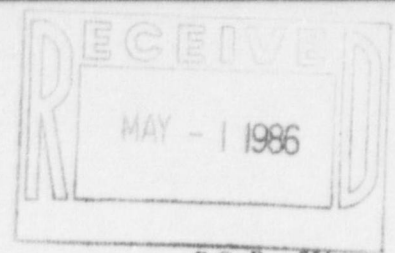


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COTTER CORPORATION
CANON CITY OPERATIONS



P.O. Box 751
CANON CITY, COLORADO 81212

40-~~SEL~~

April 28, 1986

Mr. Robert D. Martin
Regional Administrator
U.S. Nuclear Regulatory Commission
611 Ryon Plaza Drive, Suite 1000
Arlington, Texas 76011

Dear Mr. Martin:

We have recently learned of your interest in the current State vs. Cotter Corporation lawsuit through your March 24, 1986, letter to the Assistant Attorney General.

As a means of keeping you more fully informed regarding the lawsuit and the three volume Remedial Investigation/Feasibility Study discussed in the letter, please find enclosed a copy of Cotter Corporation's comments on the State's report.

If you have any questions regarding these comments or need additional information on this subject, please let me know.

Sincerely,

J. E. Rothfleisch
J. E. Rothfleisch
Mill Manager

JER:pcd

encl.

86-437

HOLME ROBERTS & OWEN

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March 28, 1986

Mr. Albert J. Hazle
Colorado Department of Health
Radiation Control Division
4211 East 11th Avenue
Denver, Colorado 80218

Re: State of Colorado v. Cotter Corporation -
Comments of Cotter Corporation on the RI/FS
Prepared for the Colorado Department of Law on
the Canon City Uranium Mill

Dear Mr. Hazle:

Our client, Cotter Corporation ("Cotter"), has requested that we forward to you its comments on the RI/FS prepared for its Canon City uranium mill (Radioactive Materials License No. 369-01S). These comments reflect, among other matters, our continued disappointment in the performance of the Colorado Department of Health and the Colorado Department of Law. First, the Departments are acting outside the scope of state law. Second, the work product reflected by the RI/FS is technically irresponsible and incompetent. The RI/FS fails entirely to meet the requirements of the National Contingency Plan.

As you are aware, Cotter has attempted consistently to deal on a sound technical and legal basis to resolve matters of "concern" to the State. It is obvious that the technical expertise Cotter has brought to this matter for the benefit of the State has been ignored in the RI/FS.

Finally, Cotter, in good faith, has sought to act to remedy impacts associated with the mill. A clear example of this effort is the request to construct the hydrologic barrier system at the SCS Dam. That request has been pending in your office since our license renewal application provided to you in March 1984 and our license amendment application provided to you in June 1984. As stated in the comments, if you continue to fail to deal with this request, Cotter will consider constructing the hydrologic barrier system without your approval.

Mr. Albert J. Hazle
March 28, 1986
Page 2

The public notice provided to my office by Kevin Ward, Esq., under cover letter dated March 7, 1986, states that these comments are to be sent to you. This copy of the public notice apparently is inaccurate. Although we did not receive an amended notice, in light of comments made at the public meeting, it appears that the written comments should be sent to Kevin Ward. Accordingly, to avoid confusion over this matter, a copy of these comments is being delivered to Kevin Ward, as well. Further, we request that you provide to us, as soon as possible, copies of all written comments on the RI/FS received from other persons and entities.

Sincerely,

HOLME ROBERTS & OWEN
A.E. Benton
Edward J. McGrath
Richard L. Schrepferman
Marilyn G. Alkire

By: Marilyn G. Alkire
Counsel For Cotter Corporation
1700 Broadway, Suite 1800
Denver, Colorado 80290
(303) 861-7000

MGA:pg

Enclosure

cc: Mr. Joseph P. McCluskey
Mr. Timothy C. Smith
Kevin M. Ward, Esq.

