BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-366-A – ORDER NO. 2005-338(A)

JUNE 27, 2005

IN RE: Application of Chem-Nuclear Systems, LLC, a Division of Duratek, Inc., for Adjustment in the Levels of Allowable Costs and for Identification of Allowable Costs (FY 2004-2005)	)	ORDER IDENTIFYING ALLOWABLE COSTS

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the necessity to amend Commission Order No. 2005-338 issued in the present docket. The Order, dated June 17, 2005, was issued in regard to the Application of Chem-Nuclear Systems, LLC, a Division of Duratek, Inc., for adjustment in the levels of allowable costs and for identification of allowable costs for fiscal year 2004-2005. Order No. 2005-338 referenced Appendices A and B as being attached to the Order. However, the Commission Staff inadvertently omitted Appendix A when the Order was issued. Additionally, attached to the original Order was a version of Appendix B that had been provided to the Commission in the Joint Proposed Order submitted by the parties on May 20, 2005. Two minor changes to that Appendix that were later proposed by counsel for the Company were not included.[1] To correct the omissions, the present Order is being issued with Appendix A and the revised version of Appendix B. The body of the text of Order No. 2005-338 remains verbatim.

[1] The specific changes to Appendix B entailed adding an asterisk (indicating costs which were not subject to the 29% statutory operating margin) to the fixed cost items of "Employee Retention Compensation" and "Legal Support".

I. INTRODUCTION

This matter is before the Commission by way of the Application of Chem-Nuclear Systems, LLC, a Division of Duratek, Inc., ("Chem-Nuclear" or "the Company"), dated September 27, 2004. By its Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs, which the Commission had previously identified and for the identification of allowable costs for Fiscal Year 2004-2005 associated with the operation of the Company's regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina ("the Barnwell Facility"). The Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act ("the Act"), which is codified as S.C. Code Ann. §§ 48-46-10, *et. seq.* (1976), as amended.

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina's membership in the Atlantic Low-level Radioactive Waste Compact ("the Compact") and authorizes the manner in which this State participates in the Compact with the other member states -- Connecticut and New Jersey. S.C. Code Ann. § 48-46-20 (Supp. 2004).

The Act fixes a schedule of annually declining maximum volumes of low-level, radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact's member States. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2004). In addition, the Act empowers the South Carolina Budget and Control Board ("the Budget and Control Board") to fix the rates that an operator of a disposal facility in South Carolina may

charge a generator for disposal of the generator's low-level radioactive waste. The Act fixes fees for various purposes and provides for the disposition of revenues produced by the disposal operations of facilities subject to the Act. Chem-Nuclear operates the only disposal facility for low-level, radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the "allowable costs" of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Supp. 2004). "Allowable costs" are "costs to a disposal site operator of operating a regional disposal facility" and they "are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations." S.C. Code Ann. § 48-46-30(I) (Supp. 2004). The Act provides that "allowable costs" expressly include the costs of certain specifically identified activities necessary in the operation of a low-level radioactive waste facility. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Supp. 2004). Section 48-46-40(3) also provides that "allowable costs" include "any other costs directly associated with disposal operations determined by [the Commission] to be allowable." The Act excludes from identification as "allowable costs" the costs of certain expressly listed activities and "any other costs determined by [the Commission] to be unallowable." S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2004).

The Act entitles a disposal facility operator to recover an operating margin of 29%, which is applied to identified "allowable costs," excluding certain "allowable costs" for taxes and the licensing and permitting fees which the operator is responsible to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2004).

The level of "allowable costs" and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At the end

of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue the operator had received for waste disposal services during the fiscal year, reduced by the operator's identified "allowable costs," reduced further by the 29% statutory operating margin on the "allowable costs" under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of certain administrative costs which the Budget and Control Board, the Commission, the State Treasurer and the Atlantic Compact Commission ("the Compact Commission") had incurred for the conduct of those agencies' responsibilities in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2004).

