

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 08-PO-01022-BNB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. COTTER CORPORATION,

Defendant.

PLEA AGREEMENT AND STATEMENT OF FACTS RELEVANT TO SENTENCING

The United States, by Troy A. Eid, United States Attorney, through Robert S. Anderson, Special Assistant United States Attorney for the District of Colorado, and the defendant, COTTER CORPORATION, personally and by counsel, John L. Watson, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to paragraph 4 General Order 94-3.

PART I. PLEA AGREEMENT

1. PLEA AGREEMENT PROCEDURE: The United States and the Defendant agree that this Plea Agreement is presented to the Court pursuant to Rules 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure, which provide, among other things, that the United States will make certain recommendations but that such recommendations are not binding on the Court and that the Defendant may not



withdraw his plea of guilty if the Court rejects such recommendations.

2. ACKNOWLEDGMENT AND WAIVER OF RIGHTS: The Defendant agrees that it has been fully advised of its statutory and constitutional rights herein, and that it has been informed of, and understands, the charge and allegations against it and the maximum potential penalties for that crime. The Defendant further agrees that it understands that by entering a plea of guilty as set forth hereafter, it will be waiving certain statutory and constitutional rights to which it is otherwise entitled, and that there will be no trial.

3. COUNT TO WHICH THE DEFENDANT WILL PLEAD GUILTY: The Defendant agrees to plead guilty to Count One of the Information filed in this case, which charges a Class B misdemeanor violation of the Migratory Bird Treaty Act, in violation of Title 16, United States Code, Section 703 (Unlawful Take Of Migratory Birds). Specifically, Count One alleges that on or about October 21, 2005, in the State and District of Colorado, the Defendant unlawfully killed approximately 40 migratory birds (geese and ducks) by unintentionally discharging approximately 4,500 gallons of a kerosene-contaminated organic solvent into a collection pond at its uranium processing mill near Cañon City, Colorado, which poisoned the waterfowl, resulting in the birds' deaths.

4. MAXIMUM STATUTORY PENALTIES: The Defendant understands that the crime alleged in Count One of the Information, the count to which it will plead guilty, is a Class B misdemeanor. (16 U.S.C. §707(a), 18 U.S.C. § 3559(a)(7)). The Defendant understands that the maximum statutory penalty for an organization convicted of the crime charged in Count One of the Information is a fine of not more than \$15,000 (16

U.S.C. § 707), probation for up to five years (18 U.S.C. §3561(c)(2)) and a special assessment of \$50 (18 U.S.C. § 3013(a)(1)(B)(ii)).

5. CORPORATE AUTHORIZATION: Cotter Corporation will provide to the United States written evidence in the form of a notarized legal document certifying that Defendant is authorized to plead guilty to the misdemeanor charge set forth in the Information, and to enter into and comply with all provisions of this Agreement. The notarized document shall further certify that a designated Officer or Director of Cotter Corporation is authorized to take these actions and that all corporate formalities applicable in such instance, including, but not limited to, approval by Defendant's directors, have been observed. Defendant agrees that the designated Officer or Director of Cotter Corporation shall appear on behalf of Defendant to enter the guilty plea in the District of Colorado and shall also appear for imposition of the sentence in the District of Colorado.

6. NO FURTHER FEDERAL PROSECUTION BY DISTRICT OF COLORADO OR ENVIRONMENT AND NATURAL RESOURCES DIVISION: In exchange for the Defendant's plea to Count One of the Information, the United States Attorney's Office for the District of Colorado and the Environment and Natural Resources Division of the U.S. Department of Justice, acting through its Environmental Crimes Section, agree to not prosecute the Defendant for any other federal crimes relating to the subject matter of the charge in this case of which it is aware on the day this Plea Agreement is entered. The Defendant understands that this promise binds only the United States Attorney's Office for the District of Colorado and the Environment and Natural Resources Division of the U.S. Department of Justice, acting through its Environmental

Crimes Section, and that this Plea Agreement cannot and does not bind other federal, state, or local prosecuting authorities.

