

STATE OF COLORADO



Colorado Department of Public Health and Environment

Bill Owens, Governor
Douglas H. Benevento, Acting Executive Director
Dedicated to protecting and improving the health and environment of the people of Colorado

Laboratory and Radiation Services Division

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SUBJECT:

Costa Response to 12/12 NOV.

DATE:

1/22/03

NUMBER OF PAGES TO FOLLOW:

6

COMMENTS:

As you requested
Can I have your address, too?
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Telephone (720) 554-6200
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Cotter Corporation
7800 E. Dorado Place, Suite 210, Englewood, CO 80111

File 369-01
(Imp.) m.c.e

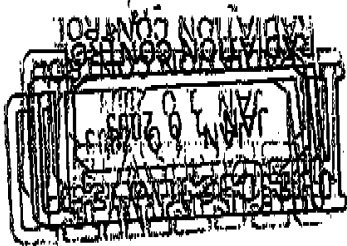
The troubling nature of the misrepresentations is exacerbated by the fact that one of the two supposed violations (i.e. structural integrity of the CCD tanks) was not even mentioned during the close out discussion. This omission is evidenced by notes taken by Cotter personnel during the exit discussion. In addition, the other supposed violation was corrected prior to the tour group's departure on that same day (i.e. the drums on the rail dock were moved to a secured storage location). It is unfortunate that the inspection philosophy presented to Cotter representatives in a December 18, 2002 meeting with Messrs. Butcher, Potter and Weaver was not employed. If this philosophy would have been applied it would have been very clear that an inspection was being conducted, any minor items which could be easily corrected before the teams departure would not have been cited as violations and all perceived violations would have been identified at exit. Use of this philosophy at the time of the inspection could have rendered at least one of the 5 identified items moot. In addition, Cotter would have been fully aware of the CCD question and would have been afforded an opportunity to discuss available options,

This is written in response to the Division's Notice of Violation dated December 12, 2002. As a preface, it should be noted that it is Cotter's view that the inspection team was less than forthright in their approach to the inspection. More specifically, when visiting the site on November 19, 2002 the team did not indicate that they were on an inspection but instead said that they wanted to "tour" the plant and tailings area and were uncertain as to whether a "report" would be written as a result of the "visit". The tour group included not only LARS staff, but also staff from the Air Pollution Control Division and the Hazardous Materials and Waste Management Division. During the exit interview, LARS staff gave no indication that the comments they were making were considered to be violations, nor did they tender any written comments about their visit, which has been common during inspections. It is certainly within the authority of the Department to conduct an inspection at any time. However, misrepresentation as to the purpose of the visit does not foster a sense of trust in the agency's intentions nor does it lift the inspector's comments to the correct priority level for responses prior to departure from the mill.

Dear Mr. Potter

Re: December 12, 2002 Notice of Violation
Canon City Milling Facility-License 369-01

Colorado Department of Public Health and Environment
Laboratory and Radiation Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928



January 10, 2003

Date	7671
Post-# Fax Note	
From	P. J. Stoffer
To	Mrs. Howard
Co./Dept.	LARS
Phone #	X 3061
Fax #	697-3691

WORKING COPY

Handwritten signature and date: *Cotter NV Response 1/10/03*

In response to the Division's concern, Cotter has contracted the services of a Professional Engineer (Ramsey M. McDermid, P.E.) to perform the engineering work outlined in the Division's finding. An initial inspection and assessment was completed by Mr. McDermid on December 19, 2002 which concluded that "there was no evidence of imminent collapse" and that the observed conditions did not indicate "short-term failure"

Cotter disagrees that the Division's findings with regard to CCD Tanks 1 & 8 constitute a violation. The basis for Cotter's disagreement rests in the fact that the Division personnel were not qualified, and thus unable, to render a technical opinion about whether these tanks were "in good working order". While the Division's aesthetic observation may constitute a question (i.e. item of concern) as to the integrity of the tanks, sufficient quantitative engineering information was not presented by the Division to support a finding that the tanks were not "in good working order". In fact, the Division has requested a review by a qualified engineer admitting by default that they had not compiled sufficient information to support a violation finding. The issue as to whether the tanks are in "good working order" has not been answered yet and, as such, a violation finding is inappropriate.