The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of "allowable costs" which the Commission had identified for the previous fiscal year and for identification of costs which the Commission had not previously identified as "allowable costs." S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2004). Upon approval of the application, the Act requires the Commission to authorize the site operator to adjust its "allowable costs" for the current fiscal year to compensate the site operator for revenues "lost" during the previous fiscal year (that is, the difference between the level of "allowable costs" previously identified and the level of "allowable costs" identified upon approval of the application). *Id.*

Chem-Nuclear filed its Application in this proceeding for compensation of the difference between the level of "allowable costs" which we identified in Order No. 2004-349 and the amount of such costs which the Company actually experienced in the Fiscal Year 2003-2004 and for identification of Chem-Nuclear's "allowable costs" for Fiscal Year 2004-2005. As in prior proceedings, Chem-Nuclear applied to be compensated only for those "allowable costs" incurred

in Fiscal Year 2003-2004 where the actual costs were more than those that we identified and approved in Order No. 2004-349. (TR. pp. 13-15, 17-18).

This case represents the fifth annual proceeding in this Docket in which the Commission has considered the identification of "allowable costs" for Chem-Nuclear under the provisions of the Act. *See* Order No. 2001-499, dated June 1, 2001; Order No. 2002-395, dated June 3, 2002; Order No. 2003-188, dated April 14, 2003; and Order No. 2004-349, dated July 23, 2004.

Upon receipt of the Company's Application, the Commission's Docketing Department directed Chem-Nuclear to publish a Notice of Filing, advising the public of the submission of the Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear filed affidavits of publication which demonstrated its compliance with the instructions of the Docketing Department.

The Act specifies certain agencies to be parties of record in proceedings for identification of allowable costs before the Commission. Those parties are: the Budget and Control Board, the Consumer Advocate for the State of South Carolina and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40 (B)(9) (Supp. 2004). In addition, the Compact Commission and the South Carolina Department of Health and Environmental Control ("DHEC") have the discretion under the Act to participate as parties. *Id.* Pursuant to the provisions of S.C. Code Ann. §58-4-10(B) (Supp. 2004), the Office of Regulatory Staff ("ORS") represents "the public interest" in proceedings in this Docket.

On April 21, 2005, the Commission held an evidentiary hearing with respect to the issues in the Company's Application. The Honorable Randy Mitchell, Chairman, presided, and all members of the Commission were in attendance. Appearances were as follows: Robert T.

Bockman, represented Chem-Nuclear; Jessica J. O. King represented DHEC; Frank R. Ellerbe, III, represented the Compact Commission; and Florence P. Belser and Ben Mustian represented the ORS; neither the Budget and Control Board nor the Consumer Advocate were represented by counsel. The Attorney General did not appear or participate in the hearing. Duke Power and South Carolina Electric & Gas Company, which had intervened in this Docket and participated in some previous hearings, did not appear or participate in the hearing.

Chem-Nuclear and the ORS entered into a Settlement Agreement by which they resolved various issues about which their prefiled evidence differed. (TR. pp. 18-19, 44 and 46-47). This agreement included language accepting Chem-Nuclear's proposal to identify $892,551 as the allocated Corporate General and Administrative expense for fiscal year ending June 30, 2004. The agreement also specified that Chem-Nuclear would accept the proposal of the ORS to treat the costs for site modification for the construction of the "Western Swale Project" as a capitalized expenditure for the purposes of determining depreciation as an allowable cost. The useful life of the Western Swale project will be a three year period beginning July 1, 2005 and ending June 30, 2008. The Settlement Agreement was filed with the Commission prior to the hearing and is a part of the Docket. (TR. p. 21). Chem-Nuclear presented the evidence of two witnesses: Regan E. Voit and James W. Latham. No other party offered direct testimony or exhibits, although ORS had prefiled the direct testimony and exhibits of one witness. The record of this proceeding consists of the pleadings; the Commission's notices and interlocutory orders; the transcript of the oral testimony, consisting of 70 pages; and two hearing exhibits, including a "late-filed" exhibit of Chem-Nuclear, which was submitted by direction of the Commission and agreement of all parties. (TR. pp. 52-53).

