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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8
FILED
REGION VIII
HEARING CLERK

IN THE MATTER OF:

Lincoln Park Superfund Site
Cañon City, Fremont County,
Colorado

Cotter Corporation (N.S.L.),
Respondent.

ADMINISTRATIVE
SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
PAYMENT OF PAST RESPONSE
COSTS

U.S. EPA Region 8
CERCLA Docket No.
CERCLA-08-2016-0003
Proceeding Under Section 122(h)(1)
of the Comprehensive
Environmental Response,
Compensation, and Liability Act, 42
U.S.C. § 9622(h)(1).

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT FOR PAYMENT OF PAST RESPONSE COSTS**

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I. JURISDICTION

1. This Administrative Settlement Agreement and Order on Consent for Payment of Past Response Costs (Settlement Agreement) is entered into voluntarily by the EPA and Respondent.

2. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and re-delegated to the directors of the EPA Region 8 Superfund, Technical Enforcement, and Legal Enforcement Programs.

II. BACKGROUND

3. This Settlement Agreement concerns the Site. EPA alleges that the Site is a “facility” as defined by Section 109(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In performing response actions, EPA has incurred response costs at or in connection with the Site.

5. Respondent is a New Mexico corporation with its headquarters in Denver, Colorado. Respondent has been the owner and operator of Respondent’s uranium mill (Mill) since 1957.

6. EPA alleges that Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and liable for response costs incurred by the United States at or in connection with the Site.

7. The Mill received its original license to operate in 1957 from the Atomic Energy Commission (AEC), now the United States Nuclear Regulatory Commission, pursuant to the Atomic Energy Act. In 1968, AEC withdrew certain federal licensing authorities for the Mill pursuant to an agreement with CDPHE, which was subsequently amended (1968 Agreement). After the 1968 Agreement, CDPHE issued Respondent a Radioactive Materials License (License) to replace the original AEC-issued license. Pursuant to the License, Respondent operated the Mill at the Site. As a result of these operations, hazardous substances including, but not limited to, uranium, thorium, radium, radon, molybdenum, polychlorinated biphenyls and trichloroethylene have been released or are threatened to be released into the environment.

8. In 1983, the State of Colorado brought a lawsuit under CERCLA against Respondent in United States District Court, District of Colorado. The suit alleged that operation of the Mill released contaminants into the soil and ground water at the Site.

9. In 1984, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, Vol. 49, Fed. Reg. 37070.

10. On April 4, 1988, the United States District Court, District of Colorado, entered a consent decree (CD) between Respondent and the State of Colorado (Civil Action No. 83-C-2389), that settled the 1983 lawsuit by the State of Colorado against Respondent. The CD obligates Respondent to implement a Remedial Action Plan (RAP) to address contamination at the Site and to decommission, close, reclaim and monitor the Mill pursuant to the Radiation Control Act.

11. Pursuant to the RAP and the regulation of the Site by CDPHE under State and federal law, many investigations, studies and interim response actions have been performed at the Site since it was listed on the NPL. Additional information about environmental conditions at the Site is available at the offices of EPA Region 8 and at the information repository in Cañon City, located at: The Royal Gorge Regional Museum and History Center 612 Royal Gorge Boulevard, P.O. Box 1460, Cañon City, CO 81215, and 719-269-9036.

12. On July 15, 2014, Respondent, CDPHE and EPA entered into the AOC, the results of which will help EPA determine whether any additional remedial action is necessary before the Site can be removed from the NPL.

III. GENERAL PROVISIONS

13. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations set forth in this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees not to contest the basis or validity of this Settlement Agreement.

IV. PARTIES BOUND

14. This Settlement Agreement applies to and is binding upon the EPA, the Respondent, and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement.

15. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Respondent to this Settlement Agreement.

V. DEFINITIONS

16. Unless otherwise expressly provided in this Settlement Agreement, terms used herein that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“AOC” shall mean the July 15, 2014 Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study entered into by Respondent, EPA, and CDPHE.

“CDPHE” shall mean the Colorado Department of Health and Environment, and any successor departments or agencies of the State.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided in Section XVI.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Superfund interest rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm. If EPA receives partial payment of past costs, Interest shall accrue only on any unpaid balance.

“Lincoln Park Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), under the July 15, 2014 AOC, the funds in which are to be used to conduct or finance response actions in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and the Respondent.

“Past Response Costs” shall mean all costs that the United States has incurred, including, but not limited to, all costs incurred by the Agency for Toxic Substances and Disease Registry (ATSDR) and the United States Department of Justice on behalf of EPA, at or in connection with the Site through July 15, 2014 that have not yet been paid by the Respondent, including but not limited to direct and indirect costs that EPA has incurred, or which ATSDR or the U.S. Department of Justice on behalf of EPA has incurred, at or in connection with the Site through July 15, 2014.

“RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

“Respondent” shall mean Cotter Corporation (N.S.L.) and its successors and assigns.

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent for Payment of Past Response Costs, all appendices attached hereto, and all documents incorporated by reference into this document.

“Site” shall mean the Lincoln Park Superfund Site, made up of the Mill and associated facilities, and the adjacent community of Lincoln Park, located near Cañon City, in Fremont County, Colorado, and depicted generally on the map attached as Appendix A.

“State” shall mean the State of Colorado.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PAYMENT OF PAST RESPONSE COSTS

17. Payment by Respondent of Past Response Costs. Within thirty (30) days after the Effective Date, Respondent shall pay to EPA \$957,604.46.

For Wire Transfer Payment:

Wire transfers to EPA can be made through the Federal Reserve Bank of New York using the following information:

ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: U.S. Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the EPA.

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency,” and payment shall reference Site/Spill ID Number 0828 and the EPA docket number for this action.

18. Deposit of Past Response Costs Payment. The total amount to be paid by Respondent to EPA pursuant to this Settlement Agreement shall be deposited by the EPA in the Lincoln Park Special Account, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund for use at another site.

19. Notice of Payment. At the time of payment, Respondent shall send notice that payment has been made to EPA at:

Joseph Poetter
Director, Financial Management Unit (TMS-F)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and Respondent shall send notice to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@edpa.gov, or by United States mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268.

Such notice shall reference Site/Spill ID Number 0828 and the EPA docket number for this action.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

20. Interest on Late Payments. If Respondent fails to make the payment required by this Settlement Agreement by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

21. Stipulated Penalty.

- a. If any amounts due to EPA under Paragraph 17 (Payment by Respondent of Past Response Costs) are not paid by the required date, Respondent shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 20 (Interest on Late Payments), \$100 per violation per day that such payment is late, unless EPA waives payment of all or a portion of such stipulated penalty amount as set forth in Paragraph 23 below.

- b. Stipulated penalties are due and payable within thirty (30) days after the date of written demand for payment of the penalties by EPA. Respondent shall identify all payments to EPA under this Paragraph 21 as “stipulated penalties,” shall reference Site/Spill ID Number 0828 and the EPA docket number for this action, and shall make payment by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency.”

If Respondent chooses to pay stipulated penalties by check, Respondent shall identify all payments to EPA under this Paragraph 21 as “stipulated penalties” and shall make payment by official bank check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall identify the name and address of the party making payment, the Site name, Site/Spill ID Number 0828, and the EPA docket number of this action and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- c. At the time of payment, Respondent shall send notice that payment has been made as provided in Paragraph 19 (Notice of Payment).
- d. Penalties shall accrue as provided in this Paragraph 21 regardless of whether EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

22. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Respondent’s failure to comply with the requirements of this Settlement Agreement, if Respondent fails or refuses to comply with the requirements of this Settlement Agreement, Respondent shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement,

Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of any stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Respondent from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

24. Covenants for Respondent by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants extend only to Respondent and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within Section VIII (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to:

- a. liability for failure of Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

26. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY RESPONDENT

27. Covenants by Respondent. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement for Past Response Costs from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Colorado, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or State law for Past Response Costs.

28. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

29. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

30. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs.

31. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved

liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) for the “matters addressed” in this Settlement Agreement.

32. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

34. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment required by Section VI (Payment of Past Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 30, and that, in any action brought by the United States related to the “matters addressed,” Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by EPA.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Mark Aguilar, or current EPA Remedial Project Manager, Lincoln Park Site
Superfund Remedial Program, Mail Code 8EPR-SR
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
aguilar.mark@epa.gov

As to Respondent:

Stephen Cohen
Cotter Corporation (N.S.L.)

For regular mail:
P.O. Box 1750
Cañon City, CO 81215-1750

For courier or express mail delivery:
0502 County Road 68
Cañon City, CO 81212.

XIII. INTEGRATION/APPENDIX

This Settlement Agreement and Appendix A constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. Appendix A is a map generally depicting the Site.

XIV. PUBLIC COMMENT

36. This Settlement Agreement shall be subject to a public comment period of at least thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL

37. The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVI. EFFECTIVE DATE

41. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Section XIV (Public Comment) has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

Agreed this 22nd day of April, 2016.

For Respondent Cotter Corporation (N.S.L.):

By: 

Kenneth J. Mushinski
President, Cotter Corporation (N.S.L.)

It is so ORDERED AND AGREED this 26th day of May, 2016.

BY: Kelcey Land DATE: 5/25/16
Kelcey Land
Director, RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency

BY: Andrea Madigan DATE: 5/24/16
Andrea Madigan
Supervising Attorney, Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency

EFFECTIVE DATE: