

# STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY  
Department of Natural Resources

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GRAND JUNCTION  
OFFICE



December 6, 2012

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

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta Pineda  
Director

***RE: JD-9 Mine, Permit No. M-1977-306, Submittal of an Environmental Protection Plan (EPP), Amendment AM-01, INFORM Comment Letter.***

Dear Mr. Williams,

On December 5, 2012 the Division of Reclamation, Mining and Safety (Division) received comments regarding the above referenced application from INFORM.

Please inform the Division of how the Applicant will respond to the jurisdictional issues presented by INFORM.

If you require additional information, have questions or concerns; please contact me at the DRMS Grand Junction Field Office at Phone No. (970) 241-2042.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Marshall".

Travis Marshall  
Environmental Protection Specialist

Enc. – INFORM Comment Letter

# STATE OF COLORADO



OFFICE OF THE  
ATTORNEY GENERAL

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DEPARTMENT OF  
NATURAL RESOURCES

OFFICE OF THE  
ATTORNEY GENERAL

DEPARTMENT OF  
NATURAL RESOURCES

OFFICE OF THE  
ATTORNEY GENERAL

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the State of Colorado, this 1st day of January, 1901.

ATTEST:

JOHN W. HARRIS, Secretary of State

JOHN W. HARRIS, Secretary of State

JOHN W. HARRIS, Secretary of State

JOHN W. HARRIS, Secretary of State

JOHN W. HARRIS, Secretary of State

JOHN W. HARRIS, Secretary of State

# INFORM

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Dec. 5, 2012

Mr. Dustin Czapla  
Colorado Division of Reclamation, Mining and Safety  
Grand Junction Field Office  
101 South 3rd St., Ste 301  
Grand Junction CO 81501

Via email to [dustin.czapla@state.co.us](mailto:dustin.czapla@state.co.us)

Re: Cotter Corporation 112(d) C-JD-9 amendment application, Permit No. M-1977-306

Dear Mr. Czapla,

Thank you for the opportunity to comment on the Environmental Protection Plan submitted by Cotter Corporation for the JD-9 Mine, Permit No. M-1977-306, located in Bull Canyon in western Montrose County in the Dolores River drainage. The Information Network for Responsible Mining is a Colorado-based citizens organization that advocates for the protection of communities and the environment and actively participates in mining reviews. INFORM appreciates your consideration of the following comments and concerns related to this amendment application.

The JD-9 Mine is not in compliance with the Colorado Mined Land Reclamation Act. It does not have approval to actively mine, its current condition does not meet regulatory requirements, and it has been inactive for at least 29 of the previous 32 years. Cotter Corporation has been able to escape compliance with the MLRA for over three decades by relying on a self-perpetuating and unwarranted status as an intermittent operation. Throughout most of this mine's permitted history, and along with other Cotter-permitted mines in the area, Cotter has resisted the Division's directions and repeatedly challenged regulations and policies intended to protect the environment, water quality and the public from contamination problems associated with uranium mining. Most recently, the Division has directed Cotter to place the JD-9 into Temporary

Cessation before Dec. 15, 2012, and reiterated that the mine is not eligible for Intermittent Status nor in compliance with the law.

Cotter Corporation first received Temporary Cessation status at the JD-9 in August 1980, noting in its letter to the State that, "Interim surveillance and maintenance will be conducted to keep the mine in a condition to allow eventual resumption of mining." The JD-9 was renewed for a second, five-year period of Temporary Cessation from 1985 to 1990, then Cotter applied for a change of status to an intermittent operation and the mine remained in a non-operating, non-productive state for at least another 15 years, according to Division records. Cotter justifies the inactive status of the JD-9 by arguing that its periodic and limited activities at the site, such as drilling, ore sampling and other activities in preparation for mining, constitute the definition of "mining activities" under the Division's Rules. However, the MLRA refers unambiguously to the "production of ore" when determining whether a mine is active and specifically forbids an inactive mine to remain open longer than 10 years without production activity. The MLRA clearly states that, "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." [See C.R.S. § 34-32-103(6)(a)(III).] The JD-9 should have been closed and fully reclaimed in 1990, but it was allowed to remain idle through the following years.