Cotter Response:

The licensee must take immediate action to assess the operational condition of these tanks and correct any urgent conditions which pose safety concerns for site workers. This assessment should be conducted by an independent professional engineering firm with expertise in the maintenance and operation of large process vessels. The licensee must provide the Department with the following documentation: (1) a listing of all safety concerns identified by a Professional Engineer; (2) a Professional Engineer's determination and certification that the tanks and foundations have or have not exceeded their design life; (3) a complete listing of the needed repairs; and, (4) a schedule for replacement and/or repair of damaged tanks and foundations.

License Condition 18.3.1 requires that the licensee maintain each process, storage, containment, monitoring, and safety system in good working order. Contrary to this requirement, at the time of the inspection, the large wooden CCD process tanks were observed to be in a state of disrepair. Tanks show evidence of leakage and extensive corrosion. Specifically, Tank #1 was observed to be leaking directly from the side of the tank (not simply weeping) and the foundation under Tank #8 was crumbling.

NOV No. 1 Finding

Cotter's responses to the Division's December 12, 2002 Notice of Violation are provided below:
including an engineering evaluation. It should be noted that Cotter does not agree that any of these items are violations.

Cotter disagrees that the Divisions findings with regard to the labeling of drums constitute a violation. In accordance with the provisions of RH 4.31.3 containers which are attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by Part 4 are exempt from container labeling requirements. Cotter has taken such precautions. Workers assigned to the area where the subject drums of sump cleanout materials were located were well aware of the contents and Cotter's restricted area signage warns all who would enter the Mill Site that "ANY AREA OR CONTAINER ON THIS PROPERTY MAY CONTAIN RADIOACTIVE MATERIAL". In this instance, the maximum reading was one mrem/hr and, as such, an individual worker would have needed to spend in excess of 5000 hours (2.4 continuous work years) in contact with the drums to exceed the Part 4 annual limits. Accordingly, there simply aren't enough available hours in the work year to exceed the limits even if a worker spent his entire shift at this drum location. In

Cotter Response:

The licensee must take immediate action to identify all containers of radioactive materials which are unlabeled and ensure that the containers are labeled in accordance with the requirements of RH 4.30.1 of the Regulations. In addition, the licensee must provide the Department with an inventory documenting all such containers and their contents.

Contrary to these requirements, at the time of the inspection, several drums were identified during a survey of the rail dock and the area beside the sample storage shed. These drums contain radioactive materials and have surface exposure rates ranging from a 50 μ R/hr to 1 mrem/hr above background. The drums did not have labels bearing the radiation symbol and cautionary wording and were not labeled as to their radioactive contents.

License Condition 18.1.2 requires the licensee to comply with the requirements of Part 4 of the Regulations. RH 4.30.1 of the Regulations states that the licensee shall ensure that each container of licensed radioactive materials bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

NOV No. 2 Finding

of the tanks. In order to answer questions related to safety concerns, life expectancy and any repair/replacement requirements a detailed quantitative inspection has been scheduled for January 13 & 14, 2003. A copy of Mr. McDermid's preliminary observations is attached for the Division's review.

The reduced water level in the impoundments has exposed a considerable surface area

Item of Concern B Findings:

Cotter was under the impression that Scott Mason was in routine contact with members of the LARS staff and had assumed that communication between the Divisions relative to APCD compliance issues was ongoing. In accordance with the License and the conditions at LC 12.2, Cotter has provided copies of air permitting applications and correspondence to the Division. Correspondence related to inspections conducted by other Divisions and/or Agencies is not addressed by the License. However, Cotter will make sure in the future that correspondence related to inspections is copied to the Division as well.

