



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 5 2009

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**IN THE MATTER OF:**

Cotter Corporation  
7800 East Dorado Place, Suite 210  
Englewood, CO 80111

**ATTENTION:** John Hamrick, VP Milling

**Request to Test and Provide Information Pursuant to the Clean Air Act**

The United States Environmental Protection Agency (EPA) is requiring Cotter Resources (Cotter or you) to perform certain tests and gather and submit certain information in relation to your operations in the United States of America. Appendix B specifies the test procedures and information you must submit. You must send this information to us within the time specified below.

We are issuing this testing and information request under section 114(a) of the Clean Air Act (the Act), 42 U.S.C. § 7414(a). Section 114(a) authorizes the Administrator of EPA to require testing and the submission of information. The Administrator has delegated this authority to the Director of the Air Enforcement Division.

Cotter owns and operates facilities that are or may be subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP). We are requesting this information to determine whether your company is complying with the National Emission Standard for Radon Emissions From Operating Mill Tailings found at 40 C.F.R. Part 61, Subpart W.

You must send all required information to:

Attn: Charles Garlow, Attorney-Advisor  
OECA, Air Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW – MC 2242A  
Washington, DC 20460

with a copy to:

Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice  
United States Environmental Protection Agency  
Region 8 (8-ENF)  
1595 Wynkoop St  
Denver, CO 80202-1129

Under 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality for any portion of the submitted information. You must specify the page, paragraph, and sentence when identifying the information subject to your claim. Appendix A specifies the assertion and substantiation requirements for business confidentiality claims. Cotter must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to section 113(c)(2) of the Act, and 18 U.S.C. §§ 1001 and 1341.

We may use any information submitted in response to this request in an administrative, civil, or criminal action.

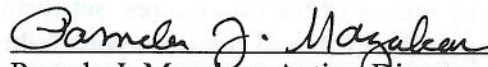
This request is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 et seq., because it seeks collection of information from specific individuals or entities as part of an

administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this request for information without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

Failure to comply fully with this request for information may subject Cotter to an enforcement action under section 113 of the Act, 42 U.S.C. § 7413.

You should direct any questions about this request for information to Charles Garlow at (202) 564-1088.

5/1/09  
Date

  
Pamela J. Mazakas, Acting Director  
Air Enforcement Division

cc: Robert Jorgenson, Unit Supervisor  
Colorado Department of Public Health and Environment  
Air Pollution Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
Telephone: 303-692-3171

Steve Tarlton, Unit Leader  
CDPHE Radiation Management Unit  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

## **Appendix A**

### **Confidential Business Information**

You may assert a business confidentiality claim covering all or part of the information you provide in response to this information request for any business information entitled to confidential treatment under Section 114(c) of the Clean Air Act (the Act), 42 U.S.C. § 7414, and 40 C.F.R. Part 2, subpart B. Under Section 114(c) of the Act, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” See 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 114(c) of the Act and 40 C.F.R. Part 2, subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this information request as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this information request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without your consent, and (4) the disclosure of the information is likely to cause substantial harm to your business’s competitive edge. See 40 C.F.R. § 2.208 (a)-(d). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. See 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this request for information, in accordance with 40 C.F.R. § 2.204(e)(4), EPA is requesting that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph, and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you've specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this information request if you have claimed any information as business confidential. See 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your comments to Charles Garlow at the address given above.

## Appendix B

### INSTRUCTIONS

1. Please identify the individual(s), including title, responsible for responding to this request.
2. Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
3. Precede each answer with the number of the question to which it corresponds and at the end of each answer identify the person(s) that provided the information used or considered in responding to that question, as well as each person consulted in the preparation of that response.
4. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
5. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
6. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.

### DEFINITIONS

1. All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. §§ 7401, et seq., 40 C.F.R. Part 61 or other Clean Air Act implementing regulations.
2. The terms "person" or "persons" shall have the meaning set forth in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.
3. The terms "relate to" or "pertain to" (or any form thereof) shall mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.
4. The term "uranium in-situ leaching facility" means a facility at which uranium is extracted using a leaching agent.