7. NO OTHER AGREEMENTS EXIST: The Defendant and the United States acknowledge that this Plea Agreement contains the entire agreement between the Defendant and the United States with respect to the Defendant's guilty plea in this matter, and that no other promises, representations or inducements have been made to the Defendant through its attorney or employees or other representatives.

PART II. STIPULATION OF FACTS RELEVANT TO PLEA AND SENTENCING

8. The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

9. Pertinent facts are set out below in order to provide a factual basis of the plea and to provide facts which the parties believe are relevant for computing the appropriate sentence. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea.

10. The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to sentencing in general. Neither the court nor probation are precluded from the consideration of such facts. In "determining the factual basis for the sentence, the court will consider the stipulation of the parties, together with the results of the presentence investigation, and any other relevant information."

11. The parties agree that the government's evidence would show that the date on which conduct relevant to the offense began is October 21, 2005. The parties agree

the United States' evidence would be:

12. THE MILL FACILITY:

A. The Cotter Corporation Cañon City Milling Facility ("CCMF" or "mill") was constructed under Atomic Energy Act (AEA) licensing in the late 1950's and has experienced operational and standby periods since then. A new mill was constructed in 1979 and has resulted in the present configuration. Activities at the mill, in a standby condition since March of 2006, are conducted pursuant to a radioactive materials license issued by the State of Colorado under authority granted by the AEA. Colorado Radioactive Materials License Colo. Number 369-01 ("the License") authorizes Cotter to conduct activities at the mill. The mill is also subject to a court-approved Consent Order and associated Remedial Action Plan ("RAP") under the auspices of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Civil Action No. 83-C-2389, December 1987. The RAP requires Cotter to conduct various environmental monitoring and remediation actions. When operational, the CCMF also operates under an air permit issued by the State of Colorado.

The objectives and requirements of the License and RAP are to conduct operational and remedial activities at the site that are protective of human health and the environment. To that end, a portion of the property owned by Cotter has been designated as a Restricted Area for the purposes of minimizing exposure of individuals to licensed radioactive materials and, since 9-11, for National Security reasons. The mill is considered a "zero discharge" facility and essentially evaporates all waste waters generated within the Restricted Area. Process and remediation wastes, i.e. solids, liquids and slurries, are discharged to the Hypalon-lined Primary and/or Secondary

Impoundments. Surface water discharge is prevented by the Soil Conservation Service dam ("SCS dam") located within the Restricted Area on the northern border of the CCMF. A compacted clay barrier which extends to bedrock and is located up gradient from the SCS dam was installed in 1988 and 1989. The clay barrier is designed to capture groundwater which might otherwise leave the site. Captured groundwater is pumped back to the primary impoundment. In addition, an additional below-ground treatment structure which is referred to as a "permeable reactive barrier" was designed and installed down gradient from the SCS dam to treat groundwater prior to release from the Restricted Area.

B. The engineered Secondary Impoundment was constructed to act as a permanent repository for tailings and mill wastes generated prior to 1979. The impoundment is clay-lined and Hypalon-lined and was filled with dry wastes which were excavated from the old tailings area during the period of 1981 through 1983. In 1989, fresh water was added to the Secondary Impoundment to cover the dry materials. The water level in the impoundment is maintained within a two-foot "band" near the crest of the impoundment dike as per License requirements. The Primary Impoundment, also clay-lined and Hypalon-lined, is the "active" waste disposal area. The mill has used acid- and alkaline-based recovery processes, but most recently has used the sulfuric acid process exclusively. Liquids in the Primary Impoundment prior to 1997 were from the acid process and were at or about pH 1. In 1997, Cotter and the Colorado Department of Public Health and Environment (CDPHE) agreed to treat the contained liquids to raise the pH above 4. Cotter treats discharges to the Primary Impoundment to maintain a pH of 4 or above.

C. Pond 3 is a “temporary” pond that was lined with Hypalon in 1981 for collection of construction discharges associated with the placement of waste materials in the Secondary Impoundment. After completion of the Secondary Impoundment project in 1983, Pond 3 was converted to a collection pond. At present, surface liquid discharges from the mill area are collected and stored in this pond prior to pumping the liquids into the Primary Impoundment for evaporation.

