

December 4, 2013

Mr. Jeffrey Leavey, CHP  
Radiation Safety Officer  
The Pennsylvania State University  
Environmental Health and Safety  
201 Academic Projects Building  
University Park, PA 16802

SUBJECT: NEED FOR A STANDBY TRUST

Dear Mr. Leavey:

On October 2, 2013, U.S. Nuclear Regulatory Commission (NRC) staff had a conference call with staff from Pennsylvania State University (PSU) to discuss questions regarding the need for a standby trust agreement (also termed STA, standby trust, or standby trust fund) in the context of financial assurance for decommissioning; a note summarizing the conference call is on the docket as Reference 1. In concluding the conference call, the NRC staff stated that the subject involves future licensing activities (e.g., annual certification of the self-guarantee), and thus, suggested that the questions be formally sent to the NRC. By letter dated October 10, 2013, PSU formally submitted questions as Reference 2. In the October 10, 2013, letter, PSU identified six instances where the NRC staff's guidance document (Ref. 3) appears to be inconsistent with regulatory requirements (Ref. 4). In the paragraphs to follow, the NRC staff addresses each point of the October 10, 2013, letter.

Pursuant to regulatory requirements (Ref. 4), licensees who use self-guarantees must establish a standby trust fund prior to submitting its self-guarantee agreement. Item F(1) of Reference 4 states, "[a] standby trust to protect public health and safety and the environment must be established for decommissioning costs before the self-guarantee agreement is submitted."

Point 1 (Ref. 2). Page A-9 and A-10, Section A. 1.4.2, Method 2: Surety, Insurance and Guaranty. The citation specifically states that for a surety bond, letter of credit and insurance, each must be accompanied by a standby trust. No such language is present for the self-guarantee.

The language in Section A.1.4.2 of the NRC guidance (Ref. 3) does not expressly state in the self-guarantee paragraph that it must be accompanied by a standby trust. However, Section 4.3.2.6, "Self-Guarantees", gives criteria that a self-guarantee submission should meet to be acceptable to the NRC and states in part, that the standby trust fund meets all applicable NRC requirement. Additionally, Section A.1.4.5, "Standby Trust Funds", on page A-11, states that the "funds drawn from a surety bond, letter of credit, parent company guarantee, self-guarantee, or insurance policy must be placed directly into a standby trust fund if the licensee fails to conduct decommissioning as required."

Point 2 (Ref. 2). Page A-11, Section A.1.4.5, Standby Trust Funds. The first sentence of the citation states that a stand-by trust is needed if the licensee fails to conduct decommissioning as

required. Also, the first bullet in this section references, licensees who elect to use a standby trust fund.

The first sentence of the first paragraph of Section A.1.4.5 of the NRC staff's guidance (Ref. 3) expressly states that funds drawn for certain mechanisms to include a self-guarantee "must be placed directly into a standby trust fund if the licensee fails to conduct decommissioning as required." The primary purpose of a standby trust fund is to be available to accept funds from a particular source in the event of a default by the licensee.

Point 3 (Ref. 2). Page A-94, Section A.9, Self-Guarantees. Next to last paragraph, the citation states that the licensee must provide a written guarantee stating that it will fund and carry out the required decommissioning activities or, upon issuance of an order by the NRC, will set up and fund a trust in the amount of the current decommissioning cost estimates or certified amounts.

In Section 6, "Procedures For Drawing on Financial Assurance Instruments", of the NRC guidance (Ref. 3), page 6-1 outlines the procedures that are used when drawing money from a financial instrument. This section states in part that, "[D]rawing on funds means transferring funds from a surety method, insurance or other guarantee method into a trust fund for later use in decommissioning. These funding methods promise to provide funds when demanded. Financial instruments that may be used for these methods include letters of credit, surety or bonds, parent company guarantees, or self-guarantees. Each of these funding methods requires a standby trust to directly receive the funds drawn from the instrument."

In Section 6.4, "Self-Guarantee", page 6-3 states in part that "[P]ayments by the guarantor must be made to a standby trust fund established at the same time that the guarantee is created."

Point 4 (Ref. 2). Page A-96. Checklist 9A does not list a standby trust. Verify that the standby trust is not listed because it would have already been approved by the NRC and established, if required.

Checklist 9-A on page A-96 of the NRC guidance (Ref. 3) lists the documentation needed for the self-guarantee agreement itself. Checklist 12-A on page A-126 lists the documentation needed for the standby trust agreement, which is a separate document.

Point 5 (Ref. 2). Page A-106, Section A.9.6, Model Self-Guarantee Test for Nonprofit Colleges and Universities that Issue Bonds (Title 10 of the *Code of Federal Regulations* [10 CFR] Part 30, Appendix E). The citation does not list a standby trust. As with number 4 above, verify that the standby trust is not listed because it would have already been approved by the NRC and established, if required.

