



cotter

Via E-mail and U.S. Mail

January 25, 2013

Ms. Stephanie Reigh
Environmental Protection Specialist
Department of Natural Resources
Colorado Division of Reclamation, Mining and Safety
Grand Junction Field Office
101 South Third St., Suite 301
Grand Junction, CO 81501

RECEIVED
JAN 28 2013
GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

Re: Mineral Joe Mine, Permit No. M-1977-284, Response to Comments from Information Network for Responsible Mining ("INFORM")

Dear Ms. Reigh:

I am writing in response to your letter dated November 28, 2012, which requests that Cotter Corporation (N.S.L.) ("Cotter") respond to the concerns presented by INFORM in its letter, dated November 25, 2012, to the Division of Reclamation, Mining and Safety ("Division"), regarding Cotter's 110d Amendment Application for the Mineral Joe Mine ("Mineral Joe Amendment").

In its letter, INFORM includes comments on both the Mineral Joe Amendment and Cotter's 110d Amendment Application for the JD-6 Mine ("JD-6 Amendment"). This response will solely address INFORM's concerns regarding the Mineral Joe Amendment, as the Mineral Joe Mine and JD-6 Mine are permitted separately, and Cotter is responding to INFORM's concerns regarding the JD-6 Amendment in a separate letter.

As to the Mineral Joe Amendment, INFORM's concerns divide into two categories: (1) jurisdictional concerns related to intermittent status, temporary cessation, and permit consolidation; and (2) non-jurisdictional concerns. This letter responds first to INFORM's concerns on jurisdiction, and second to the non-jurisdictional concerns raised by INFORM.

I. Jurisdictional Concerns

INFORM asserts several positions in its November 25, 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 Mineral Joe Mine and to place the Mineral Joe Mine into temporary cessation. While Cotter will address those positions below, it also wishes to make clear that INFORM's assertions on intermittent status and temporary cessation should not be considered in this proceeding.

The purpose of the Environmental Protection Plan ("EPP") for the Mineral Joe 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 almost 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 Mineral Joe Mine on December 20, 1993. In its application, Cotter described the activities undertaken since 1985 which constituted mining operations and which qualified the mine to be in intermittent status. By letter dated January 31, 1994, the Division of Minerals and Geology informed Cotter that the Board had approved Cotter's application. The Division has consistently confirmed the Mineral Joe Mine's intermittent status since that approval, including in inspection reports for inspections conducted February 21, 1997, February 24, 1999, and October 10, 2002. 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 Mineral Joe Mine's future status in this proceeding where these decisions and status are not now 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 Mineral Joe Mine into temporary cessation. However, if any such decision is made and the Mineral Joe 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 concerns raised by INFORM.

- A. *INFORM Comment: Because the mines are essentially the same facility under two permits, we feel it is appropriate to comment on them together and encourage the Division to consider them as a cohesive mining facility that should be regulated under a single 112(d) reclamation permit.*

The Mineral Joe Mine and the JD-6 Mine were originally permitted by two separate companies operating on contiguous lands. After Cotter acquired the Mineral Joe claims and associated mine permit, the Division continued to regulate the two mines under separate permits. Consistent with this practice, Cotter has submitted to the Division separate reclamation permit amendments for the Mineral Joe Mine and JD-6 Mine. Both permit amendments contain updated information in compliance with the Board's Hard Rock/Metal Mining Rules, and should be considered for approval as submitted.

- B. *INFORM Comment: Because the JD-6 uses the Mineral Joe portals for access and emergency exits and the features of the Mineral Joe are exclusively used for supporting mining activities on the JD-6 such as ore storage, the two permits should be consolidated and considered as a single mining operation. Having two separate applications results in a duplicative and confusing presentation that is a burden to the public. Having a single permit file for the entire mining*

site would foster a more cohesive review of the environmental impacts and allow a more comprehensive reclamation plan to be developed. In addition, the existing reclamation permit for the Mineral Joe is out of date and, if it is not discontinued, should be reviewed entirely rather than just approving the Environmental Protection Plan alone.

