Safety technician Bob Tennant shows an air sampler that must be worn while in certain portions of the Cotter site. Daily Record News Group/Jeff Haller

Procedures facing the Cotter Corp.

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The Cotter Corporation currently has three approval processes underway with the Colorado Department of Health and Environment. The three are:

1. Regular, five-year renewal of Cotter's operating license. This began in 2000.

2. Review of 16 "items of noncompliance" with the company's current operating license. This began April 23, 2002.

3. Review of Cotter's proposal to deposit contaminated soil from Maywood, N.J., at the plant site south of Canon City. This review began April 1, 2002.

The processes are listed here:

Five-year license renewal

Step 1 - Cotter submitted its application on Dec. 1, 2000, 30 days in advance of the expiration of its license. Thirty days is the length of time required. Because the application was submitted on time, the existing license remains in effect until the process is complete. The process may take years.

Required, government-imposed improvements are incorporated into the renewed license. The company can also request changes to the license that reflect alterations or desired alterations to its operation.

Step 2 - The health department reviews all plans and documents for the full life and full scope of the site's activities. This means that not only are operations for the coming five years considered, but also projected operations beyond five years, including the eventual shutdown of the site. Cotter projects a plant shutdown in 2020, at which time the federal government would take possession of the site. Shutdown costs are projected and bonded. This step is currently under way.

Step 3 - The health department issues a preliminary decision and offers opportunity for public comment. Cotter will be required to pay the costs of an adjudicatory style hearing with a hearing officer. Interested parties or individuals can participate in a legal "discovery" process in which documents may be demanded. Testimony may be given. Questions may be asked of Cotter and the state. Step 3 will likely occur in 2003.

Step 4 - The health department executive director makes a final decision based upon the staff recommendation and the results of hearings as presented in a "Findings of Fact,

Conclusions of Law, and Order." The executive director then issues a license renewal amendment, which includes additional protections for the public and any changes of operation that the company will be permitted to make. Step 4 is expected to be complete late in 2003.

The health department reported that although Cotter submitted its application for renewal Dec. 1, 2000, it will likely submit a revised application letter later in 2002. The health department said that "authorizations desired by Cotter have shifted" and the health department has identified shortcomings in the Cotter operation, both prompting a revised application letter.

Review of "items of non-compliance."

Step 1 - The health department cited Cotter on April 23, 2002, for 16 violations of its license and 18 areas of concern, which are not license violations but could lead to future problems.

Step 2 - Cotter responded to the health department on May 23, 2002. Four of the sixteen items were resolved with that response.

Step 3 - Cotter agreed to correct six items but the state in a July 9 letter required the company to submit specific written procedures that it will use to meet the terms of the license.

Step 4 - Cotter submitted those procedures on July 29 but they have yet to be fully reviewed by the state.

Step 5 - Six additional violations are under state review as part of the state's suspension of all Cotter activities on July 9, 2002. The health department announced Aug. 27 that it will not lift the operational suspension until it is satisfied that all the violations have been resolved and until a 21-day public comment period has elapsed and public comments considered. The department did, however, on Sept. 13 permit the company to receive and process two shipments of materials.

The six violations that resulted in the suspension of activities at Cotter are:

Inability to determine occupational doses of radiation to workers. In other words, the health department believes that the company is not adequately testing the air to assure that workers health and safety are safeguarded. This is a repeat violation identified as long ago at the Colorado Bureau of Investigation report in the mid 1980s.

Bioassay sampling is not being conducted at required frequencies. Bioassay samples are, for example, urine tests or thyroid counts used to determine the kinds, quantities and locations of radioactive material in the human body.

Failure to investigate or take corrective action when an individual's bioassay result exceeds the established limits.

This, also, is a repeat violation.

Inadequacy in respiratory protection program.

No written procedures regarding issuance, maintenance and testing of respirators, the supervision and training of personnel and written procedures for record keeping.

Not performing annual In Vivo lung scans on workers. In Vivo lung scans are bioassay tests done within the living body.

Review of Maywood soil proposal

Step 1 - Cotter submitted a "Material Acceptance Report" on April 1, 2002. The report stated the company's intent to receive contaminated soil from the Maywood Chemical Works, a Superfund site in and around Maywood, N.J. The report included a Waste Profile Record prepared for the U.S. Army Corps of Engineers by Stone and Webster, Inc. Cotter also included its "Materials Handling Work Plan."

Step 2 - The Radiation Services Program staff completed initial review of the report and supporting documents. "Reviewers have not found any technical or legal contradiction to Cotter's determination that the material is acceptable for receipt and disposal," the health department wrote in answer to a question about the process.

Step 3 - As a result of House Bill 1408 passed in this year's legislative session, the health department required submission of an environmental assessment for "transportation, receipt and use" of the Maywood soil. The Fremont County Board of Commissioners was required to review the assessment or conduct its own and submit its comments to the state. The county has completed its review of the existing assessment; it did not conduct an independent environmental assessment. The new law also required public hearings, which have been completed. Transcripts have been submitted to the state.

Step 4 - The health department is currently reviewing the documents and transcripts. It has questions that it will ask of Cotter. Satisfactory answers to the questions need to be submitted before the health department will be ready to conclude that all requirements of radiation regulations and House Bill 1408 have been met. The environmental assessment is currently on the health department's executive director's desk for review.

The health department has not approved or disapproved of the Maywood soil as of yet.

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