D. During the course of normal 24-hour operations, the CCMF has administrative support staff, supervisors, operators, maintenance personnel, utility department personnel and Safety/Security Technicians (“SSTs”) present during day shift. Supervisors, operators, maintenance personnel and SSTs are present on-site during swing and graveyard shifts. Personnel receive general radiation and safety training prior to commencing work. Operators receive instruction in area-specific procedures and participate in hands-on training in their area of assignment. Operators receive continuing mentoring from supervisors during operational periods. The SSTs receive training in their duties and responsibilities through review of written procedures. One of the enumerated duties of a SST is to perform an inspection of mill areas.

E. The solvent extraction (“SX”) process is carried out for both uranium and vanadium recovery in the SX building. Solvent extraction is used to purify and concentrate uranium and vanadium so that the two products can be sold into commerce. Approximately half of the SX building is used for uranium recovery and half for vanadium recovery. The uranium is recovered first from the aqueous feed to the building and then vanadium is recovered. On the vanadium side an aqueous feed

stream, approximately 150 gallons per minute is mixed with the solvent, approximately 96 volume % kerosene, 2 volume % extractant (a tertiary amine) and 2 volume % alcohol. The solvent is recycled or in a continuous loop and is intended to remain inside the building. The total design volume of the vanadium solvent or organic extractant is approximately 100,000 gallons. The total volume of the tanks is approximately 300,000 gallons and there are four large tanks (approximately 25,000 gallons each) and approximately eight active smaller tanks (variable sized, but average about 6,000 gallons each). There are holding or surge tanks located outside the SX building. During normal operations each non-holding process tank is about two-thirds full of aqueous solution and one-third full of organic. The organic is floating on top of the aqueous and each tank has approximately 4 to 6 inches of freeboard. The building is designed to hold spillage and has a concrete sump, or "launder," running through the middle of the process area. The floors are sloped to the launder and the building floor can hold approximately 100,000 gallons before overflowing to the surrounds.

13. INCIDENT DESCRIPTION AND RESPONSE:

A. At the time of the incident the mill had been shut down due to operational difficulties. Startup of the vanadium SX was attempted beginning on graveyard shift October 20, 2005. Ten hourly and two salary supervisors were working graveyard shift, with three hourly personnel assigned to the SX building. One of the supervisors was assigned a different part of the mill. The supervisor assigned to the SX building was also responsible for product precipitation, drying and packaging, all of which are carried out in different buildings. The senior hourly worker was assigned to

the vanadium side of the building and had approximately 1,096 hours of work experience in the SX. Prior to the incident, that worker had started and shut down the operations in the SX building multiple times.

B. At approximately 4:30 a.m. on October 21, 2005, the Safety-Security Technician was making a scheduled inspection of the mill area as per procedure and discovered vanadium organic solvent overflowing the SX building's vanadium "scrub cell" and the floor sump. The supervisor was able to quickly diagnose the problem (an open recycle valve) and stop the spill, but not until approximately 4,500 gallons of organic solvent had escaped from the SX building. The spilled organic solvent ran approximately 10 feet across an earthen walkway on the north side of the SX building and down an earthen embankment into a concrete lined ditch at the base of the embankment. From that point the organic solvent flowed down a concrete ditch, through a culvert and down the Hypalon-lined ditch until reaching Pond 3. The solvent was comprised of 95-97% kerosene, 2.5% of a tertiary amine and 2.5% of tri-decyl alcohol.

C. Mill personnel were quickly assigned to place earthen dams along the length of the lined ditch between the SX building and Pond 3. Organic solvent recovery operations began by using portable pumps to return the organic in the ditch to the SX building. Pond 3 is configured so that inflow to the pond occurs behind an island of reeds. Sorbent floating booms were deployed to retain the organic behind the reed island to minimize exposure to waterfowl and to aid in organic recovery operations. Cotter's Manager of Environmental Affairs, in Denver, was notified of the spill early on in the incident. He notified Cotter's vice-president and CDPHE. Cotter's License requires

that CDPHE be notified within 24-hours of any spill of greater than 500 gallons that may contain a radioactive substance.