Cotter incorporates its response to comment I.A., above. INFORM does not identify facts to substantiate its concerns on permit consolidation. It does not explain why having two separate permit applications results in a duplicative and confusing presentation that is a burden to the public. Further, it does not explain why having a single permit file for the entire mining site would foster a more cohesive review of the environmental impacts and allow a more comprehensive reclamation plan to be developed. Given the lack of supporting facts in INFORM's letter, and the Division's consistent, historical practice of regulating the Mineral Joe Mine and JD-6 Mine under separate permits, the Division should not adopt INFORM's recommendations on permit consolidation.

INFORM's assertion that the reclamation permit for the "Mineral Joe" is "out of date" is also unsubstantiated. The Mineral Joe Amendment and EPP contain updated information for many aspects of Cotter's permit for the Mineral Joe Mine. However, INFORM does not specify the additional aspects of the Mineral Joe Mine permit, if any, that it contends require updating. Any need for such additional updating is therefore unsupported.

- C. *INFORM Comment: Neither the Mineral Joe nor the JD-6 are compliant with the Colorado Mined Land Reclamation Act. Cotter Corporation has been able to escape the reclamation requirements of MLRA by placing both permits on Intermittent Status for lengthy periods despite the lack of any mineral production - - in the case of the Mineral Joe, since 1994; and in the case of JD-6, since 1990 - - and clearly, both permits have been out of compliance with the law for two decades. In fact, Cotter Corporation's noncompliance reaches back even further, since there has been no serious, consistent and documented active mineral production at the mines prior to 1985. Although Cotter claims to have produced some ore at the JD-6 in late 2005 through February 2006, this brief output does not represent a return to active mining, since the ore was never delivered to a mill for processing.*

INFORM's assertion that the Mineral Joe Mine is not compliant with the MLRA is based on its concern that the mine does not satisfy the MLRA's definition of an intermittent operation. The Division has already addressed this concern. In a letter to Cotter dated November 9, 2012, the Division identified the steps that Cotter must take to ensure that the Mineral Joe Mine meets the definition of an intermittent operation. If Cotter does not, or cannot, take such steps, then Cotter must submit a request to place the Mineral Joe Mine into temporary cessation. INFORM's concern has therefore been addressed.

INFORM is incorrect that Cotter has been able to escape the MLRA's reclamation requirements by placing the Mineral Joe Mine permit on intermittent status for lengthy periods without

mineral production, and that the Mineral Joe Mine permit has been out of compliance with the law for two decades or more. This assertion fails on multiple bases.

First, Cotter has already undertaken substantial reclamation measures at the Mineral Joe Mine, as documented in the Division's records. For example, the Division's inspection report, signed March 30, 2005, states: "Most of the Mineral Joe Claims has been reclaimed." The Division's inspection report, signed October 4, 2011, explains the "main mine area, support facilities, and waste piles have been reclaimed with the exception of the Mineral Joe #12 shaft." Further, in the same October 4, 2011 inspection report, the Division observes "The piles, support, and office area are fully re-vegetated and are equal to or better than the surrounding area. Density and diversity of vegetation is very good. Four winged and rabbit brushes are predominant with native grasses and minor shrubs filling in. Some pinyons were noted as coming in as well. With the exception [of] final reclamation of the shaft this area is fully reclaimed." While some portions of the Mineral Joe Mine have not been reclaimed, such as the Duggan Adit, the Mineral Joe 2 portal, and the Mineral Joe 12 shaft, those areas were needed for then existing or future operations. Cotter has therefore not sought to escape the MLRA's reclamation requirements.

