



**COLORADO DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENTAIR POLLUTION CONTROL
DIVISION STATIONARY SOURCES PROGRAM**

NOTICE OF VIOLATION Case No. 2005-095

In the Matter of Cotter Corporation

The Colorado Department of Public Health and Environment ("**CDPHE**"), through the Air Pollution Control Division ("**Division**"), issues this Notice of Violation to Cotter Corporation ("**Cotter**") pursuant to the Division's authority under **C.R.S. § 25-7-115(2)**.

I. ALLEGED FINDINGS OF FACT

1. The Division issues this Notice of Violation ("**NOV**") as a follow up to an inspection and stack test at Cotter Corporation's Canon City Mill ("**Mill**" or "**Facility**"), located at 0502 County Road 68, Township 19 South, Range 70 West, **Fremont** County, Colorado. Equipment at the Facility includes: one Decomposition Kiln, heat input rated at 4,883,000 **BTU/hr**; and one natural gas fired Fusion Furnace, heat input rated at 1,700,000 **BTU/hr**. The Facility is subject to the requirements of Colorado Air Quality Control Commission ("**AQCC**") Regulation **Nos. 1 and 3**, as well as the terms and conditions of Construction Permit No. 95FR803, Initial Approval Modification 4, issued to Cotter on May 2, 2002 ("**Permit No. 95FR803**").

2. On November 8 & 9, 2005, Mr. **Steven Hine**, of the Division, was present at the Facility to observe compliance stack testing of the Decomposition Kiln at the Facility.

3. During the course of the stack test on November 9th, Mr. Hine observed visible emissions from the combined process stack for the Decomposition Kiln and Fusion Furnace at the Facility and conducted an opacity reading of the observed emissions in accordance with the requirements of **EPA Reference Method 9**. The reading showed opacity ranging from 30% to 45% with a high consecutive six-minute average of 39.6% and two separate six-minute averages of 39.2% and 36.7%. Mr. Hine documented his reading on a visible emissions observation form and **provided a copy** to Jim Cain of Cotter Corporation

Pursuant to Condition 11 of Permit No. 95FR803, Cotter is required to perform a compliance test on the Decomposition Furnace in order to demonstrate compliance with the applicable permit requirements. General Condition 7 provides that compliance must be demonstrated within 180 days after commencing operation. Prior to commencing the testing on **November 8th and 9th**, Cotter had requested and obtained extensions of this deadline. As a result

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of the opacity issues noted above and other problems, Cotter failed to complete the compliance test that Mr. Hine observed, and has to date failed to conduct a new test.

5. Pursuant to Permit No. 95FR803 Attachment A, **particulate** matter emissions from the Decomposition Kiln shall be controlled by two fabric filter **baghouses** and two packed bed scrubbers. While at the Facility, Mr. Hine observed that in fact emissions from the kiln are controlled by one of two baghouses (not two in tandem) and only one scrubber. Additionally, Mr. Hine observed dual combustion stacks for the Decomposition Kiln that are not controlled by any of the control devices and are not referenced in any Construction permit of **APEN**.

6. Pursuant to Permit No. 95FR803 Attachment A, particulate emissions from the Fusion Furnace shall be controlled by two fabric filter baghouses. As actually configured, these emissions are controlled by a single **baghouse**.

II. PROVISIONS OF THE LAW ALLEGED TO HAVE BEEN VIOLATED

7. On November 9, 2005, the opacity of emissions from the combined stack for the Decomposition and Fusion Furnaces exceeded the opacity limits set forth in **AQCC** Regulation No. 1, Section **II.A.1**. and Permit No. 95FR803 Condition 2.

8. Cotter has failed to conduct timely compliance testing of the Decomposition Furnace, in violation of Permit No. 95FR803 Condition 11 and General Condition 7.

9. Cotter has failed to utilize two fabric filter baghouses and two packed bed scrubbers to control particulate matter emissions from the Decomposition Kiln in violation of Permit No. 95FR803 Attachment A.

10. Cotter has emitted air pollutants from the dual combustion stacks for the Decomposition Kiln with out first submitting an **APEN** or obtaining a Construction Permit for these emission points in violation of AQCC Regulation No. 3, Part A, Section II.A and Part **B**, Sections **I.A.** and **II.A. 1**.

11. Cotter has failed to utilize two fabric filter baghouses to control particulate matter emissions from the Fusion Furnace in violation of Permit No. 95FR803 Attachment A.

III. STANDARD PENALTY PROVISION FOR THE VIOLATION AS ALLEGED

12. Sections 25-7-115(3)(b) and 25-7-122(1)(b), C.R.S., provide that any person who violates any requirement of a construction permit or a regulation of the Commission shall be subject to a civil penalty of not more than Fifteen Thousand Dollars (\$15,000.00) per day for each day of such violation.

13. Section 25-7-115(5), **C.R.S.**, requires the Division to determine if a **noncompliance** penalty is applicable. If the Division finds a **noncompliance** penalty is applicable, the Division must assess the penalty for any period of violation from the date of this notice until the date on which the emission source is brought into compliance. The Division will

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calculate the **noncompliance** penalty in accordance with the provisions of § 25-7-115(5)(b), **C.R.S.**

IV. CONFERENCE REGARDING THE ALLEGED VIOLATION

14. In accordance with the requirements of § 25-7-115(3), C.R.S., the Division has scheduled a conference regarding the violations described above at 1:00 on December 28, 2005, at the Air Pollution Control Division office, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. This conference will provide Cotter an opportunity to submit data, views, and arguments concerning the violation and whether assessment of civil and noncompliance penalties is appropriate. The conference is an informal proceeding; however, you may have legal counsel attend with you. Following the conference and upon completion of our investigation, the Division will determine whether a Compliance Order will be issued and whether a civil penalty and noncompliance penalty must be assessed. The Division may provide further opportunity for you to respond after the conference if circumstances warrant.

15. If the scheduled conference date and time is not convenient for you, contact Mr. Robert Jorgenson, at 303-692-3171, to reschedule the conference. If you have any other questions concerning the conference or other matters prior to the scheduled conference, contact Garry Kaufman, at 303-692-3269, to discuss those concerns.

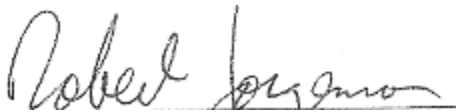
V. ADDITIONAL ACTION BY THE DIVISION

16. If you fail to attend the conference, the Division will issue a Compliance Order and possibly assess penalties against Cotter. Subsequent violation of the Compliance Order may subject Cotter to further enforcement action under § 25-7-121, C.R.S. (court injunction) and § 25-7-122, C.R.S. (civil penalties up to \$15,000.00 per day of violation).

VI. EFFECTIVE DATE OF NOTICE

17. This Notice of Violation shall become effective upon receipt. Dated this **9th** day of December 2005.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Robert Jorgenson
Supervisor, **Field Services**
Stationary Sources Program Air
Pollution Control Division

cc: Will Allison, Office of the Attorney General
Cindy Beeler U.S. EPA Region VIII
File (2)