

Spakes, Rita

From: Speake, Susan
Sent: Monday, February 06, 2017 4:12 PM
To: 'Timothy McDonald'; Matoska, Maria
Cc: Cusher, Annette; Hynum, Tammie; Spakes, Rita
Subject: RE: Wizeagg C & D Facility
Attachments: Standby Trust Agreement.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Rec'd Digitally	
AFIN: 60-04543	
PMT#: 0320-SCDR	
<small>RECEIVED By spakes at 4:15 pm, Feb 08, 2017</small>	
DOC ID#: 70978	
TO: SS>FILE	<RDS

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Dear Mr. McDonald:

Please make sure your clients are award of the following regulation requirements if establishing a Surety or Performance Bond:

1. The surety company issuing the bond must be among those listed as acceptable sureties on Federal Bonds in Circular 570 of the U.S. Department of Treasury (Reg.22.1405 (b)(1)) - https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm (it is the 6th tab under "Quick Links"); and
2. The owner or operator must establish a standby trust fund (Reg.22.1405 (b)(4)) – template attached.

Thank you,

Susan Speake
Regulated Waste Programs; Office of Land Resources

From: Timothy McDonald [<mailto:tmcdonald@esgisafety.com>]
Sent: Monday, February 06, 2017 4:01 PM
To: Matoska, Maria
Cc: Cusher, Annette; Hynum, Tammie; Speake, Susan; Spakes, Rita
Subject: [BULK] Re: Wizeagg C & D Facility

Maria,

Sorry to take awhile getting back to you. Our clients have frankly been struggling to secure the proper surety, and have gone down several paths they thought would work, only to find out at the end of the processes that those specific avenues weren't as workable as they originally thought...

Bottom line is they now have assured me that they have made the final arrangements for their required surety bond, and should have it in place by the end of this week....

I will get back with you as soon as I see the bond in place and work to secure the final arrangements with ADEQ for the permit...

Again, my clients apologize for the delays and assure me they are almost there,

Tim

On 1/25/17, 4:04 PM, "Matoska, Maria" <MATOSKA@adeq.state.ar.us> wrote:

Mr. McDonald,

I am emailing you to get an update on the Financial Assurance for the Wizeagg C & D facility. A draft permit was issued in August 2016, but the owner must post the required financial assurance prior to issuance of the final permit. To date, Financial Assurance has not been posted.

Please contact me at your earliest convenience in this matter. You can email me or call me at (501) 682-0608.

Sincerely,

Maria Matoska
Permit Engineer
Office of Land Resources

Timothy E. McDonald, P.E.

Vice President - Business Development
Environmental Services Group Incorporated
Safety / Health / Environmental / Regulatory Services

Office: 501-663-4731
Email: tmcdonald@esgisafety.com

STANDBY TRUST AGREEMENT

STANDBY TRUST AGREEMENT, the “Agreement,” entered into as of *[date]* by and between *[name of the owner or operator]*, a *[name of State]* *[insert “corporation,” “partnership,” “association,” or “proprietorship”]*, the “Grantor,” and *[name of corporate trustee]*, *[insert “incorporated in the State of” or “a national bank”]*, the “Trustee.”

WHEREAS, the Arkansas Pollution Control and Ecology Commission has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for the closure and/or post-closure facility monitoring, maintenance, and care of the facility, hereinafter referred to as “Closure and Post-Closure”, and the Arkansas Department of Environmental Quality, hereinafter referred to as “ADEQ”, an agency of the State of Arkansas, enforces those established regulations, and

WHEREAS, the Grantor has elected to establish a _____ *[insert either “performance bond” or “surety bond”]* to provide all or part of financial assurance for closure, post-closure care, and/or corrective action for the permitted solid waste management facility identified herein, and is required to establish a standby trust fund able to accept payments from the instrument *(This paragraph is only applicable to the standby trust agreement.)*;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, subject to the final approval by the ADEQ Director, 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.
- (c) The term “**ADEQ**” means the Arkansas Department of Environmental Quality.
- (d) The term “**Director**” means the current Director of the Arkansas Department of Environmental Quality, his successors, designees, and any subsequent entity of the State of Arkansas upon whom the duties of regulation and enforcement of regulations governing solid waste landfills may devolve.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the

[Identify the financial assurance mechanism, either a “performance bond” or a “surety bond”, from which the standby trust fund is established to receive payments. (This paragraph is only applicable to the standby trust agreement.)]

