

History of violations

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CANON CITY - Since a criminal investigation into allegedly falsified records was launched in 1979, the Cotter Corporation's regulatory record has been marked by a steady stream of violations that appear to have changed little in 22 years.

Although the 1979-80 investigation produced no criminal charges because of the statute of limitations, the allegations contained in that investigative report are strikingly similar to those that resulted in the uranium mill's license suspension this year.

And both the 1980 report and the current violations point a finger at Cotter's management.

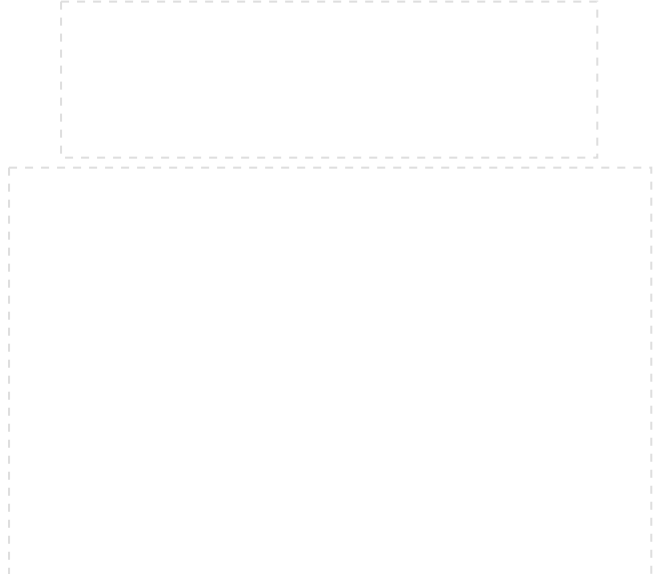
But, the mill's record of violations also appears to pre-date both the 1980 report and the state's assumption of regulatory duties in 1968. In a 2000 opinion overturning a lawsuit against Cotter - a suit that has since been re-tried and which resulted in Cotter being ordered to pay pollution victims more than \$43 million - the U.S. 10th Circuit Court of Appeals noted Cotter's record of repeated violations beginning its first year of operation.

"As early as 1959, the Atomic Energy Commission, which then regulated uranium-production operations at the mill, notified Cotter of violations of the conditions of its license," the court said. "Annual violations of AEC standards of protection against radiation occurred through 1968, when the State of Colorado took over responsibility from the AEC for licensing radioactive materials."

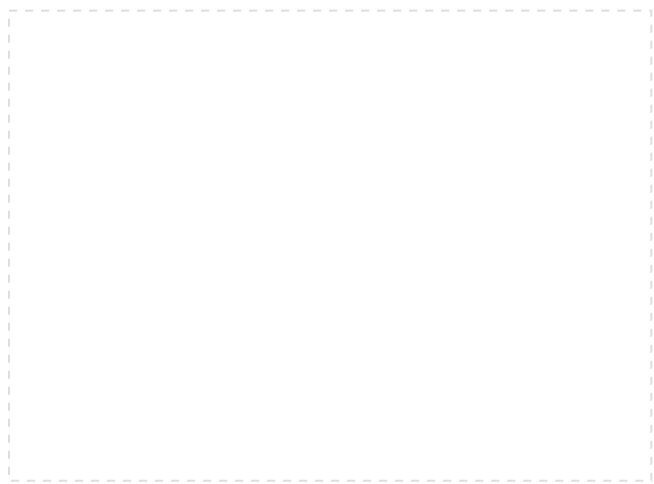
That pattern of violations appeared to come to a head in the spring of 1979, when local resident Paul Kendall complained to then-Gov. Dick Lamm about the mill's operations. Lamm ordered the Colorado Bureau of Investigation to investigate possible criminal wrongdoing at the mill.

Former CBI agent Alvin La Cabe, who is now an attorney and a federal prosecutor in Denver, was given the job of investigating allegations that Cotter, according to the report, "had engaged in improper practices in regard to the monitoring of radiation exposure to its employees and the reporting of those radiation levels to the Colorado Department of Health."

In interviews with the CBI, at least two Cotter laboratory employees claimed they were ordered by then-mill manager Myles Fixman to concentrate on production work instead of safety testing required by the mill's license.



Dyle Knifong, left, and Jim Woodard play golf on the eighth hole of Shadow Hills golf course Thursday as Cotter's plant looms in the background. Times-Call/Jeff Haller



[View the 1980 CBI Report](#) ☐

The late Lynn Boughton, who was the chief chemist at the mill until resigning in 1979, told La Cabe he remembered at least two occasions when air samples were simply not taken at all, but that forms were filled out indicating the tests were taken, and that the figures entered in those forms were made up to match readings taken before and after. La Cabe's investigation concluded that no air sample-tests were conducted at all during two months between 1975 and 1978. Boughton also claimed that air samples that tested too high for radiation were sometimes re-taken after the sampling area was thoroughly washed down to settle dust.

Boughton also told the CBI that Cotter was always given at least three days advance notice of inspections by health department employees. He said that when inspections were scheduled, Fixman would tell him to put all other work aside and to make sure all the "paperwork" was ready for inspection.

The health department continues to give Cotter advance notice of inspections. When asked why, Jake Jacobi, who heads the radiation division at the health department and who personally conducted inspections as far back as the 1970s, said it was important for inspectors to be able to talk to specific people at the plant when inspecting. If those individuals were not notified to be there, the inspectors could end up wasting their time.

William Hayhurst, the lab employee in charge of air samples at the time of the CBI report, backed up Boughton's story and told LaCabe he once told a health department inspector the air sampling program was a "joke," but that he felt helpless in changing the situation. Hayhurst also told LaCabe that when sampling indicated an overexposure, he would sometimes re-test the area after a washdown. According to Hayhurst's testimony, the mill also took unusual steps prior to and during inspections. He said the floors in the yellow-cake area were routinely washed down every day, but that the walls were only washed immediately before an inspection. He also alleged that dust-creating activities such as ore-crushing was not done during inspections and that on occasion crushers were purposely scheduled for maintenance so they would not be operating during the inspections.

LaCabe's report also noted a list of violations discovered by state inspectors in the years leading up to the criminal probe. In 1975 the mill was cited for failing to properly calibrate air monitoring equipment, failure to maintain a "breathing zone" and overexposing workers to radiation. In 1978, Cotter was cited for allowing workers to be exposed to airborne uranium in excess of allowable limits and failure to report the overexposures. According to LaCabe's report, Fixman declined to be interviewed in the investigation until he contacted his lawyer. The report said Fixman's lawyer agreed to get back to him regarding an interview with Fixman, but never did so.

According to the report, La Cabe also had trouble interviewing fearful current and past employees.

"During the first week in August, I conducted a series of interviews with former and current Cotter employees who were associated with the analytical laboratory," the report said. "All expressed concern over being named as the source of any information because of fear of harassment on their job or in the community and fear that the information they might give could possibly affect the health department's application for the license to run the new milling facility."

They needn't have worried about the mill's license.

In spite of an agreement with the CBI not to make a decision on the new license until the criminal probe was finished, health department chief Frank Traylor, whose department was criticized in the report, signed the new license in August of 1979 - months before the investigation was completed. Traylor told reporters he issued the license after agreeing to wait until the investigation was finished because the probe was taking so long.

When asked if his department adequately protected the public health during its regulation of Cotter, he replied, "I honestly don't know," adding that he felt the health of the workers may have been affected by unreported or uncorrected overexposures.

After the report was completed, both CBI Chief Carl Whiteside and then-Fremont County District Attorney John Anderson said there were no prosecutable offenses uncovered. Whiteside said the alleged violations were all beyond the 18-month statute of limitations on prosecuting them and Anderson, now a district judge who will retire this year, at the time said, "There are no available prosecutions."

The violations, however, continued.

In a deposition taken during one of the civil lawsuits against Cotter, former health department radiation division head Albert Hazle detailed some of those violations, also called items of non-compliance. He said that in October of 1980 the mill was cited for 13 violations involving safety records, testing and documentation.

"They were quite extreme," he said, "many of them extremely important." During that same testimony, Hazle said that while the mill's license at that time had never been suspended, "it was threatened at one time." He did not say when that was.

The Mine Safety Health Administration has also had problems with Cotter. In January of 1980, MSHA cited Cotter for exceeding employee exposure standards in the new mill's vanadium section, but handed down no punishment. At that time MSHA representative Jack Petty said the agency would "check back to see if they are handling the situation well."

A week later four Cotter workers were hospitalized with what was termed "vanadium poisoning" and a total of 20 were treated for the ailment - marked by symptoms that

included "green tongue," breathing difficulty and gastro-intestinal distress.

During the 1990s, Cotter continued to be cited for license violations similar to those uncovered years before.

Records obtained from the health department, now known as the Colorado Department of Public Health and Environment, shows Cotter was cited in 1991 for tardy quarterly reports, an incomplete annual report, missing air samples, failure to check contamination sources, groundwater contamination and deviating from radiation-survey procedures. In 1992 the CDPHE cited the mill for exceeding groundwater standards and submitting an incomplete annual report and in 1996 cited it for not filing a quarterly report.

An inspection in 2000 produced what was at that time a record number of 15 non-compliance citations. Those included several violations pertaining to employee exposure to radiation, including overexposure, a failure to conduct employee exposure tests, failure to correct situations that caused overexposure and failure to document individual worker-exposure figures. That same inspection also cited Cotter for failing to correct "repeat" situations, including equipment maintenance, housekeeping and storage of respiratory equipment. The mill was also cited for failing to post a radiation-storage building as a radiation area, shipping uranium oxide without posting radioactive placards and failing to register an X-ray machine.

This year produced a record 16 violations, which resulted in the first-ever suspension of Cotter's license. Familiar items were cited.

The latest inspection report, much like the 1980 investigative report, alleged "serious and substantial breakdown in the management oversight of this facility."

The report pointed out "conflicts" between worker-activity logs involving the use of respiratory equipment and the company's "dose calculation sheets" and a failure to account for the measured levels of radioactive material in the air when assessing worker dosages. Those were all listed as repeat violations.

"(Cotter) has failed to implement a bioassay program sufficient to demonstrate compliance with the 10mg weekly soluble uranium intake limit for workers," the report stated. "The majority of workers are providing urine samples at two-week frequencies and there are numerous instances where individuals exceeded the minimum monthly bioassay sampling frequency."

Cotter was also accused of failing to determine or document the radiation dose to a fetus being carried by a pregnant worker. The report said Cotter "assumed the (effects) from radioactive materials in the woman's body to be negligible" but provided no data to support that claim.

It was also cited for allowing a United Parcel Service employee to freely wander around restricted areas of the mill and for questionable safety-training issues.

Cotter executive vice president Rich Ziegler said the UPS driver's access to the mill was merely the result of old habits. "Those guys have been doing that forever. It's been going on for umpteen years but will obviously stop."

Ziegler said the newest violations and the resulting suspension are the result of differences regarding documentation.

"They are telling us, 'Your paperwork is not up to what we expect,' " he said. "It's like an IRS audit - they tell you, 'We need documentation to determine if you have to pay more.' "

LaCabe said he remembers little about the report he prepared 22 years ago. He said he was not frustrated by the fact that his investigation produced no criminal charges and always felt the probe might produce civil suits. Which it has.

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