



**Certified Mail - Return Receipt Requested**

April 8, 2022

Mr. Pasquale Paduano  
Vice President of Operations  
Advanced Chemical Treatment, Inc.  
6137 Edith Boulevard, N.E.  
Albuquerque, New Mexico 87107

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

**RE: SECOND DISAPPROVAL  
RESPONSE TO DISAPPROVAL, 2019 FINANCIAL ASSURANCE SUBMITTAL  
ADVANCED CHEMICAL TREATMENT, INC.  
BERNALILLO COUNTY, ALBUQUERQUE, NEW MEXICO  
EPA ID # NMD002208627  
HWB-ACT-MISC**

Dear Mr. Paduano and Ms. Harsono:

The New Mexico Environment Department (NMED) has completed its review of Advanced Chemical Treatment, Inc.'s (the Permittee) *Response to Disapproval 2019 Financial Assurance Submittal* dated June 11, 2021 and received July 6, 2021. NMED hereby issues this second disapproval with the following comments.

**Comment 1**

In the February 2, 2022 e-mail, the Permittee asked NMED if they should be preparing annual estimates. The Permittee is required to submit annual financial assurance and cost estimate documents in accordance with their effective RCRA Container Storage Facility Operating Permit Sections II.N (Cost Estimate for Facility Closure) and II.O (Financial Assurance for Facility Closure). However, since NMED and the Permittee have been working toward correcting the 2019 Financial Assurance submittal, the Permittee will not be required to submit the 2020 or 2021 Financial Assurance submittals. To satisfy the requirements for the 2020 and 2021 Financial Assurance submittals, the Permittee must address and incorporate NMED's comments from the October 2019 Disapproval and this second disapproval in the 2022 Financial Assurance submittal.

**Comment 2**

Comment 2 from the October 2, 2019 Disapproval letter for the 2019 Financial Assurance Submittal required the Permittee to “[e]xplain why the full amount of the maximum underwriting limitation was not utilized for the performance bond.” The Permittee’s Response to Comment 2 states “[w]e 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?” NMED’s Comment 2 was an observation made during the review of the 2019 financial assurance submittal. NMED wanted to know why the amount reported in the Circular 570 listing did not match the amount provided in the performance bond. NMED has discussed the situation with EPA and was informed that there is no concern with the reported amounts from the Circular 570 and performance bond not matching up. No response required.

**Comment 3**

Comment 4 from the October 2, 2019 Disapproval letter requires the Permittee to provide a Corporate Seal on the signature page of the “Corporate Surety(ies)” in accordance with 40 CFR 264.151(c). The Permittee provided a revised Performance Bond with a Corporate Seal; however, the Corporate Seal was still missing from the signature page of the “Corporate Surety(ies).” The Permittee must include a Corporate Seal where it has been written in the wording of the mechanism. Furthermore, failure to include a Corporate Seal renders the document(s) invalid and will result in additional disapproval letters of the financial assurance submittal. Ensure all documents include a Corporate Seal where it has been written in the wording of the mechanism.

**Comment 4**

Comment 5 from the October 2, 2019 Disapproval letter required the Permittee to identify the total penal sum for closure activities only. According to the Permittee, the “Standby Trust Balance Sheet has been updated to remove the word ‘post’,” however, the Permittee did not provide an updated copy of the *Standby Trust Balance Sheet*. Ensure updated and revised copies of documents are included in all future responses.

