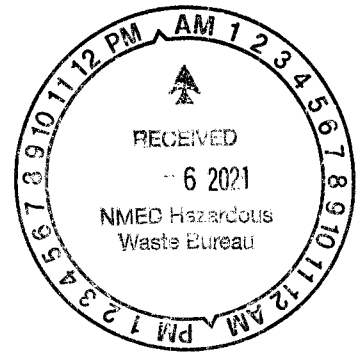




 ENTERED



June 11, 2021

John E. Kieling, Chief  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive  
Santa Fe, NM 87505

**RE: Response to Disapproval 2019 Financial Assurance Submittal – Advanced Chemical Treatment, Inc. EPA ID# NMD002208627 – HWB-ACT-MISC**

**Dear Mr. Kieling:**

Advanced Chemical Treatment, Inc. (ACTreatment) would like to respond to the disapproval of the 2019 Financial Assurance Submittal. Please note that ACT received confirmation in mid-2020 that a new bond should be issued instead of issuing a rider to the bond. On March 11, 2021, ACTreatment received an affidavit confirming the bond was mis-placed and needed to be re-issued.

Below you will find a summary of comments along with our response and follow-up.

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 CSFO Permit. Although the Permittee has submitted a Permit Renewal Application in July 2018, the December 2001 CSFO 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.

***Any references to post-closure costs referenced in the 2019 submittal have been removed.***

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 \$61,920,00. 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 \$[6]1,920,000. Explain why the full amount of the maximum underwriting limitation was not utilized for the performance bond.



***We agree that the US Treasury Department issues Circular 570 listing the underwriting limitation values for any given surety, however, this amount has nothing to do with the amount of authority given to our agent by the surety as their agent with Power of Attorney. It should be noted that our agent has Power of Attorney authority up to \$60,000,000 and the bond in question has a limit of less than \$500,000. Could you please explain the concern or question?***

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).

***The performance bond has been revised to provide the EPA Identification Number, name, address and closure amount for the facility as requested and is being submitted as Attachment A to this NOD response.***

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).

***The revised performance bond has been modified to include the Corporate Seal in accordance with 40 CFR 264.151(c) and is attached to this NOD response as Attachment A.***

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 CSFO permit only discusses costs associated with closure. Identify the total penal sum as being for closure on the performance bond.

***The Standby Trust Balance Sheet has been updated to remove the word 'post'.***

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 were 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.

***Schedule A has been updated to reflect the closure cost in 2020 dollars. Please refer to Attachment C.***



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.

***ACT acknowledges the above comment and has revised the financial assurance submittal to include a duplicate of the trust agreement with original signatures.***

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).

***ACT is not requesting to utilize a letter of credit to satisfy the requirements but rather is choosing to use a Surety Bond (Performance Bond) to satisfy the financial assurance requirements in conjunction with the Standby Trust Fund in accordance with the requirements of § 264.143 (b). Therefore, this regulation is not applicable.***

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.(a)(1) in the 2017 dollar value.  
***The Schedule A has been revised to reflect the closure cost is \$457,178.***

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.

***ACT acknowledges the above comment and is providing seals to the signature page as directed by 40 CFR 264.151(a)(1) for the trust agreement in the revised 2019 Financial Assurance submittal.***

11. 40 CFR 264.151(a)(2) requires a certificate of acknowledgement which must accompany the trust agreement. The 2019 Financial Assurance submittal provided a copy titled, "CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT" 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 acknowledgement in accordance with the wording included in 40 CFR 264.151(a)(2).

***ACT acknowledges the above comment and is providing a revised certificate of acknowledgement in accordance with the wording included in 40 CFR 264.151(a)(2) as Attachment B.***

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.

***ACT acknowledges the above comment and is providing a revised Schedule B that indicates, in accordance with 40 CFR 264.14(c)(3), under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. Please refer to Attachment D.***

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 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.