COMMENTS AND OBJECTIONS OF COTTER CORPORATION
ON THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
PREPARED FOR THE COLORADO DEPARTMENT OF LAW
ON THE COTTER CORPORATION URANIUM MILL SITE

On March 7, 1986, the State of Colorado (the "State") made available to the public a remedial investigation ("RI") and feasibility study ("FS") pertaining to the Cotter Corporation uranium mill site (the "Site") located south of Canon City in Fremont County. The RI/FS was prepared for the State Department of Law in connection with the State of Colorado v. Cotter Corporation, Civil Action No. 83-C-2389, United States District Court for the District of Colorado. The RI/FS purports to be prepared for the State under and consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., and the federal implementing regulations known as the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.*

Concurrent with the issuance of the RI/FS, the State published notice of a public meeting scheduled in Canon City on March 26, 1986 and of the right of the public to submit written comments on the RI/FS on or before March 28, 1986. The comments of Cotter Corporation ("Cotter") are set forth below and address: a) the statutory authority of the State to prepare an RI/FS and to undertake remedial action under CERCLA or State law; b) the failure of the State to comply with requirements of State law and of CERCLA; and c) the inadequacy of the RI/FS under CERCLA, the NCP, and applicable federal guidance documents.

I. THE STATE HAS NO STATUTORY
AUTHORITY TO PREPARE THE
RI/FS OR TO UNDERTAKE THE
REMEDIAL ACTIONS

The authority of the State to act or otherwise be involved in the implementation of CERCLA is set forth in C.R.S. § 25-16-103 (1985 Supp.). Pursuant to that statutory provision, the Colorado Department of Health is authorized only to participate in implementation of CERCLA by the federal government. In this case, the State has not entered into a cooperative agreement with the U.S. Environmental Protection

* All citations to the NCP are to the revised NCP published on November 20, 1985 at 50 Fed. Reg. 47912 et seq.

Agency authorizing the State to act as lead agency. The lead agency under the NCP with respect to the Site is the U.S. Environmental Protection Agency ("EPA"). The State in preparing the RI/FS is acting totally independently of EPA. The EPA, not the Colorado Department of Health or the Colorado Department of Law, is responsible for the preparation of an RI/FS for the Site, if an RI/FS is necessary. This fact is recognized in the NCP which states, "An RI/FS shall, as appropriate, be undertaken by the leading agency" 40 C.F.R. § 300.68(d). EPA has, in fact, undertaken remedial investigation activities at the Site. The preparation of the RI/FS by the State has no legal basis and represents an unwarranted, illegal, and duplicative expenditure of public funds. Cotter objects, therefore, to the past activities of the State in preparing an RI/FS and the continued activities of the State in purporting to proceed with the adoption of a record of decision and promulgation of a remedial action plan for the Site.

Even assuming the State is authorized to prepare the RI/FS, the State has no authority under State law to undertake remedial action at or in the vicinity of the Site, the State has no funding to undertake remedial action at or in the vicinity of the Site, the State lacks rights of access, rights of way, or eminent domain powers required to undertake such remedial actions at or in the vicinity of the Site, and the State lacks authority under CERCLA to require Cotter to undertake such action.

II. THE STATE HAS FAILED TO COMPLY WITH STATUTORY REQUIREMENTS UNDER STATE LAW FOR EITHER ADJUDICATORY OR RULEMAKING PROCEEDINGS AND HAS FAILED TO COMPLY WITH CERCLA

Even assuming the State has authority to prepare the RI/FS and to implement response actions, the State may adopt the RI/FS, and subsequent record of decision and remedial action plan, only by an appropriate rulemaking or adjudicatory proceeding. The State has failed to advise the public as to the nature of these proceedings. In light of this failure, Cotter requests the State to designate, no later than April 4, 1986, the nature of the proceedings under state law. Cotter and the public are entitled to this information. Cotter hereby reserves all rights to object to such designation and to the authority of the State to conduct such a proceeding.

Whether the State characterizes these proceedings as rulemaking or adjudicatory in nature, these proceedings must

be conducted consistent with the State Administrative Procedure Act (the "State APA"), C.R.S. § 24-4-101 et seq. The State has not even suggested it is attempting to comply with the State APA in this matter. As a result, the State has failed to comply with virtually every requirement of the State APA. The most significant failure on the part of the State is the failure to have a public hearing at which interested persons may seek party status and are provided the opportunity to cross-examine witnesses testifying under oath.

