

April 18, 2023

U.S. Nuclear Regulatory Commission
Chief Financial Officer
11555 Rockville Pike
Rockville, MD 20852-2738

**Re: Application for Exemption of Fees Pursuant to 10 CFR 170.12
Docket No. 07000925; License No. SNM-928**

Dear Sirs:

Solely as Trustee for the Cimarron Environmental Response Trust (CERT), Environmental Properties Management LLC (EPM) is advising the U. S. Nuclear Regulatory Commission (NRC), as a beneficiary of the CERT, that its beneficial interest in recovery of oversight fees conflicts with its beneficial interest in the decommissioning of the Cimarron site and termination of special nuclear materials license SNM-928.

The February 14, 2011, Environmental Response Trust Agreement (Cimarron) provides for recovery of NRC fees from CERT accounts. Paragraph 2.2.1 states that one of the objectives of the CERT is to perform all "... activities pursuant to the terms and conditions of the Cimarron License, including the preparation and implementation of an NRC-approved decommissioning plan and groundwater remediation plan, and all Environmental Actions required under federal or state law ...".

Unfortunately, based on current remediation cost estimates, the CERT accounts do not provide sufficient funding to achieve compliance with all federal and state requirements. The State of Oklahoma has agreed to defer actions that would complete remediation to State cleanup criteria for the sole purpose of achieving termination of license SNM-928.

All that remains to achieve license termination is the removal of uranium from groundwater. It is not possible to achieve this goal if the NRC continues to recover oversight fees, which have constituted nearly one fourth of all decommissioning expenditures since 2011. Consequently, EPM is requesting exemption of NRC from pursuant to 10 CFR 170.12.

10 CFR 170.11(b) states, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections."

EPM believes it is clearly in the public interest to reduce the concentration of enriched uranium in groundwater at the Cimarron site to concentrations that are less than the NRC Criterion

stipulated in NRC license SNM-928, and to the extent achievable if not less than the NRC Criterion.

Prior to the full funding of the Trust accounts, the NRC deferred recovery of costs, with the intent that when the Trust accounts received additional funding from ongoing litigation, the deferred costs would be recovered. When additional funding was received, the NRC invoiced the Trust for all deferred fees. At a minimum, EPM requests that the NRC resume the policy of deferring all fees until the decommissioning of the site is complete.

The CERT is not an operating business that can generate additional funds to address an anticipated shortfall in funding. As both regulator and beneficiary of the CERT, the NRC has a unique role; as beneficiary, the NRC can decide whether to utilize Trust funds to recover fees or to complete the decommissioning of the site.

Attachment 1 provides background information which describes the formation of the CERT, the impact of NRC fee recovery on expenditures, and the basis for EPM's assertion that exemption or deferral of NRC fees is necessary for EPM to complete the decommissioning of the site.

If you have any questions or desire clarification, please contact me at jlux@envpm.com or (405) 642-5152.

Sincerely,



Bill Halliburton
Trust Administrator



Jeff Lux
Project Manager

cc: Jane Marshall, NRC
Pamela Dizikes, Office of General Counsel, DEQ
NRC Public Document Room
DEQ vcpsubmittals@deq.ok.gov

ATTACHMENT 1
APPLICATION FOR EXEMPTION FROM NRC FEES
SUPPORTING INFORMATION

ATTACHMENT 1
Application for Exemption from Fees Pursuant to 10 CFR 170.12
Supporting Information

The Formation of the Cimarron Environmental Response Trust

The previous licensee, Cimarron Corporation, a subsidiary of Tronox Incorporated (Tronox), notified the NRC that it had filed for relief under Chapter 11 of the U.S. Bankruptcy Code in a letter dated January 12, 2009.

Approximately two years later, on February 14, 2011, Tronox and its subsidiaries, numerous federal and state agencies, and the Navajo Nation executed a Consent Decree and Environmental Settlement Agreement (the Agreement). The Agreement created six Trusts, including the Cimarron Environmental Response Trust (the CERT). NRC License SNM-928 was transferred from Cimarron Corporation to the CERT.

