

From: [Kalman, Kenneth](#)
To: [Lux, Jeff J.](#); [Halliburton, Bill](#)
Cc: [Przygodzki, Roman](#); [Kline, Kenneth](#); [Michalak, Paul](#)
Subject: NRC staff comments on Standby Trust Agreement
Date: Thursday, June 09, 2011 4:36:00 PM
Attachments: [Draft CERT Standby Trust Agreement 050211.docx](#)

Bill/Jeff,

The NRC staff reviewed your draft Standby Trust Agreement and has the following comments:

- The document is called a “standby trust fund” and references “standby trust” in several places. As it will be funded with the cash collateral from the LOC, it should be called a “Trust Fund.”
- Document does not reference who the Trustee for this account would be (e.g. Bank of America, Wells Fargo, etc.), therefore, I cannot verify that the Trustee is acceptable. Based on Bill’s below note, it looks like JP Morgan will be the Trustee.
- As this account will be funded, the second “WHEREAS” clause could be modified to state that the funded trust fund would provide financial assurance. (see attached markup)
- The first paragraph of the document defines the Grantor and Trustee. It might be helpful for the document to explain that the Cimarron Environmental Response Trust (who is the Grantor) was established by a bankruptcy settlement agreement.
- Section 5 describes when payments from the Trust may be made. Consider the following changes:
 - Section 56(c)(ii) of the Settlement Agreement contains a clause that “the assets of the Cimarron Standby Trust shall not be accessed by the Cimarron Trustee until further order of NRC.” Similar text should be used in Section 5 of the draft document, so that the bankers are also aware of this requirement.
 - Section 5 essentially states that funds may only be withdrawn for activities undertaken pursuant to an approved Decommissioning Plan (DP). Because a DP has not yet been submitted or approved, it would appear that funds may not be withdrawn from this Trust Fund. In addition, as previously discussed, it is unclear whether the funds in the Federal Environmental Cost Account may be used to create a DP. Therefore, consider adding the following sentence in the event that the Federal Environmental Cost Account cannot be used to create a DP: “Upon approval of NRC, funds may be withdrawn for the preparation of a decommissioning plan.”
 - Long term surveillance and control may be needed as well. We may want to add the following to this section as well: “Upon approval of NRC, funds may be withdrawn for the long term surveillance and control of the licensed site”
- Similar to the above, Section 2 states that the Trust Fund pertains to the costs of

decommissioning. Because a DP has not yet been submitted or approved, funds might not be withdrawn from this Trust Fund for the creation of a DP. Consider adding the following sentence in the event that the Federal Environmental Cost Account cannot be used to create a DP: "Upon approval of NRC, this Agreement may also pertain to the costs of preparing a decommissioning plan."

Also, these funds might need to be used for long term surveillance. Consider adding: "Upon approval of NRC, this Agreement may also pertain to the long term surveillance and control of the licensed site."

- Section 16 of the document states that "Upon termination of the trust, all remaining trust property...shall be delivered to the Grantor or its successor." Essentially, this states that upon completion of decommissioning and termination of this trust, any remaining funds could be given back to EPM. DOJ attorneys note that the standby trust could provide that any remaining funds after decommissioning be transferred to another account. Consider having the trust agreement state: "Consistent with Paragraph 55(e)(ii)(b) of the Settlement Agreement, the Trustee is authorized, in consultation with the Grantor and approval of NRC, to transfer from time to time any or all the assets of the Trust to the Cimarron Trust Accounts in Paragraph 55 of the Settlement Agreement.
- Schedule B currently states that "no property is currently deposited in the standby trust fund." We may want to change this to stated that a cash deposit of \$3.6M constitutes the property of the trust.

We can telcom with you next week if you would like to discuss these comments,

Thank you,

Ken