***References to post-closure have been removed throughout the financial assurance submittal.***

Regards,

A handwritten signature in black ink, appearing to read "Pasquale Paduano".

Pasquale Paduano  
Vice President of Operations  
ACTenviro

Enclosures

cc: K. Harsono, Compliance Director, ACTenviro



## Attachment A – Performance Bond

## PERFORMANCE BOND

Date bond executed: June 8, 2021  
Effective date: August 12, 2019

Principal: Advanced Chemical Treatment, Inc., 6137 Edith Blvd. NE, Albuquerque, NM 87107

Type of organization: Corporation

State of incorporation: New Mexico

Surety(ies): Atlantic Specialty Insurance Company, One State Street Plaza, Floor 31, New York, NY 10004

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: EPA Identification Number NMD002208627, Advanced Chemical Treatment, Inc., 6137 Edith Blvd. NE, Albuquerque, NM 87107, Closure Amount \$457,178.

Total penal sum of bond: \$457,178  
Surety's bond number: 800049265

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in subpart H of 40 CFR part 264, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the closure requirements of 40 CFR part 264, for a facility for which this bond guarantees performance of closure, the Surety(ies)

shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the post-closure requirements of 40 CFR part 264 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.

Upon notification by an EPA Regional Administrator that the Principal has failed to provide alternate financial assurance as specified in subpart H of 40 CFR part 264, and obtain written approval of such assurance from the EPA Regional Administrator(s) during the 90 days following receipt by both the Principal and the EPA Regional Administrator(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(c) as such regulation was constituted on the date this bond was executed.

Signature(s):

  
\_\_\_\_\_

Principal

Advanced Chemical Treatment, Inc.:

Title(s):

[Corporate seal]



Corporate Surety(ies)

Atlantic Specialty Insurance Company, One State Street Plaza, Floor 31, New York, NY 10004

State of incorporation: New York

Liability limit: \$60,000,000

Signature(s): \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Dean Sigmundson", is written over a horizontal line.

Dean Sigmundson, Attorney-In-Fact

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$9,144





# Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Charles Massie, Dean Sigmundson, David W. Massie**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **sixty million dollars (\$60,000,000)** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

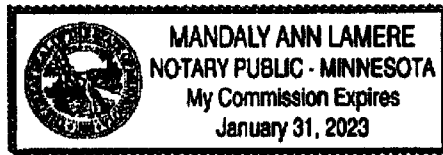
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-ninth day of April, 2019.

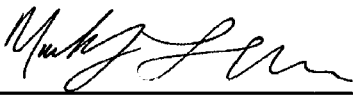


By   
Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA  
HENNEPIN COUNTY

On this twenty-ninth day of April, 2019, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.

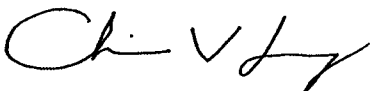


  
Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 8th day of June, 2021.



  
Christopher V. Jerry, Secretary

This Power of Attorney expires  
January 31, 2023

## TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of Sept 15, 2020, by and between **Advanced Chemical Treatment, Inc.**, a New Mexico corporation, the "Grantor," and **Comerica Bank and Trust, National Association**, a national banking association, the "Trustee." This Agreement supersedes the trust agreement between the same parties, dated October 6, 2011.

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

### **Section 1. Definitions.** As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

### **Section 2. Identification of Facilities and Cost Estimates.** This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

**Section 4. Payment for Closure and Post-Closure Care.** The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for closure and post-closure expenditures in such amounts

as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.** Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, *15 U.S.C. 80a-2(a)*, shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, *15 U.S.C. 80a-1* et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

**Section 10. Annual Valuation.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. For trust accounting reporting purposes the fiscal year end is September 30<sup>th</sup> on an on-going forward basis. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation as evidenced in the executed fee schedule for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

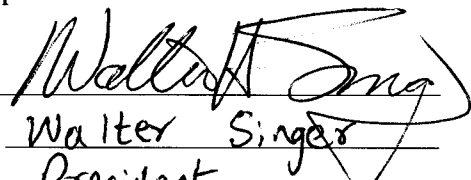
**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In 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.