For the remediation of the Cimarron Site, the Agreement established four accounts, initially funded by Tronox and subsequently by a settlement agreement with the Kerr-McGee Corporation and certain of its affiliates (“New Kerr-McGee”), and their parent Anadarko Petroleum Corporation, in a fraudulent conveyance case brought by the United States and co-plaintiff Anadarko Litigation Trust (the “Trust”) in the bankruptcy of Tronox Inc. and its subsidiaries (Tronox).

The NRC (on behalf of the United States) and the Oklahoma Department of Environmental Quality (DEQ) (on behalf of the State of Oklahoma) are the primary beneficiaries of the CERT. The Agreement established the following three Trust accounts for which the NRC and the DEQ are both beneficiaries:

- Cimarron Trust Administrative Account (Administrative Account)
- Cimarron Trust Federal Environmental Cost Account (herein, State Account)
- Cimarron Trust State Environmental Cost Account (herein, Federal Account)

A Letter of Credit held by the previous licensee was called in to create a Cimarron Standby Trust Fund, for which the NRC is the sole beneficiary.

Decommissioning/remediation costs are to be funded by the Federal Account and the State Account. Theoretically, State Account funds are to be used to achieve State criteria and Federal Account funds are to be used to achieve Federal criteria. Because reducing the concentration of uranium in groundwater represents progress toward achieving both Federal and State criteria, the NRC and the DEQ have agreed that both accounts will fund the decommissioning of the site. The DEQ has agreed to defer remediation of other contaminants for now to preserve as much funding as possible to achieve termination of special nuclear materials license SNM-928.

The purpose for the Standby Trust Fund was not specifically defined, and EPM has included that account in the available funding for decommissioning.

Decommissioning Expenditures and the Impact of NRC Fee Recovery

As of the end of 2022, the CERT costs have totaled over \$27,000,000 for regulatory oversight fees, site characterization, remedial alternative evaluation, and preparation of decommissioning plans to achieve license termination. Specifically, NRC fees for that time period exceed \$6,200,000, or 23% of the total decommissioning costs. Exhibit A provides a tabulation of decommissioning costs and NRC fees from the time the CERT was created through the end of 2022.

Although EPM does not assume that NRC fees will continue to represent such a significant portion of decommissioning costs, projected NRC fees represent the greatest single factor that jeopardizes the likelihood of completing the decommissioning of the site.

Basis for Asserting that Decommissioning Could be Completed with NRC Fee Exemption or Deferral

EPM submitted a decommissioning plan for the Cimarron site in November 2022. The decommissioning plan included a decommissioning cost estimate in accordance with NUREG-1757, “Consolidated Decommissioning Guidance”. EPM believes the decommissioning plan can be approved by the end of 2024 and construction can be completed by the end of 2025.

Calculation of the rate of decline of concentrations, based on groundwater flow models which have been reviewed by NRC personnel, provided the basis for a groundwater remediation schedule. Exhibit B presents four schedules from the decommissioning plan:

- Figure 9-1, “Pre-Construction Schedule”
- Figure 9-2, “Construction Schedule”
- Figure 9-3, “Remediation Schedule”
- Figure 9-4, “Post-Remediation Schedule”

Figure 9-3 shows that the license criteria for groundwater (the NRC Criterion) is projected to be achieved in the second quarter of 2038.

Exhibit C presents two tables based on Table 16-5 of the decommissioning plan, “Cost Summary – Rev 0”. Both tables present the anticipated cost for pre-construction and construction activities, groundwater remediation, and post-remediation activities. The tables show the funds available when the decommissioning plan was submitted, the annual cost in 2022 dollars, and the anticipated depletion of available funds based on a 1% return on invested funds and a 3% escalation rate.

The first table in Exhibit C, “Decommissioning Cost Estimate Including NRC Fees” shows that the impact of NRC fees results in the exhaustion of funds approximately two years before the NRC Criterion is achieved. The second table in Exhibit C, “Decommissioning Cost Estimate Eliminating NRC Fees”, shows that exemption from NRC fees indicates that funding may be sufficient to achieve the NRC Criterion.

