COLORADO
Department of Public
Health & Environment

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

January 26, 2015

Ken Mushinski, President
Cotter Corporation (N.S.L.)
7800 E. Dorado Place, Ste. 210
Greenwood Village, Colorado 80111

Certified Mail Number: 7007 0220 0001 0163 1183

RE: Compliance Order on Consent, Number: IC-150123-1

Dear Mr. Mushinski:

Enclosed for Cotter Corporation's records, you will find Cotter's copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 35). Following initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Compliance Order on Consent was changed to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris, Manager
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Natasha Davis, EPA Region VIII
Jefferson County Public Health
Tom Kaldenbach, DRMS
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Janet Kieler, Permits Section, CDPHE
Tania Watson, Compliance & Enforcement Unit, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: IC-150123-1**

IN THE MATTER OF: **COTTER CORPORATION (N.S.L.)**
SCHWARTZWALDER MINE
JEFFERSON COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Cotter Corporation (N.S.L.) ("Cotter"). The Division and Cotter may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:

   a. To establish compliance requirements for the ongoing monitoring of water quality and control of pollutant discharges from Cotter's Schwartzwalder Mine site located in Jefferson County near Golden, Colorado; and

   b. To resolve, without litigation, the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: IO-100601-1 (the "NOV/CDO"), that the Division issued to Cotter on June 1, 2010, including its Amendments Number One, Two and Three that were issued to Cotter on July 12, 2010, August 27, 2010, and September 27, 2011 (collectively, the "NOV/CDO"), and the civil penalties associated with the alleged violations.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF ALLEGED VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Cotter, the Schwartzwalder Mine, and Cotter's compliance with the Act and its implementing permit regulations.

3. At all times relevant to the violations alleged herein, Cotter was a New Mexico corporation in good standing and registered to conduct business in the State of Colorado.

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

5. The Schwartzwalder Mine is an underground uranium mine in Jefferson County near Golden, Colorado that includes the mine and its associated buildings and structures (the "Facility").

6. The Schwartzwalder Mine was acquired by Cotter in 1966. Cotter operated the mine from 1966 until May 2000, when mining ceased. In 2000, pumps that dewatered the mine were shut off and the mine was 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.

7. Prior to the construction of mine facilities, waste rock from the mine was placed 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.

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

9. 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 treated effluent from the WWTP to Ralston Creek via outfall 001, in accordance with the effluent limitations, monitoring requirements and other terms and conditions of the Permit.

10. In June 2002, Cotter ceased pumping water from the sumps to the WWTP, and the WWTP was shut down.

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

12. From 2002 to April 2008, the sump pump in Sump Number One was operated which caused recirculation in the vicinity of Sump Number One.

13. In 2008, after Cotter ceased the Sump Number One pumping, the levels of uranium and other mine-related pollutants increased in Ralston Creek downstream of the Facility.

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

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

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

17. 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.

18. Cotter, as a result of the 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.

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

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

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

22. Cotter does not have a permit authorizing the discharge of pollutants described above, and, specifically, the discharge described above is not authorized pursuant to the terms of the Permit.

23. Pursuant to §25-8-501(1), C.R.S., 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.

24. Cotter's discharge of uranium and other mine-related pollutants from the Pad to the alluvial water and Ralston Creek during the time periods described above and up to the effective date of this Consent Order constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

25. Cotter's discharge of uranium and other mine-related pollutants from the mine to ground water and Ralston Creek during the time periods described above and up to the effective date of this Consent Order constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

Cotter's Position on Alleged Violations

26. In an effort to prevent unpermitted discharges and to comply with applicable water quality standards, Cotter implemented measures at the Schwartzwalder Mine, including an alluvial ground water capture and treatment system, cutoff wall, and diversion pipeline. Further, Cotter initiated in situ treatment of the mine pool and began mine pool dewatering and reverse osmosis treatment. In implementing these measures, Cotter has been proactive, proposing in some cases more remediation measures than what the Division, the Colorado Division of Reclamation, Mining and Safety ("DRMS"), and the Colorado Mined Land Reclamation Board ("MLRB") were requiring. Once the necessary permits were obtained, Cotter substantially reduced the concentrations and amounts of uranium and other mine-related pollutants in Ralston Creek, the underlying ground water, and the alluvial water of Ralston

Creek. To date, Cotter has spent in excess of $8.5 million in its effort to prevent unpermitted discharges into Ralston Creek.

27. The inclusion of Cotter's position statement in this Consent Order should not be construed to constitute an admission or agreement by the Division as to the content of the position statement.

ORDER AND AGREEMENT

28. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders Cotter to comply with all provisions of this Consent Order, including all requirements set forth below.

29. Cotter agrees to the terms and conditions of this Consent Order. Cotter agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Cotter also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Cotter against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

30. Notwithstanding the above, Cotter does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Cotter pursuant to this Consent Order shall not constitute evidence of fault and liability by Cotter with respect to conditions resulting from past or present operations of the Facility. Cotter expressly reserves its rights to deny any of the Division's factual or legal determinations and to defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements

31. Cotter shall continue monthly water quality monitoring of Ralston Creek (when water is flowing in the creek) at a point upstream of the Facility and at the Facility's lowermost property boundary for the following parameters: total uranium, dissolved uranium, total molybdenum, dissolved molybdenum, phosphorus, phosphate, sulfate, 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, arsenic, total recoverable chromium, dissolved copper, dissolved silver, 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 Consent Order or until such time as the Division issues written notice modifying the requirement or written notice that the monitoring may cease, whichever occurs sooner.