D. Cotter personnel deployed all the sorbent materials on hand on October 21, 2005, approximately 180 pads and booms. Cotter personnel contacted a local engineering firm and borrowed several more cases of sorbent materials, in addition to placing a rush order with a sorbent vendor. The sorbent materials from New Pig Corporation were received into the warehouse on October 25, 28 and 31, 2005 at a total cost of \$3,101. Floating organic on the pond was removed by an improvised system. Cotter personnel used a tank, pump and flexible hose to remove organic from the pond surface. A 300 gallon tank was used to collect the liquids sucked off the pond in this fashion. Thirty five trips were made with the 300 gallon tank. The amount of organic in each load varied and no total amount of organic removed was estimated. Groundwater samples from two nearby monitor wells were collected and have been analyzed for Total Petroleum Hydrocarbons.

E. On October 24, 2005, representatives of CDOW and the U.S. Fish and Wildlife Service (FWS) observed that water from Pond 3 was being pumped to another pond, despite the continued presence of organic solvent in Pond 3. Cotter personnel immediately stopped removing water from Pond 3.

F. The floating organic was not completely removed from Pond 3 until October 31, 2005.

G. At the time of the spill, Pond 3 held about 100 Canada geese (*Branta canadensis*) and some other waterfowl. On the morning of October 21, 2005, an initial report of wildlife distress was received by the Mill Manager, who notified the Colorado

Division of Wildlife (CDOW). CDOW personnel arrived the afternoon of October 21, 2005 and picked up one live goose. At that time Cotter personnel were in possession of one dead goose and were using Dawn dishwashing soap to try to remove the organic solvent from some live geese, an action encouraged by CDOW personnel. As waterfowl were washed they were placed in a barricaded shower area in the heated change room to try and reduce physical stress levels.

H. Cotter personnel continued to retrieve dead and dying geese and one duck during the next two days, culminating with the transfer of 15 dead Canada geese to U.S. Fish and Wildlife Special Agent Dan Coil. On October 25, 2005, a representative of Wildthings Rehabilitation Center picked up the last live goose.

I. Cotter supervisors were instructed immediately following the incident to inspect Pond 3 on an hourly basis and haze any waterfowl present including the use of the noisemakers when available. Hourly inspections continued until the free organic was removed from Pond 3. Shotgun and pistol noisemakers have been used to haze geese away from the Pond. As a result of the spill, Cotter has revised the procedures used by the SSTs to require them to evaluate waterfowl presence (or absence) on their shift inspection forms. The SSTs have been trained to use the pistol and noisemakers to encourage waterfowl to leave Cotter property.

J. It is unknown precisely how many geese, ducks or other wildlife were harmed or killed by contact with the organic solvent spilled at the mill. To date, officers have retrieved 38 Canada geese and one duck carcass from the mill and surrounding area that appear to have been killed by contact with the organic solvent. Six of these carcasses were submitted to the FWS Forensics Laboratory, for necropsies. Lab

personnel reported on March 24, 2006, that all had died as the result of contact with a hydrocarbon, such as kerosene.

PART IV: SUGGESTED SENTENCING COMPUTATION

14. The parties acknowledge that, inasmuch as the crime alleged in Count One of the Information is a Class B misdemeanor, the advisory Sentencing Guidelines do not apply to this case. (U.S.S.G. § 1B1.9). The parties understand that sentencing in this case will be determined by the Court in accordance with 18 U.S.C. § 3553. The parties understand the Court may impose any sentence up to the statutory maximum, regardless of any guideline range computed, and the Court is not bound by any position or recommendation of the parties. The Court is free to make its own findings of facts and consider such sentencing factors which accord with Title 18, U.S.C. § 3553, including the parties' stipulations, the presentence investigation report, and any other relevant information.

