

D. CAUSE OF ACTION

Claim Number 1: Violation of the Clean Water Act (C.W.A.), 33 USC §§ 1251, et seq. (2001); Violation of the Eighth Amendment, Deliberate Indifference to a Serious Threat to Health and Well Being, and Inhumane Treatment; Violations of Health and Safety Regulations; and E.P.A. rules and recommendations.

Supporting Facts:

The acting **Governor** of Colorado, the County of Fremont, and the City of Cañon City, the President (**Quinn**) and Vice President (**Hamerick**) of **Cotter** Corporation, a subsidiary owned by the San Diego, California based parent company **General Atomics (owners name unknown)**, have known about the ongoing issue of the contamination of the water supply, groundwater and air by radioactivity, heavy metals and various chemical solvents, in and around the Cañon City area, where the Plaintiff is currently a resident, by the **Cotter** Corporation Mine/Mill located South of Cañon City, within the State of Colorado. There are many health and life threatening conditions which many of the inmate population are totally unaware of. The Clean Water Act (C.W.A.) makes it unlawful for anyone to discharge pollutants into the Nation's waters except pursuant to a permit.

This site was active in mining and milling uranium for the nuclear triggers that were manufactured at the Rocky Flats site, during the Cold War. This site, is known to have had leaking contaminants in its eleven (11) tailing ponds, where it disposed of its various types of toxic waste, since it began mining in 1958. Of which its contents were transferred to two (2) newer lined tailing ponds in 1982, whose liners also leaked due to a rocky surface on the bottom of the ponds, as of an E.P.A. investigation in 1984. **Cotter's** current plan, is to let the water evaporate off, and then fill in the ponds with dismantled mill machinery and contaminated top soil, amounting to 4.4 million cubic yards of radioactive and chemically toxic materials. There have been many gallons of this contaminated water pumped from the leaking site, and that have leached out of the ponds and into groundwater and streams, that are radioactive, contain heavy metals (i.e. cadmium, lead, mercury, molybdenum, etc.), and contain known to be deadly and carcinogenic chemicals (i.e. arsenic, trichloroethylene, etc.).

How much of this contaminated groundwater that has not been accounted for, and has leaked into the current well-water supply and rivers, is unknown, but likely substantial. And, has also likely been the cause of many health problems experienced by this Plaintiff and others in the Cañon City area. Namely, chronic kidney disease, skin problems (i.e. extreme eczema, psoriasis, seborrhea and open sores on the scalp, legs and ankles), and swallowing problems, that were never experienced by this Plaintiff, prior to his residency in Cañon City for several years. As well as thyroid problems and many other numerous health problems that are likely linked to the toxic waste leakage. The actual causes of which are unknown to this Plaintiff, who is not a medical professional himself.

It is apparent that the acting **Governor**, and **Quinn**, and **Hamerick** of the **Cotter** Corporation Uranium Mine/Mill, along with its parent company, **General Atomics** and its **owners**, knew about and allowed toxic contaminated material from the mill property to leach into the groundwater and water system supplying Cañon City, including C.T.C.F. and the other correctional facilities in Cañon City. This contamination found its way into the Arkansas River, from area creeks and streams adjacent to the prison. This unchecked toxic contamination flows through the heart of Cañon City. It is also a fact, that a part of the Arkansas River is diverted into a canal that flows through the middle of the C.T.C.F..

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It is from this source, that C.T.C.F. draws its water for irrigation of lawns, gardens, and other uses.

Also, a citizens group of Cañon City, "Western Mining Action Project", filed an addendum to their previous lawsuit, filed in Denver District Court, Case Number #???, alleges that recent dismantling activity at Cotter's Uranium Mill is being done without a required reclamation plan, presenting a public-health risk as toxic, and radioactive waste stored in ponds and buried on site and leaches into the water table. This addendum, states that Cañon City has frequent high winds, causing an even greater risk, from airborne contaminants also being blown over Cañon City, which would include C.T.C.F.. And, another group, "Colorado Citizens Against Toxic Waste," also filed a complaint in District Court dated on September 19, 2010.

These problems were identified several years earlier by the Environmental Protection Agency (E.P.A.), and the Colorado Department of Public Health and Environment (Hereafter C.D.P.H.E.). The C.D.P.H.E. Director, Martha Rudolph, has declined to comment on the allegations. As the State of Colorado stands to bear the expense of clean-up, if Cotter walks away from its responsibilities, which they have threatened to do on more than one occasion.

In 1984, the E.P.A. placed the Cotter Mill site on their list of national Superfund clean-up sites. The C.D.P.H.E. and other State agencies have been given primary responsibility to oversee the clean-up, under an agreement with the E.P.A.. However, this clean-up has not proceeded at any kind of reasonable speed, nor with proper safeguards in place to assure the safety of the surrounding citizens in Cañon City and C.T.C.F. as well as the other correctional facilities at the Cañon City Complex, and the contamination has progressed uninterrupted.

