

February 27, 2006

Mr. Gary W. Baughman, Director  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Re: Cotter Corporation Canon City Milling Facility-RML 369-01  
Notice of Violation, Assessment of Penalties and Order dated February 8, 2006

In order to support the bases for Cotter's February 16, 2006 request for an informal conference the following information is provided to facilitate communications relative to RH 13.5.3 and as a requirement relative to the necessary information exchange prior to an informal conference in accordance with RH 13.5.6.

**NOV Item 1: Equipment Inoperability**

Cotter would like to discuss this issue within the context of the issues which led to the May, 2005 Order (i.e. intake above regulatory limit). In response to this matter Cotter has completed engineering changes at the location of the injury. As first response Cotter installed a cap on the vertical riser which conveyed the heated solution. Then, after a root-cause type analysis, a pressure regulator was installed on the air supply to the riser and the valve was moved from directly over the riser. These engineering changes preclude pumping and release of slurry beyond the top of the riser and the potential for employee contact with this solution has been eliminated. Second, the safety showers at the grind and leach building and first floor of the CCD wagon wheel location have been restored to service and protection of these facilities from freezing conditions are planned for future operations. Finally, as noted by the inspector, PPE requirements have been posted in the grind-leach building and all employees working in this location have been made aware of the requirement. In addition to the above, Cotter has been reviewing facility management systems in order to identify system failures which can lead to circumstances such as those noted in this violation.

**NOV Item 2: Employee Training**

Cotter disagrees that this finding constitutes a violation of the Compliance Order # 05-23-01. As noted by the inspector, this employee was trained and that training was documented in the form of a completed Leach Operator Global Competency Checklist and a Leach Autoclaves Operation Competency Checklist, both dated November 3, 2005. The fact that these lists were completed and dated is ample evidence that the training did occur and that the employee was qualified to do the work. The fact that the checklists had not yet been signed by management does not nullify the training and qualification of the worker. Cotter requests that the \$ 1,250 fine related to PPE requirement failure be

rescinded as the finding that the employee was not qualified is not supported on the basis of lack of management signatures on the checklists.

This was a matter of paperwork backlog and did not constitute evidence that the employee was unqualified by lack of required training. However, as was the case with NOV Item 1 above, Cotter has been reviewing facility management systems in order to identify system weaknesses which can lead to circumstances such as those noted in this violation. In this instance, the matter of work area training (and the assurance that training documents have been signed) is a system which requires a detailed review and refinement as an element of the forthcoming readiness review.

### **NOV Item 3: Shift Inspections Inadequate**

The fact that the shower units were not noted as inoperable during routine plant inspections is a matter of documentation failure and is an indication of a need for system improvement. As noted in NOV Items 1 and 2 above, review and refinement of the Environmental and Safety Management systems is necessary as an element of the forthcoming readiness review process.

### **NOV Item 4: PPE Requirements Not Met**

Based on Cotter's review of this situation, it appears that an assessment was completed and that PPE was a requirement at this location. However, the system of communication (written or oral) was ineffective in this instance and will be an element of the forthcoming system refinement component of readiness review.

### **NOV Item 5: Work Place Hazard Assessment Timeliness & Readiness Review Order**

As noted above, a formal Hazard Assessment provision has been added to the safety program and in this case the assessment resulted in a requirement for PPE at this location. However, the matter of communication by means of written posting and/or oral instruction was a systemic weakness which requires refinement during the forthcoming readiness review process.

Regarding the Order to provide the readiness review now, Cotter disagrees that an Order is warranted at this time. More specifically, the provisions of RH 13.5 require that the Department must: (1) Notify the licensee of an alleged violation (13.5.1); (2) Allow 30 days for the Licensee to respond to the alleged violation and, if requested, allow for an informal conference (RH 13.5.3); and then (3) Issue an Order within 30 days of the licensee's written response and/or conference (RH 13.5.4). The Department has not followed the requirements of RH 13.5 in that the Department failed to find an alleged violation and circumvented the response and informal conference provisions of the Regulation.

As a matter of clarification, Cotter did not violate License Condition 8.2 because the requirement for a readiness review was conditioned upon milling operations at greater than 500 tons per day. Thus, Cotter requests that the Department rescind the Order for a readiness review at this time.

The information provided above is intended for discussion purposes during the informal conference which has been scheduled for March 2, 2006. Cotter's formal response will be delivered to the Department after the matter has been reviewed in the informal conference setting. Should you have any questions regarding this matter please be prepared to pose them at the forthcoming informal conference.

Sincerely,

Steven D. Landau  
Manager, Environmental Affairs

Cc Mr. Steve Tarlton  
Mr. Phil Egidi