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2003-2004 and for Fiscal Year 2004-2005 were resolved among the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

A. "Allowable Costs" for Fiscal Year 2003-2004

In accordance with the provisions of the Collaborative Review of Chem-Nuclear's Operations and Efficiency Plan ("OEP") which Order No. 2004-349 approved for use in these "allowable cost" proceedings, Chem-Nuclear's application and its evidence separated costs into three categories: fixed costs, variable costs and irregular costs. (TR. pp. 12-13). As Order No. 2004-349 recognized, the OEP was valid for use as a "baseline for establishing a method for identifying 'allowable costs'." (Order No. 2004-349, p. 17.) Pursuant to the Collaborative Review of the OEP, that method for identification of "allowable costs," provides for the three categories of costs, although neither the method itself nor the Commission's approval of it in Order No. 2004-349 fixes or "locks in" a particular level for any specifically identified "allowable cost." (TR. p. 20). As the evidence in the record demonstrates, the actual cost information which was reflected on Chem-Nuclear's books and records for the three cost categories in Fiscal Year 2003-2004 generally validated the costs in the Collaborative Review and provided a reliable basis for the accurate identification of costs which reflected Chem-Nuclear's actual operating experience. (TR. p. 13).

1. Fixed Costs for Fiscal Year 2003-2004

Chem-Nuclear separated its fixed costs for Fiscal Year 2003-2004 into several general categories: labor and fringe costs, non-labor costs, corporate allocation of general and administrative expense, and those fixed costs for which the statutory operating margin was not applicable. Hearing Exhibit No. 1 (JWL-5) (revised 4/21/05). The operating experience for that period resulted in total fixed costs of $7,081,797 actually incurred. *Id.* That figure included the results of a reclassification from the irregular cost category to the fixed cost category of certain costs for depreciation, insurance premiums, employee retention compensation and other non-labor costs. The ORS had proposed the reclassification and Chem-Nuclear agreed to it in the Settlement Agreement. (TR. p. 44). There is no evidence in the record in opposition to the identification of $7,081,797 as fixed "allowable costs" for Fiscal Year 2003-2004.

2. Variable Material Costs for Vaults for Fiscal Year 2003-2004

The actual costs for the material costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. (TR. pp. 30 and 44); Hearing Exhibit No. 1 (JWL-9). For Fiscal Year 2003-2004, Chem-Nuclear's actual costs for disposal vaults were $1,281,258.95. (TR. p. 45). Hearing Exhibit No. 1 (JWL-8) (revised 4/21/05). There is no evidence in the record in opposition to the identification of that amount as the proper "allowable cost" for variable material costs for vaults.

3. Variable Labor Costs for Fiscal Year 2003-2004

Order No. 2004-349 determined variable labor rates applicable to purchase, inspection, and placement of disposal vaults; handling of the various classes of waste shipments; slit trench offload operations; customer assistance; and scheduling of waste shipments and

maintenance of disposal records. (TR pp. 30 and 45). The variable labor rates are associated with several independent variables. (*Id.* pp. 30-31 and 45-46). The labor rates that Order No. 2004-349 identified estimated variable labor costs within approximately fifteen percent (15%) of Chem-Nuclear's actually experienced variable labor costs for Fiscal Year 2003-2004 (TR. pp. 31 and 45). Hearing Exhibit No. 1. (JWL-6) (revised 4/21/05). There is no evidence in the record in opposition to the identification of $560,001 as the allowable variable labor cost for that period.

4. Irregular Costs for Fiscal Year 2003-2004

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. (TR. pp. 31 and 46). The record contains numerous descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2003-2004. Hearing Exhibit No. 1 (JWL-7) (revised 4/21/05) and Exhibit B to the Application. At the date of the issuance of Order No. 2004-349, not all of the irregular costs for Fiscal Year 2003-2004 were known and measurable. The evidence here establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2003-2004 of $896,620 (TR. pp. 46-47). That amount, which is uncontested, includes the result of the reclassification of several costs from the irregular cost category to the fixed cost category which the ORS had proposed and which Chem-Nuclear accepted in the Settlement Agreement. *Id.*

B. Proposed "Allowable Costs" for Fiscal Year 2004-2005

Chem-Nuclear's Application and the evidence of record presented "allowable costs" to be identified for Fiscal Year 2004-2005 separated into the three cost categories that were

submitted in the Collaborative Review of the OEP and adopted in Order No. 2004-349. (TR. pp. 38-40, 47-48). Hearing Exhibit No. 1 (JWL-8) (revised 4/21/05).