EXHIBIT A
NRC FEES AS A PERCENTAGE OF DECOMMISSIONING EXPENDITURES

**CIMARRON ENVIRONMENTAL RESPONSE TRUST
NRC FEES AS A PERCENTAGE OF DECOMMISSIONING EXPENDITURES**

Year	Federal Account Expenditures	State Account Expenditures	Total Expenditures	NRC Fees	
					% of Total Expenditures
2011	\$502,052	\$30,845	\$532,897	\$190,071	35.7
2012	\$655,531	\$57,842	\$713,373	\$63,497	8.9
2013	\$987,572	\$86,190	\$1,073,762	\$1,781	0.2
2014	\$1,186,605	\$72,953	\$1,259,558	\$17,438	1.4
2015	\$1,833,234	\$191,027	\$2,024,260	\$173,131	8.6
2016	\$1,550,242	\$84,100	\$1,634,342	\$701,640	42.9
2017	\$3,915,437	\$251,299	\$4,166,736	\$2,565,927	61.6
2018	\$5,306,841	\$173,162	\$5,480,003	\$497,906	9.1
2019	\$3,531,033	\$209,350	\$3,740,383	\$777,280	20.8
2020	\$2,581,705	\$131,995	\$2,713,700	\$605,374	22.3
2021	\$1,835,848	\$82,759	\$1,918,607	\$339,903	17.7
2022	\$1,660,489	\$114,774	\$1,775,262	\$274,315	15.5
Cumulative	\$25,546,588	\$1,486,296	\$27,032,884	\$6,208,261	23.0

Note: Beginning Q3 2012, the NRC did not charge the Trust for recovery of all fees.

In 2018, the NRC billed the Trust for \$2,168,844.50 to recover fees not previously charged.

EXHIBIT B

FROM FACILITY DECOMMISSIONING PLAN – REV 3

- Figure 9-1, “Pre-Construction Schedule”
- Figure 9-2, “Construction Schedule”
- Figure 9-3, “Remediation Schedule”
- Figure 9-4, “Post-Remediation Schedule”