**Comment 5**

Comments 6 and 9 from the October 2, 2019 Disapproval letter required the Permittee to clarify the discrepancy between the closure cost estimate, \$235,088.61 (in 2011 Dollars), reported in the Schedule A document from the original August 20, 2019 Financial Assurance submittal and

Mr. Paudano and Ms. Harsono

April 8, 2022

Page 3

Appendix D (Closure Cost Estimate) which reported \$457,178 (in 2017 Dollars). Please address the following comments:

- a. Explain why two values were reported, one reported in 2011 Dollars and the other reported in 2017 Dollars, in the original submittal.
- b. The response to Comment 6 states that the "Schedule A has been updated to reflect the closure cost in 2020 dollars." However, the cost estimate was not provided for the 2020 cost estimate, and it appears that the 2020 cost estimate value is the same as the 2017 cost estimate. Provide the updated cost estimate for the 2022 Financial Assurance submittal in 2021 dollars and explain why the 2020 cost estimate value was the same as the 2017 cost estimate.
- c. In Attachment C (Schedule A), the Permittee must also include the "Date of Estimate", so the NMED is aware of when the cost estimate was last updated and in terms of what year of the *current dollars*.

#### **Comment 6**

Comment 8 from the October 2, 2019 Disapproval letter required the Permittee to provide both the letter of credit and letter by the owner/operator. The Permittee states "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." There appears to be a misunderstanding with interpreting which regulations apply to the financial assurance submittal. NMED agrees that the requirements for 40 CFR 264.143(d) are not applicable because the Permittee is not utilizing a letter of credit. However, the reference to 40 CFR 264.143(b) is also not correct because that reference lists the requirements for a financial guarantee or payment bond. The Permittee has submitted a Performance Bond and therefore are subject to the requirements of 40 CFR 264.143(c).

#### **Comment 7**

Comment 12 from the October 2, 2019 Disapproval letter required the Permittee to provide the property information in the Schedule B document of the revised 2019 Financial Assurance submittal. The Permittee provided a revised Schedule B, but the format of the new document was not correct and the property information was not provided. The "property" in question is defined as the "assets held in trust." Therefore, in order to satisfy the requirements of 40 CFR 264.151(a)(1), Section 3 (Establishment of Fund), the Permittee must provide the amount of the trust and the trust fund account number. NMED has provided a sample Schedule B that should satisfy the requirements of 40 CFR 264.151(a)(1), Section 3. Since the Permittee does not utilize a Letter of Credit, the item that mentions the "Type of mechanism(s) that will be deposited" can

Mr. Paudano and Ms. Harsono

April 8, 2022

Page 4

be stated as "Not Applicable." Use the attached sample Schedule B for the 2022 financial assurance submittal as an example.

**Comment 8**

In the 2019 Financial Assurance submittal, the Permittee provided a Closure Cost Estimate in terms of 2017 dollars. Explain how all of the values in the cost estimate table were generated (e.g., use CostPro software). An example would be the cost per unit for each activity. Update to cost estimate to 2021 dollars.

The Permittee must address all the comments from this second disapproval for the 2022 Financial Assurance submittal. A response letter must be included with the 2022 Financial Assurance submittal and must be submitted to NMED no later than **May 18, 2022**. In addition, all comments from this second disapproval must be incorporated in the 2022 Financial Assurance submittal.

If you have any questions, please contact Leona Tsinnajinnie of my staff at (505) 690-7820.

Sincerely,

**Rick Shean**

Digitally signed by Rick  
Shean  
Date: 2022.04.08 10:33:24  
-06'00'

Rick Shean  
Chief  
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB  
L. Tsinnajinnie, NMED HWB  
C. Amindyas, NMED HWB  
K. Harsono, ACTenviro  
L. King, EPA Region 6 (6LCRRC)

File: ACT 2022

Mr. Paudano and Ms. Harsono

April 8, 2022

Page 5

## Schedule

### B

---

Account Information:

Account Number assigned to this Trust Agreement \_\_\_\_\_ Amount  
of Deposit into this standby Trust Agreement \$ \_\_\_\_\_ Type of  
mechanism(s) that will be deposited into this account if applicable: Letter  
of Credit # \_\_\_\_\_

Bank/Branch location of the Trustee for this Trust

Agreement Bank/Branch name \_\_\_\_\_  
Location Address \_\_\_\_\_ City & State \_\_\_\_\_

Contact Person at Bank who will be responsible for information/questions regarding this  
Standby Trust Agreement:

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Phone No. \_\_\_\_\_