1. Allowable Fixed Costs for Fiscal Year 2004-2005

Chem-Nuclear proposed total fixed costs of $7,249,023 to be identified as "allowable costs" for Fiscal Year 2004-2005. That amount was based on actual fixed costs incurred in Fiscal Year 2003-2004, with appropriate adjustments for inflation, the transfer of certain costs categorized as irregular costs in Fiscal Year 2003-2004, and the reclassification of certain costs previously categorized as irregular costs as proposed by the ORS to which Chem-Nuclear agreed. *Id.* The total fixed costs for Fiscal Year 2004-2005 include $966,641 to which the statutory operating margin is not applicable. Hearing Exhibit No. 1 (JWL-8) (revised 4/21/05). The record contains no evidence in opposition to the identification of $7,249,023 as allowable fixed costs for Fiscal Year 2004-2005.

2. Allowable Irregular Costs for Fiscal Year 2004-2005.

Chem-Nuclear described three known projects with estimated total costs of $230,000, which it categorized as irregular costs for Fiscal Year 2004-2005. (TR. p. 47). Hearing Exhibit No. 1 (JWL-8) (revised 4/21/05). That figure also reflected the reclassification of certain costs from the irregular category to the fixed category which the ORS had proposed and to which Chem-Nuclear agreed. (TR. pp. 18-19). The record contains no objection to the identification of $230,000 as allowable irregular costs for Fiscal Year 2004-2005.

3. Variable Materials Costs (Vaults) Rates for Fiscal Year 2004-2005

For Fiscal Year 2004-2005, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates approved in Order No. 2004-349 for

Fiscal Year 2003-2004, as adjusted for a documented increase in the cost of concrete disposal vaults from Chem-Nuclear's supplier. (TR. pp. 47-48). Hearing Exhibit No. 1 (JWL-8) (revised 4/21/05). The ORS agreed to the proposed variable material cost rates for disposal vaults. (TR. p. 19). There was no evidence of record in opposition to them.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2004-2005

For Fiscal Year 2004-2005, Chem-Nuclear proposed rates for variable labor and non-labor costs. Those rates pertained to five categories: vault purchase, inspection and placement (per vault); ABC waste disposal (per shipment); Slit Trench Waste Operations (per offload); customer assistance (per shipment); and maintenance of trench records (per container). The rates were based on the rates approved in Order No. 2004-349, adjusted for inflation. (TR. pp. 39-40 and 47). The ORS proposed slightly different rates for variable labor and non-labor for Fiscal Year 2004-2005 which Chem-Nuclear accepted. (TR. p. 19). There is no evidence of record in opposition to those rates.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. §§ 48-46-40(B), et seq. (Supp. 2004) to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site in question continuously since 1971 without interruptions. The site is comprised of approximately 235 acres of property owned by the State of South Carolina and leased by Chem-Nuclear from the Budget and Control Board. Approximately 105 acres have been used for disposal. Approximately 10 acres remain available

for disposal. The remaining 120 acres include a buffer zone area, water basins, and space for support operations.

3. Undisputed amounts in Chem-Nuclear's accounts that shall herein be identified and approved by this Commission as "allowable costs" for Fiscal Year 2003-2004, are included in Appendix A, which is attached to this Order.

4. Further, we approve and identify as "allowable costs" for Fiscal Year 2004-2005 the individual figures and the sum of $7,479,023 in fixed and irregular costs. We approve the variable cost rates for Fiscal Year 2004-2005, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable costs category will be dependent on the actual volumes and classes of waste received. Those costs and rates are appropriately documented in the record of this proceeding.

5. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman
(SEAL)

APPENDIX A -- Order No. 2005-338
Docket No. 2000-366-A
27-Jun-05

Chem-Nuclear Systems LLC
Allowable Costs
Fiscal Year Ending June 30, 2004

Description		Allowable Cost
Fixed Costs		
Fixed Labor and Fringe		$ 2,758,135
Non-Labor Costs		$ 1,173,316
Depreciation		$ 94,967
Insurance		$ 929,585
Equipment Leases and Support		$ 230,411
Other material and supplies		$ 249,721
Corporate G&A		$ 892,551
Intangible Asset Amortization (Operating Costs)*		$ 625,000
Employee Retention Compensation*		$ 83,541
Legal Support*		$ 44,570
Total Fixed Costs		**$ 7,081,797**
Variable Costs		
Vault costs		$ 1,281,259
Variable Labor and Fringe		
	Vault Purchase and Inspection	$ 23,413
	ABC Waste Disposal	$ 323,470
	Slit Trench Operations	$ 86,026
	Waste Acceptance	$ 90,184
	Trench Records	$ 36,908
Total Variable Costs		**$ 1,841,260**
Irregular Costs		
Total Irregular Costs (see page 2 of 2)		**$ 896,620**
Total Allowable Costs		**$ 9,819,677**

* Not subject to statutory operating margin

APPENDIX A – Order No. 2005-338
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Chem-Nuclear Systems LLC
Allowable Costs
Fiscal Year Ending June 30, 2004

Irregular Cost Item	Labor+Fringe	Non-Labor	Total Cost
Big Rock RPV	$ 2,465	$ 60,409	$ 62,874
CT Yankee RPV	$ 8,177	$ 345,220	$ 353,397
Other large components:	$ 11,476	$ 88,398	$ 99,874
Trench 96	$ 4,955	$ 70,464	$ 75,419
Trench 86 Mods	$ 1,729	$ 46,056	$ 47,785
Other Trenches	$ 27,413	$ 44,216	$ 71,629
Combined Decon and Corrective Actions	$ 10,521	$ 10,047	$ 20,568
Engineering Drawing Updates	$ 38,545	$ 18,660	$ 57,205
Miscellaneous Irregular Projects	$ 14,343	$ 11,394	$ 25,737
License Admin and renewal			
License Appeal			
License Renewal and Appeal Costs	$ 24,194	$ 258	$ 24,452
B&CB support (irregular)	$ 8,709		$ 8,709
Other Irregular costs (PT&C, QA consultant)		$ 54,311	$ 54,311
Prior year trench cost adjustment		$ (5,340)	$ (5,340)
Total Irregular Costs	**$ 152,527**	**$ 744,093**	**$ 896,620**

APPENDIX B -- Order No. 2005-338
Docket No. 2000-366-A
27-Jun-05

Chem-Nuclear Systems LLC
Allowable Costs
Fiscal year Ending June 30, 2005

Description	Allowable Cost
Fixed Costs	
Labor and Fringe	$ 2,854,670
Non-labor Costs	$ 1,193,327
Depreciation	$ 110,000
Insurance	$ 962,120
Equipment Leases and Support	$ 238,475
Corporate Allocation (Management Fee/G&A)	$ 923,790
Intangible Asset Amortization (Operating Rights)*	$ 625,000
Employee Retent Retention Compensation*	$ 91,641
Legal Support*	$ 250,000
Total Fixed Costs	$ 7,249,023
Irregular Costs	
Trench Construction	$ 60,000
Free-flowing Sand Backfill	$ 100,000
Large components	$ 70,000
Total Irregular Costs	$ 230,000
Variable Costs	
Variable Labor and Non-Labor Rates	
Vault Purchase and Inspection (per vault)	$ 74
ABC Waste Disposal (per shipment)	$ 1,377
Slit Trench Operations (per slit trench offload)	$ 6,168
Customer Assistance (per shipment)	$ 233
Trench Records (per container)	$ 38
Variable Material Costs (Vault Costs)	
Class A Waste (per cubic foot)	$ 31.23
Class B Waste (per cubic foot)	$ 31.41
Class C Waste (per cubic foot)	$ 31.33
Slit Trench Waste (per cubic foot)	$ 115.93

* Not subject to statutory operating margin