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DIVISION OF  
RECLAMATION MINING & SAFETY

January 22, 2013

Mr. Dustin Czapla  
Environmental Protection Specialist  
Department of Natural Resources  
Colorado Division of Reclamation, Mining and Safety  
Grand Junction Field Office  
101 S. Third St., Suite 301  
Grand Junction, CO 81501

Re: CM-25 Mine, Permit No. M-1977-307, Response to Comments from Information Network for Responsible Mining ("INFORM")

Dear Mr. Czapla:

I am writing in response to your letter dated November 26, 2012, which requests that Cotter Corporation (N.S.L.) ("Cotter") inform the Division of Reclamation, Mining and Safety ("Division") of how it will respond to the jurisdictional issues presented by INFORM in its letter, dated November 23, 2012, to the Division, regarding Cotter's 110d Amendment Application ("Amendment") for the CM-25 Mine. Subsequent to writing its letter, the Division expanded its request to also include the non-jurisdictional issues presented by INFORM. This letter is written to comply with the Division's original and expanded requests, and will respond to INFORM's concerns in the order in which INFORM presents them in its letter.

## **I. Jurisdictional Issues**

INFORM asserts several positions in its November 23, 2012 letter that misstate the authority of the Division and the Mined Land Reclamation Board ("Board") under the Mined Land Reclamation Act ("MLRA"), C.R.S. §§ 34-32-101 to -127, and its implementing regulations, particularly as to the Division's and Board's authority to approve intermittent status for the CM-25 Mine and to place the mine into temporary cessation. While Cotter will address those positions below, it also wishes to make clear that INFORM's assertions on jurisdiction should not be considered in this proceeding.

The purpose of the Environmental Protection Plan ("EPP") for the CM-25 Mine is to meet the requirements of Hard Rock/Metal Mining Rule 6.4.21 and to update portions of Cotter's permit, not to question the Division's prior approval of intermittent status. The EPP process is neither the time nor proper procedure to criticize Division decisions made more than two decades ago or to present legal arguments regarding how the Division should be implementing its intermittent status and temporary cessation rules. Cotter applied for intermittent status for the CM-25 Mine on July 26, 1990. In that application, Cotter described the activities undertaken since 1980 which constituted mining operations and which qualified the mine to be in intermittent status.

By letter dated December 5, 1990, the Mined Land Reclamation Division informed Cotter that its application was deemed approved as a matter of law. The Division has consistently confirmed the CM-25 Mine's intermittent status since that approval, including in an inspection report, signed April 18, 1997. Moreover, in a letter dated September 30, 2011, the Division requested that Cotter update its permits by submitting EPPs, which Cotter has now done. INFORM should not be allowed to question these decisions or the CM-25 Mine's future status in a proceeding where such decisions and status are not being adjudicated, and Cotter is merely attempting to comply with the Division's requests to update its permit and submit an EPP. INFORM's assertions on temporary cessation are especially inappropriate in this proceeding, because no decision has yet been made on placing the CM-25 Mine into temporary cessation. However, if any such decision is made and the CM-25 Mine is placed into temporary cessation in the future, a separate administrative process will be initiated at that time specifically addressing that matter.

Notwithstanding the above, Cotter responds below to the specific jurisdictional issues raised by INFORM.

- A. *INFORM Comment: The CM-25 is a fully reclaimed mine and has been idle since at least August 8, 1980. The 110(d) reclamation permit should be terminated and the CM-25 site should be inspected for final release. All reclamation work at the site was completed in 2003 and recent inspection reports have noted that vegetation is established and the site is releasable under the existing permit standards. Considering the longterm depressed conditions of the uranium market, the economic costs of redeveloping the CM-25 mine is not feasible and there is no clear reason why the operator would continue to keep a permit for a fully reclaimed mine open. Cotter Corporation still has not responded to the Division's Jan. 4, 2012, letter asking Cotter to either identify any remaining tasks related to reclamation at the CM-25 or to commence proceedings for a full performance and warranty release.*

