

# STATE OF COLORADO

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

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Colorado Department  
of Public Health  
and Environment

SEP 13 2011

Kay M. Hawkle  
1739 Fremont County Rd 21A  
Cañon City, CO 81212

Dear Ms. Hawkle:

Thank you for commenting on Cotter Corporation's 2011 Annual Financial Assurance Report. While some of the comments you have provided relate to ongoing legal action and will not be addressed here, I will attempt to respond to other comments as appropriate.

You commented that the radiation rules should have clarified the statutory language added in 2010. This language was specifically created by CCAT and approved by the legislature. Consequently, when we drafted the regulation changes implementing the statutory changes for public comment, we maintained the same language so as not to modify this intent. No comments were received from CCAT or other parties regarding this language in our or the Board of Health's public process, so no changes were made.

As to the comment period, since this was not specifically prescribed in the CCAT language, we were uncomfortable in limiting the opportunity to comment, and no language was suggested to change the regulations. Although Cotter is required to provide an annual report for financial assurance, the department is not limited as to when changes to it can be directed. Thus we can adjust the required amount whenever there is sufficient justification.

You have suggested using different mechanisms to inform the public regarding Cotter issues. We agree that a published notice may not be the most effective tool for informing the public of upcoming items, and have invested significant effort toward doing so through our web site and the monthly Citizens Advisory Group (CAG) meetings.

We agree that a public meeting should be scheduled in the near future and have been in discussions with EPA to do so. If you have other ideas for these communications, we would welcome them. I identified some processes we expect to use in the April 13, 2011 letter to the CAG regarding public involvement in agency decisions.

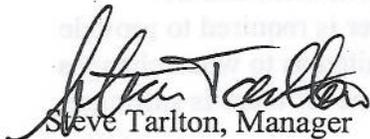
You reference the surety amounts in the April 20, 2010 estimate by the Department. Casual reading of this document would allow you to understand that the financial assurance is divided among license activities and Remedial Action Plan (RAP) activities, and that the license amount of \$20.8 million estimated by the department was accepted by Cotter. The actual estimate also included an additional \$15 million for RAP surety, which is still being negotiated with Cotter under the terms of the Consent Decree in Federal court. Once this amount is finalized, a more coherent total will be available.

In your specific concerns you identify many of the issues raised by CCAT in their lawsuit against the Department, which I cannot respond to at this time. However, you do note two issues I can address:

- **Financial assurance is based on estimates, not real costs.** This is true, since the financial assurance is based on the hypothetical situation where at some unknown point in the future Cotter does not perform the work and the state is required to do so. While the scope of many of the activities required for closure is relatively straightforward, others are as yet poorly defined or undefined. Thus the financial assurance estimates are indeed estimates based on assumed scope, timing and state structure for implementing the projects. State burdened rates (indirect and overhead) are different from Cotter's as you would expect between a public and private entity. Since state costs are often higher than private entity costs, use of Cotter's actual costs would likely undervalue the hypothetical future work.
- **Surety should not have been updated until all plans were finalized.** The department made a decision not to delay updating the financial assurance until all documents and plans were updated and finalized so as not to delay receiving funds on finalized plans. Further, we have increased the surety amounts even though plans are not yet finalized, and indeed may change them again in the near future.

We appreciate and encourage your continued interest in Cotter issues.

Sincerely,

  
Steve Tarlton, Manager  
Radiation Program

Cotter CC 369-01 File 3.2