Section 3. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. Schedule A contains, for each facility: ADEQ permit numbers, Arkansas Facility Identification Numbers (AFIN), names, address, and the costs, as established or approved by ADEQ, per facility for Closure and Post-Closure, or portions thereof, for which financial assurance is demonstrated by this Agreement.

Section 4. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, (hereinafter referred to as the "Fund") for the benefit of ADEQ. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. If required, the Fund will be 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 ADEQ.

Section 5. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the ADEQ Director 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 ADEQ Director from the Fund for closure and post-closure expenditures in such amounts as the ADEQ Director specifies in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ADEQ Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 6. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee, and shall conform to the requirements of ADEQ Regulation 22 regarding the dollar amount of the Fund.

Section 7. 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 standby 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:

- (a) 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;
- (b) 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
- (c) The Trustee is authorized to hold cash awaiting investment or distribution not invested for a reasonable time and without liability for the payment of interest thereon.

Section 8. 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 9. 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 10. 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 Standby 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 11. 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 ADEQ Director a statement confirming the value of the Standby Trust. 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 ADEQ Director 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 12. 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 13. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 14. 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 standby trust in a writing sent to the Grantor, the ADEQ Director, 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 15. 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 ADEQ Director shall also receive copies of all instructions to the Trustee from the Grantor.

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 ADEQ Director to the Trustee shall be in writing, signed by the ADEQ Director or his designee, 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 ADEQ 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 ADEQ, except as provided for herein.

Section 16. Notice of Nonpayment. The Trustee shall notify the Grantor and the Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Standby 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 17. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director if the Grantor ceases to exist.

Section 18. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Standby Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director, if the Grantor ceases to exist. Upon termination of the Standby Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 19. 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 Standby Trust, or in carrying out any directions by the Grantor or the ADEQ Director issued in accordance with this Agreement.

The Trustee shall be indemnified and saved harmless by the Grantor or from the Standby 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 20. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Arkansas.

Section 21. 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 by ADEQ.

GRANTOR: _____

By: _____

TRUSTEE: _____

By: _____

CERTIFICATION OF ACKNOWLEDGEMENT

ACKNOWLEDGMENT BY TRUSTEE.

(Bank Name)
STATE OF ARKANSAS
COUNTY OF _____

On this _____ day of _____, 200_ before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to have been on the relevant date the _____ (title, officer, etc.) of _____ (bank), and that he/she, as such, being authorized so to do, executed the Standby Trust Agreement for the purposes therein contained, by signing his/her name in his/her official capacity on the date reflected on the pages where his/her signature appears.

IN WITNESS Whereof I hereunto set my hand and official seal.

NOTARY PUBLIC
(Seal)

My Commission Expires:

ACKNOWLEDGMENT BY GRANTOR.

(Corporation, Partnership, Association, Proprietorship Name)
STATE OF ARKANSAS
COUNTY OF _____

On this _____ day of _____, 200_ before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to have been on the relevant date the _____ (title, officer, etc.) of _____ (Corporation, Partnership, Association, Proprietorship), and that he/she, as such, being authorized so to do, executed the Standby Trust Agreement for the purposes therein contained, by signing his/her name in his/her official capacity on the date reflected on the pages where his/her signature appears.

IN WITNESS Whereof I hereunto set my hand and official seal.

NOTARY PUBLIC
(Seal)

My Commission Expires:

APPROVAL FORM BY THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)

We have reviewed this Standby Trust wording and payment schedule and will approve the establishment of this Standby Trust as meeting our financial assurance requirements.