The CM-25 Mine has not been idle since at least August 8, 1980. In its July 26, 1990 application for intermittent status, Cotter expressly told the Division that "Since 1980, many activities have been undertaken at the CM-25 Mine which constitute mining operations according to the current definition in the Mineral Rules and Regulations." As explained in Cotter's application, those activities included "determining ore reserves, surface and underground drilling, mine mapping, mine feasibility studies, geological report preparation, ore sampling, timber repair and ground control in preparation for mining, and drainage work near [the] portal in preparation for mining." Cotter also informed the Division that in the "most recent nine year period, \$84,900 were spent at the mine (an average of \$9,400 per year) on activities of this nature, as well as on mine maintenance," and "the ability to produce ore from the [CM-25] Mine and process it through a milling facility has been actively maintained . . ." Further, Cotter informed the Division that "Since 1980, Cotter has operated the CM-25 Mine as an intermittent operation." Subsequent to 1990, there was a variety of activity at the site. Ground support work occurred in 1992, 1993, and 1996-98, and surface drilling occurred in 1991-94 and 1996. Additional drilling occurred in 2010.

INFORM's assertions that Cotter's reclamation permit should be terminated and that the CM-25 site should be inspected for final release are insupportable. The completion of reclamation work is not a basis to terminate a permit, as set forth in C.R.S. § 34-32-103(6)(a) (defining "Life of the mine"). Nor do INFORM's statements about the "longterm depressed conditions of the uranium market" and the "economic costs of redeveloping the CM-25 mine" provide a basis to terminate Cotter's permit. Substantial economic reserves continue to exist at the CM-25 Mine, and these reserves can be mined in the future. See Colorado Division of Reclamation, Mining and Safety Minerals Program Inspection Report signed July 30, 2010 ("The mine was reclaimed due to economic reasons and not ore reserve depletion. Should favorable market conditions evolve Cotter could reactivate the mine once an approved [EPP] amendment is approved."). Cotter intends to mine those reserves when market conditions recover, and has submitted a plan to the Division for doing so. Further, through its EPP, the Amendment, and its Response to Adequacy Review #1, Cotter has submitted to the Division the measures it will take to prevent off-site impacts during periods of inactivity. These measures include grading and installation of improved roadway ditches along portions of the mine access roads, installation of a containment berm along the eastern edge of the site, and excavation of a retention pond with installation of embankments to capture onsite runoff (Onsite Basin 30). A more detailed discussion of these structures as well as maps can be found in section 7.1 of the Drainage Plan for the CM-25 Mine (attached as Appendix III to Cotter's Amendment). For these reasons, and as discussed below, Cotter's reclamation permit should not be terminated, and the CM-25 site should not be inspected for final release. Exhibit D to Cotter's Amendment contains the "remaining tasks related to reclamation" that Cotter believes will be necessary following implementation of the mine plan for the CM-25 Mine.

- B. *INFORM Comment: According to Division records, the CM-25 entered Temporary Cessation for the first time on Aug. 8, 1980. This status was renewed for the second five-year period as allowed under the Mined Land Reclamation Act on July 25, 1985. Once that second five-year period of temporary cessation ended in 1990, under the terms of the MLRA, Cotter should have been required to fully reclaim the mine and terminate the permit. See C.R.S. § 34-32-103(6)(a)(III) ("In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.") Thus, the MLRA states that under no circumstances shall a mine remain in a non-operating status for longer than 10 years, and after 10 years of inactivity, in all cases, a mine must be closed. Nevertheless, at the end of the first decade of non-production at CM-25, Cotter obtained Intermittent Status through a technicality and the permit was allowed to continue. This did not demonstrate the good-faith effort required of mining operators in Colorado to comply with the requirements of the MLRA and the Division's Rules. Intermittent Status was granted to Cotter in 1990 because the Division was unable to complete the review of the application before the statutory time limit and not because it was merited.*

The underlying premise of this comment is that the Division erred when it authorized intermittent status for the CM-25 Mine in 1990. This position fails for several reasons.

First, INFORM's position fails because it is time barred by Hard Rock/Metal Mining Rule 1.4.11, which requires that persons adversely affected or aggrieved by a Division decision file an appeal within certain prescribed time periods. 2 Code Colo. Regs. 407-1, Rule 1.4.11(1)(b) (2010). Here, INFORM makes no claim that it filed any such timely appeal. Its current claim that the Division erred when it authorized intermittent status for the CM-25 Mine is therefore time barred.