Advanced Chemical Treatment, Inc.


Grantor

By:   
Name: Walter Singer  
Title: President  
Date: September 15, 2020



Comerica Bank & Trust, National Association

Trustee

By:   
Name: SAQUANDA NAILIS  
Title: OFFICER  
Date: September 29, 2020

## TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of Sept 15, 2020, by and between **Advanced Chemical Treatment, Inc.**, a New Mexico corporation, the "Grantor," and **Comerica Bank and Trust, National Association**, a national banking association, the "Trustee." This Agreement supersedes the trust agreement between the same parties, dated October 6, 2011.

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions.** As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

**Section 2. Identification of Facilities and Cost Estimates.** This Agreement pertains to the facilities and cost estimates identified on attached Schedule A.

**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

**Section 4. Payment for Closure and Post-Closure Care.** The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for closure and post-closure expenditures in such amounts

as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.** Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, *15 U.S.C. 80a-2.(a)*, shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, *15 U.S.C. 80a-1 et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;



(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

**Section 10. Annual Valuation.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. For trust accounting reporting purposes the fiscal year end is September 30<sup>th</sup> on an on-going forward basis. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation as evidenced in the executed fee schedule for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

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**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In 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.

Advanced Chemical Treatment, Inc.

Grantor

By: Walter H. Singer  
Name: Walter Singer  
Title: President  
Date: September 15<sup>th</sup>, 2020



Comerica Bank & Trust, National Association

Trustee

By: S. Nails  
Name: SAQUANDA NAILS  
Title: OFFICER  
Date: September 29, 2020



## Attachment B – Certificate of Acknowledgement

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

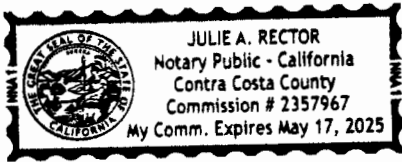
State of California }  
County of Contra Costa }

On June 8, 2021 before me, Julie A. Rector, Notary Public  
*Date Here Insert Name and Title of the Officer*  
personally appeared Dean Sigmundson  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Julie A Rector  
*Signature of Notary Public*

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: ACT Bond

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Dean Sigmundson

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**CERTIFICATION OF ACKNOWLEDGMENT  
FOR  
STANDBY TRUST FUND AGREEMENT**

State of California

County of Santa Clara

On this 15th day of September, 2020 before me

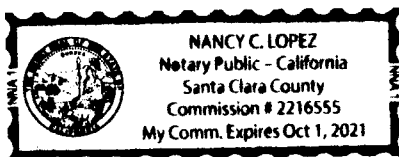
personally came, Walter H. Singer [owner or operator] to me known, who, being by

me duly sworn, did depose and say that she/he resides at

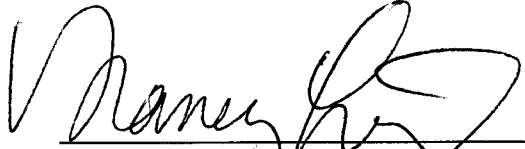
13250 Pierce Rd, Saratoga, CA 95070 [address],

that she/he is President [title] of Advanced Chemical Treatment [corporation],

the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.



(seal)

  
\_\_\_\_\_  
Signature of Notary Public



**Attachment C – Schedule A**

**Schedule A**  
**Identification of Facilities and Cost Estimates**

EPA Identification Number	NMD002208627
Name	Advanced Chemical Treatment, Inc.
Address	6133 Edith Blvd., NE Albuquerque, NM 87107
Closure Cost Estimate	\$457,178





**Attachment D – Schedule B**

**SCHEDULE B**  
**Establishment of Fund**

In accordance with 40 CFR 264.14(c)(3), under the terms of the performance bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator.