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

June 1, 2010

Mr. Gus M. Gaviotis, Registered Agent
Cotter Corporation (Schwartzwalder Mine)
7800 E Dorado Pl., Ste. 210
Greenwood Village, CO 80111

Certified Mail Number: 7009 1680 0000 2094 4756

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-100601-1

Dear Mr. Gaviotis:

Cotter Corporation is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that Cotter Corporation has violated the Act, and/or permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Cotter Corporation is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of $10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Cotter Corporation desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Jefferson County Public Health

ec: Aaron Urdiales, EPA Region VIII
Jon Erickson, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Michael Beck, OPA

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER **NUMBER: IO-100601-1**

IN THE MATTER OF: **COTTER CORPORATION**
SCHWARTZWALDER MINE
JEFFERSON COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S. (2009), which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S. (2009), the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, the Cotter Corporation ("Cotter") was a New Mexico limited liability company in good standing and registered to conduct business in the State of Colorado.

2. Cotter is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. (2009), and its implementing permit regulations, 5 CCR 1002-61, §61.2(73).

3. The Schwartzwalder mine is an underground uranium mine in Jefferson County near Golden, Colorado (including, but not limited to, the mine and mine building and structures, referred to as the "Facility"). It opened in about 1953 and was acquired by Cotter in 1966.

4. Cotter operated the mine from 1966 until May 2000, when mining operations ceased. In 2000, pumps that dewatered the mine were shut off and the mine was thus allowed to flood. Uranium and other metals have leached from the rock in the mine and are contained within the solution that forms the mine pool.

5. Prior to the construction of mine facilities, Cotter placed waste rock from the mine as fill material in the alluvium of Ralston Creek in order to create a pad for mine-related buildings (the "Pad"). Four sump pumps were placed in the Pad and the alluvium of Ralston Creek, and Ralston Creek was routed around the Pad. Mine-related structures were then constructed on the Pad.

6. Cotter constructed a water treatment plant ("WTP") on site to treat water pumped from the mine and water from the sumps and drains in the Pad and alluvium.

7. In order to operate the mine in compliance with state and federal law, Cotter obtained, *inter alia*, Colorado Discharge Permit System ("CDPS") Permit # CO-0001244 (the "Permit"). The current version of the Permit authorizes Cotter to discharge certain levels and/or amounts of uranium and other mine-related pollutants from the WTP to Ralston Creek via outfall 001, defined in the Permit as the discharge pipe leading from the treated water retention pond to Ralston Creek.

8. In June of 2002, Cotter ceased pumping water from the sumps to the WTP, and the WTP was shut down.

9. In 2002, shortly after sump pumping to the WTP ceased, the levels of uranium and other mine-related pollutants increased in Ralston Creek downstream of the Facility.

10. From 2002 to 2008, Cotter recirculated water from a downgradient sump in the Pad to an upgradient sump. Cotter ceased sump pump recirculation in April of 2008.

11. In 2008, shortly after Cotter ceased the sump recirculation, the levels of uranium and other mine-related pollutants significantly increased in Ralston Creek downstream of the Facility.

12. "Discharge of pollutants" is defined as "the introduction or addition of a pollutant into state waters." §25-8-103(3), C.R.S. (2009).

13. Ralston Creek is "state waters" as defined by §25-8-103(19), C.R.S. (2009) and its implementing permit regulations, 5 CCR 1002-61, §61.2 (102).

14. Alluvial water near or beneath the Facility is hydrologically connected to Ralston Creek and is "state waters" as defined by §25-8-103(19), C.R.S. (2009), and its implementing permit regulations, 5 CCR 1002-61, §61.2 (102).

15. Cotter, as a result of the disturbance of the hydrologic condition of the mine, as an effect of allowing the mine to flood, is discharging uranium and other mine-related pollutants to ground water and Ralston Creek.

16. Cotter, as a result of its placement of waste rock from the mine in the alluvium of Ralston Creek to create the Pad, is discharging uranium and other mine-related pollutants to the alluvial water and Ralston Creek.

17. Uranium and other mine-related pollutants are "pollutants" as defined by §25-8-103(15), C.R.S. (2009), and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).

18. The mine is a "point source" as defined by §25-8-103(14), C.R.S. (2009), and its implementing permit regulation, 5 CCR 1002-61, §61.2 (75).

19. The Pad is a "point source" as defined by §25-8-103(14), C.R.S. (2009), and its implementing permit regulation, 5 CCR 1002-61, §61.2 (75).

20. Cotter does not have a permit authorizing the discharge of pollutants described in paragraphs 8-19 above, and, specifically, the discharge described above is not authorized pursuant to the terms of the Permit.

Discharging Without a Permit

21. Pursuant to §25-8-501(1), C.R.S. (2009), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

22. Cotter's discharge of uranium and other mine-related pollutants from the Pad to the alluvial water and Ralston Creek constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S. (2009).

23. Cotter's discharge of uranium and other mine-related pollutants from the mine to ground water and Ralston Creek constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S. (2009).

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Cotter has violated the following section of the Colorado Water Quality Control Act:

> **Section 25-8-501(1), C.R.S. (2009)**, which states "*No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge...*"

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S. (2009), Cotter is hereby ordered to:

24. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S. (2009), and its implementing regulations promulgated thereto.

Furthermore, the Division hereby orders Cotter to comply with the following specific terms and conditions of this Order:

25. Cotter shall immediately initiate measures to cease all unauthorized discharges of pollutants from the Facility to state waters.

26. Cotter shall immediately begin monthly water quality monitoring of Ralston Creek at a point upstream of the Facility and at the Facility's lowermost property boundary for the following parameters: total uranium, potentially dissolved uranium, total molybdenum, potentially dissolved molybdenum, phosphorus, phosphate, nitrate + nitrite, gross alpha particle activity, gross beta particle activity, total dissolved solids, total suspended solids, radium 226+228 (total), pH, total recoverable antimony, boron, total recoverable chromium, potentially dissolved copper, potentially dissolved silver, potentially dissolved zinc, weak acid dissociable cyanide, fluoride, and total recoverable thallium. Sample collection and laboratory analysis shall be conducted using U.S. Environmental Protection Agency approved methods, and the analytical

method selected for analysis of each parameter shall be the one that can measure the lowest detected limit for that parameter. Cotter shall report the results of the monthly monitoring to the Division within seven (7) calendar days of receipt of the results. Cotter shall continue the monthly monitoring until closure of this Order or until such time as the Division issues written notice modifying the requirement or written notice that the monitoring may cease.

27. Within thirty (30) calendar days of receipt of this Order, Cotter shall provide the Division with a written certification that it has ceased the unauthorized discharge of pollutants to Ralston Creek. If Cotter is unable to cease the unauthorized discharge of pollutants from the Facility into Ralston Creek, Cotter shall alternatively submit, with thirty (30) calendar days, a detailed written plan and expedited time schedule for the implementation of interim measures that Cotter has, or will, implement to reduce or mitigate the concentrations of pollutants in the unauthorized discharge. The interim measures shall consider, but not be limited to, reinitiating pump back operations from Sump Number One to an upper sump to reverse the flow of groundwater in the alluvial fill such that the groundwater is not flowing into the surface water of Ralston Creek and/or initiating active remediation of the alluvial fill/alluvial groundwater to prevent further discharge of pollutants to Ralston Creek. Implementation of the interim measures shall continue until such time as the discharge has ceased or coverage for the discharge under a CDPS permit has been obtained. The submitted plan and time schedule shall become a condition of this Order and Cotter shall comply with the plan and time schedule, as submitted, unless notified by the Division in writing that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order.

28. If Cotter is unable to cease the unauthorized discharge of pollutants from the Facility to Ralston Creek, and consistent with direction from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), Cotter shall:

    a. Reinitiate a water treatment system to treat all water that reports to Sump Number One as soon as possible, but no later than July 31, 2010.

    b. Reinitiate mine dewatering and water discharge treatment sufficient to bring the mine water table to a level at least 500 feet below the Steve Level, and sufficient to reestablish a hydraulic gradient away from Ralston Creek. Implementation must occur as soon as possible, but no later than July 31, 2010.

    c. Ensure that all discharges from the water treatment systems described in (a) and (b) above are made in compliance with the Water Quality Control Act, its implementing regulations, and an applicable CDPS permit.

29. By August 31, 2010, Cotter shall submit to the Division a detailed written description and time schedule outlining Cotter's plan for the long term management of pollutant sources and pollutant discharges from the Facility to state waters. The submitted plan and time schedule shall become a condition of this Order and Cotter shall comply with the plan and time schedule, as submitted, unless notified by the Division in writing that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice and Orders, Cotter shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-CAS
Compliance Assurance Section
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: michael.harris@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice and Orders, that person shall make the following certification with each submittal:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. (2009) and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. (2009) and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S. (2009), that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S. (2009), or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation, Cease and Desist Order, and Cleanup Order, the Department has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S. (2009), you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation and Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S. (2009), and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 1st day of June, 2010.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Lori M. Gerzina

Lori M. Gerzina, Section Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION