of disposal, to the extent that these agreements do not preclude the disposal facility from accepting all regional waste that can reasonably be projected to require disposal at the regional disposal facility consistent with subitem (5)(b) of this section;

 (3) adopted a binding regulation or policy in accordance with Article IV(i)(12) of the Atlantic Compact authorizing each regional generator, at the generator’s discretion, to ship waste to disposal facilities located outside the Atlantic Compact region;

 (4) authorized South Carolina to proceed with plans to establish disposal rates for low‑level radioactive waste disposal in a manner consistent with the procedures described in this chapter;

 (5) adopted a binding regulation, policy, or order officially designating South Carolina as a volunteer host state for the region’s disposal facility, contingent upon South Carolina’s membership in the compact, in accordance with Article V.b.1. of the Atlantic Compact, thereby authorizing the following compensation and incentives to South Carolina:

 (a) agreement, as evidenced in a policy, regulation, or order that the compact commission will issue a payment of twelve million dollars to the State of South Carolina. Before issuing the twelve million‑dollar payment, the compact commission will deduct and retain from this amount seventy thousand dollars, which will be credited as full payment of South Carolina’s membership dues in the Atlantic Compact. The remainder of the twelve million‑dollar payment must be credited to an account in the State Treasurer’s office, separate and distinct from the fund, styled “Barnwell Economic Development Fund”. This fund, and earnings on this fund which must be credited to the fund, may only be expended for purposes of economic development in the Barnwell County area including, but not limited to, projects of the Barnwell County Economic Development Corporation and projects of the Tri‑County alliance which includes Barnwell, Bamberg, and Allendale Counties and projects in the Williston area of Aiken County. Economic development includes, but is not limited to, industrial recruitment, infrastructure construction, improvement, and expansion, and public facilities construction, improvement, and expansion. These funds must be spent according to guidelines established by the Barnwell County governing body and upon approval of the office. Expenditures must be authorized by the Barnwell County governing body and with the approval of the office. Upon approval of the Barnwell County governing body and the office, the State Treasurer shall submit the approved funds to the Barnwell County Treasurer for disbursement pursuant to the authorization;

 (b) adopted a binding regulation, policy, or order consistent with the regional management plan developed pursuant to Article V(a) of the Atlantic Compact, limiting Connecticut and New Jersey to the use of not more than 800,000 cubic feet of disposal capacity at the regional disposal facility located in Barnwell County, South Carolina, and also ensuring that up to 800,000 cubic feet of disposal capacity remains available for use by Connecticut and New Jersey unless this estimate of need is later revised downward by unanimous consent of the compact commission;

 (c) agreement, as evidenced in a policy or regulation, that the compact commission headquarters and office will be relocated to South Carolina within six months of South Carolina’s membership; and

 (d) agreement, as evidenced in a policy or regulation, that the compact commission will, to the extent practicable, hold a majority of its meetings in the host state for the regional disposal facility.

 (B) The office, the State Treasurer, and the PSC shall provide the required staff and may add additional permanent or temporary staff or contract for services, as well as provide for operating expenses, if necessary, to administer new responsibilities assigned under this chapter. In accordance with Article V.f.2. of the Atlantic Compact the compensation, costs, and expenses incurred incident to administering these responsibilities may be paid through a surcharge on waste disposed at regional disposal facilities within the State. To cover these costs the office shall impose a surcharge per unit of waste received at any regional disposal facility located within the State. A site operator shall collect and remit these fees to the office in accordance with the office’s directions. All such surcharges shall be included within the disposal rates set by the office pursuant to Section 48‑46‑40.

 (C) In accordance with Article V.f.3. of the Atlantic Compact, the compact commission shall advise the office at least annually, but more frequently if the compact commission deems appropriate, of the compact commission’s costs and expenses. To cover these costs the office shall impose a surcharge per unit of waste received at any regional disposal facility located within the State as determined in Section 48‑46‑40. A site operator shall collect and remit these fees to the office in accordance with the office’s directions, and the department shall remit those fees to the compact commission.

HISTORY: 2000 Act No. 357, Section 1; 2014 Act No. 121 (S.22), Pt V, Section 7.HH, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.HH, in subsection (A), substituted “the office” for “the board”; in subsection (A)(5)(a), three times substituted “the office” for “the board”; in subsection (B), four times substituted “the office” for “the board” and substituted “the office’s” for “the board’s”; and in subsection (C), three times substituted “the office” for “the board”, substituted “the office’s” for “the board’s”, and substituted “the department shall remit” for “the board shall remit”.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

**SECTION 48‑46‑70.** Northeast Interstate Low‑Level Radioactive Waste Management Compact incorporated by reference.

 The Northeast Interstate Low‑Level Radioactive Waste Management Compact, P.L. 99‑240, Section 227, 99 Stat. 1909 (1985) as it existed on the date this act was enacted, is hereby incorporated by reference, and all terms and conditions contained therein shall have full force and effect as if set forth herein in their entirety. In addition to the express limitations on non‑host state and compact commission liability provided in the Northeast Interstate Low‑Level Radioactive Waste Management Compact, South Carolina will indemnify the Atlantic Compact Commission or any of the other party states for any damages incurred solely because of South Carolina’s membership in the compact and for any damages associated with any injury to persons or property during the institutional control period resulting from the radioactive and waste management operations of the regional facility.

HISTORY: 2000 Act No. 357, Section 1.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

**SECTION 48‑46‑80.** Adjustment of license fees for Low‑Level Radioactive Waste Shallow Land Disposal.

 Pursuant to Section 48‑2‑10 et seq., the Department of Health and Environmental Control may adjust the radioactive materials license fee for Low‑Level Radioactive Waste Shallow Land Disposal in Regulation 61‑30 in an amount that will offset changes to its annual operating budget caused by projected increases or decreases in the number of permittees expected to pay fees for Radioactive Waste Transport Permits under the same regulation for shipment of low‑level radioactive waste for disposal within the State.

HISTORY: 2000 Act No. 357, Section 1.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.

**SECTION 48‑46‑90.** Custody and maintenance of Barnwell site following closure.

 (A) In accordance with Section 13‑7‑30, the office, or its designee, is responsible for extended custody and maintenance of the Barnwell site following closure and license transfer from the facility operator. The Department of Health and Environmental Control is responsible for continued site monitoring.

 (B) Nothing in this chapter may be construed to alter or diminish the existing statutory authority of the Department of Health and Environmental Control to regulate activities involving radioactive materials and radioactive wastes.

HISTORY: 2000 Act No. 357, Section 1; 2014 Act No. 121 (S.22), Pt V, Section 7.II, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 7.II, in subsection (A), substituted “the office” for “the board”.

Library References

Environmental Law 484.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 170.