

FILED

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Ardelle M. Kissler, Clerk  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

In the Matter of )  
COTTER CORPORATION ) Docket No. \_\_\_\_\_

PETITION PROTESTING ACTION DENYING REQUEST TO LEAVE AN  
OPERATION PARTIALLY UNRECLAIMED  
AND FOR EXTENSION OF TIME

COMES NOW, Cotter Corporation, a New Mexico corporation, and protests the action and final decision of the Administrator of the Land Quality Division of the Wyoming Department of Environmental Quality, denying the request of Cotter Corporation to leave its operation partially unclaimed for a period of time on the basis that economic conditions may make it profitable to continue mining in the near future. Petitioner's request a contested de novo hearing before the Environmental Quality Council pursuant to the general rules of practice and procedure of the Department of Environmental Quality and further request the Council to extend time for completion of reclamation for an appropriate length of time pending a decision of this matter by the Environmental Quality Council.

The Petition of Cotter Corporation is based on the following grounds:

I.

Cotter Corporation is a New Mexico corporation whose address is 9305 West Alameda Parkway, Suite 201, Lakewood, Colorado 80226.

## II.

Cotter Corporation has conducted the test pit mining of uranium in Johnson County pursuant to a permit issued by the Land Quality Division of the Department of Environmental Quality, Permit No. 483, on May 29, 1979. On April 6, 1981, the Cotter Corporation made a written request to the Land Quality Division to leave the test pit operation partially unreclaimed for a period of time on the basis that economic conditions may make it profitable to continue mining in the near future. Said request provided a detailed economic report and concluded that complete reclamation at the present time would result in a loss of uranium resources in the test pit and Mike Ore body in the future because it would be uneconomical to reexcavate the totally reclaimed area. A copy of the request of Cotter Corporation of April 6, 1981, is attached hereto as Exhibit "A" and made a part hereof by reference.

## III.

The rules and regulations of the Department of Environmental Quality - Land Quality Division filed with the Secretary of State on March 26, 1981, provide in Chapter 4 Section 2(1)(2) that,

"If any operator desires to leave an operation partially unreclaimed for a period of time on the basis that economic conditions may make it profitable to continue mining in the near future, this may be explained in a written request to the Land Quality Division."

#### IV.

By letter dated May 20, 1981, Roger Shafer, Engineering Supervisor of the Land Quality Division, stated the Division had received Cotter Corporation's request for delay of the approved reclamation plan and the conclusion had been reached that the reclamation of the site was to continue as outlined in Table 2.9-1(a) of the Reclamation Schedule dated May 16, 1980.

#### V.

After several attempts, on or about June 11, 1981, Mr. J.P. McCluskey, Executive Vice President of Cotter Corporation, discussed the April 6, 1981 request of Cotter Corporation and the letter of Mr. Shafer's dated May 20, 1981, with Walt Ackerman, administrator of the Land Quality Division. After discussion of the request of Cotter Corporation, Mr. Ackerman informed Mr. McCluskey that he wanted to look over the materials submitted and the other information available, that he would think about it and would give the request his further consideration.

#### VI

After hearing nothing further from Mr. Ackerman, William J. Thomson, of Dray, Madison & Thomson, P.C., Cheyenne, Wyoming, an attorney for Cotter Corporation, made an appointment and met with Mr. Ackerman on June 15, 1981 to discuss the present status of the April 6th request of Cotter Corporation.

Mr. Ackerman indicated he had reviewed the information, that he was prepared to respond to Mr. McCluskey's telephone conversation of the previous week, but had not yet called Mr. McCluskey. Mr. Ackerman informed Mr. Thomson that the review and consideration promised in the telephone conversation with Mr. McCluskey had resulted in his conclusion that Cotter Corporation's request to leave its operation partially unreclaimed pursuant to Section 2(1)(2) of the rules and regulations of the Department of Environmental Quality - Land Quality Division would be denied. While no written decision or response from Mr. Ackerman was been received regarding his review, his intention to confirm the conclusion reached in Mr. Shafer's May 20, 1981 letter was communicated to Mr. Thomson on June 15, 1981. The Affidavit of Mr. Thomson is attached hereto as Exhibit "B" and made a part hereof by reference.