In addition, under section 104 of CERCLA and under the NCP, potentially responsible parties, such as Cotter, are to be provided the opportunity to participate in the process of developing and implementing response actions. In this case, the State has effectively barred Cotter's right to participate despite requests by Cotter to be able to participate. Cotter has, in fact, been prohibited by the State from attending meetings on this matter in violation of the Colorado "sunshine" laws, C.R.S. § 24-6-402 (1973).

Accordingly, Cotter objects to the conduct of this proceeding as being in violation of State law and CERCLA. The actions of the State have denied Cotter substantive and procedural due process of law. Cotter is entitled to and intends to seek a full and complete trial of all matters relating to the actions of the State before a court of competent jurisdiction.

III. COMMENTS ON RI/FS

A. Introduction

In making the following comments on the RI/FS, Cotter does not waive and hereby expressly reserves its objections set forth in sections I and II of these comments. In addition, Cotter hereby reserves all claims and defenses asserted against the State in the pending federal district court action. Finally, the following comments indicate the gross inadequacy of the RI/FS under the standards set forth in the NCP and EPA guidance documents, "Guidance on Feasibility Studies Under CERCLA" (April 1985) and "Guidance on Remedial Investigations Under CERCLA" (May 1985). As a result of these pervasive inadequacies, no purpose is served by providing specific, detailed comments covering all inaccuracies and inadequacies in the RI/FS. Cotter hereby reserves, however, all of its comments and objections to the RI/FS, whether or not stated below.

B. Comments

1. The RI/FS uses extensively the terms "hazardous substance" and "hazardous materials." These terms are not defined in the RI or the FS. Various chemical constituents are, however, discussed in the RI/FS. Certain of these constituents are not defined under CERCLA as "hazardous substances." Furthermore, each such constituent is naturally occurring in the environment. The RI lacks any discussion of the hazardous properties, if any, of these naturally occurring constituents as required by the NCP, 40 C.F.R. § 300.68(e)(2)(iii).

2. The NCP requires, in the initial stages of scoping the appropriate response actions at a site (if any), an analysis of the "extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site and the extent to which other Federal criteria, advisories and guidance and State standards are to be used in developing the remedy." 40 C.F.R. § 300.68(e)(2)(xii). This assessment is to be directed to the particular site and relevant circumstances. For example, the water quality standards adopted by the Colorado Water Quality Control Commission for pertinent segments of the Arkansas River are the applicable requirements for those segments of the river. Similarly, the water quality standards adopted by the Commission that pertain to drinking water supplies may be relevant and appropriate for application to groundwater subject to the same use. In cases where no applicable or relevant and appropriate requirement exists, a site specific risk assessment is necessary to establish the requirement. See the comment in paragraph 4 of this section concerning risk assessments.

The assessment of applicable or relevant and appropriate requirements guides all aspects of the RI/FS process including, but not limited to, the threshold determination of the need for response action, development of alternative response actions, screening the alternative response actions in relation to cost and effectiveness, and final selection of the remedial action plan. The RI/FS prepared for the State lacks the necessary assessment of applicable or relevant and appropriate requirements. No consistent requirements are used throughout the RI/FS. In most cases, the requirement or standard used by the State for the various constituents is not identified. To the extent it appears the State has selected a standard for a constituent (*i.e.* background levels), the basis for that selection is unsupported either in fact or under CERCLA and the NCP. By way of example, Section 2 of the FS states an operational objective of 100% elimination of alleged contaminants but contains no

evaluation of the measured concentrations of each chemical constituent in relation to applicable or alternate and appropriate requirements. By virtue of these gross deficiencies, the entire RI/FS is unsupportable under the NCP.

3. The RI/FS is replete with references to "contamination," "elevated levels," "acute levels," "chronic levels," and levels of "concern" in relation to various naturally occurring chemical constituents. These terms are not defined either specifically, in relation to background levels, or in relation to the hazardous properties of the constituent (if any). Furthermore, once applicable or relevant and appropriate requirements are determined under the NCP, the extent to which those requirements are exceeded, if at all, must be determined. 40 C.F.R. § 300.68(2)(e)(xiii). As applicable or relevant and appropriate requirements have not been established by the State, this determination cannot be made. For example, in Section 2 of the FS, the concepts of acute and chronic levels fail to differentiate between the natural variability or range of background in chemical constituents and enhanced concentrations that may be expected to impact public health or the environment on the basis of applicable or relevant and appropriate requirements. References, therefore, to "contamination," "elevated levels," "acute levels," "chronic levels," or levels of "concern" are rendered meaningless, except as they may act to induce unnecessary devaluation of property in the areas to which they have been irresponsibly applied.

4. Under the NCP, the preliminary assessment of a site (to be conducted before an RI/FS is undertaken) is to include an evaluation of the threat to public health (if any) and the magnitude of the potential threat. 40 C.F.R. § 300.64(a). If, based on that preliminary assessment, it is determined that the amount, quantity, and concentration of a "release" of a "hazardous substance" warrant a response action, the RI/FS process may be initiated. In the RI, the population, environment and welfare concerns at risk are to be assessed to determine appropriate response actions, if any. 40 C.F.R. § 300.68(e)(2)(i). In this case, the RI/FS presumes actual threats to the public health and the environment. There is no documented evidence of an actual or potential threat to the public health or to the environment associated with the Site. Any public health risk assessment of a site must be multi-dimensional and include independent variables (such as the constituent representing potential hazard, mechanism of risk, time, target population group, and geographic location) and a dependent variable (which is the measure of human health risk). Clearly, the State has not completed any public health or

environmental risk assessment for the Site or even suggested that it has conducted the same.

All information available to Cotter and the State indicates, in fact, that no actual or potential threat to the public health or environment exists. In the absence of quantitative evidence or the completion of a site specific risk assessment, the State's position is unfounded and has served only to alarm, unnecessarily and unjustifiably, citizens of Fremont County and neighboring counties. The lack of the scientific and professional integrity on the part of the State in dealing with this significant and central issue of public health is irresponsible.

Furthermore, in the absence of such evidence or an assessment, the State cannot evaluate either the need for response action or the technical or cost effectiveness of any alternative action as it relates to reducing a threat to public health and to the environment. As a result, the State has failed to comply with one of the most significant aspects of the NCP and has failed to deal with the threshold issue under CERCLA: whether or not there is a threat to the public health or to the environment.

5. The RI/FS is premised on a number of assumptions, opinions, "concerns" and "inferences" that are either unsupported by quantitative data or sound technical bases, or are inconsistent with existing quantitative data and facts in the possession of and/or known by the State. These include, but are not limited, to the following:

- a. The alleged leakage from the main and secondary impoundment;
- b. The alleged increasing contamination levels in groundwater;
- c. The alleged groundwater transport pathways to the northeast and northwest of the Site;
- d. The alleged impacts on water quality and aquatic life in the Arkansas River attributable to the operations at the Site;
- e. The extent of off-site deposition in soils and sediment of airborne particulate matter attributable to the Site, especially with respect to the definition of the alleged "chronic" and "acute" areas depicted on Plate 1 of the RI; and

f. The alleged deep path of groundwater migration allegedly originating from the Wolf Park Mine workings.

6. In the RI/FS the State appears to have utilized certain data selectively and to have eliminated other data from consideration. No adequate justification for such selective use or elimination of data is contained in the RI/FS. In the absence of a sound technical basis for eliminating data from consideration or for selectively using data, the State appears to have intentionally biased the analysis of data in the RI/FS. As a result, for example, the "summary" of water quality history is inaccurate. Furthermore, the RI/FS fails to justify that the small data base used in the RI/FS is adequate to support the conclusions drawn in the RI/FS.

7. While the State has selectively eliminated certain data generated by Cotter, it has failed to justify the viability, accuracy, and representativeness of its own data, especially in view of some of the inappropriate and improperly executed field practices of the State and the failure of the State to carry out its work plan.