15. The parties acknowledge that the sentencing of the Defendant in this matter is entirely within the discretion of the Court. Understanding this, the parties intend to make the following, non-binding, joint sentencing recommendation for the Court's consideration at sentencing:

A. The parties will jointly recommend that a fine of \$15,000 should be imposed in this case.

B. The parties will jointly recommend that the Defendant be sentenced to a term of 12 months probation with the following specific conditions imposed in addition to the standard conditions;

i. The Defendant will perform community service by making a

\$15,000 payment to the National Fish and Wildlife Foundation, a private, non-profit, 501(c)(3) tax-exempt organization, established by Congress in 1984 and dedicated to the conservation of fish, wildlife and plants and the habitat on which they depend. The Defendant will not claim this payment as a tax deduction or characterize it in any manner or forum as a donation or contribution.

ii. Within 90 days of sentencing the Defendant will submit an Environmental Compliance Plan, designed to both prevent events like that which gave rise to the charge in this case and ensure timely and effective remediation of such events, to the FWS for review, editing in cooperation with the Defendant, and approval, which shall not be unreasonably withheld. Within 90 days following finalization of the Environmental Compliance Plan, the Defendant shall provide the Probation Office with proof that the Plan has been implemented.

PART V. WHY THE PLEA AGREEMENT IS APPROPRIATE

16. Pursuant to the General Order 1994-3, the parties believe the sentencing range resulting from the proposed plea agreement is appropriate because all relevant conduct is disclosed and the sentencing guidelines takes into account all pertinent sentencing factors with respect to this defendant.

PART VI. DEFENDANT REPRESENTATIVE'S STATEMENT

17. I am the President of Cotter Corporation, empowered by corporate

resolution to bind Cotter Corporation in this matter. I make the following representations to the Court:

A. Cotter Corporation wishes to enter a plea of guilty to Count One of the Information, which charges it with unlawfully taking migratory birds, in violation of Title 16, United States Code, Section 703 by discharging approximately 4,500 gallons of a kerosene-contaminated liquid into a settling pond at its uranium processing plant near Cañon City, Colorado, which killed approximately 40 specimens of waterfowl, which are "migratory birds" as that term is defined in the relevant statute and regulations.

B. Cotter Corporation understands that by pleading guilty it gives up and agrees to waive the following rights:

- The right to plead not guilty or to persist in that plea if it has already been made;
- The right to a speedy and public trial by a jury on the issues of its guilt;
- The right to object to the composition of the grand or petit jury;
- The right to be presumed innocent and not to suffer any criminal penalty unless and until its guilt is established beyond a reasonable doubt;
- The right to be represented by a lawyer at trial and if necessary to have a lawyer appointed to represent it at trial. Cotter Corporation understands that it is not waiving its right to have counsel continue to represent it during the sentencing phase of its case;
- The right to confront and cross-examine witnesses against the company, and the right to subpoena witnesses to appear on its behalf;
- The right to remain silent at trial, with such silence not to be used against it, and the right to testify in its own behalf;
- The right to contest the validity of any searches conducted on its property or person.

C. Cotter Corporation is fully aware that if it were convicted after a trial and sentence were imposed on it thereafter, it would have the right to appeal any aspect of its conviction and sentence. Knowing this, Cotter Corporation, through its

representative below, voluntarily waives its right to appeal its conviction. Furthermore, Cotter Corporation knowingly and voluntarily agrees to waive its right under 18 U.S.C. § 3742 to appeal any aspect of the sentence imposed in this case, if the Court accepts this agreement and imposes a sentence no greater than the statutory maximums available for this offense. Furthermore, Cotter Corporation knowingly and voluntarily waives its right to collaterally attack any aspect of its conviction or sentence - except for a challenge based upon ineffective assistance of counsel based on information not now known by it and which, in the exercise of due diligence, could not be known to it by the time the Court imposes the sentence - which affected either its guilty plea or the sentence imposed by the Court. Cotter Corporation, through its representative, states that it is fully satisfied with the representation given to it by its attorney, John L. Watson. Cotter Corporation and its attorney have discussed all possible defenses to the charge in the Information. Cotter Corporation's attorney has investigated the case and followed up on any information and issues it has raised with its attorney to its satisfaction and its attorney has taken the time to fully explain the legal and factual issues involved in this case to the company's satisfaction. Cotter Corporation, through its representatives, has discussed how its sentence will be calculated as well as the statutes applicable to its offense and any other factor that will affect the sentence calculation in its case. As representative for Cotter Corporation, I have also discussed with counsel the sentencing recommendations set forth in this document and I understand they are binding on the parties to this case, but not the Court.