In its annual reports in August 2004 and August 2005, Cotter reported that the mine was in active production, yet it did not report any actual production numbers or actual mining, presumably because production was minimal or even nonexistent. Throughout the history of the permit, Cotter has provided insufficient information in its annual reports to fully document mining activities, in violation of the Division's requirements. Understanding Cotter Corporation's history of noncompliance and pattern of delay is relevant to the current review. Even if the most recent flurry of activity at the mine in 2004 and 2005 briefly returned the JD-9 to active status, it does not change the fact that under the terms of the MLRA, the JD-9 is not eligible for additional periods of Temporary Cessation. The mine should be fully reclaimed and the permit terminated. The approval of the proposed Environmental Protection Plan and the additional development of facilities and infrastructure to support mining activities is not appropriate at the time.

The proposed Environmental Protection Plan and amendment application fails to provide evidence of Cotter's actual intent to mine at the JD-9 rather than simply delay final reclamation and closure. Many years are likely to pass before the viability of the uranium market makes mining in the Uravan district viable and Cotter no longer has an operating mill to process its ore and no plans to reopen one. Again, we are talking about a mine that has been largely inactive -- and hasn't provided evidence to the contrary -- since 1980. Considering the flaws of the proposed EPP, it is more appropriate to terminate the permit. If the regional uranium market becomes viable in the future, Cotter should have the opportunity to apply for a reclamation permit under current laws and regulations that meet contemporary standards.

If the Division approves the EPP, Cotter should be held to a strict timetable to construct the Environmental Protection Features and to commence mining operations. Adequate and timely progress toward final completion of mine development should be documented and demonstrated. Cotter should not be allowed to push off meaningful activities that are protective of the environment. If Cotter does not immediately begin mining activities, they should under no circumstances be allowed to retain Intermittent Status, as the JD-9 does not meet the definition of an intermittent operation in the Rules. In the very first pages of the amendment application, Cotter again seems to be creating a safe place for itself now in order to delay later by carefully noting that, "Due to the erratic nature of the Uravan Mineral Belt's ore deposits and past mining experience in this area, the life of the mine may be extended."

Groundwater and surface water quality concerns and impacts are significant at the JD-9, and have not been minimized through the current application. In the Division's Oct. 11, 2011 inspection report, the inspector noted that the water treatment plant "is now unusable due to its age and condition" and that previously, the failed condition of the liners in the two discharge ponds was such that both the Division and CDPHE required them to be shut down. Even so, Cotter's amendment application does not specify the construction of a new water treatment facility but continued use of the existing plant. Cotter notes that 2 million gallons of water currently in the mine will need to be pumped and treated before discharge, a volume that will pose quite a challenge to a nonfunctioning water treatment plant.

Current stormwater management features at the JD-9 are insufficient to protect the environment and there is insufficient baseline water surface and ground water monitoring described in the amendment application. Cotter states that there is a spring west of the mine that may indicate the presence of another aquifer but does not identify it or describe in detail how its hydrology will be affected by proposed mining activities. Considering that the JD-9 is a wet mine with seeps from the surface, the presence of aquifers that are already impacted by the mine, the history of producing water from perched aquifers, and the proximity of the mine to Bull Canyon and its pathway to the Dolores River, the hydrology of the JD-9 lease tract should be carefully studied and understood before it is further disturbed by mining. Additional monitoring wells should be installed and sequential monitoring data gathered to document baseline conditions.

Regardless of the outcome of the EPP approval or the status of the permit, Cotter should be required to implement or confirm the existence of new stormwater management features immediately in order to prevent additional migration of radionuclides and other toxic contaminants from the permitted area offsite, into the Bull Canyon drainage or into ground water supplies. Because of the lack of documentation for approvals of existing stormwater management features, the status of these features is not fully described in the EPP and needs to be clarified.

