

1980 WL 120779 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1980

***1 RE: Sections 13-7-140(A)(1) and (A)(3) of the South Carolina Radioactive Waste Transportation and Disposal Act**

Mr. Michael A. Mann
Chem-Nuclear Systems, Inc.
240 Stoneridge Drive
Suite 100
Columbia, South Carolina 29210

Dear Mr. Mann:

Your letter of June 30, 1980, to Heyward G. Shealy, Chief, Bureau of Radiological Health, S.C. Department of Health and Environmental Control, has been referred to me for reply. Please address any future correspondence in this matter directly to me.

Specifically, you have asked if a shipper procures a liability insurance policy acceptable to the Department to satisfy Section 13-7-140(A)(1), and such policy includes provisions that all suits brought against any party arising out of the same incident will be defended and all awards paid up to the limits of the policy, will certification of the existence of such a policy satisfy Section 13-7-140(A)(3)? It is our opinion that it will not.

Section 13-7-140(A)(1) of the Act specifically addresses the legal and financial duty imposed by State law upon every shipper of radioactive waste into this State in order to assure that the shipper has the means to offset any possible radiological injury or damage to persons or property resulting from the transportation of such waste. The intent of such language is that the State be satisfied that all potential private claimants will find a financially responsible private defendant against which to seek damages, if any.

Section 13-7-140(A)(3) concerns the direct relationship between the shipper and the State. The purpose of this section is to cut off any effort by a shipper seeking indemnification by the State in the event of a successful damage suit by a private litigant against the shipper. Since this prohibition against indemnification by the State is addressed in (A)(3), but not in (A)(1), it is apparent that the two sections are not in pari materia and, therefore, must be construed separately. It is also observed that Section 13-7-140(A)(3) does not act to impose any additional independent liability upon the shipper. It merely serves to preserve the State's status as an immune sovereign.

Therefore, it is the opinion of this Office that Section 13-7-140(A)(1) and Section 13-7-140(A)(3) are not in pari materia. Accordingly, compliance with one section may not be construed as being in compliance with the other and each section must be complied with separately.

I trust the preceding discussion adequately answers your question, however, if any further assistance or explanation is required, please do not hesitate to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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