D. As representative of Cotter Corporation, I further understand that if Cotter Corporation pleads guilty, there will not be a trial and that the Court will ask me

under oath to answer questions about this offense. I understand that I may be prosecuted if I make false statements or give false answers and may suffer other consequences set forth in this agreement.

E. Cotter Corporation understands that it has a right to plead not guilty and that no one can force the company to plead guilty. If anyone, including my attorney, has done or said anything other than what is contained in this agreement I, as representative of Cotter Corporation, will inform the judge when I stand before the Court to enter a plea of guilty on the company's behalf.

F. Cotter Corporation understands that no one, including its attorney, can guarantee the outcome of its case or what sentence the Court may impose if the company pleads guilty. As representative of Cotter Corporation, I understand that the Court has the discretion to impose any sentence authorized by the relevant federal statutes and that if the sentence deviates from that proposed by the parties, Cotter Corporation will not be free to withdraw from this agreement.

G. Cotter Corporation understands that anything that it discusses with its attorney is privileged and confidential, and cannot be revealed without permission of Cotter Corporation. Knowing this, Cotter Corporation agrees that this document will be filed with the Court.

H. This document contains all of the agreements made between Cotter Corporation, its attorney, and the attorney for the United States regarding this plea of guilty. Aside from this agreement, there are no other promises, assurances, or agreements between Cotter Corporation, its attorney, and the United States that have

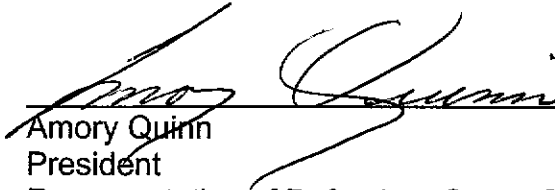
affected Cotter Corporation's decision to change its plea or to enter into this agreement.

If there were, Cotter Corporation would so inform the Court. Cotter Corporation understands that if it breaches this agreement in any way the United States will be free to prosecute it on all charges for which there is probable cause, arising out of the investigation of this case, and to reinstate any charges dismissed pursuant to this agreement.

I. Cotter Corporation's representatives have read this plea agreement carefully and understand it thoroughly. I know of no reason why the Court should find me, acting as representative for Cotter Corporation, to be incompetent to enter into this agreement or to enter a plea of guilty on behalf of Cotter Corporation. On behalf of Cotter Corporation, I enter into this agreement knowingly and voluntarily.

J. Cotter Corporation therefore wishes to enter a plea of guilty to Count 1 of the Information, which charges it with violating the Migratory Bird Treaty Act.

Date: 12-19-07

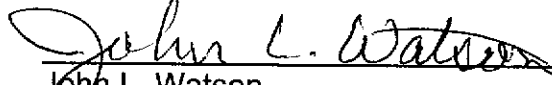


Amory Quinn
President
Representative of Defendant Cotter Corporation

18. As counsel for the defendant, I have discussed with the above representative for Cotter Corporation the terms of this plea agreement, have fully explained the charge to which he is pleading guilty to on behalf of Cotter Corporation, and the necessary elements, all possible defenses, and the consequences of such a plea. Based on these discussions, I have no reason to doubt that Cotter Corporation, as a corporate entity, is knowingly and voluntarily entering into this agreement and entering a plea of guilty. I know of no reason to question the competency of the

representative or the corporate decision-making process or the competency of any party on behalf of Cotter Corporation to make these decisions. If, prior to the imposition of sentence, I become aware of any reason to question the competency of Cotter Corporation's representative or corporate competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the Court.

Date: 1-2-08



John L. Watson
ATTORNEY FOR DEFENDANT

19. On behalf of the United States, the following accept Cotter Corporation's offer to plead guilty under the terms of this plea agreement.

Date: 2-15-08



Robert S. Anderson
SPECIAL ASSISTANT U.S. ATTORNEY
District of Colorado
SENIOR TRIAL ATTORNEY
Environmental Crimes Section
U.S. Department of Justice