Preparer: E. Dulle; Date: 08/31/22
Reviewer: J. Hesemann; Date: 08/31/22

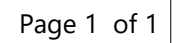


Figure 9-2 Revision 0
Construction Schedule

Preparer: E. Dulle; Date: 08/31/22
Reviewer: J. Hesemann; Date: 08/31/22

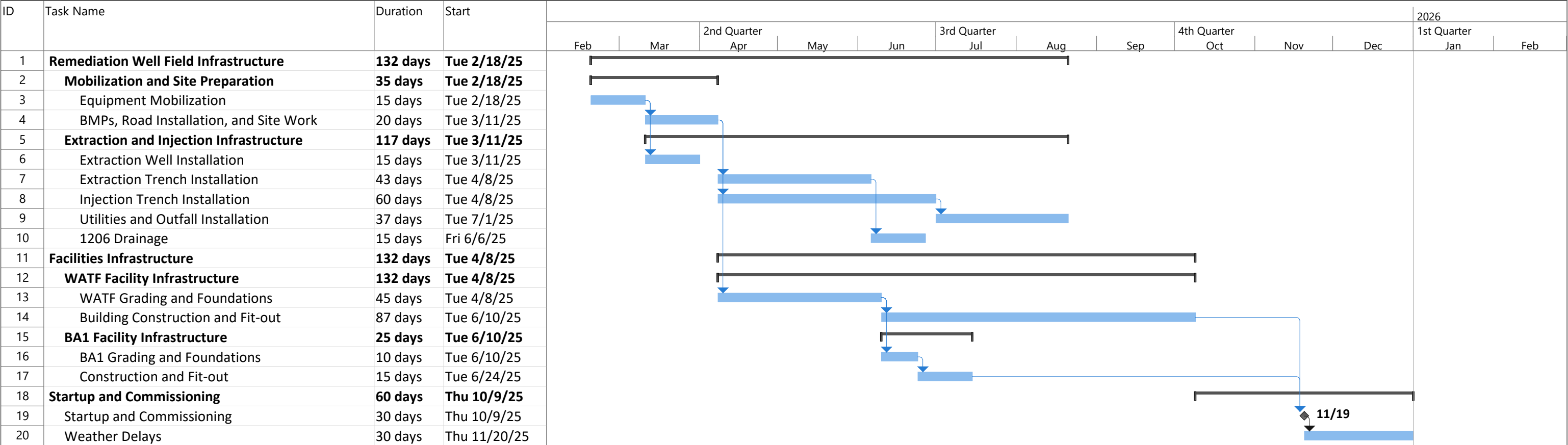


Figure 9-4 - Revision 0
Post-Remediation Schedule

Preparer: E. Dulle; Date: 09/29/22
Reviewer: J. Hesemann; Date: 09/30/22

	2038						2039												2040													
	Q3			Q4			Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4				
	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D		
Post-Remediation Monitoring																																
1 st Quarter Sample, Analyze, Q-Review																																
2 nd Quarter Sample, Analyze, Q-Review																																
3 rd Quarter Sample, Analyze, Q-Review																																
4 th Quarter Sample, Analyze, Q-Review																																
5 th Quarter Sample, Analyze, Q-Review																																
6 th Quarter Sample, Analyze, Q-Review																																
7 th Quarter Sample, Analyze, Q-Review																																
8 th Quarter Sample, Analyze, Q-Review																																
Dismantle & Dispose of Material																																
Sample & Analyze Resin & Filter Media																																
Demobilize/Ship Filter Systems																																
Dispose/Ship Resin																																
Demobilize/Ship Resin Processing System																																
Demobilize/Ship Ion Exchange Systems																																
Demobilize/Ship Pumps, Tanks, Etc.																																
Remove/Ship Wells, Piping, Utilities																																
Final Status Survey																																
Draft & Submit Final Status Survey Plan																																
NRC Review																																
Finalize Final Status Survey Plan																																
Conduct Final Status Survey																																
Prepare Final Status Survey Report																																
NRC Review																																
Finalize Final Status Survey Report																																
License Termination Process																																
Prepare Dose Model																																
NRC Review																																
Finalize Dose Model																																
Apply for License Termination																																
Terminate SNM-928																																

Figure 9-4 - Revision 0
Post-Remediation Schedule

Preparer: E. Dulle; Date: 09/29/22
Reviewer: J. Hesemann; Date: 09/30/22

	2041												2042												2043					
	Q1			Q2			Q3			Q4			Q1			Q2			Q3			Q4			Q1			Q2		
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
Post-Remediation Monitoring																														
1 st Quarter Sample, Analyze, Q-Review																														
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7 th Quarter Sample, Analyze, Q-Review																														
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Demobilize/Ship Resin Processing System																														
Demobilize/Ship Ion Exchange Systems																														
Demobilize/Ship Pumps, Tanks, Etc.	P																													
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Apply for License Termination																														
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EXHIBIT C

DECOMMISSIONING COST ESTIMATE

- Decommissioning Cost Estimate Including NRC Fees
- Decommissioning Cost Estimate Eliminating NRC Fees

**CIMARRON ENVIRONMENTAL RESPONSE TRUST
DECOMMISSIONING COST ESTIMATE INCLUDING NRC FEES**

Table 16-5a - Costs in 2022 Dollars

Description	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
License Compliance	\$378,000	\$765,000	\$765,000	\$730,000	\$880,000	\$850,000	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000
NRC Fees	\$400,000	\$800,000	\$800,000	\$400,000	\$400,000	\$280,000	\$240,000	\$240,000	\$240,000	\$240,000	\$240,000
Decomissioning	\$583,000	\$2,446,000	\$1,384,000	\$24,038,750	\$1,850,000	\$1,785,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000
ODEQ Fees	\$15,000	\$30,000	\$30,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000
Total Annual Cost	\$1,376,000	\$4,041,000	\$2,979,000	\$25,204,750	\$3,166,000	\$2,951,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000