## Appendix B

### TEST PROCEDURES AND DATA COLLECTION REQUIREMENTS

The objective of this request is to collect data from *in-situ* leach and recovery (ISL&R) uranium facilities in order to determine the radon flux from solar evaporation ponds. EPA is requiring that all your solar evaporation ponds at ISL&R uranium facilities be monitored for radon-222 flux, lead-210, and radon daughter products at working levels of operation. EPA shall be notified 30 days prior to each sampling event so that EPA may, at its option, observe the test. Notifications must include the date sampling will begin and shall be sent to:

Attn: Charles Garlow, Attorney-Advisor  
OECA, Air Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W. – MC2242A  
Washington, DC 20460

With a copy to:

Attn: Angelique Diaz, Ph.D.  
Region 8 OPRA, Air Program (8P-AR)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202-1129

Radionuclide monitoring shall be conducted according to the following requirements:

1. For each evaporation pond, place samplers at the foot of the pond in the four cardinal directions and in the prevailing wind rose direction. At each sample point, collect a sample at a height of 1 meter, 2 meters, and 3 meters, above the pond surface, so that radon flux can be calculated.
2. In addition, for each evaporation pond, samplers must be placed at the following distances in each of the four cardinal directions and in the prevailing wind rose direction to monitor radon-222, lead-210, and radon daughter products: 50 meters, 100 meters, 250 meters, and 500 meters. *(If monitoring locations overlap for two or more ponds, due to their proximity to each other, it must be noted in the report and only one sampler is required for radon and its daughter products.)*
3. Samples must be collected continuously at each location listed above for 14 days per month for the months of June, July and August, 2009 for analysis of radon-222, lead-210, and radon daughter products

4. The instrumentation used and the method of radionuclide analysis, including lower limit of detection and precision and accuracy of results, should be conducted according to NUREG 4.14, "Radiological Effluent and Environmental Monitoring at Uranium Mills."
5. For each sample, the following shall be recorded and reported to the EPA:
  - a. Location of sample and associated evaporation pond.
  - b. Dates during which sample was collected.
  - c. The radon-222 flux in pCi/m<sup>2</sup>-s, the raw radon-222 data and the basis for the flux calculation.
  - d. The concentration of lead-210 in microcuries per milliliter and radon daughter products in working levels.
  - e. The magnitude of the random error of the analysis to the 95% uncertainty level in microcuries per milliliter; if significant, an estimate of the magnitude of systematic error should also be reported as a percentage of the result.
6. The following information shall be included in the report to the EPA:
  - a. Name of facility, location, and license number.
  - b. Description of sampling equipment and discussion of how sampling locations were chosen.
  - c. Description of sampling procedures, including sampling times, rates, and volumes.
  - d. Description of analytical methods.
  - e. Description of methods of calculation.
  - f. Discussion of random and systematic error estimates, including methods of calculation and sources of systematic error.
  - g. The values of the lower limits of detection along with a description of the calculation of the lower limit of detection.
  - h. Discussion of the program for ensuring the quality of results.
  - i. Description of calibration procedures.
  - j. Discussion of any unusual releases, including the circumstances of the release and any data available on the quantities of radionuclides released.
7. For each week of sampling, the operator shall provide the EPA with the following:
  - a. Average temperature of the discharge water to the pond.
  - b. Daily surface water temperature of the pond, taken at the same time every day and during the anticipated warmest temperature.
  - c. Daily high, low, and average air temperature.
  - d. Status of operation of the *in-situ* recovery field during sampling.
  - e. Pond freeboard distance during sampling.
  - f. Pond operational status during sampling.
  - g. Daily average water discharge rate to the pond when operating.
  - h. Daily average volume of water in the pond.



**Appendix B**

- i. Average surface area of the pond (if there are multiple ponds within the monitoring area, provide the surface area for each pond and the total area within the samplers).
- j. Daily average radium-226 concentration in the water discharged to the pond and daily average radium-226 concentration in the water in the pond (providing the information requested in 5a, 5b, 5c and 6 above for radium samples).
- k. The background radon-222, lead-210, and radon daughter product data at the location defined as background in the license.
- l. Wind rose data.
- m. Any other radionuclide data collected under the operating license or for any other reason.

If you have technical questions or would like to suggest alternatives to the above sampling requirements, please contact Dr. Angelique Diaz, (303) 312-6344. You shall report the above required information no later than 30 days after the final sampling event to:

Charles Garlow, Attorney-Advisor  
OECA, Air Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W. – MC2242A  
Washington, DC 20460

With a copy to:


Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency  
Region 8 (8-ENF) 1595 Wynkoop Street  
Denver, CO 80202-1129

CERTIFICATE OF MAILING

I, Tawanna Ragsdale, certify that I sent a Request to Provide Information Pursuant to the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Cotter Corporation.  
Attn: John Hamrick, VP Milling  
7800 East Dorado Place, Suite 210  
Englewood, CO 80111

on the 5<sup>th</sup> day of May 2009.



Tawanna Ragsdale, Secretary

Certified Mail Receipt Number: 7008 1140 06009103 8598