8. The FS states that a number of alternatives have been screened from further detailed analysis. The NCP recognizes initial screening of alternatives. 40 C.F.R. § 300.68(g). The FS fails to provide reasoning adequate to support elimination of any alternatives on the basis of cost, acceptable engineering practices and effectiveness considerations, as more fully set out in the NCP. Embedded in these broad criteria are the concepts of remediation objectives, feasibility and applicable or relevant and appropriate requirements. As discussed in these comments, the State has no remediation objectives and has not designated requirements. In the absence of the same, no alternative can be rationally selected or eliminated.

9. The RI/FS proposes a number of studies to attempt to establish matters, after the fact, that are presumed to be true in the RI and that are proposed to be remediated in the FS. These studies include, but are not limited to, a public health risk assessment, a study of the depth and areal extent of alleged on and off site "acute" soils areas, and a study of the Arkansas River and ephemeral drainages. As previously stated, sufficient data exist (in many cases collected by Cotter, but ignored by the State) with respect to many of these matters and the proposed studies are not required. If studies are determined to be required with respect to any particular matter, the studies proposed lack sufficient description to allow for comment on their technical adequacy. As recognized in the NCP, the detailed analysis of

alternatives may require the gathering of additional data to complete the analysis of alternatives. 40 C.F.R. § 300.68(h)(2)(vi). No response actions can be recommended or taken pending completion of such studies. To suggest otherwise is inconsistent with the NCP.

10. No logical transition exists between the RI (problem definition phase) and the FS (problem resolution phase). Based on the RI, for example, the State, at best, has not established the existence of the northwest and northeast shallow ground water pathways. In fact, geologic, hydrologic and chemical data in the possession of the State indicate that such pathways do not exist. Notwithstanding the conclusions in the RI, the alternatives in the FS would attempt to remediate these unsubstantiated pathways. Similarly, notwithstanding the fact that no data indicate the presence of a "deep path" through the Wolf Park Mine workings (as acknowledged by the State in the RI by virtue of the absence of uranium concentrations in the workings), the FS, nevertheless, proposes remedial activities relating to the mine.

11. The FS fails to take an integrated approach in assessing remedial action alternatives and, as a result, does not assess how various alternatives, if selected, may complement or interfere with other alternatives, if selected. For example the FS fails to assess the relationship between proposed removal of on and off site soils into impoundments on the Site and the effect of the proposals on the capacity of the impoundments. Undertaking either one or both of these removal activities may foreclose use of the impoundments for disposal of soils and other material in connection with the other response actions. Such activities also may result in the inability of Cotter to close the impoundments in accordance with applicable federal and state standards.

12. Although required by the NCP, the FS fails to adequately account for adverse environmental and public health impacts associated with the implementation of various response action alternatives, methods for mitigating adverse impacts, and costs of mitigation of those impacts. 40 C.F.R. § 300.68(h)(2)(vi). For example, there is not an adequate discussion of these matters in relation to fugitive dust associated with additional soils removal in the old tailings pond area, to fugitive dust associated with removal of soils from extensive off-site areas, or to the disruption of the terrestrial ecosystem resulting from stripping of topsoil, replacing topsoil, and revegetating.

13. The FS fails to give necessary consideration to the no action alternatives. This lack of adequate analysis of

the no action alternatives is due, in part, to the lack of designation of applicable or relevant and appropriate standards pursuant to which the need, if any, for response actions can be assessed.

An example of inadequate consideration of the no action alternative can be found in Section 3.2 of the FS concerning treatment of the springs along Sand Creek. The NCP requires that, "an alternative that far exceeds the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental protection or technical reliability shall usually be excluded from further consideration. For purposes of this paragraph, an alternative which meets or exceeds applicable or relevant and appropriate Federal public health and environmental requirements provides substantially greater protection than do alternatives that do not meet such requirements." 40 C.F.R. § 300.68(g)(1).

The applicable standards for water quality in the springs along Sand Creek are the standards adopted by the Water Quality Control Commission for the Arkansas River. The water quality of the Sand Creek springs and seeps currently meets or is better than all applicable standards for all measured parameters. All remedial measures proposed for the springs and seeps, other than no action, do not provide substantially greater protection than the no action alternative. The costs of the remedial actions proposed vary from \$20,000 to \$1,227,000 - costs which, obviously, far exceed the cost of the no action alternative. No demonstration has been made that alternatives which remained after screening provide substantially greater public health or environmental protection. Only the no action alternative meets the requirement of the NCP.