Second, INFORM's assertion fails because its underlying premise - that mineral production is required to keep a mine in intermittent status - is inaccurate. As explained by the Division in a letter to Cotter, dated January 24, 2012, regarding the Mineral Joe Mine, intermittent status requires some "active mining," and "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)." The Division has also found that the construction of Environmental Protection Facilities is a mining activity, because "[t]he construction of the facilities is part of the infrastructure required to develop the site towards extraction of a mineral . . . and therefore considered a mining activity." Letters, dated November 9, 2012, from the Division, to Cotter, regarding the Mineral Joe Mine and the CM-25 Mine. Based on the above, active mining does not require mineral production, and includes other mining activity. Accordingly, mineral production is not required to keep the Mineral Joe Mine and other uranium mines in intermittent status.

Third, no "escape" of the MLRA's reclamation requirements has occurred, as Cotter has submitted to the Division a "Reclamation Plan" for the Mineral Joe Mine to be implemented after existing ore reserves at that mine are extracted. This Reclamation Plan is attached as Exhibit D to the Mineral Joe Amendment.

Fourth, INFORM's assertion that the Mineral Joe Mine permit has "been out of compliance with the law for two decades" is incorrect. Since 1994, when the Mineral Joe Mine entered intermittent status, Cotter has regularly submitted annual reports to the Division in compliance with the MLRA and the Division's rules. The Division has also regularly inspected the Mineral Joe Mine, as documented by its written reports. None of these reports found that, by maintaining intermittent status for the Mineral Joe Mine, Cotter was violating the MLRA or the Division's rules. To the contrary, many of those reports noted no issues or no problems. *See* Minerals Program Inspection Reports for inspections of the Mineral Joe Claims conducted September 21,

1995, February 21, 1997, October 10, 2002, March 24, 2005, October 5, 2005, July 28, 2010, and October 2, 2012. While the Division informed Cotter late last year that the Mineral Joe Mine did not meet the definition of an intermittent operation, it also identified the steps that Cotter could take to correct that situation. Letter, dated November 9, 2012, from the Division, to Cotter, regarding the Mineral Joe Mine. Cotter intends to take those steps.

Finally, INFORM's claim that "Cotter Corporation's noncompliance reaches back even further" is also wrong, as mining operations were occurring at the Mineral Joe Mine after 1985. These operations occurred when the Mineral Joe Mine was owned by Kelmine Corporation and by Cotter. With respect to Kelmine Corporation's ownership after 1985, preparation for mining commenced in 1986 with mining occurring in 1987 (over 900 tons of ore mined and shipped), 1988 (1,107 tons of ore mined and shipped), and 1989 (3,043 tons of ore mined and shipped). Letter, dated December 20, 1993, from Cotter, to the Division.

With respect to Cotter's ownership, the following tasks were undertaken between March 1993 and the date of Cotter's application for intermittent status on December 20, 1993: "[m]ine evaluation, surveying, ground control, timber installation and repair, regular mine inspections, environmental assessment, stormwater assessment, sampling and disposal of transformers, electrical supply upgrade, inspection of escape-way and maintenance work performed on all access roads." *Id.* Based on these tasks, the Board approved Cotter's technical revision application requesting intermittent status for the Mineral Joe Mine. Letter dated January 31, 1994, from the Division of Minerals and Geology, to Cotter. INFORM's claims of noncompliance are therefore without basis.

D. INFORM Comment: In any case, Cotter failed in 2006 to maintain its earlier approved Intermittent Status by notifying the Division; by actively extracting ore that year, Cotter implicitly ended the Intermittent Status and once operations ceased again, should have been fully reclaimed pursuant to the Mined Land Reclamation Act at that time. In any case, the clock had run out on Temporary Cessation status for both these permits many years before that. Actual ore production numbers for the Mineral Joe or the JD-6 have not been reported, presumably because there has been no real production.

It is unclear whether the first sentence of this comment applies to the Mineral Joe Mine, as the sentence appears to be incomplete. If the sentence does apply, it is without merit.

Cotter did not end the Mineral Joe Mine's intermittent status by "actively extracting ore" in 2006. To the contrary, as explained by the Division in a January 24, 2012 letter to Cotter, the extraction of ore constitutes "active mining," which qualifies a mine to remain in intermittent status. Accordingly, the active extraction of ore would not have ended the intermittent status of the Mineral Joe Mine.

There is also no basis to any INFORM claim that the Mineral Joe Mine "should have been fully reclaimed" once "operations ceased" in 2006. Substantial ore reserves then existed at the Mineral Joe Mine and JD-6 Mine, and those reserves could be mined in the future. Cotter also

intended to mine those reserves once market conditions recovered. Under these circumstances, fully reclaiming the Mineral Joe Mine in 2006 made no sense, and no provision of the MLRA required it. Nor does INFORM cite any authority to support its position. INFORM's assertion that the "clock had run out on Temporary Cessation status" for the Mineral Joe Mine is irrelevant, as the mine held intermittent status in 2006 and it could lawfully continue in that status. But even if intermittent status for the Mineral Joe Mine was no longer an option in 2006, the "clock" had not "run out" on temporary cessation.

INFORM's assertions on ore production numbers are also incorrect. As explained above, in its December 20, 1993 letter, Cotter reported actual ore production from the Mineral Joe Mine in 1987-1989.

- E. *INFORM Comment: In any case, there is no reference to Intermittent Status in the MLRA but it is explicitly stated that in no instance may a mine remain in a non-producing status for longer than 10 years; after 10 years of non-production, in all cases, a mine must be closed and reclaimed. [See C.R.S. § 34-32-103(6)(a)(III) where it 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."]* Thus, regardless of whether the Division considers some of the activities occurring at a permitted mine site as "operations" under the Board's regulations, the MLRA instead speaks unambiguously in terms of "production" or ore.

The MLRA authorizes intermittent status in its definition of "Life of the mine," which provides, in pertinent part: "The requirement of a notice of temporary cessation shall not apply to operators who 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." C.R.S. § 34-32-103(6)(a)(II). The MLRA's authorization of intermittent status has also been recognized by the Division. See letter, dated January 24, 2012, from the Division, to Cotter, regarding the Mineral Joe Mine.

Contrary to INFORM's assertions, the MLRA fails to state either explicitly, or implicitly, that "in no instance may a mine remain in a non-producing status for longer than 10 years; after 10 years of non-production, in all cases, a mine must be closed and reclaimed." No such language appears in the MLRA. Further, INFORM's statement is flawed 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," referenced above. 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 regulated in "intermittent status."

INFORM's comments on "production" are irrelevant to the current proceeding, which is focused on approval of an EPP and updating Cotter's permit. Moreover, the ten-year period in C.R.S. § 34-32-103(6)(a)(III) does not apply to mines in intermittent status, which is the case for the Mineral Joe Mine.

- F. *INFORM Comment: In the case of the Mineral Joe, there has been no documented mining activities other than to support access to JD-6, and the last activity reported on Cotter's most recent annual report occurred in November 2005. These activities cannot be considered "production" under any reasonable interpretation of the MLRA. The Mineral Joe portal that is used for escape from the JD-6 has been collapsed since at least 2010, underscoring the inability of Cotter Corp. to mine at the site safely and necessarily limiting the types of activities they can undertake there. But the Mineral Joe's dormancy dates back far longer; original mining operations ceased in March 1984, during the previous ownership of Kelmine Corp. [Please see Division's March 22, 1999 inspection report of the Mineral Joe and Aug. 1, 1985 Notice of Temporary Cessation from Kelmine Corp in the file record.] In all, the record demonstrates an astounding 28 years of non-production at this mine through multiple ownerships, far longer than the explicitly defined maximum limit of 10 years of non-production under the MLRA.*

Whether mining activities that occurred at the Mineral Joe Mine constituted "production" or not is irrelevant to this proceeding. But even if that question had some relevance, INFORM does not explain why such activities "cannot be considered 'production' under any reasonable interpretation of the MLRA." In 2005 and 2006, mining activities then occurring at the Mineral Joe Mine contributed to the production of ore from the JD-6 Mine, as documented in Minerals Program Inspection Reports for inspections of the Mineral Joe Mine conducted March 24, 2005 and October 5, 2005, and in the Division's memorandum, dated April 5, 2005, titled "Cotter Corporation, Active Uranium Mine Permit Review and Preliminary Report."

The Mineral Joe portal that is used for "escape" from the JD-6 can be timely repaired insofar as it is needed for future mining. It therefore does not limit the type of activities that can be conducted in the future at the Mineral Joe Mine, as INFORM contends.

INFORM's use of the term "original mining operations" is unclear. If, by that term, INFORM means the excavation of ore from the Mineral Joe Mine, such operations did not cease in March 1984. As explained above, approximately 5,000 tons of ore were mined and shipped from the Mineral Joe Mine from 1987 through 1989. See letter, dated December 20, 1993, from Cotter, to the Division, at 2.

INFORM's assertion that the record demonstrates 28 years of non-production at the Mineral Joe Mine is without merit, given the production that occurred at that mine from 1987 through 1989.

As explained above, the MLRA does not set a “maximum limit of 10 years of non-production” for mines.

- G. *INFORM Comment: Many parts of the Mineral Joe’s permitted area have been reclaimed and as much of the remaining area that can be reclaimed should be reclaimed and released from the permit. Shaft 12 should be reclaimed since it is also collapsed and not usable for accessing the JD-6 and most of the area around it has been reclaimed already.*

Cotter has previously reclaimed and submitted for reclamation liability release as much of the Mineral Joe permitted affected area as it believes is in a condition to be released. The Mineral Joe 12 shaft has been used for ventilation in the past, and may be used for ventilating mine workings in the future, so it should be maintained as currently affected area.

- H. *INFORM Comment: In addition, because the Mineral Joe has largely been reclaimed, it appears that there is no current, updated BLM Plan of Operations for the site nor any site-specific NEPA analysis, both of which must be in place before any mining activities can recommence. Because the Mineral Joe is tied to the JD-6, it should be subject to the final recommendations and record of decision in the pending Programmatic Environmental Impact Statement for the Department of Energy’s Uranium Leasing Program and the site-specific analysis that will be required and conducted in the future as part of that PEIS.*

Cotter has satisfied all permitting requirements with the Bureau of Land Management in regards to the Mineral Joe permitted areas.

The Mineral Joe permit area covers affected area on the Mineral Joe claims, which are distinctly different from the JD-6 Department of Energy (“DOE”) lease, and are not affected by the Programmatic Environmental Impact Statement for DOE’s Uranium Leasing Program.

- I. *INFORM Comment: In the case of inactivity at the JD-6, Cotter Corporation takes the untenable position in its Oct. 1, 2012, letter to the Division that it is entitled to Intermittent Status because in 2011 it removed some soil from a pond, and that meets the definition of “active mining activities” under the MLRA. However creatively Cotter interprets the law, removing soil from a pond cannot possibly be considered “production” under the MLRA. Simply put, the Division should put a permanent stop to Cotter Corporation’s decades-long tactics to avoid reclamation of uranium mine sites that have not seen any serious effort at mining. In order to maintain Intermittent Status, some active mining must occur each year and the MLRA explicitly states that active mining does not include “general site maintenance, or off-site smelting, refining, cleaning, preparation, transportation, and other operations not conducted on affected land.” [C.R.S. § 34-32-103(8); Rule 1.1(31)].*

Cotter responds to this comment in its letter addressing INFORM's concerns on the JD-6 Amendment.

- J. *INFORM Comment: Cotter Corporation is also shielding its inactivity by misinterpreting the intent of the federal court injunction currently in effect at the JD-6 and claiming that it is relieved of responsibility to undertake any exploration, drilling or mining activities. The inactive state of both the JD-6 and Mineral Joe long predate the DOE court injunction. At maximum, because of the conditions of the injunction, the only proper status for the JD-6 is Temporary Cessation; Cotter must comply with Colorado state law on this matter, and Cotter is quite late in filing the technical revision to formally obtain this status. It is inappropriate for Cotter to delay these filings, as it suggests that it will in its Oct. 1, 2012, by saying that it will not review its status until next year at the earliest. This allows Cotter to continue the same pattern it always has and exacerbates the ongoing violation of the 10-year non-production prohibition in the MLRA.*

Cotter responds to this comment in its letter addressing INFORM's concerns on the JD-6 Amendment.

II. Non-Jurisdictional Concerns

- A. *INFORM Comment: Because the termination of the JD-6 and Mineral Joe permits are long overdue, the Division should not approve the proposed Environmental Protection Plan without strong conditions to ensure timely resumption of mining activities, time-limited periods of 30 days for stockpiling ore on-site, and continued ground water quality monitoring on a quarterly basis. Cotter should also be required to demonstrate where it will transport and process ore, since it has closed its own mill in Cañon City, Colo., and Energy Fuels Resources has recently announced that it will reduce toll processing at the White Mesa Mill in Blanding, forgo construction at any potential new mills, and concentrate on its own production and waste reprocessing into the foreseeable future. Because of the decades-long inactivity at these mines, and Cotter's failure to seriously demonstrate that they will resume mining activities, the Division should require Cotter to enter into full reclamation at both sites and stop delaying their inevitable closure.*

The approval of the Mineral Joe Mine's EPP should not be linked to the resumption of mining activities at that mine. Hard Rock/Metal Mining Rule 6.4.21 imposes no such requirement for approval of an EPP. However, Cotter plans to resume production operations at the Mineral Joe Mine after the price of uranium returns to a profitable point. The plan for such resumption of mining is attached as Exhibit C to the Mineral Joe Amendment.

The ore stockpile will be handled on a first in/first out basis to minimize the length of time that the ore will be in the ore stockpile area.

If the comment on continued groundwater quality monitoring is in regard to the quarterly sampling of the lysimeter associated with the JD-6 mine dump, Cotter responds to that comment in its letter addressing INFORM's comments on the JD-6 Amendment.

The potential ore processing site for the ore from the Mineral Joe Mine is not under the Division's jurisdiction. Moreover, the existence of current ore processing facilities is not relevant to the approval of Cotter's EPP.

- B. *INFORM Comment: The Environmental Protection Plan for the JD-6 indicates there are currently no groundwater monitoring wells on site. If the site does not enter reclamation, Cotter should be required to install the proposed monitoring well as soon as weather permits and gather at least five quarters of water quality monitoring data should in order to establish current baseline conditions. Rather than sampling only once a year, Cotter should be required to continue quarterly monitoring as long as its permit remains active.*

Cotter responds to this comment in its letter addressing INFORM's concerns on the JD-6 Amendment.

- C. *INFORM Comment: As the technical review of the Mineral Joe and JD-6 amendments proceeds, the public should be able to consider that review and the entire permit file comprehensively and weigh in when serious issues arise, especially when the applications have been deemed complex and the review time lengthened. INFORM reserves the right to supplement these comments as appropriate as the review continues. Again, thank you for your consideration.*

The Hard Rock/Metal Mining Rules establish deadlines by which comments on an amendment application must be submitted. *See, e.g., Rule 1.7.1(2).* Cotter requests that the Board and Division enforce the deadlines set forth in the Rules. Accordingly, comments submitted after the regulatory deadline should be considered untimely and not considered by the Division.

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

Respectfully,



Glen Williams

Vice President, Mining Operations