Second, INFORM's position fails because, contrary to its assertions, the MLRA did not state in 1990, and does not state today, that "under no circumstances shall a mine remain in a non-operating status for longer than 10 years, and after 10 years of inactivity, in all cases, a mine must be closed." INFORM's statement is flawed on its face because it misapprehends the two separate regulatory categories in which a non-producing mine may be placed under the MLRA. The first category is "temporary cessation," which applies when the "operator plans to, or does, temporarily cease production for one hundred eighty days or more . . . ." C.R.S. § 34-32-103(6)(a)(II). The second category is "intermittent status," which applies when operators "resume operating within one year and have included, in their permit applications, a statement that the affected lands are to be used for less than one hundred eighty days per year." *Id.* Citing the ten-year period applying to "temporary cessation" in C.R.S. § 34-32-103(6)(a)(III), INFORM contends that Cotter was required to close the CM-25 Mine in 1990 because the mine had existed in "temporary cessation" from 1980 to 1990. This contention ignores the independent category of "intermittent status," and the fact that the ten-year period contained in section 34-32-103(6)(a)(III) solely applies to mines continuing in "temporary cessation" and does not apply to mines changing to "intermittent status," which was the case for the CM-25 Mine in 1990.

Third, INFORM's position fails because, in 1990, the CM-25 Mine had not been "idle," "inactiv[e]," or in a "non-operating status" for a ten-year period, as discussed above. Based on the activities described in Cotter's July 26, 1990 application, "temporary cessation" did not appropriately characterize the CM-25 Mine in the 1980s, as mine operations were intermittently occurring. The ten-year period in C.R.S. § 34-32-103(6)(a)(III) therefore did not even apply to the CM-25 Mine, as the mine was operated as an intermittent operation.

Fourth, INFORM's position fails because there is no basis to its assertion that, in 1990, Cotter "did not demonstrate the good-faith effort required of mining operators in Colorado to comply with the requirements of the MLRA and the Division's Rules." INFORM does not cite a single fact to suggest, let alone show, that Cotter's efforts in acquiring intermittent status lacked "good-faith." Nor can it do so. Cotter met with the Division prior to submitting its application for intermittent status for the CM-25 Mine. Pursuant to the Division's recommendations in that meeting, Cotter assembled information to support its request for a technical revision to its permit, and presented that information to the Division in its three-page application, dated July 26, 1990. That the Division did not make a decision on Cotter's application within the 30-day statutory deadline does not show that Cotter's effort lacked good faith, and does not reflect on whether Cotter's application contained the necessary information to support intermittent status for the CM-25 Mine, which it did contain.

- C. *INFORM Comment: In any case, even though Intermittent Status was granted, another decade of idleness passed at the CM-25 without any active mining activity from the operator. Under Intermittent Status, Cotter is required to undertake some active mining activities each and every year, and the MLRA explicitly excludes general site maintenance as a defined active mining activity. [C.R.S. § 34-32-103(8); Rule 1.1(31)] Reclamation work at the CM-25 began in 2001 and was completed in 2003. Since 1990, CM-25 has been permitted under Intermittent Status without meeting the requirements of that status. Because the CM-25 is a mine regulated by the Department of Energy under the Uranium Leasing Program, Cotter is required to comply with Colorado laws and regulations regarding status and permit compliance.*

The CM-25 Mine was not idle in the 1990s, as discussed above. Ground support work occurred in 1992, 1993, and 1996-98, and surface drilling occurred in 1991-94 and 1996. Additional drilling occurred in 2010. But even if such mining activity did not occur, the Board and Division are authorized under the MLRA and its implementing regulations to allow Cotter to cure any deficiencies that may exist in the CM-25 Mine's intermittent status so that such status can be maintained in the future.

The Board has broad authority to permit and regulate mining operations. C.R.S. § 34-32-103(13) (defining "reclamation"). This authority over permitting would allow the Board to approve a request for intermittent status, provided that the MLRA's requirements are met. See C.R.S. § 34-32-103(6) (defining "Life of the mine").