The poor condition of the two previous discharge ponds is not adequately addressed in the application. Cotter states that the ponds are about two-thirds full with evaporate TENORM waste that will have to be hauled offsite to a licensed disposal facility. Yet, precautions for how this

material will be handled and where it will be ultimately disposed are not discussed in the application.

Cotter should also be required to demonstrate that it has adequate water available for mining. In the application, Cotter says it plans to purchase water from the Town of Naturita and a commercial hauler will deliver it to the mine, quite a ways up the county road to the mine, which will require 8 gallons per minute to operate. In a recent CDPHE hearing, Energy Fuels Resources testified that during portions of dry years the region's rivers cannot provide an adequate water supply for Energy Fuels to saturate and cover the mill tailings in its proposed waste disposal cells at the Piñon Ridge site. Like Cotter, Energy Fuels also plans to rely on a letter-agreement to purchase San Miguel River water from the Town of Naturita. Where multiple companies are relying Town of Naturita's seemingly unlimited willingness to promise water to the uranium industry, the Division should require Cotter to provide proof regarding the Town of Naturita's right and ability to provide water to multiple operations and companies.

In the amendment application, Cotter says that it will conduct a radiometric survey of the JD-9 site prior to commencing any future mining activities. That will surely mean that it will be many years before the results of such a survey are available for review. (It is worth noting that in a letter to the State from Cotter on July 26, 1990, Cotter claimed that "radiometric scanning" was one of the defined mining activities that entitled it to Intermittent Status.) This is critical information, as well as a fully and current radiometric survey that should be undertaken now so that impacts to the public, wildlife, water quality and the environment can be taken into consideration during the review of the Environmental Protection Plan.

In an April 2005 Division review of the JD-9 permit, it was noted that between 60 and 80 tons of ore was stockpiled at the mine and the "current activity" of the mine was primarily stockpiling. The report also noted that the Department of Energy informed Cotter that it was not allowed to gob waste rock into the underground workings, thus precipitating the need for the proposed waste rock pile expansion on the surface. However, in the proposed EPP, Cotter again says that a portion of the waste rock generated will be finally disposed underground, despite the DOE prohibition.

Cotter proposes building a new access road to the lower-level portal. Why is this necessary? Altogether, new roads should be prohibited and surface activities and features limited to places where they are accessed by existing road. Magnesium chloride should not be used for dust control of the access and mine roads, but rather a more environmentally friendly alternative. Further road development will result in loss of habitat for wildlife and will contribute to a degradation of the surrounding ecosystem. The JD-9 is located in a sensitive area that is both winter range and severe winter range habitat for mule deer and elk, and mining impacts these species. Operations should not be allowed between December and March. The mine may be used by hibernating bats, as there are ten bat species in the region, including Thompson's Big Eared Bat, which is a BLM sensitive species and a species of concern in Colorado. Cotter should

develop a protocol for how to protect potential bat habitat and prevent disturbances to hibernating and roosting bats.

Cotter's assertion that the ore will have no acid-leaching effects because of the area's limited precipitation is not realistic. Previous geochemical analysis of samples from the JD-9 has found that the waste rock could liberate radium, uranium and other metals into surface runoff. SPLP testing has found that aluminum, arsenic, vanadium and uranium exceed federal water quality standards and that fluoride, aluminum, molybdenum, uranium, zinc and radium are all constituents of concern. Cotter proposes to construct a compacted clay pad for the ore stockpile, but it should have a synthetic liner in order to reduce the possibility of contamination. SPLP testings should be conducted on both the ore and waste rock on a regular basis in order to continually monitor the potential for acid generation from these piles. Ore should be removed within 30 days of being brought to the surface, rather than within 30 days of the end of mining, as Cotter proposes. As Cotter's definition of mining appears to be very fluid, we cannot rely on how those 30 days will actually be counted in the future.

It does not seem that Cotter has put together an amendment application with the thorough updating, analysis and planning that an Environmental Protection Plan requires. As the technical review proceeds and Cotter responds to the Division's requests, INFORM reserves the right to supplement these comments as appropriate.

Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Thurston".

Jennifer Thurston  
Director  
INFORM

