



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 25, 2017

MEMORANDUM TO: John Tappert, Director
Division of Decommissioning, Uranium Recovery,
and Waste Programs,
Office of Nuclear Material Safety
and Safeguards

THROUGH: Christopher McKenney, Chief
Performance Assessment Branch
Division of Decommissioning, Uranium Recovery,
and Waste Programs
Office of Nuclear Material Safety
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FROM: Reginald Augustus, Financial Project Manager */RA/*
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SUBJECT: DETERMINATION OF WHETHER WYOMING'S DEPARTMENT
OF ENVIRONMENTAL QUALITY'S FIDUCIARY FUND
COMPLIES WITH NUCLEAR REGULATORY COMMISSION
REGULATORY REQUIREMENTS

Wyoming's Department of Environmental Quality submitted a letter to the Nuclear Regulatory Commission (NRC), demonstrating that its use of a fiduciary fund for the receipt and direction of funds for decommissioning costs is equivalent to a standby trust account, as required by 10 CFR Part 40, Appendix A, Criterion 9(i). Enclosed is the NRC staff's review and determination that WDEQ's fiduciary fund meets the intent of 10 CFR Part 40, Appendix A, Criterion 9(i). Please contact Reginald Augustus if you have any specific questions regarding NRC staff's input.

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Enclosure:
Compliance Determination Input

SUBJECT: DETERMINATION OF WHETHER WYOMING'S DEPARTMENT
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REGULATORY REQUIREMENTS **DATE** October 25, 2017

ADAMS Accession Number: ML172234A454

OFC	DUWP/PAB	DUWP/MDB	DUWP/PAB	OGC
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DATE	8/22/17	8/23/17	8/23/17	10/25/17

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**DETERMINATION OF WHETHER WYOMING'S DEPARTMENT OF
ENVIRONMENTAL QUALITY'S FIDUCIARY FUND COMPLIES WITH
NUCLEAR REGULATORY COMMISSION FINANCIAL ASSURANCE REQUIREMENTS**

Nuclear Regulatory Commission (NRC) staff conducted a compliance review of the State of Wyoming's fiduciary fund in order to determine if it complies with the financial assurance requirements in Title 10 *Code of Federal Regulations* (10 CFR) Part 40, Appendix A, Criterion 9(i). The relevant language in 10 CFR Part 40, Appendix A, Criterion 9(i) contains the following requirement:

If a trust fund is not used, then a standby trust must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the Commission.

A standby trust fund is a trust fund that has not yet been funded but is ready to accept monies in the event that they are received from a particular source such as a surety bond, letter of credit, parent company guarantee, or other insurance.¹ The monies in the standby trust fund are legally separated for a specific purpose and are administered by a trustee who has a fiduciary responsibility to keep or use the property in the fund for the benefit of the beneficiary. Pursuant to 10 CFR Part 40.36(e)(2)(ii), an acceptable trustee includes "an appropriate State or Federal government agency, or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency." Once funded, a standby trust fund would be available to pay costs associated with decommissioning.

For Wyoming uranium recovery licensees, the State has a fiduciary fund that it believes is equivalent to the standby trust required in Criterion 9(i).² By letter dated April 20, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17062A962), NRC staff, among other things, requested clarifying information from WDEQ (see comment 46, pp. 14-15) sufficient to demonstrate that the State's fiduciary fund mechanism is equivalent to the standby trust fund mechanism required in 10 CFR Part 40, Appendix A, Criterion 9(i). By letter dated May 26, 2017 (ADAMS Accession No. ML17177A267), WDEQ submitted its response detailing why it believed that its fiduciary fund is equivalent to a standby trust.

In its response, WDEQ indicated that the State uses a fiduciary fund in lieu of a standby trust fund. WDEQ stated that (i) its fiduciary fund is designated as a fund with resources that are adequate for paying the decommissioning costs of the site(s) for which the funds have been collected; (ii) the State has the ability to both hold and use the funds for decommissioning purposes; and (iii) the State does not have the authority to divert funds to any other State projects.

¹ The standby trust fund definition was derived from NUREG-1757. Vol. 3, Rev. 1, Appendix A.12, Page A-125 (ADAMS ML12048A683) and the Branch Technical Position on Financial Assurances for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities, Section 3.6, Page 19 (ML020300533).

² The State of Wyoming's belief that its fiduciary fund is equivalent to a standby trust fund came from conversations between NRC and Wyoming as part of Wyoming's agreement state application. The issues discussed were formally provided in the State's May 26, 2017 letter to NRC (ML17177A267).

WDEQ also indicated in its response that the State of Wyoming's fiduciary fund, known as Fund 487, was created to account for cash received in the form of reclamation/remediation bonds to pay for specific site decommissioning costs. This is similar to the purpose of a standby trust account (STA) fund which is also established in order to accept monies to pay for site specific costs of decommissioning.

Additionally, the State indicated in its response that it holds cash collected from financial assurance instruments in Fund 487 on behalf of beneficiaries, and the cash is designated for a specific purpose. This is consistent with the purpose of an STA fund which is held in trust for the benefit of others and for a specific decommissioning purpose.

Finally, the State indicated in its response that it will not have the authority to divert funds from Fund 487 to other State projects. Disposition of cash from Fund 487 can only occur under the following circumstances: (i) a release of the bond due to the State's acceptance of the permittee's reclamation/remediation; or (ii) when funds collected due to bond forfeiture are dispersed to pay for costs of decommissioning activities. This again is similar to the STA fund where monies are used for a specific decommissioning activity and, when all reclamation is completed and approved, funds leftover are returned to the licensee.

The NRC staff has reviewed Wyoming's response letter and, for the reasons discussed above, the staff finds that the State of Wyoming fiduciary fund (Fund 487) is an acceptable alternative for meeting the requirement of Part 40, Appendix A, Criterion 9(i).