

STATE OF COLORADO

Bill Owens, Governor
Jane E. Norton, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory and Radiation Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

June 20, 2003

Certified Mail # 0122 3951
Return Receipt Requested

Mr. James Cain
Cotter Corporation
502 Fremont County Road 68
Canon City, CO 81212

RE: Addendum to the Compliance Advisory for the November 19, 2002 Hazardous Waste Compliance Inspection; EPA Identification Number COD042167858

Dear Mr. Cain:

On November 19, 2002 inspectors from the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the Division) conducted a compliance inspection at the Cotter Corporation (Cotter) located in Canon City, Colorado. At the completion of that inspection, the inspectors issued a Compliance Advisory requesting Cotter to make a hazardous waste determination for approximately two hundred 55-gallon containers of used oil. Cotter was requested to make a hazardous waste determination on its inventory of used oil because the oil cannot be burned for energy recovery due to radiological contamination.

On June 6, 2003 the Division received an analysis of the used oil inventory currently in storage at Cotter. Based upon that analysis, the oil in question is regulated as a hazardous waste due to benzene and tetrachloroethylene. Because Cotter is storing hazardous waste on-site, all of the regulations at 6 CCR 1007-3, Part 264 applicable to a hazardous waste storage facility are currently applicable to Cotter until such time as all hazardous waste is removed from the facility.

The Division is hereby amending the November 19, 2002 Compliance Advisory to identify additional compliance issues that must be addressed now that the used oil has been determined to be regulated as a hazardous waste. Please see the attached revised Compliance Advisory. The Division is requesting a written response to the attached Compliance Advisory within 30-days from receipt of this letter.

Cotter is hereby advised that the two aboveground storage tanks that are being used for the storage of the hazardous waste oil are subject to the tank regulations identified at 6 CCR 1007-3, Part 264, Subpart J. Please ensure that all applicable portions of those regulations are met as long as the tanks in question are used for the storage of hazardous waste.

Please contact me at (303) 692-3386 if you have any questions regarding this matter.

Sincerely,



Edward Smith
Hazardous Waste Compliance Unit

cc w/att: Tim Bonzer, HMWMD
Fred Dowsett, HMWMD
Phil Egidi, HMWMD
Kristine Figur, HMWMD
Marion Galont, HMWMD
Pam Harley, HMWMD
Eugene Potter, HMWMD
Joe Schieffelin, HMWMD
Amy Williams, HMWMD
Randy Landin, EPA

COMPLIANCE ADVISORY

1. **Deficiency:** On November 19, 2002, Division inspectors requested Cotter to make a hazardous waste determination for its inventory of used oil. Cotter had failed to make a hazardous waste determination on its used oil in violation of the regulatory requirements identified at 6 CCR 1007-3, section 262.11.

Requested Action: On June 6, 2003, the Division received an analysis of the used oil in storage at Cotter indicating that the oil exhibits the toxicity characteristic for benzene and tetrachloroethylene and is regulated as a hazardous waste. Therefore, no further action is required on this issue.

2. **Deficiency.** Cotter has been storing its hazardous waste oil on-site in excess of the one year storage limit allowed by the land disposal restriction (LDR) regulations in violation of 6 CCR 1007-3, section 268.50(a).

Requested Action. Within 30-days from receipt of this Compliance Advisory, provide the Division with the name of a permitted treatment, storage, or disposal facility that can accept this hazardous waste and a date by which the waste will be removed from the facility.

3. **Deficiency.** Storage of hazardous waste at the Cotter facility without having interim status or a permit in violation of 6 CCR 1007-3, section 100.10 and Section 25-15-308(1)(b) of the Colorado Revised Statute.

Requested Action. Within 30-days from receipt of this Compliance Advisory, provide the Division with the name of a permitted treatment, storage, or disposal facility that can accept this hazardous waste oil and a date by which the waste will be removed from Cotter.

4. **Deficiency.** At the time of the November 19, 2002 and the February 11, 2002 compliance inspections, Division inspectors observed that the **countercurrent decantation (CCD) tanks** operated by Cotter were leaking. The pH of the material being released was determined to be less than 2.0 from certain tanks while material released from other tanks was determined to be greater than 12.5 using pH test paper. The acid and alkaline materials that were being released from the tanks appear to be exempt from the hazardous waste regulations via application of the Atomic Energy Act exemption (6 CCR 1007-3, section 261.4(a)(4)) and/or the exemption applicable to mining and milling operations (6 CCR 1007-3, section 261.4(b)(7)). However, the heavy metals contained in the ores processed in those tanks, such as lead and cadmium, are identified as hazardous constituents in Appendix VIII to Part 261 of the Colorado Hazardous Waste Regulations.

The regulations at 6 CCR 1007-3, section 264.31(a) specify that facilities must be designed, constructed, maintained, and operated to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface or ground water which could threaten human health or the environment. Because the CCD tanks were observed to be leaking at the time of the two referenced inspections, Cotter appears to be in violation of the referenced regulation.

Requested Action. Within 60-days from receipt of this Compliance Advisory, Cotter shall submit a plan to the Division describing its efforts to upgrade and/or repair the CCD tanks to stop the ongoing releases of hazardous waste constituents from those tanks.

5. **Potential Deficiency.** At the time of the February 11, 2002 compliance inspection, Division inspectors observed the inventory of used oil at Cotter. At that time, an observation was made that some of the containers were not in good condition and were leaking. Subsequent to that inspection, the used oil has been consolidated and tested. Based upon that analysis, the oil is regulated as a hazardous waste. Therefore, releases of hazardous waste to the environment may have occurred in violation of 6 CCR 1007-3, section 100.10 and Section 25-15-308(1)(b).

Requested Action. Within 60-days from receipt of this Compliance Advisory, Cotter shall submit a plan to the Division for the cleanup of visible releases of oil at the former used oil storage area. A hazardous waste determination must be made on all contaminated soil and all soil that is determined to be a hazardous waste must be managed in accordance with all applicable hazardous waste requirements.

Request for Additional Information

1. Provide the Division with an estimate of the volume of hazardous waste oil that is currently on-site at Cotter.
2. Provide the Division with an estimate of how long the material identified in item 1 has been on-site.
3. Provide the Division with information regarding the concentration of uranium in the hazardous waste oil.
4. Provide the Division with a description of the two storage tanks that are now being used for the storage of the hazardous waste oil to include the capacity of the tanks and a description of any secondary containment. Because the tanks in question are storing a hazardous waste, provide the Division with a written certification confirming that Cotter will comply with the tank standards identified at 6 CCR 1007-3, Part 264, Subpart J, including the requirement to conduct and document inspections of the tanks each calendar day that hazardous waste is stored in the two tanks.