Table 16-5b - 3% Annum Escalation

Description	Year --->	1	2	3	4	5	6	7	8	9	10
License Compliance	\$378,000	\$787,950	\$811,589	\$797,691	\$990,448	\$985,383	\$1,003,004	\$1,033,094	\$1,064,087	\$1,096,009	\$1,128,890
NRC Fees	\$400,000	\$824,000	\$848,720	\$437,091	\$450,204	\$324,597	\$286,573	\$295,170	\$304,025	\$313,146	\$322,540
Decomissioning	\$583,000	\$2,519,380	\$1,468,286	\$26,267,791	\$2,082,191	\$2,069,304	\$2,006,008	\$2,066,188	\$2,128,174	\$2,192,019	\$2,257,780
ODEQ Fees	\$15,000	\$30,900	\$31,827	\$39,338	\$40,518	\$41,734	\$42,986	\$44,275	\$45,604	\$46,972	\$48,381
Total Annual Cost	\$1,376,000	\$4,162,230	\$3,160,421	\$27,541,911	\$3,563,361	\$3,421,018	\$3,338,570	\$3,438,727	\$3,541,889	\$3,648,146	\$3,757,590
Initial Available Funds (7/1/2022)	\$71,462,410										
Year-End Available Funds	\$70,443,722	\$66,985,929	\$64,495,367	\$37,598,410	\$34,411,033	\$31,334,126	\$28,308,897	\$25,153,259	\$21,862,902	\$18,433,385	\$14,860,129

Table 16-5a - Costs in 2022 Dollars

Description	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
License Compliance	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000	\$703,962	\$567,924	\$567,924	\$467,924	\$253,962	\$126,981
NRC Fees	\$240,000	\$240,000	\$240,000	\$240,000	\$240,000	\$220,000	\$200,000	\$200,000	\$200,000	\$200,000	\$100,000
Decomissioning	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,180,000	\$1,040,550	\$241,100	\$940,550	\$1,380,000	\$205,000	\$115,000
ODEQ Fees	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$33,000	\$30,000	\$30,000	\$30,000	\$30,000	\$15,000
Total Annual Cost	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,296,000	\$1,997,512	\$1,039,024	\$1,738,474	\$2,077,924	\$688,962	\$356,981

Table 16-5b - 3% Annum Escalation

Description	11	12	13	14	15	16	17	18	19	20	21
License Compliance	\$1,162,756	\$1,197,639	\$1,233,568	\$1,270,575	\$1,308,693	\$1,129,652	\$938,692	\$966,853	\$820,508	\$458,684	\$236,222
NRC Fees	\$332,216	\$342,183	\$352,448	\$363,022	\$373,912	\$353,035	\$330,570	\$340,487	\$350,701	\$361,222	\$186,029
Decomissioning	\$2,325,513	\$2,395,278	\$2,467,137	\$2,541,151	\$1,838,402	\$1,669,777	\$398,502	\$1,601,223	\$2,419,838	\$370,253	\$213,934
ODEQ Fees	\$49,832	\$51,327	\$52,867	\$54,453	\$56,087	\$52,955	\$49,585	\$51,073	\$52,605	\$54,183	\$27,904
Total Annual Cost	\$3,870,318	\$3,986,427	\$4,106,020	\$4,229,201	\$3,577,093	\$3,205,420	\$1,717,348	\$2,959,636	\$3,643,652	\$1,244,342	\$664,090
Initial Available Funds (7/1/2022)											
Year-End Available Funds	\$11,138,412	\$7,263,369	\$3,229,983	(\$966,919)	(\$4,553,681)	(\$7,804,638)	(\$9,600,033)	(\$12,655,669)	(\$16,425,878)	(\$17,834,479)	(\$18,676,913)

Notes:

\$71,189,722 is the funding available in the Federal, State and Standby Trust Accounts as of 9/30/2022.

Table 16-5a was created by taking the costs from Tables 16-4 through 16-4 (adjusting the values for a portion of 2022).

For all tables, Year-End Available Funds were calculated by adding 1% to the previous year's Year-End Available Funds and subtracting the year's Total Annual Cost.

For Table 16-5b, the Total Annual Cost in 2022 dollars is escalated by 3% per annum by (1.03^n, where "n" is the number of years).

CIMARRON ENVIRONMENTAL RESPONSE TRUST
DECOMMISSIONING COST ESTIMATE ELIMINATING NRC FEES

Table 16-5a - Costs in 2022 Dollars

Description	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
License Compliance	\$378,000	\$765,000	\$765,000	\$730,000	\$880,000	\$850,000	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000
NRC Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Decomissioning	\$583,000	\$2,446,000	\$1,384,000	\$24,038,750	\$1,850,000	\$1,785,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000
ODEQ Fees	\$15,000	\$30,000	\$30,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000
Total Annual Cost	\$1,376,000	\$4,041,000	\$2,979,000	\$25,204,750	\$3,166,000	\$2,951,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000

Table 16-5b - 3% Annum Escalation

Description	Year --->	1	2	3	4	5	6	7	8	9	10
License Compliance	\$378,000	\$787,950	\$811,589	\$797,691	\$990,448	\$985,383	\$1,003,004	\$1,033,094	\$1,064,087	\$1,096,009	\$1,128,890
NRC Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Decomissioning	\$583,000	\$2,519,380	\$1,468,286	\$26,267,791	\$2,082,191	\$2,069,304	\$2,006,008	\$2,066,188	\$2,128,174	\$2,192,019	\$2,257,780
ODEQ Fees	\$15,000	\$30,900	\$31,827	\$39,338	\$40,518	\$41,734	\$42,986	\$44,275	\$45,604	\$46,972	\$48,381
Total Annual Cost	\$976,000	\$3,338,230	\$2,311,701	\$27,104,820	\$3,113,157	\$3,096,421	\$3,051,998	\$3,143,558	\$3,237,864	\$3,335,000	\$3,435,050
Initial Available Funds (7/1/2022)	\$71,462,410										
Year-End Available Funds	\$70,843,722	\$68,213,929	\$66,584,367	\$40,145,391	\$37,433,688	\$34,711,603	\$32,006,722	\$29,183,231	\$26,237,199	\$23,164,571	\$19,961,167

Table 16-5a - Costs in 2022 Dollars

Description	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
License Compliance	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000	\$703,962	\$567,924	\$567,924	\$467,924	\$253,962	\$126,981
NRC Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Decomissioning	\$1,680,000	\$1,680,000	\$1,680,000	\$1,680,000	\$1,180,000	\$1,040,550	\$241,100	\$940,550	\$1,380,000	\$205,000	\$115,000
ODEQ Fees	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$33,000	\$30,000	\$30,000	\$30,000	\$30,000	\$15,000
Total Annual Cost	\$2,796,000	\$2,796,000	\$2,796,000	\$2,796,000	\$2,296,000	\$1,997,512	\$1,039,024	\$1,738,474	\$2,077,924	\$688,962	\$356,981

Table 16-5b - 3% Annum Escalation

Description	11	12	13	14	15	16	17	18	19	20	21
License Compliance	\$1,162,756	\$1,197,639	\$1,233,568	\$1,270,575	\$1,308,693	\$1,129,652	\$938,692	\$966,853	\$820,508	\$458,684	\$236,222
NRC Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Decomissioning	\$2,325,513	\$2,395,278	\$2,467,137	\$2,541,151	\$1,838,402	\$1,669,777	\$398,502	\$1,601,223	\$2,419,838	\$370,253	\$213,934
ODEQ Fees	\$49,832	\$51,327	\$52,867	\$54,453	\$56,087	\$52,955	\$49,585	\$51,073	\$52,605	\$54,183	\$27,904
Total Annual Cost	\$3,538,102	\$3,644,245	\$3,753,572	\$3,866,179	\$3,203,181	\$2,852,385	\$1,386,779	\$2,619,149	\$3,292,951	\$883,120	\$478,060
Initial Available Funds (7/1/2022)											
Year-End Available Funds	\$16,622,676	\$13,144,658	\$9,522,533	\$5,751,579	\$2,605,914	(\$220,412)	(\$1,609,395)	(\$4,244,638)	(\$7,580,036)	(\$8,538,956)	(\$9,102,406)

Notes:

\$71,189,722 is the funding available in the Federal, State and Standby Trust Accounts as of 9/30/2023.

Table 16-5a was created by taking the costs from Tables 16-4 through 16-4 (adjusting the values for a portion of 2022).

For all tables, Year-End Available Funds were calculated by adding 1% to the previous year's Year-End Available Funds and subtracting the year's Total Annual Cost.

For Table 16-5b, the Total Annual Cost in 2022 dollars is escalated by 3% per annum by (1.03^n, where "n" is the number of years).