Cotter Response:

License Condition 12.3 states that the licensee shall operate in full compliance with the requirements of each other Division of the Department. The licensee has recently been cited by the Air Pollution Control Division for violations of that Division's regulations and the licensee's air permit. During the inspection close-out briefing, a representative of the Air Pollution Control Division expressed concerns regarding a number of issues pertaining to the operation of the facility. These concerns included: (1) small short term projects at the mill being started without obtaining the required air permits; (2) a potential emission point not on the current facility permit; and, (3) impoundments. The licensee must ensure that activities at the mill are conducted in accordance with the requirements established by the Department's Air Pollution Control Division. In addition to the notifications required under License Condition 12.2.2, the licensee must provide this Division with timely ongoing documentation describing violations, corrective actions, and the dates when full compliance with Air Pollution Control Division requirements is achieved.

Item of Concern A Findings:

In addition, Cotter's monitoring programs and dose calculations do not support the assertion that any worker is exceeding the limits established in Part 4 (i.e. the maximum annual worker external dose for the year 2001 was 205 mrem, approximately 4% of the limit). As noted above, these drums were moved into the product storage area prior to departure of the team and they were made aware of this fact prior to leaving the site. The drums were not intended for shipment, were not available for public access and were in transition for return to the circuit by the workers assigned to the area who were knowledgeable as to the drum contents. It should be noted that Cotter has already provided inventory information to Mr. Egidi and Mr. Mason of the Department. Cotter's inventory control system descriptions are being prepared relative to other matters under review by the Division and will be provided under separate cover.

Given the ongoing discussion with the Division over the last 9 months about alpha and beta activity surveys in relation to release of materials and surveys conducted in work areas, Cotter is surprised that the Division would assume that the subject crates were uncontaminated on the basis of a cursory gamma survey. Given the purpose of the bone

Concer Response:

Wooden crates located in the bone yard were posted with radiation placards and stenciled with cautions pertaining to radioactive surface contaminated items. A survey of these items did not identify any gamma radiation above background. Whenever radiation warning signs, postings, or stencils are left in place when there is no hazard the effectiveness of the warnings signs and stencils are diminished. Complacency in the use of warning signs may lead to unnecessary exposures and unsafe conditions. The licensee should take immediate action to identify and eliminate any and all warning signs, labels, stencils, etc. throughout the facility which falsely indicate the presence of radioactive materials or a radiation hazard.

Item of Concern C Findings:

As an immediate response to this notification, Cotter began filling the impoundment with water on December 13, 2002. In addition, Cotter is applying water and dust suppressant to exposed surfaces to further preclude the potential for dusting from the impoundment. However, it should be noted by the Division that unnecessary use of water during drought conditions is a concern overall within the State of Colorado and has been a controversial matter locally. It is also important to note that it has been Cotter's intention to maintain limited head conditions within the impoundment in accordance with decisions made with the Division regarding impoundment operations.

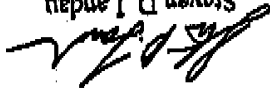
Cotter is confused by the mixed messages delivered by the Division regarding this issue. Cotter sought and was granted the Division's approval by Mr. Phil Stoffey to apply mulch to exposed beach areas within the impoundment. Mr. Stoffey and Mr. Egidi visited the site after the mulch was applied and Mr. Stoffey stated in a November 14, 2002 public meeting related to plutonium sampling that the mulching effort had been successful and that Mr. Egidi had inspected for dusting and did not observe a problem. As the Division is aware, it has been Cotter's intention to utilize low-activity Maywood dirt to cover impoundment beaches.

Cotter Response:

and has created the potential for substantially increased emissions of radioactive materials from the site. The effectiveness of the licensee's efforts to control air emissions by covering the portions of the exposed areas of the impoundment with a mulch material was not verified during the inspection through independent air sampling. It appears from the visual examination of the impoundment that large areas of mill tailings are currently exposed. The licensee should take immediate action to control air emissions.

Manager of Environmental Affairs

Steven D. Landau



Sincerely,

If you should have any questions regarding this matter, please contact me.

Yard storage location (e.g. items for salvage and/or disposal) it was possible that the crates were if fact contaminated with surface alpha contamination which would have gone undetected by the LARS survey. In response to the inspection team's visit the crate placards were removed and stenciled labels were painted over.