32. Cotter shall continue operation of the alluvial ground water capture and/or treatment system at the Facility, including the performance of periodic evaluations of the effectiveness of the system as a whole and the implementation of process improvements and efficiencies where identified, with the goal of limiting or preventing untreated mine water from discharging to Ralston Creek or otherwise migrating beyond the property boundaries of the Facility. Cotter shall continue the operation of the system until closure of this Consent Order or until such time as the Division issues written notice modifying the requirements or written notice that operation of the system may cease, whichever occurs sooner.

CIVIL PENALTY

33. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Cotter shall pay Seven Hundred Fifty Thousand Dollars ($750,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Seven Hundred Fifty Thousand Dollar ($750,000.00) civil penalty for the above alleged violation(s) and Cotter agrees to make the payment within thirty (30) calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Michael Harris
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CWE-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

34. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations alleged herein and in the NOV/CDO, and of the civil penalties associated with the alleged violations.

35. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty day public comment period. The Division and Cotter each reserve the right to withdraw consent to this Consent Order if comments received during the thirty day period result in any proposed modification to the Consent Order.

36. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Cotter, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

37. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

38. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

39. Notwithstanding paragraph 30 above, the alleged violations described in this Consent Order will constitute part of Cotter's compliance history for the Division's purposes.

40. This Consent Order does not relieve Cotter from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder or from obtaining all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

41. This Consent Order does not relieve Cotter from complying with MLRB and/or DRMS orders for the Schwartzwalder Mine, including without limitation compliance with the corrective actions set forth in MLRB Order No. MV-2010-018, as modified by the September 12, 2012 Agreement between DRMS and Cotter and MLRB's September 18, 2012 Order and the March 12, 2013 Agreement between DRMS and Cotter and MLRB's March 13, 2013 Order. In addition, this Consent Order does not relieve Cotter from complying with the technical plans and requirements approved by DRMS through Amendment 4 and all related technical revisions.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

42. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific violations alleged herein and in the NOV/CDO, and all civil penalties for the alleged violations. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

43. This Consent Order does not grant any release of liability for any violations not specifically alleged herein or in the NOV/CDO.

44. Cotter reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order.

45. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

46. Upon the effective date of this Consent Order, Cotter releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically alleged herein. Cotter shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Cotter, or those acting for or on behalf of Cotter, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Cotter shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Cotter in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

FORCE MAJEURE

47. Cotter shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Cotter, and which cannot be overcome by due diligence.

48. Within seventy-two (72) hours of the time that Cotter knows or has reason to know of the occurrence of any event which Cotter has reason to believe may prevent Cotter from timely compliance with any requirement under this Consent Order, Cotter shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Cotter knows or has reason to know of the occurrence of such event, Cotter shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

49. The burden of proving that any delay was caused by a force majeure shall at all times rest with Cotter. If the Division agrees that a force majeure has occurred, the Division will so notify Cotter. The Division will also approve or disapprove of Cotter's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Cotter's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Cotter. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Cotter may file an objection.

50. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Cotter shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence once the force majeure condition no longer exists.

DISPUTE RESOLUTION

51. If the Division determines that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by Cotter to mitigate the delay caused by a force majeure are

inadequate; that any request to modify this Consent Order should be disapproved; or that Cotter's request for closure of this Consent Order should be rejected pursuant to paragraph 56, the Division shall provide a written explanation of its determination to Cotter. Within thirty (30) calendar days of receipt of the Division's determination, Cotter shall:

a. Submit a notice of acceptance of the determination; or
b. Submit a notice of dispute of the determination.

If Cotter fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

52. If Cotter files any notice of dispute pursuant to paragraphs 51 or 56, the notice shall specify the particular matters in the Division's determination that Cotter disputes, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Cotter. The Division and Cotter shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedure Act, §§ 24-4-101 through 108, C.R.S.

NOTICES

53. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-3598
E-mail: michael.harris@state.co.us

For Cotter:

President
Cotter Corporation (N.S.L.)
7800 E. Dorado Place, Ste. 210
Greenwood Village, CO 80111
Telephone: 720-554-6207
Fax: 720-554-6201

Each Party may change the individual to whom reports, notices, and other communications required or permitted to be given under this Consent Order are sent, or the individual's contact information, by notifying the other Party in writing of such change. Unless otherwise specified, any report, notice or other communication required under this Consent Order that is sent by fax or e-mail shall also be sent by U.S. mail or courier within three (3) business days of the date that the fax or e-mail was transmitted.

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

54. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Cotter of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Cotter agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Cotter and the Facility to achieve and maintain compliance with State law.

MODIFICATIONS

55. This Consent Order may be modified only upon mutual written agreement of the Parties.

CLOSURE OF CONSENT ORDER

56. Cotter may request closure of this Consent Order when it has demonstrated that water discharged from or leaving the Schwartzwalder Mine complies with the Act. The Division shall either accept or reject Cotter's request for closure in writing within ninety (90) calendar days of receipt. If the Division rejects Cotter's request for closure, it shall include in its determination a statement identifying the factual and legal bases for its finding. Cotter shall, within thirty (30) calendar days of receipt of the Division's rejection, either:

    a. Submit a notice of acceptance of the determination; or
    b. Submit a notice of dispute.

    If Cotter fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

57. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 35. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

58. This Consent Order is binding upon Cotter and its officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Cotter agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR COTTER CORPORATION (N.S.L.):

_____ Date: 1/7/2015
Kenneth J. Mushinski, President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 23 Jan 15
Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION