

ATTACHMENT 23

AR # 316

E-mail re: Revised Trust Agreement

316

McDonald, Jeffrey

From: McDonald, Jeffrey
Sent: Friday, March 28, 2014 1:31 PM
To: 'Lucinda Swartz'
Cc: Gilmore, Tyler J; Greenhagen, Andrew; Krueger, Thomas; McAuliffe, Mary; Bayer, MaryRose
Subject: RE: Revised Trust Agreement

Importance: High

Lucy,
As I stated in my phone message to you just now, there are a number of problems with the insurance policy as it currently stands. We don't think we can recommend to our management that it would be an acceptable demonstration of financial responsibility. If we had a few more weeks, we might be able to negotiate some revised language, but if time is of the essence, we think that the FGA should use a trust fund (at least for the near future) for demonstrating FR. If you have another option to consider, let me know, but redrafting our documents will take more time.
Please call me at your earliest convenience,
Jeff

Jeffrey R. McDonald, Geologist
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(312) 408-2240 [direct fax]
mcdonald.jeffrey@epa.gov

From: Lucinda Swartz [mailto:lswartz@futgen.org]
Sent: Friday, March 28, 2014 8:27 AM
To: McDonald, Jeffrey
Cc: Gilmore, Tyler J; Greenhagen, Andrew; Penny Goodwyn
Subject: Re: Revised Trust Agreement

Good morning, Jeff:

We will only go this route if EPA is still uncomfortable after reviewing the materials from the insurance company. We look forward to your comments on what was sent last night. Insurance is still our strong preference for emergency and remedial response.

The revised trust agreement has not been fully executed yet (the bank has not signed and won't until I give the word); I just needed to get Ken's signature yesterday to make sure we could execute today if necessary.

Tyler and I will both be traveling for a good part of the day, but we will keep in touch as best we can. If you can't reach us and have insurance questions, please contact Penny Goodwyn directly.

Thank you,

Lucy

Lucinda Low Swartz, Esq.
Chief Operating Officer
FutureGen Industrial Alliance, Inc.

Telephone: 301/933-4668
Email: lswartz@futuregenalliance.org

From: <McDonald>, Jeffrey <mcdonald.jeffrey@epa.gov>
Date: Friday, March 28, 2014 8:19 AM
To: Lucinda Low Swartz <lswartz@futgen.org>
Cc: "Gilmore, Tyler J" <Tyler.Gilmore@pnnl.gov>, "Greenhagen, Andrew" <Greenhagen.Andrew@epa.gov>
Subject: RE: Revised Trust Agreement

Yes, many revisions. I heard back from people and they would probably have wanted to alter the language a little more from what you sent, they are ok with it and so am I. Can I assume then that FGA will go this route instead of the insurance policy?

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From: Lucinda Swartz [<mailto:lswartz@futgen.org>]
Sent: Thursday, March 27, 2014 3:19 PM
To: McDonald, Jeffrey
Subject: Re: Revised Trust Agreement

I just got this message, and Ken has already signed the revised agreement. Can you live with what that? Here is what I sent him.

Lucy

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From: <McDonald>, Jeffrey <mcdonald.jeffrey@epa.gov>
Date: Thursday, March 27, 2014 12:58 PM
To: Lucinda Low Swartz <lswartz@futgen.org>, "Gilmore, Tyler J" <Tyler.Gilmore@pnnl.gov>, John Buchovecky <JJB@vnf.com>, "tom.maple1@usbank.com" <tom.maple1@usbank.com>
Cc: "Greenhagen, Andrew" <Greenhagen.Andrew@epa.gov>, "Bayer, MaryRose" <Bayer.MaryRose@epa.gov>, "McAuliffe, Mary" <mcauliffe.mary@epa.gov>, "Krueger, Thomas" <krueger.thomas@epa.gov>
Subject: RE: Revised Trust Agreement

Some slight last minute revisions.

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From: McDonald, Jeffrey
Sent: Thursday, March 27, 2014 12:03 PM
To: 'Lucinda Swartz'; Gilmore, Tyler J; John Buchovecky; tom.maple1@usbank.com
Cc: Gilmore, Tyler J; Greenhagen, Andrew; Bayer, MaryRose; McAuliffe, Mary; Krueger, Thomas
Subject: RE: Revised Trust Agreement

Lucy,

Thanks. The \$26.7M was developed using EPA's Cost Tool. EPA's ran multiple calculations and for purposes of the FR proposes using an estimate in the middle of the range of values calculated. Those analyses will be part of the administrative record. The Cost Tool is "The Cost Estimation Tool for the Class VI Financial Responsibility Demonstrations."

The changes you made were ok.

If you decide to go with the insurance, we'd like to find out some more about how much of the \$100M policy covers EPA requirements in the ERRP and how much if for other things. Would EPA be the first in line to use any portion of the \$100M for the ERRP related costs prior to others that might be covered under the policy?

Thanks,

Jeff

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From: Lucinda Swartz [<mailto:lswartz@futgen.org>]
Sent: Thursday, March 27, 2014 11:19 AM
To: McDonald, Jeffrey; Gilmore, Tyler J; John Buchovecky; tom.maple1@usbank.com
Cc: Gilmore, Tyler J; Greenhagen, Andrew; Bayer, MaryRose; McAuliffe, Mary; Krueger, Thomas
Subject: Re: Revised Trust Agreement
Importance: High

Hi Jeff,

I made some tweaks to the EPA edits, although I believe I have not changed the meaning. To save time, I have not circulated my tweaks to Tyler, the bank, and the Alliance counsel in advance – they may have other comments. I highlighted my changes in yellow.

Also, could you provide the basis for the \$26.7 estimate?

Thanks,

Lucy

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From: <McDonald>, Jeffrey <mcdonald.jeffrey@epa.gov>
Date: Thursday, March 27, 2014 9:13 AM
To: Lucinda Low Swartz <lswartz@futgen.org>
Cc: "Gilmore, Tyler J" <Tyler.Gilmore@pnnl.gov>, "Greenhagen, Andrew" <Greenhagen.Andrew@epa.gov>, "Bayer, MaryRose" <Bayer.MaryRose@epa.gov>, "McAuliffe, Mary" <mcauliffe.mary@epa.gov>, "Krueger, Thomas" <krueger.thomas@epa.gov>
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We took yours and made some changes. Importantly, it includes a higher amount to cover the ERRP. We are ok with this version. Let us know what you think.

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From: Lucinda Swartz [<mailto:lswartz@futgen.org>]
Sent: Thursday, March 27, 2014 7:16 AM
To: McDonald, Jeffrey
Cc: Gilmore, Tyler J
Subject: Revised Trust Agreement

Good morning, Jeff:

Not to bug you, but do you think you'll be able to provide input about revised trust fund language this morning? The Alliance wants to be able to execute Plan B if necessary, but that would require the Alliance to sign the document today in order for the bank to sign it tomorrow, and get a hard copy to EPA on Monday.

Thanks very much,

Lucy

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