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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

February 20, 2017

Krista W. Harsono
Compliance Director
Advanced Chemical Treatment
6137 Edith Boulevard, N.E.
Albuquerque, New Mexico 87107

**RE: EXPANDED RCRA STORAGE CAPACITY AND FINANCIAL ASSURANCE
REQUIREMENTS
ADVANCED CHEMICAL TREATMENT, INC.
EPA ID# NMD002208627
RNCH-11-001**

Dear Ms. Harsono:

The New Mexico Environment Department (NMED) received Advanced Chemical Treatment's (ACT) email dated February 9, 2017 regarding questions concerning expanded Resource Conservation and Recovery Act (RCRA) storage and associated financial assurance requirements.

In response to your February 9, 2017 email about increasing ACT's RCRA container storage capacity from 55,000 gallons to 100,000 gallons, the permit renewal application due May 15, 2017 should, at a minimum, contain the following information [per 40 CFR 264 Subpart I and 40 CFR 270.15]:

1. proposal for storage expansion,
2. proposed new maximum capacity,
3. list and description of any new waste types and RCRA codes to be accepted,
4. detailed descriptions and diagrams of locations for increased storage,

5. detailed descriptions, volume calculations, and diagrams of secondary containment capacities in each proposed area of increased storage,
6. as-built floor plans verifying all secondary containment capacities (capacity, floor slope, drains or sumps, and drain/sump piping, etc),
7. updated contingency and/or waste analysis plans (as needed), and
8. updated closure cost estimates (inflation adjusted for 2017).

In your February 9, 2017 email, you ask if ACT is “required to post a bond for the full closure amount at the time we submit the renewal application or when the permit is issued?” Financial assurance requirements are found in 40 CFR 264 Subpart H. An owner/operator may choose a financial assurance mechanism from a Closure Trust Fund, Surety Bond (guaranteeing payment into a closure trust), Surety Bond (guaranteeing performance of closure), Closure Letter of Credit, or a Financial Test and Corporate Guarantee for Closure. If a Surety Bond is chosen, it must meet the requirements of 40 CFR 264.143(b) or (c) as well as requirements of 40 CFR 264.151(b) or (c).

Financial assurance mechanisms for both closure and operational liability (updated as needed for increased capacity) should be succinctly summarized in the application and effective no later than 60 days after the renewal permit effective date. Final copies should be received by NMED no later than 60 days after the renewal permit effective date.

In reviewing ACT’s financial assurance records, we determined the following:

1. the ACT Trust Fund (Pay-in-Trust) updated third-party cost estimate for closure was last submitted in 2015. An inflation-adjusted third-party (verified) cost estimate using a verified federal inflation index [e.g., <http://www.bea.gov> (NIPA Table 1.1.9 Implicit Price Deflators for GDP)] must be submitted annually. The detailed written and dated closure cost estimate must follow the requirements of 40 CFR 264.142(a) through (d). The Closure Trust Fund financial mechanism must meet the requirements of 40 CFR 264.143(a). Submit an inflation-adjusted third-party closure cost annual update for 2017 no later than March 31, 2017.

The financial assurance mechanism for the permit renewal should be submitted with the permit renewal application no later than May 15, 2017. Within 60 days of the renewed permit’s effective date, the updated closure cost estimate using verifiable third-party estimates and a copy of the financial mechanism that meets 40 CFR 264.151(a)(1) must be submitted to NMED. If you request a container storage capacity increase, the permit application must reflect the resulting financial assurance changes.

2. the Sudden Third-Party (Operational) Liability Insurance also appears to have lapsed. The last submittal in NMED’s records is dated effective April 18, 2015 and expired on April 18, 2016. An updated insurance policy for 2016-2017 must be submitted immediately and the subsequent policy (2017-2018) submitted before March 31, 2017. This updated policy wording is required to match the wording in 40 CFR 264.151(j). Previous submittals do not follow the required wording and could be considered a permit

violation. The following changes must be made to financial assurance annual operational submittals henceforth:

- a. the Sudden Third-Party Liability Insurance policy should always include the Notary's clear seal, as well as signature and date.
- b. the correct name of the facility must be on the policy.
- c. the certificate holder is not the New Mexico Environment Department (as listed on the 2013-2014 policy).
- d. any policies submitted with the permit application are not considered to have been officially submitted to NMED as the annual updated submittal.

In summary, the 2017 updated closure cost estimate as well as 2016-2017 and 2017-2018 liability insurance updates must be submitted no later than **March 31, 2017**. The container storage capacity increase request and associated updated financial assurance summaries for the RCRA renewal permit application must be submitted with the application, no later than **May 15, 2017**. Final financial assurance documents for the renewal permit are due to NMED no later than 60 days after the renewal permit takes effect.

Please call Stacie Singleton of my staff at 505-476-6056 if you have any questions regarding this letter.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
S. Singleton, NMED HWB