

## **MEMORANDUM OF UNDERSTANDING**

**This MEMORANDUM OF UNDERSTANDING is made by and among Chem-Nuclear Systems, LLC, a subsidiary of EnergySolutions; (“Chem-Nuclear”) the South Carolina Budget and Control Board (“the Board”); and with respect to Paragraph 3(b) only, the South Carolina Department of Revenue (collectively, “the Parties”) regarding certain matters related to the disposal of low level radioactive waste at Chem-Nuclear’s Barnwell Facility and the pricing for the disposal of such waste beginning July 1, 2009 (“the 2010 Fiscal year”).**

**WHEREAS, the Parties seek to memorialize arrangements that will allow the Barnwell disposal facility to continue to serve the disposal needs of radioactive waste generators in the State of South Carolina and the Atlantic Compact region; and**

**WHEREAS, continuing access to the Barnwell disposal site by Atlantic Compact waste generators requires that the site remain economically viable in spite of the small volume of waste received from this limited customer base; and**

**WHEREAS, several major waste generators in the Atlantic Compact region have notified the Board staff that they will develop agreements in cooperation with the disposal site operator, that considered collectively, will ensure the economic viability of the Barnwell disposal facility and eliminate any need to request public subsidies from the extended care fund to cover essential operating costs and statutory obligations, and**

**WHEREAS, these generators have requested that the Board – in consideration of their commitment to ensure the economic viability of the disposal site – establish annual disposal rates and/or access fees at a break-even**

level necessary to yield revenues sufficient to safely operate the disposal facility and to meet all statutory and regulatory obligations; and

WHEREAS, this arrangement is consistent with the provisions of the Atlantic Compact Statute (P.L. 99-240, Title II, at (V(f)(1); also at 48-46-70, South Carolina Code of Laws), which provides that the regional fee schedule shall be reasonable and sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, and institutional control of the regional facility,

NOW THEREFORE, for and in consideration of these promises and the mutual covenants in this memorandum, the Parties agree as follows:

1. The Board, in consultation with Chem-Nuclear, the Atlantic Compact Commission and waste generators, and consistent with applicable laws, agrees to:

a. Establish a rate schedule for each fiscal year at a level that is intended to equal, but not exceed, the costs for safely operating the disposal facility for the fiscal year (plus or minus any adjustments from prior fiscal years), and cover the costs of all allowable costs as identified by the South Carolina Public Service Commission (PSC), and all statutory obligations associated with the disposal facility except for those costs paid from the Decommissioning Trust Fund or the Extended Care Fund, as provided below. For Fiscal Year 2010 only, the revenue requirement on which the disposal rates are based shall be reduced by \$500,000 due to the availability at the beginning of the fiscal year of carried over funds, as provided in Paragraph 3(c), that were paid by Atlantic Compact generators for waste disposed in the

previous fiscal year. The revenue requirement and resulting disposal rates may, in any year, be targeted at a level that is less than estimated operating costs consistent with allowable costs as identified by the PSC, if the disposal site operator provides a binding commitment, after consultation with the generators, that the operator will voluntarily accept less compensation than otherwise authorized by the PSC. For non-routine waste such as irradiated hardware (slit trench) shipments, and steam generators and other large components, the Board agrees pricing will be calculated on a case-by-case basis in an amount sufficient to cover all additional operating costs incurred by the site operator to dispose of the waste. At the end of any fiscal year, if disposal revenues received through fees and access payments exceed actual operating costs, the disposal site operator will refund a pro-rata portion of the overcollection to generators prior to the annual transfer of revenue to the State of South Carolina. Final approval by the PSC of allowable operating costs for each fiscal year is expected no later than the end of the following fiscal year. In the event that the total of operating costs and margin (and all adjustments) approved by the PSC for a fiscal year is less than the amounts paid through fees and surcharges, then Chem-Nuclear shall issue each generator who has entered into an agreement to cover all operating shortfalls a pro-rata refund within 30 days of the end of the Fiscal Year. If the PSC approves allowable costs and margin that exceed the interim revenue requirement, then each generator who has entered into an agreement to cover all shortfalls will be invoiced for a pro-rata share of the difference, unless

**Chem-Nuclear voluntarily waives its right under South Carolina law to seek or accept such revenues or adjustments.**

**b. Recognizing that large portions of the Barnwell facility grounds are permanently closed and decommissioned, the Board or its designee shall, consistent with all laws, regulations and procedures, approve disbursements from the Barnwell Decommissioning Trust Fund and/or the Barnwell Extended Care fund in an amount not to exceed \$2,020,000 each fiscal year (adjusted in March of each fiscal year in accordance with the most currently available monthly Producer Price Index for the Net Output of Selected Industries in the category of "Other Selected Traditional Service Industries," or another index mutually agreeable to Chem-Nuclear and the Board), to cover "Institutional Costs" of the disposal facility and its surroundings. Institutional Costs include:**

- i. The costs for monitoring and custodial care of those portions of the disposal facility that have been designated as Closed areas by the Department of Health and Environmental Control.**
- ii. The costs of monitoring areas adjacent to the Barnwell disposal facility property to assess compliance with regulatory standards.**
- iii. A portion of the total costs for monitoring, security, custodial care, and other shared costs of common areas of the disposal site property, in accordance with an apportionment schedule that is consistent with any determinations by the Public Service Commission regarding allowable costs of operation.**