Through the Office of Mined Land Reclamation, the Division "has the full power and authority to carry out and administer the provisions of" the MLRA. C.R.S. § 34-32-104. This delegation of authority to the Division includes the power to review permits to ensure that they meet current standards. See C.R.S. § 34-32-124.

Here, as part of the Amendment, Cotter has submitted an EPP for the CM-25 Mine. Cotter's Amendment also includes a Drainage Design Plan, which proposes drainage improvements for the site. Further, Cotter has informed the Division that it will review the status of its permit for the CM-25 Mine following the construction of these improvements, and determine whether additional mining activity will continue at the CM-25 Mine in the following year.

In a letter to Cotter dated November 9, 2012, the Division reports that the construction of the CM-25 Mine's drainage facilities "is part of the infrastructure required to further develop the site towards extraction of a mineral, not general site maintenance, and therefore considered a mining activity." Letter dated November 9, 2012, from the Division, to Cotter, regarding the CM-25 Mine, at 1 (emphasis added). The Division also recognizes Cotter's plans to review the status of its CM-25 Mine permit following the completion of the drainage facilities, and explains "If Cotter does not resume approved mining activities on or before the 180 day time frame it must submit a request to place the mine into TC [temporary cessation]." *Id.* (emphasis in original). These statements reflect the Division's position that the CM-25 Mine can continue in

“intermittent” status if Cotter constructs the drainage facilities identified in the Amendment, and then timely resumes additional mining activities. Further, the Division’s statements show that, if Cotter complies with the above process, Cotter would not need to terminate its permit for the CM-25 Mine and that the CM-25 Mine can continue as an “intermittent” operation or go into “temporary cessation.”

- D. *INFORM Comment: Should the Environmental Protection Plan be approved, Cotter proposes building the Environmental Protection Facilities and the main staging area in 6 to 12 months and completing full mine redevelopment within two to three years, and then undertaking a review of its status for another 180 days about whether to seek Active status or enter Temporary Cessation. Under this scenario, Cotter ignores the reality that the CM-25 is not eligible for another period of temporary cessation under the MLRA, as its allowable 10 years has passed, three times now.*

The gist of this comment is INFORM’s contention that the MLRA limits the period in which a mine can exist in temporary cessation over its entire life to ten years. To support this contention, INFORM again relies on the MLRA’s definition of “Life of the mine,” which states “In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.” C.R.S. § 34-32-103(6)(a)(III) (emphasis added). The MLRA does not support INFORM’s position.

INFORM’s position fails because it disregards the plain language of C.R.S. § 34-32-103(6)(a)(III). The word “continue” means “keep up or maintain esp. without interruption a particular condition, course, or series of actions.” Merriam-Webster Inc., *Webster’s Third New International Dictionary* 493 (2002). Based on the plain meaning of those words, section 34-32-103(6)(a)(III) fails to impose any limit on the maximum period in which a mine may exist in “temporary cessation” over its life but, at most, indicates an intent to limit periods of “temporary cessation” to ten continuous years. Here, the CM-25 Mine was placed in “temporary cessation” over 30 years ago, and such status ended in 1990 when the Division approved Cotter’s technical amendment as a matter of law and revised the mine’s status to “intermittent.” The CM-25 Mine has also been permitted as an “intermittent” operation from 1990 through the present. A change in the CM-25 Mine’s current status to “temporary cessation” would not, therefore, cause such status to be “continued” for more than ten years, and is authorized under the MLRA.

INFORM’s position that the MLRA establishes a maximum ten-year period in which a mine may exist in “temporary cessation” also disregards the Board’s and Division’s interpretation of the MLRA. The Board’s Hard Rock/Metal Mining Rules impose no such maximum “allowable” period for “temporary cessation,” but instead provide that “In no case shall Temporary Cessation be continued for more than ten (10) years . . . .” 2 Code Colo. Regs. 407-1, Rule 1.13.9 (emphasis added). Likewise, the Division has not interpreted section 34-32-103(6)(a)(III) to impose such a maximum ten-year limit. In its letter to Cotter dated November 9, 2012, the Division advises, “If Cotter does not resume approved mining activities on or before the 180 day time frame it must submit a request to place the [CM-25] mine into TC [temporary cessation].”

Failure to do so may result in enforcement action which may include . . . forced status change to TC . . .” Letter dated November 9, 2012, from the Division, to Cotter, regarding “Temporary Cessation (TC) Response, CM-25 Mine” (emphasis in original). In November 2012, the Division knew that it had approved temporary cessation for the CM-25 Mine from 1980 to 1990. Under these circumstances, the Division’s statements in its November 9, 2012 letter reflect its position that the MLRA does not impose a ten-year maximum limit on the period in which a mine may exist in temporary cessation.

- E. *INFORM Comment: Cotter’s proposed time frame for the redevelopment of the mine is simply not realistic, particularly in context of the extremely low price for uranium and the costs for rebuilding major infrastructure from scratch. It is much more likely that Cotter will persist with patterns well established in its history of delaying construction and thus compliance with any new approved plans or permit requirements; what other choice would it have, considering the impracticality of the uranium market and the lack of a mill to process any ore that may eventually be produced? Again, the CM-25 mine is a mine that is already reclaimed, with no realistic outlook for production into the foreseeable future. The permit should be terminated. Should Cotter wish to propose mining in the future, it should be required to start a new permit application subject to all the current requirements and subject to any requirements that are forthcoming from the Department of Energy’s Programmatic Environmental Impact Statement related to the leasing program, including a site-specific analysis under the National Environmental Policy Act.*

There is no basis to INFORM’s claim that “Cotter’s proposed time frame for the redevelopment of the [CM-25] mine is simply not realistic, particularly in context of the extremely low price for uranium and the costs for rebuilding major infrastructure from scratch. ” INFORM provides no facts to support this claim. Likewise, INFORM’s assertions regarding the “impracticality of the uranium market and the lack of a mill to process any ore that may eventually be produced” are speculation. Cotter believes there is a definite future for the uranium/vanadium mining industry, including the CM-25 Mine. Cotter can also send uranium ore that it produces to the White Mesa Mill south of Blanding, Utah for processing. However, Cotter also recognizes that the future of the uranium/vanadium mining industry will be subject to the world economy and the world market for uranium and vanadium. For this reason, if market conditions preclude opening the CM-25 Mine in a timely manner, Cotter will consider placing the mine into temporary cessation pending recovery of the market. INFORM’s assertions that “[i]t is much more likely that Cotter will persist with patterns well established in its history of delaying construction and thus compliance with any new approved plans or permit requirements” are groundless. Thus, for the reasons discussed above and in section I.A. of this letter, the permit for the CM-25 Mine should not be terminated.

## II. Non-Jurisdictional Issues

- A. *INFORM Comment: Because of the unlikelihood of Cotter resuming mining activities at the CM-25 in the future, regardless of the final status the permit is granted, if the Division is to approve the Environmental Protection Plan, it should not approve the additional acreage requested by Cotter in the amendment application. This seems like an unnecessary authorization to disturb additional acreage that is not clearly justified in the application.*

The purpose of the additional 1.41 acres requested in the Amendment is to cover the additional acreage required to access the proposed vent holes and escapeway locations. Even though the proposed access routes are on previously affected drill roads and old mine access roads, they should be included in the proposed affected area.

- B. *INFORM Comment: The Division has previously noted that the entire permit application - - not just the EPP - - is in need of updating. The Division should enforce this requirement immediately.*

The Amendment and EPP contain updated information for many aspects of Cotter's permit. INFORM does not specify the additional aspects of Cotter's permit, if any, that require updating.

- C. *INFORM Comment: Cotter should be required to demonstrate that it has adequate water supplies to operate the mine should it ever reopen. Although Cotter anticipates being able to purchase water from the Town of Naturita and to haul it to the mining site by truck, the application does not include any demonstrated agreement or water rights that actually authorize this activity.*

Cotter proposes to use the same source of water that it has used for other mining operations in this area in the past.

