



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

NOTICE OF VIOLATION

Case No. 2006-071

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 a review of records regarding Cotter Corporation’s Canon City Mill (“Mill” or “Facility”), located at 0502 County Road 68, Township 19 South, Range 70 West, Fremont County, Colorado. Operations at the Facility include a solvent extraction process consisting of a series of interconnected tanks containing organic solvents, principally kerosene with lesser amounts of alamine 336 and tridecyl, that are used to extract uranium and vanadium from leached ore feed solutions. Used solvent is disposed of by sending it to an impoundment at the Facility along with tailings from the process, where organic compounds are evaporated into the atmosphere. The Mill is subject to the requirements of Colorado Air Quality Control Commission (“AQCC”) Regulation Nos. 3 and 7, 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. Pursuant to Condition 9 and Attachment A of Permit No. 95FR803, annual organic solvent usage shall not exceed 85 tons per year, which equates to approximately 26,000 gallons. VOC emissions from the solvent extraction process are limited to 85 tons per year, as determined on a rolling twelve-month basis.

3. On September 8, 2005, Cotter submitted a revised Air Pollution Emission Notice (“APEN”) seeking to increase the solvent usage limit to 300,000 gallons per year. In a letter submitted with the APEN Cotter indicated that based on its analysis the assumption in the permit that all the solvent used is emitted into the atmosphere as VOC emissions is incorrect, and that usage of 300,000 gallons of solvent would not result in an exceedance of 85 TPY VOC emission limit. In support of this conclusion, Cotter stated that the EPA Tanks emission-modeling program indicated that VOC emissions from the tanks, based on a 300,000 gallon usage, would be 2.53 TPY. Additionally, Cotter argued that based on a laboratory analysis of a tailings sample, potential free organic compounds disposed of in the impoundment that could be emitted

into the atmosphere from the impoundment would be approximately 75.4 TPY, for a total of 77.93 tons of VOC emissions per year. Cotter further indicated that any remaining organic compounds would either be entrained in the tailings sent to the impoundment, or entrained in the product where they would be destroyed by the high temperatures utilized further on in the production process.

4. During December 2005 and January 2006, the Division conducted an analysis of solvent use at the Facility and the potential Volatile Organic Compound (“VOC”) emissions from the extraction process. Cotter’s records indicate that during the period from January 2005, when the extraction process started up, through August 2005, Cotter used approximately 350.8 tons of solvent. Further, the Division identified a number of problems with Cotter’s argument that only a portion of the solvent used is emitted to the atmosphere, and that based on these shortcomings, Cotter’s assertion that the potential VOC emissions from the process is less than 80 tons per year based on solvent usage of 300,000 gallons is incorrect, and that actual emissions are likely much closer to the amount of solvent used, as assumed in Permit No. 95FR803.

II. PROVISIONS OF THE LAW ALLEGED TO HAVE BEEN VIOLATED

5. Cotter exceeded its solvent usage limit of 85 tons per year in violation of Condition 9 and Appendix A of Permit No. 95FR803.

6. Cotter exceeded its VOC emission limit of 85 tons per year in violation of Condition 9 and Appendix A of Permit No. 95FR803.

7. Based on its solvent usage of 350.8 tons during the period from January 2005 through August 2005, annual VOC emissions from the solvent extraction process exceeded 250 tons per year and thus Cotter was required to obtain a Prevention of Significant Deterioration (“PSD”) Permit prior to commencing construction or operation of the solvent extraction process, as well as comply with all the other requirements of the PSD program including installation of Best Available Control Technology (“BACT”), pre and post construction monitoring, and emission modeling and increment analysis. Cotter failed to obtain a PSD Permit or comply with the other requirements of the PSD Program in violation of AQCC Regulation No. 3, Part D prior to commencing construction or operation of the solvent extraction process.

8. Pursuant to AQCC Regulation No. 3, Part C, § II.A.1., Major Sources of emissions must obtain a Title V Operating Permit from the Division. The application for the Operating Permit is due within 12 months after the source becomes major pursuant to AQCC Regulation No. 3, Part C, § III.B.2. Where a source submits a timely application, the application shall act as a shield to any enforcement action for operating without an Operating Permit in accordance with AQCC Regulation No. 3, Part C, § II.B. Cotter became a Major Source upon start-up of the solvent extraction process, but failed to submit an Operating Permit application within 12 months in violation of AQCC Regulation No. 3, Part C, § III.B.2. Accordingly, Cotter has been operating the Facility without an Operating Permit since January 2005 in violation of AQCC Regulation No. 3, Part C, § II.A.1.

9. Pursuant to AQCC Regulation No. 7, § V.A., VOCs shall not be disposed of by evaporation unless Reasonably Available Control Technology (“RACT”) is employed. Cotter disposed of VOCs by evaporation without applying RACT, violating AQCC Regulation No. 7, § V.A.

III. STANDARD PENALTY PROVISION FOR THE VIOLATION AS ALLEGED

10. 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.

11. 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 noncompliance penalty shall be calculated in accordance with the provisions of § 25-7-115(5)(b), C.R.S.

IV. CONFERENCE REGARDING THE ALLEGED VIOLATION

12. In accordance with the requirements of § 25-7-115(3), C.R.S., the Division has scheduled a conference regarding the violations described above on June 21, 2006, at 10:00 AM 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.

13. 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

14. 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).

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VI. EFFECTIVE DATE OF NOTICE

15. This Notice of Violation shall become effective upon receipt. Dated this 22nd day of May 2006.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

Steven Hine
Field Enforcement Officer
Stationary Sources Program
Air Pollution Control Division

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