

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

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November 9, 2012

Glenn Williams
Cotter Corporation
P.O. Box 700
Nucla, CO 81424

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta Piñeda
Director

Re: Cotter Corporation, Temporary Cessation File and Sites: No. M-1977-451;SR-11 Mine, M-1979-094HR;JD-7 Pit, M-1977-305;LP-21 Mine, M-1977-310; JD-6 Mine, M-1977-311;SR-13A Mine, M-1977-306;JD-9 Mine. Division Response

Dear Mr. Williams:

On October 1, 2012 the Division of Reclamation, Mining, and Safety (Division) received Cotter Corporation's (Cotter) response regarding the permit status for the above referenced permitted sites. The Division sent letters out to all hard rock mines with an "intermittent operation" (IS) permit designation requesting information on mining activities to assess whether operations met the definition of IS set forth in the Act and Rule. If a site did not meet the definition of IS, then the Division requested that the operator voluntarily place the site into Temporary Cessation (TC) or resume active mining operations.

In order to maintain IS active mining activities must occur each year: The Act provides that intermittent operations must "resume operating within one year." C.R.S. § 34-32-103(6)(a)(II). In order to fulfill this requirement, operators must demonstrate that some active mining occurs **every** year that they remain in IS. Active mining includes the development or extraction of a mineral from its natural occurrence, and/or, the following other activities on affected land: transportation, concentrating, milling, evaporation, and other processing. See C.R.S. § 34-32-103(8); Rule 1.1(31). Active mining **does not** include general site maintenance, or off-site smelting, refining, cleaning, preparation, transportation, and other operations not conducted on affected land.

Cotter notes that the operations were placed into IS as approved through a Technical Revision on various dates in 1990 and 1991. An IS designation is not a perpetual designation. A permit status is subject to ongoing review by the Division and Board to ensure continued compliance with the law. Annual reports and inspections note that the sites do not currently meet the definition of an intermittent operation. . The Division has the authority by law to review permits to ensure they meet current standards and, where applicable, require changes to ensure compliance. The Division has determined that an IS classification is not appropriate for the sites listed above and must be corrected to comply with the Act and Rules.

The Division is aware of the issues and injunction related to pending litigation in *Colorado Environmental Coalition vs. Office of Legacy Management*. The injunction precludes on site activities on Department of Energy (DOE) lease tracts without prior approval of the court; however, the Court's order does not relieve operators from continued compliance with local, state, and other federal law requirements. The

Division is not requiring Cotter to conduct on-site activities in violation of the injunction; the request is that Cotter take the necessary permitting steps to remain compliant with State law regarding inactivity at the sites. In light of the significant delay related to the DOE PEIS process, which precludes on-site mining activities, the Division believes that TC is the only status that would allow these sites to remain compliant with State law. The plan put forth by Cotter to maintain the status quo and wait until the conclusion of the litigation and the DOE PEIS, and related activities are accomplished before the Division commences an initial status review is not acceptable to the Division.

The Division again requests voluntary compliance by operators who do not meet the current definition of an intermittent operation by either beginning mining activities or, in this case, place the permit into TC. **The Division is requesting that Cotter place the above referenced sites into TC by December 15, 2012 as they do not meet the definition of an intermittent operation as defined by the Act and Rules and are, therefore, not in compliance with the law.**

If you need additional information please contact me at the Division of Reclamation, Mining and Safety, Grand Junction Field Office, 101 S. 3rd St., Suite 301, Grand Junction, Colorado 81501, by telephone at 970.241.1117, or by e-mail at russ.means@state.co.us.

Sincerely,



G. Russell Means
Senior Environmental Protection Specialist
West Slope Field Office Supervisor

Cc: Loretta Pineda, Division of Reclamation, Mining, and Safety Director
Tony Waldron, Mineral Program Supervisor
Jeff Fugate, Division, AGO Consul
Ed Cotter, DOE / Stoller