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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 2, 2019

Ms. Krista Harsono
Compliance Director
Advanced Chemical Treatment, Inc.
6137 Edith Boulevard N.E.
Albuquerque, NM 87107

RE: **DISAPPROVAL**
2019 FINANCIAL ASSURANCE SUBMITTAL
ADVANCED CHEMICAL TREATMENT, INC.
EPA ID # NMD002208627
HWB-ACT-MISC

Dear Ms. Harsono:

The New Mexico Environment Department (NMED) has completed its review of Advanced Chemical Treatment, Inc.'s (the Permittee) Financial Assurance submittal dated August 20, 2019 and received August 22, 2019. NMED hereby issues this Disapproval. The Permittee must address the following comments.

Comment 1

There are several documents with references to post-closure costs in the 2019 Financial Assurance submittal. According to the December 2001 Rinchem Company, Inc. RCRA Container Storage Facility Operative Permit (December 2001 CSFO Permit), the Container Storage Facility (CSF) is only permitted for clean closure. The 2019 Financial Assurance submittal must only provide estimates for closure in accordance with Section II.N (Cost Estimate for Facility Closure) in the December 2001 CFSO Permit. Although the Permittee has submitted a Permit Renewal Application in July 2018, the December 2001 CFSO Permit is still in effect. Explain why there

were references to post-closure costs in the 2019 Financial Assurance submittal or remove all references and documents involving post-closure costs from the revised 2019 Financial Assurance submittal.

Comment 2

The Underwriting Limitation is the maximum amount that each surety can guarantee in one bond, as required by the Circular 570. According to the Bureau of Fiscal Services, the current value of the Underwriting Limitation Maximum for Atlantic Specialty Insurance Company is \$61,920,000 (<https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html#a>). One Beacon Insurance Group's Power of Attorney letter reports a maximum sum of \$60,000,000. There appears to be a difference in the amount reported between the underwriting limitation on Circular 570 versus the Power of Attorney sum of \$1,920,000. explain why the full amount of the maximum underwriting limitation was not utilized for the performance bond.

Comment 3

In 40 CFR 264.151(c), the Permittee is required to provide the "EPA Identification number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond" and to "[indicate closure and post-closure amounts separately]". The current performance bond provides the penal sum of the bond but does not indicate if it is for closure, post-closure or a combination of both amounts. Revise the performance bond to indicate the amount as being for closure in accordance with 40 CFR 264.151(c).

Comment 4

In 40 CFR 264.151(c), the wording under '**Corporate Surety(ies)**' the Permittee is required to provide a Corporate Seal with the signatures of this performance bond. Revise the performance bond to include the Corporate Seal under this section in accordance with 40 CFR 264.151(c).

Comment 5

The Permittee's Financial Assurance submittal included an Appendix C-Standby Trust Balance Sheet that reports a post-closure balance of \$470,539.28 and an Appendix D-Closure Cost Estimate that reports a closure balance of \$457,178. According to 40 CFR 264.143(c)(6), the penal sums of the current closure and post-closure cost estimates must be at least equal to the current estimates. Appendix A- Performance Bond only identifies the total penal sum of the bond in the amount of \$457,178 but does not identify that the amount is for closure. Furthermore, as stated in comment 1, the December 2001 CFSO permit only discusses costs

associated with closure. Identify the total penal sum as being for closure on the performance bond.

Comment 6

The Permittee's Financial Assurance submittal included a Schedule A (Closure Cost Estimate) that reports a Total Estimated Closure Cost (in 2011 dollars) of \$235,088.61. Appendix D provides a total cost (in 2017 dollars) of \$457,178. There appears to be a discrepancy with the closure cost reported. Explain why there are two costs reported in 2011 and 2017 dollars. Update the Schedule A amount in 2017 dollars and include the update with the revised 2019 Financial Assurance submittal.

Comment 7

40 CFR 264.143(c)(3)(i) states, "[a]n originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond." The 2019 Financial Assurance submittal provided a photocopy of the trust agreement but did not provide an original signed duplicate of the trust agreement. Provide a duplicate of the trust agreement with original signatures as part of the 2019 Financial Assurance submittal.

Comment 8

40 CFR 264.143(d)(3) states, "[a]n owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust." The 2019 Financial Assurance submittal did not provide a letter of credit or the accompanying letter by the owner or operator. Provide both the letter of credit and letter by owner/operator in the revised 2019 Financial Assurance submittal. The letter of credit must be submitted in accordance with 40 CFR 264.143(d)(2) and (d)(4).

Comment 9

40 CFR 264.151(a)(1) wording of the instruments for Trust Agreement Section 2 *Identification of Facilities and Cost Estimates* requires the current closure and/or post-closure cost estimates on the Schedule A. The Schedule A provided in the 2019 financial assurance package lists a total estimated closure cost (in 2011 dollars) for the "Summary of Closure Costs" as \$235,088.61. However, the Permittee also provided a table in Appendix D titled "Closure Cost Estimate ACTenviro Container Storage Facility" with a total of \$457,178 in 2017 dollars. Explain why the costs were provided in 2011 dollars and 2017 dollars. Revise the closure cost estimate on the Schedule A in accordance with 40 CFR 264.151(a)(1) in the 2017 dollar value.

Comment 10

In 40 CFR 264.151(a)(1), the last paragraph before the signatures by the Grantor and Trustee states “[i]n Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(a)(1) as such regulations were constituted on the date first above written.” The Permittee must provide the seals to the signature page as directed by 40 CFR 264.151(a)(1) for the revised 2019 Financial Assurance submittals.

Comment 11

40 CFR 264.151(a)(2) requires a certification of acknowledgment which must accompany the trust agreement. The 2019 Financial Assurance submittal provided a copy titled, “CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT” but the wording differs from the acknowledgement in 40 CFR 264.152(a)(2). The 2019 Financial Assurance also provided a separate document titled, “ADVANCED CHEMICAL TREATMENT, INC. UNANIMOUS WRITTEN RESOLUTION OF THE BOARD OF DIRECTORS” which is not required. Provide a revised certification of acknowledgment in accordance with the wording included in 40 CFR 264.151(a)(2).

Comment 12

40 CFR 264.151(a)(1) Section 3 *Establishment of Fund* states, “[t]he Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto.” The 2019 Financial Assurance submittal “SCHEDULE B” does not provide property used to establish the trust fund. Provide this information in the revised 2019 Financial Assurance submittal.

Comment 13

The 2019 Financial Assurance submittal document titled “ADVANCED CHEMICAL TREATMENT, INC. UNANIMOUS WRITTEN RESOLUTION OF THE BOARD OF DIRECTORS” states, “[i]t is RESOLVED, effective October 6, 2011, that the signer hereto shall be and is hereby authorized and empowered to establish a post-closure trust and to enter into the Trust Agreement”. The Permittee’s Trust Agreement, Section 2 *Identification of Facilities and Cost Estimates*, states that the, “Agreement pertains to the facilities and cost estimates identified on attached Schedule A”. Schedule A only identifies estimates for closure. The Appendix C balance sheet second column titled “ACCOUNTSHORTNAME” identifies “ACT POST CLOSURE” for a tax cost

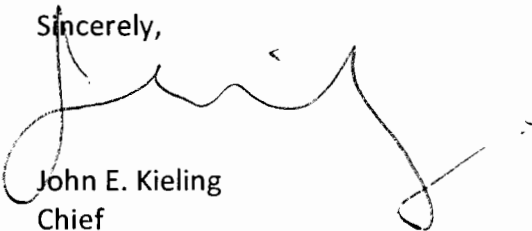
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balance of \$470,539.28. The December 2001 CFSO Permit states that if the Permittee is unable to achieve clean closure, a post-closure plan must be submitted within 90 calendar days from the date the owner/operator or the NMED Secretary determines that the CSF must be closed as a landfill.

The Permittee must address all requirements within this Disapproval letter for the 2019 Financial Assurance submittal and submit a response letter, cross-referencing NMED's numbered comments. The revised 2019 Financial Assurance submittal and response letter must be submitted to NMED no later than **November 8, 2019**.

If you have any questions, please contact Vanessa Colón of my staff at 505-476-6058.

Sincerely,



John E. Kielsing
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
L. Tsinnajinnie, NMED HWB
V. Colón, NMED HWB
L. King, EPA Region 6 (6LCRRC)

File: ACT 2019 and Reading File