By: _____

By: _____

Title: _____
Legal Division

Title: _____
Fiscal Division

TRUST PAYMENT FORMULA

(Not applicable if a Standby Trust Agreement)

Regulation 22.1405 – Allowable Mechanisms

(a) Trust Fund

Section (2) Payments into the trust fund must be made annually by the owner or operator (Grantor) over the term of the initial permit or over the remaining life of the permitted facility, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

Section (3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (1) of Regulation 22.1405, divided by the number of years in the pay-in period as defined in the aforementioned paragraph. The amount of subsequent payments must be determined by the following formula:

$$\text{NEXT PAYMENT} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

SCHEDULE A

The following information in this schedule relates to the original standby trust agreement between the _____ (Grantor) and _____ (Trustee). It is intended to give specifics about the facility covered by the standby trust agreements.

Facility Permit Number:

Facility AFIN:

Facility Name and Address:

*
*
*

The following are taken from the most recent AEIR:

Amount of Closure:

Amount of Post-Closure (*If Class 1, Class 3C, or Class 4*)*:

**Reg.22.1403 (c) "Post Closure Trust Fund Guarantee – Owners or operators that are required by law to pay disposal fees into the post closure trust fund (Generally, Class 1, Class 3C, and Class 4 landfills) may elect to provide financial assurance in an amount not less than twenty (20) percent of estimated post-closure maintenance costs through a financial mechanism readily negotiable by the department to cash funds (e.g., letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the department) upon default by the owner and operator of post-closure obligations."*

Total Estimated Post-Closure costs are _____. The amount of post-closure required for financial assurance is 20% of this amount.

SCHEDULE B
(For Standby Trust Agreement)

The following information in this schedule relates to the original standby trust agreement between the Grantor and the Trustee.

It is intended to give specifics about the Surety Bond established to fund this standby trust agreement, if necessary.

Surety Company_____

Address_____

Contact Name_____

Phone Number_____

Bond Number_____

Amount of Bond_____

Effective Date of Bond_____

Closure Cost_____ Post-Closure Cost*_____

Based on 20____ AEIR.

**Reg.22.1403 (c) "Post Closure Trust Fund Guarantee – Owners or operators that are required by law to pay disposal fees into the post closure trust fund (Generally, Class 1, Class 3C, and Class 4 landfills) may elect to provide financial assurance in an amount not less than twenty (20) percent of estimated post-closure maintenance costs through a financial mechanism readily negotiable by the department to cash funds (e.g., letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the department) upon default by the owner and operator of post-closure obligations."*

Total Estimated Post-Closure costs are _____. The amount of post-closure required for financial assurance is 20% of this amount.

*Schedule B should be updated annually and submitted with Financial Assurance and AEIR.

FINANCIAL ASSURANCE CHECKLIST STANDBY TRUST AGREEMENT

Company Name: _____ Permit No.: _____

Standby Trust Agreement: A standby trust agreement allows an owner or operator to set aside money in increments according to a pay-in period. At the end of the pay-in period, the facility will have enough money set aside to cover its financial assurance costs, and will have funds specifically earmarked for closure, post-closure care, and corrective action requirements.

Trustee Name: _____

Trustee Address: _____

Trustee Contact Person/Title: _____

Trustee Contact Phone No.: _____

Trust Fund Effective Date: _____

Number of Years Remaining in Pay-In Period: _____

Current Value of Standby Trust Agreement: _____

Closure Cost Estimate (Agency Approved): _____

Post-Closure Cost Estimate (Agency Approved): _____

Reviewed by: _____

Date: _____

**FINANCIAL ASSURANCE CHECKLIST
TRUST FUNDS FOR CLOSURE AND POST-CLOSURE**

Company Name: _____ Permit No.: _____

YES	NO	QUESTION
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- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Is the trustee an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has an originally signed duplicate of the standby trust agreement been submitted? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the standby trust agreement accompanied by a formal certification of acknowledgment? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the standby trust agreement use wording approved by the Department? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a copy of the standby trust agreement been placed in the facility's operating record? |

Comments: _____

Reviewed by: _____

Date: _____