**2. Chem-Nuclear, prior to the beginning of each fiscal year, shall provide the Board binding assurances that no public funds will be requested during the fiscal year to cover any shortfalls in the amount of disposal revenues received from disposal customers to cover the site operator's cost of operating the disposal facility and the operator's operating margin (except as provided for in 2c). To the extent a deficit occurs due to unanticipated increases in operating costs, and is determined not to be the responsibility of the generators, funds may be used from the "Barnwell Operational Shortfall Escrow Account" to offset any resulting shortfall. Chem-Nuclear shall provide the Board assurance that operating shortfall will be covered by either:**

**a. A binding commitment to the Board signed by an authorized representative of Chem-Nuclear that guarantees that Chem-Nuclear will, through private arrangements with the generators, cover operating shortfalls and that no funds from the Barnwell Extended Care Fund or any other publicly-held Fund will be requested to cover operating costs in any fiscal year, except as may be authorized by law, in the event that operating costs exceed disposal revenues,**

**b. Copies of individual binding agreements between Chem-Nuclear and waste generators that, considered collectively, guarantee that no funds from the Barnwell Extended Care Fund or any other publicly-held Fund will be requested to cover operating costs in any fiscal year, except as may be authorized by law, in the event that operating costs exceed disposal revenues, and set forth the binding mechanism by which Chem-Nuclear and/or the waste generators will make up any such shortfall, or**

**c. Another form mutually agreeable to the parties.**

**3. a. Exhibit G of the Memorandum of Understanding executed May 8, 2002, between Chem-Nuclear and the Board, pertaining to carry-over receipts and cash flows, is hereby rescinded.**

**b. Consistent with S.C. Code 48-46-40(D), within 30 days following the end of the fiscal year Chem-Nuclear shall submit a payment to the Department of Revenue. All disposal revenues collected from disposal customers in a fiscal year for waste disposed in the previous fiscal year shall be transferred to DOR in the form of a supplemental payment within 30 days of the end of each Fiscal Quarter in which any such revenues are collected. At the time of any transmittal of disposal revenue, Chem-Nuclear shall provide notification to DOR via e-mail message to the following two addresses: [llrwtax@sctax.org](mailto:llrwtax@sctax.org) and [businessoft@sctax.org](mailto:businessoft@sctax.org).**

**c. The annual payment to DOR shall be the total revenues received by June 30 for waste received in that fiscal year – minus allowable costs and operating margin; statutory assessments and obligations for the fiscal year not previously paid; and any overcollection of fees and charges from disposal customers that are eligible for refund. Chem-Nuclear may also retain not more than \$1,000,000 from Fiscal Year 2009 disposal receipts and \$500,000 from each year's disposal receipts thereafter. The purpose of this carry-over funding is to provide a cash flow cushion (a) to cover allowable operating costs and margin prior to the accumulation of positive cash flows in a new fiscal year, and (b) to ensure the availability of funds to cover operating costs at any time during the fiscal year if and when available cash receipt balances**

are not sufficient to cover these costs due to short-term lags caused by the billing cycle.

4. This MEMORANDUM OF UNDERSTANDING is limited to certain stipulations between the parties related to reimbursement for disposal site operation and the establishment of disposal rates. Nothing contained in this agreement shall be construed to alter any of the rights and obligations of the parties, as set forth in laws, regulations, licenses, permits, leases, or other agreements between the parties, with respect the Barnwell disposal site.

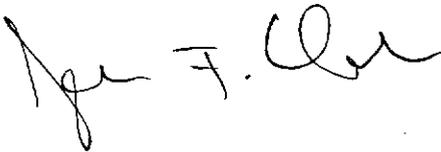
5. This MEMORANDUM OF UNDERSTANDING may be terminated in writing by Chem-Nuclear or the Board, and with respect to Paragraph 3(b) by the Department of Revenue. Notice of intent to terminate shall be provided in writing to the other parties not less than 90 days prior to the date of termination, and termination shall be effective on the final day of a fiscal year, or on another day mutually agreeable to the parties.

Unless terminated, this MEMORANDUM OF UNDERSTANDING shall remain in effect so long as South Carolina is the host State for the Atlantic Compact region, and the Barnwell site is limited to disposal of waste generated within the Atlantic Compact region.

IN WITNESS WHEREOF, the Parties have caused this MEMORANDUM OF UNDERSTANDING to be signed and sealed this the 30<sup>th</sup> day of 2009 by their duly authorized representatives.

THE SOUTH CAROLINA  
BUDGET AND CONTROL BOARD

ATTEST:



By:

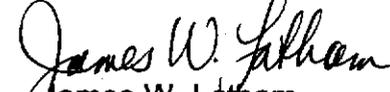
  
Frank W. Fusco  
Executive Director

CHEM-NUCLEAR SYSTEMS, LLC  
A SUBSIDIARY OF ENERGYSOLUTIONS

ATTEST:



By:

  
James W. Latham  
President

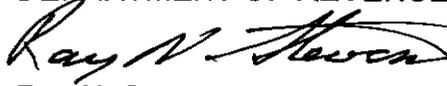
**With respect to Paragraph 3b only.**

THE SOUTH CAROLINA  
DEPARTMENT OF REVENUE

ATTEST:



By:

  
Ray N. Stevens  
Executive Director