14. Certain of the no action alternatives in the FS are not "no action" alternatives. For example, the no action alternative for groundwater remediation presumes the costly and considerable action of construction of a hydrologic barrier at the SCS Dam and a new pumpback and receiving system. While admittedly there has been no action by the State on Cotter's request to construct this barrier, the barrier represents, we believe, the only significant and critical aspect of the response action alternatives. If the State continues to fail to deal with this request, Cotter will be forced to consider construction of the barrier without approval by the State.

15. The NCP requires a detailed analysis of alternatives with emphasis on the use of established technology. 40

C.F.R. § 300.68(h)(2)(i). The NCP also requires a detailed analysis of alternatives in terms of reliability. 40 C.F.R. § 300.68(h)(2)(iii). The FS is misleading in that it suggests that all technologies included in the alternatives are "established" technologies of known reliability and effectiveness. A number of the technologies, such as biological harvesting (by irrigation of soils or by construction of wetlands) are not established technologies of known reliability or effectiveness. Furthermore, such alternatives have not been evaluated as they relate to known conventional technologies either in terms of needs, effectiveness, reliability, or cost.

16. The NCP requires alternatives to be evaluated in terms of their effectiveness. Since environmental impacts associated with alternatives have not been assessed and applicable or relevant and appropriate requirements have not been determined, the effectiveness of response action alternatives cannot be evaluated either individually or as compared to one another. For example, if off-site soil removal by large earthmoving equipment is undertaken, as proposed in the FS, it is expected that the dust created by this operation (approximately 2,000 tons of fugitive dust emissions) will exceed the amount of allegedly contaminated veneer of soil (containing the deposited particulate matter of "concern" to the State) being removed. The geographic extent of particulate deposition resulting from the soil clean-up effort also will significantly expand. The effectiveness of this alternative, therefore, is questioned. This alternative (and all other alternatives) must be capable of evaluation in terms of costs as compared to other alternatives and in relation to the degree of public health and environmental protection afforded as compared to other alternatives. See also the comment set forth in paragraph 12 of this section pertaining to adverse environmental impacts associated with response measures.

17. The NCP requires the detailed analysis of alternatives to include an evaluation of reliability of the various actions. 40 C.F.R. § 300.68(h)(2)(iii). The FS tends to state summarily that the proposed alternatives are reliable. This is not true in many cases. For example, while use of binders in soil is a proven technology, there is little field experience relating to binder effects on vegetation and water quality or relating to the reliability of binders over large areas without repeated applications. The reliability (and effectiveness) of chemical binders in this context is, therefore, speculative.

18. The NCP requires detailed cost estimation in the context of detailed analysis of alternatives. 40 C.F.R. § 300.68(h)(ii). First, varying levels of "detail" are provi-

ded for the alternatives. Second, the FS fails to provide complete cost estimates for a number of proposed alternatives, such as the cost of conducting the numerous studies proposed in the FS, the cost of loss of impoundment capacity by virtue of disposal in the impoundment of additional solid and liquid materials derived from response activities proposed by the State, the cost of acquiring water rights needed to implement various response measures, and the cost of topsoil replacement in connection with off site soils removal.

SEQUENCE	INITIALS
✓ E. MARTIN, REGIONAL ADMINISTRATOR	
✓ F. CHECK, DEPUTY REGIONAL ADMINISTRATOR	FC
✓ W. BROWN, REGIONAL COUNSEL	WB
D. POWERS, ENFORCEMENT OFFICER	
C. WISNER, PUBLIC AFFAIRS OFFICER	
✓ R. DODA, CHIEF, S&GAS	RD
G. SANBORN, REGIONAL STATE LIAISON OFFICER	GS
E. JOHNSON, DIRECTOR, DRS&P	
✓ R. BANGART, DIRECTOR, DRS&S	RB
✓ W. FOSTER, DIRECTOR, DEMA	WF
R. HERR, OI-RIV	RH
✓ D. SMITH, URPO -	DS
RIV Files (LAST)	

MAY 01 1986

Comments and Assignments

5/19
 ED [Signature]
 HARE [Signature] HP