- D. *INFORM Comment: The CM-25 is adjacent to the Uravan UMTRA site, which has had difficulties of its own coming into compliance with the reclamation standards in place, and includes a number of areas that still show radionuclide contamination that exceed standards. Considering the proximity of CM-25 to the tailings disposal site, Cotter should be required to conduct a baseline radiometric survey now in order to establish existing baseline conditions. Radionuclides are toxic to biota and should be considered as designated chemicals, subject to all commensurate regulatory requirements.*

Cotter has submitted the baseline radiometric survey to the Division in the Response to Adequacy Review #1.



- E. *INFORM Comment: The proposed EPP raises a number of concerns related to stormwater management and water quality monitoring. The CM-25 site drains into Hieroglyph Canyon, a dry canyon that is frequented by visitors for its natural and archeological values. Cotter insists that mining activities at the CM-25 will have no impact on surface water at the mining site or to Hieroglyph Canyon and therefore there is no need for a monitoring plan, but this position is not acceptable. Adequate stormwater measures should be taken to protect the canyon from surface discharge and a monitoring plan should be implemented.*

The Drainage Design Plan contained in the Amendment is designed to “contain” the 100-year 24-hour storm event on the affected area, with measures to adequately convey the 100-year 24-hour event from the surface containment area. Cotter considers this to be adequate stormwater control measures.

- F. *INFORM Comment: Likewise, Cotter's proposed groundwater monitoring is also inadequate. Cotter proposes that it will only install a monitoring well if groundwater is encountered during mining and if a subsequent analysis finds the presence of uranium. This does not establish an adequate baseline. If Cotter truly intends to proceed with mining plans, then baseline water quality monitoring — for a minimum of five quarters — should be established in advance so that impacts from future disturbances can be identified and mitigated.*

The CM-25 Mine has historically been a “dry mine.” Despite this fact, Cotter has committed to installing a monitoring well if groundwater is encountered during mining operations, as set forth in Cotter’s Response to Adequacy Review #1.

- G. *INFORM Comment: Although Cotter proposes undertaking SPLP tests for the waste rock, it does not propose the more important SPLP testing for the actual ore itself.*

In the Response to Adequacy Review #1 for the CM-25 Mine, Cotter committed to the Division that prior to ore being stockpiled on the surface, Cotter will submit to the Division a geochemical evaluation of the ore to be mined for its review and approval.

- H. *INFORM Comment: Considering that the proposed ore storage area is only one-quarter of an acre in size, Cotter should also be limited to the amount of material that can be stored on the ore pad as well as a limit for 30 days for actual stockpiling in order to prevent toxic drainage, acidic or otherwise.*

In the Response to Adequacy Review #1 Cotter specified a maximum surface ore storage stockpile quantity of 1,700 tons. This ore stockpile will be handled on a first in/first out basis to minimize the length of time that the ore will be stored on the ore stockpile area.

- I. *INFORM Comment: The application notes that Wildlife Habitat is the identified post-mining use for the CM-25 once it is fully released. But the property itself is zoned for agriculture and the presence of grazing cattle is noted in the application. This is a conflict for the number of places where concerns over soil content and stabilization of vegetation are noted as insufficient to sustain grazing over time. The site should be managed and reclaimed in a manner that precludes grazing in the future. The site provides important winter habitat for elk and deer, and any future mining operations that are contemplated should be subjected to seasonal closures that protect wildlife. Because of the suitability of the area for Thompson's Big Eared Bat and other regional bat-species, any new mining and reclamation plans should take into consideration habitat creation and protection during final closure.*

The permitted affected acreage for the portal and escapeway areas at the CM-25 Mine is located on the patented Surprise and Surprise No. 1 claims. Cotter is not responsible for limiting property owners' potential for grazing cattle in this area in the future.

Cotter has recommended seasonal work restrictions for the CM-25 Mine in the Response to Adequacy Review #1.

Prior to final closure of the mine, Cotter will contact Colorado Parks and Wildlife and the Bureau of Land Management for recommendations regarding methods for closure of any mine openings on public lands.

If you have questions regarding this submittal, please call me at Cotter's Nucla office, 970-864-7347.

Respectfully,



Glen Williams  
Vice President, Mining Operations