#### VII.

The decision of the Land Quality Division is arbitrary and capricious and without basis in fact and ignores the Division's own rules and regulations providing for an operation to be partially unreclaimed for a period of time on the basis that economic conditions may make it profitable to continue mining in the near future, rules and regulations Department of Environmental Quality - Land Quality Division, Chapter 4, Section 2(1)(2).

#### VIII.

After the correspondence and conferences detailed herein, the Administrator of the Land Quality Division of the Department of Environmental Quality has expressed his

1981. No further written communications have been received from the Administrator following his reconsideration of the request, and it appears to Cotter Corporation that further communications with the Department do not hold promise of a resolution of the problem and would appear to result in unnecessary delays in reaching a final determination.

IX.

Section 35-11-112, W.S.A., 1977, provides that the Environmental Quality Council is the final decision maker for the Department in the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the Department or any division thereof, and that is the basis for this protest and Petition.

X.

The contractor for Cotter Corporation commenced reclamation work at the Cotter Corporation pit site on April 27, 1981 and had continued to maintain the schedule provided in table 2.9-1A Reclamation Schedule dated May 16, 1980. All that remains to be completed is the backfill of the pit itself. However said Schedule provides for completion of pit back fill at the end of July, 1981. In order to meet this schedule the right of Cotter Corporation to appeal the announced decision of the Administrator of Land Quality Division to the Environmental Quality Council would be effectively denied. Cotter Corporation desires to avoid any question that it may be in violation of any provision of the Act or any rule, regulation, standard or permit.

Therefore, Cotter Corporation requests that the Council extend the period for completion of reclamation by an appropriate length of time to allow the consideration of this Petition.

WHEREFORE, Petitioners request that:

1. The Environmental Quality Council find that the Department of Environmental Quality, Land Use Division has complied with the rules and regulations of the Department of Environmental Quality - Land Use Division and that denial of the request of Cotter Corporation to leave its operation partially unreclaimed for a period of time is arbitrary and capricious and without foundation in fact and that the request of Cotter Corporation dated April 6, 1981 should be granted.


2. The Environmental Quality Council extend the time for Cotter Corporation to complete reclamation under the Reclamation Schedule in paragraph 2.9-1A dated May 16, 1980 for the appropriate period of time necessary to afford Cotter Corporation's right to appeal to the Environmental Quality Council and for the Council to hear and decide said appeal.

3. A contested de novo hearing be held before the Environmental Quality Council regarding the Petition in Protest.

4. The Environmental Quality Council consider referring this appeal to the Director of the Department of Environmental Quality for an initial determination and recommendation to the Council providing that either Cotter Corporation or the Administrator may have a de novo hearing before the Council if the initial determination and recommendation are not satisfactory to either party.

5. The Council grant such other and further relief as it deems proper and necessary.

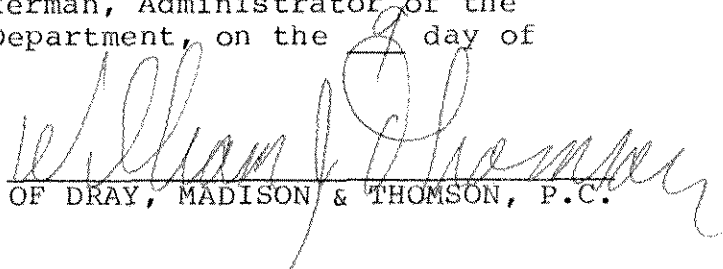
Respectfully submitted on this 9 day of July, 1981.

  
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

This will certify that the original copy of this Petition was delivered to the office of the Environmental Quality Council and copies thereof were hand delivered to the offices of Mr. Robert Sundin, Director of the Department of Environmental Quality, and Mr. Walter C. Ackerman, Administrator of the Land Quality Division of the Department, on the 9 day of July, 1981.

  
OF DRAY, MADISON & THOMSON, P.C.