

On the hot seat

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Douglas Benevento, interim executive director of the Colorado Department of Public Health and Environment.
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DENVER - Since it began regulating the state's radioactive materials industry 34 years ago, the Colorado Department of Public Health and Environment had never suspended the Cotter Corp.'s license to process radioactive materials.

Until now.

When the CDPHE suspended Cotter's license in July, it did so in what it called "the interest of worker safety."

The safety of the mill's workers, however, is nothing new. It has been an issue at Cotter for decades. And so has the health department's performance as the public's watchdog over the uranium mill.

That fact is not lost on Douglas Benevento, the new interim executive director of the CDPHE. He was appointed to the temporary post when his boss, health department Executive Director Jane Norton, was tapped to be Gov. Bill Owens' running mate during the fall campaigns.

"We need to rebuild the public perception of this department," he said. "I don't think we've done a good job communicating with the public."

Other governmental agencies have, over the past 25 years, claimed the department has also done a poor job regulating Cotter.

When the state allowed Cotter to build its new mill in the late 1970s, it did so in spite of opposition by both the Environmental Protection Agency and the Nuclear Regulatory Commission.

In 1979, the NRC said the mill location "would probably not be authorized for a new uranium mill site due to its proximity to the town." The NRC added that the mitigating measures proposed by Cotter "can be sufficient to minimize harmful effects, on both the environment and the population surrounding the site."

A later report based on an NRC review of the health department's files, however, said the documents "do not lead to the conclusion that (state) controls are adequate for this site" and said that in spite of a 20-page set of suggestions by the EPA, the health department's own files "do not reflect the vigilance

urged by the EPA."

In a 1981 report commissioned by the EPA after workers inquired about potential health risks at the mill, the private consulting firm Fred Hart and Associates ripped both Cotter and the health department.

Noting that the EPA had urged state officials to "carefully weigh" the decision to allow the new mill to be built at the Cotter site, the EPA also criticized the department's decision to allow Cotter to begin construction on the mill before deciding whether to issue the mill a new license.

One EPA scientist wrote a memo stating that granting approval to build would create "tremendous pressure to license even if there are strong reservations about continuing to use the present site."

The Hart report said the health department's water-quality enforcement "has not always been effective" and said questions about the mill's environment and health "have remained unresolved through the years, in spite of requirements as license conditions that they be resolved."

Therefore, the report said, "it is unlikely that the (health department) can assure their resolution."

The report also criticized the state's licensing procedure, saying, "Cotter has been responsible for providing virtually all the data and most of the studies on which licensing decisions are made." It also suggested that another state agency be employed to assist the department in overseeing Cotter.

State health officials inherited regulation of nuclear facilities in 1968, but they also inherited a history of violations.

According to the EPA's Office of Solid Waste, the Atomic Energy Commission - now the NRC - cited Cotter 18 times between 1959 and 1966 for "failing to track radioactive releases." Those violations included "exceedances" of particulate emission standards, discharge and release from tailings pipes and poor record keeping regarding off-site surface-water contamination.

State health officials cited Cotter 82 times between 1968 and 1984. The agency also cited the company for 26 violations between 1991 and 2000, with 15 of those in 2000 alone. Violations in other years were not available.

When the health department granted the new Cotter mill's license in 1979 - against the advice of the EPA and the NRC and during a criminal probe of

allegedly fraudulent air-monitoring results - the director of the department's radiation division admitted his agency's shortcomings.

"The enforcement could have been stricter," director Al Hazle said at the time. "We have done our best to tighten it up."

More than two decades later, however, Cotter is still solely responsible for much of the information upon which the health department makes decisions.

As part of the settlement of a 1983 suit brought by the state, Cotter is required to monitor uranium and molybdenum in about 40 wells in the Lincoln Park area. Results of those tests are submitted annually without audit.

When asked if the department checks Cotter's figures, current radiation division chief Jake Jacobi said, "Not routinely, but sometimes we split (share) samples with them."

At least two Lincoln Park residents argue that the department does virtually no checking on the Cotter reports. Sharyn Cunningham, who lives on Grand Avenue and whose two wells have been tested since 1991, was shocked to find test results from 2001.

"They didn't test my well in 2001, but the report is right there," she said. When she reported the situation to state officials this year, a CDPHE employee tested the wells and one of them indicated the presence of molybdenum, which had not previously been detected.

"They tell me the pollution plume is shrinking," she said. "Then why are my wells getting worse?"

Cunningham said the incident came after a health department employee said she had no reason for concern because no wells were being used for drinking water in Lincoln Park.

"I told him we were drinking it and he was shocked," she said.

Deyon Boughton, who lives on Cedar Avenue, said she found a well-water report from a time period when the well was "bone dry."

"We dropped a tool on a string down to the bottom and it came back dry," she said. "I'd like to know where they found water to test."

Benevento said he was unaware of such allegations, but vowed to investigate the complaints.

"If the allegations are true that they are faking results, that would be a criminal offense," he said.

"We would refer a report to the attorney general."

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The relationship between Cotter and the health department has been further muddled by movement of employees between the state and Cotter. Patrick Teegarden, a lawyer with Patton Boggs LLP - the firm that has represented Cotter for over a decade - left private practice to become the health department's policy director in February 1995.

In June 2001, he left that job and returned to Patton Boggs. Earlier this year, Teegarden represented Cotter during legislative debate on House Bill 1408, the radioactive-waste measure passed by the state Legislature.

Another Patton Boggs lawyer, Carolyn McIntosh, served as an assistant attorney general from 1986 to 1988. During that period, the state was suing Cotter for polluting natural resources. According to a biography on the Patton Boggs Web site, McIntosh, while working for the state, litigated cases "establishing the applicability of state hazardous-waste management laws to the Rocky Mountain Arsenal, Atomic Energy Act standards for employee exposure to radioactive releases and remediation at radioactive mill processing facilities."

McIntosh, a former Lafayette mayor, also represented Cotter during legislative hearings this past spring.

According to Benevento, there is little the state can do about former employees going to work for those they once helped regulate or sue.

"There are certain ethical procedures that need to be followed when you leave the state," he said. "A person is not supposed to go to work for an entity they regulated for a year, but other than that, we can't tell our former employees what to do."

In spite of the health department's past history, Benevento is quick to say his department will vigorously enforce its regulations against Cotter.

"We're taking the concerns of the community and the violations very seriously," he said in a recent interview. "There have been times (Cotter) has been difficult to work with. I hope they take a good look internally."

Benevento said the environmental assessment filed by Cotter in connection with its plan to bring in radioactive waste for storage will also face tight scrutiny.

"The environmental assessment is with me," he said.
"But I have a lot of questions."

On Sept. 13, the department partially lifted the general suspension on Cotter's license - a move that will allow the mill to process some materials while demonstrating it has implemented and is following the worker-safety procedures demanded by the state.

But questions about the state's ability to regulate Cotter are not likely to go away.

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