The regulatory requirement for a standby trust is found under Part 30 to Appendix E, Section III "Self-Guarantee". The financial test in Section A.9.6 of the NRC guidance (Ref. 3), refers to the regulatory language under Part 30 Appendix E, Section II "Financial Test."

Point 6 (Ref. 2). Page A-125 Section A. 12 Standby Trust Funds - (2<sup>nd</sup> paragraph) states that "... a standby trust agreement must be established to receive funds from a surety method (i.e. surety bond or letter of credit) or insurance. Otherwise, if funds are received directly by the NRC, the NRC is required to deposit the funds in the U.S. Treasury as general revenue." The self-guarantee method is not part of this list. It is PSU's interpretation that, with a self-guarantee, the university is certifying that the decommissioning costs will be paid directly to vendors, not to the NRC (as would be the case for letters of credit, etc.), thus there is no need for a standby trust; with a self-guarantee we would never be paying funds directly to the NRC.

The NRC staff acknowledges some inconsistencies between the regulation and the NRC guidance (Ref. 3); the NRC staff can address such inconsistencies in a future revision to the NRC guidance. Nonetheless, pursuant to Part 30 to Appendix E, the regulatory requirement expressly states that a standby trust is required by licensees who use a self-guarantee prior to submission of the self-guarantee agreement. The NRC guidance states in several sections (e.g., A.1.4.5) that self-guarantee agreements must have funds placed directly into a standby trust in the event that the licensee cannot meet its decommissioning obligations.

In accordance with 10 CFR 2.390 of the NRC's "Rule of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact me at (301) 287-0651, or via e-mail at [Christopher.Ryder@nrc.gov](mailto:Christopher.Ryder@nrc.gov).

Sincerely,

**/RA/**

Christopher Ryder, Licensing Project Manager  
Fuel Manufacturing Branch  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Point 6 (Ref. 2). Page A-125 Section A. 12 Standby Trust Funds - (2<sup>nd</sup> paragraph) states that "... a standby trust agreement must be established to receive funds from a surety method (i.e. surety bond or letter of credit) or insurance. Otherwise, if funds are received directly by the NRC, the NRC is required to deposit the funds in the U.S. Treasury as general revenue." The self-guarantee method is not part of this list. It is PSU's interpretation that, with a self-guarantee, the university is certifying that the decommissioning costs will be paid directly to vendors, not to the NRC (as would be the case for letters of credit, etc.), thus there is no need for a standby trust; with a self-guarantee we would never be paying funds directly to the NRC.

The NRC staff acknowledges some inconsistencies between the regulation and the NRC guidance (Ref. 3); the NRC staff can address such inconsistencies in a future revision to the NRC guidance. Nonetheless, pursuant to Part 30 to Appendix E, the regulatory requirement expressly states that a standby trust is required by licensees who use a self-guarantee prior to submission of the self-guarantee agreement. The NRC guidance states in several sections (e.g., A.1.4.5) that self-guarantee agreements must have funds placed directly into a standby trust in the event that the licensee cannot meet its decommissioning obligations.

In accordance with 10 CFR 2.390 of the NRC's "Rule of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact me at (301) 287-0651, or via e-mail at [Christopher.Ryder@nrc.gov](mailto:Christopher.Ryder@nrc.gov).

Sincerely,

/RA/

Christopher Ryder, Licensing Project Manager  
Fuel Manufacturing Branch  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

**DISTRIBUTION:**

FCSS r/f      XYin, NRR      EUllrich, RI

**ML13323A110**

<b>OFFICE</b>	NMSS/FCSS/FMB	NMSS/FCSS/FMB	NMSS/FCSS/FMB
<b>NAME</b>	CRyder	TBrockington	RJohnson
<b>DATE</b>	11/20/13	11/21/13	12/4/13

**OFFICIAL RECORD COPY**

## References

1. Note from C. Ryder, NRC, "Need for a Standby Trust Fund Regarding Financial Assurance For Decommissioning", October 21, 2013. ADAMS accession number ML13291A217.
2. Letter from J. Leavey, Pennsylvania State University, "Request For NRC Clarification On The Need For A Standby Trust", October 10, 2013. ADAMS accession number ML13295A426.
3. U.S. NRC, "Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness", NUREG-1757, Vol. 3, Rev 1, February 2012. ADAMS accession number ML12048A683.
4. Title 10 of the Code of Federal Regulations (10CFR) Part 30, Appendix E, "Criteria Relating to Use of Financial Tests and Self-Guarantee For Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals". 63 FR 29542, June 1, 1998; 76 FR 35568 Jun. 17, 2011.