On March 3, 2011, a local television news investigative reporter, James Jarman, of KRDO Channel 13 News, located in Colorado Springs, reported on the quality of the drinking water in Cañon City. The finding was that the water contained carcinogenic toxins, and the amount exceeded all federal and E.P.A. Standards and these contaminants can be transmitted by both air and water. The contaminants were found to be 713 parts per billion (ppb), in February and July. The most recent tests reported by the C.D.H.E., states that the readings were 89 ppb. The C.D.P.H.E. also stated that anything higher than 30 ppb is a health risk.

In October of 2011, Quinn, of Cotter Corporation stated, "Documents showing that samples collected from the wells north of the mill (*towards the Cañon City area*) were analyzed at an outside lab, indicated levels of trichloroethylene in concentrations from those wells at 1800 ppb, 1200 ppb, 490 ppb, and 386 ppb." The E.P.A.'s safe level is "5" ppb. E.P.A. spokesperson, Sonya Pennock, said, "The plumes of toxins have been detected moving underground towards Cañon City."

Another report dated June 28, 2011, regarding the groundwater tests, on Cotter's property and adjacent land to the mill, by the C.D.P.H.E. Director, Chris Urbina, stated, "The cancer causing chemical trichloroethylene, was detected in groundwater concentrations up to 360 times federal health limits."

In a Denver Post article, dated October 23, 2011, a Mrs. Deyon Boughton states that her husband, "Lynn Boughton, who was Cotter's chief chemist, died of cancer, after readings of contamination that were found in his body, showed 700 times the normal level of radiation."

Pond access is even too dangerous for the workers to continue testing pH of the ponds. And, as willful neglect, they are no longer performing radon flux measurement required by E.P.A. Regulations 40 CFR Part 61, Sub-part W.

The prisoners at C.T.C.F. and the other Cañon City facilities, are in a tough spot. The Plaintiff, and the other inmate population, are forced to live, drink, eat, and sleep with this highly toxic contamination. Consequently, prisoners are becoming ill, becoming more ill and/or dying from long term radiation exposure and other toxic chemical contamination. The Colorado Department of Corrections (C.D.O.C.) and C.T.C.F., have kept this information from prisoners. In doing this, they

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knowingly subjected the prisoners to radioactivity and other contaminants, resulting in a lifelong, catastrophic medical and mental health problems, and financial hardship to prisoners and their families. This has a potential of political and financial disaster for the State of Colorado. C.D.O.C.'s conspiracy of silence, and actions of silence, demonstrates willful gross negligence, and we can only speculate that this must have influenced their decision, on their being silent.

The facts speak for themselves. Radiation exposure results in early and delayed effects. Early effects involve damage of the rapidly dividing cells (i.e. mucosa, skin, and bone marrow). Delayed effects include: malignancy, reproductive abnormalities, liver, kidney, thyroid, and central nervous system and immune system dysfunction. Injury to superficial structures may cause: skin scarring, atrophy, telangiectasis, and xerostomia. Radiation effects to the eyes include: cataracts, dry eye syndrome, and retinopathy.

There are many more known radiation sicknesses this Plaintiff has chosen to not list here, as the list is extensive. The above information was gained from the Lange Medical "2011 Current Medical Diagnosis and Treatment," and edited by Steven J. McPhee, M.D.; Maxine A. Papadakis, M.D.; and Michael W. Rabow, M.D.

Prisoners, who have no choice in any of this, are slowly being poisoned. Many show symptoms of short and long term radiation and toxic chemical exposure. Several Colorado agencies, including the C.D.P.H.E. and the C.D.O.C., have knowingly and willfully neglected their statutory duty to seek and safeguard the safety and health of the citizens of Cañon City and the prison population at C.T.C.F. and other Cañon City Correctional Complex facilities, in defiance of the E.P.A. recommendations and health concerns of any rational human being. A large number of inmates at C.T.C.F. that are sick, and mysteriously appear to be getting sicker, and are showing most, if not all, of the above symptoms, and including obvious visible skin scarring (rashes). All of these prisoners, including the Plaintiff, desire and deserve to have a qualified medical second opinion from an outside expert with experiences in disorders related to environmental toxins exposure.

The Policy of the C.D.O.C. is clearly and concisely defined in their Mission Statement, A.R. 100-18, accepted and attested to by each and every C.D.O.C. employee, when hired. However, there has been no attempts to mitigate this exposure, resulting in willful gross negligence, and a conspiracy of silence. Employees of C.T.C.F. bring in their own bottled water and bottled drinks, refusing to drink what comes from the tap, that the prisoners **must** drink. Prisoners, and their families are completely in the dark, and left to wonder why their loved ones are getting sick, and in some cases, dying, with no real explanation.

This is arbitrary and capricious behavior, and should be considered inhumane treatment. Imposing a slow and painful death and/or long-term crippling injuries on the Plaintiff and these other prisoners. It is ironic that C.T.C.F. is considered a "Medical Facility" and houses "the C.D.O.C. Infirmary," when part of the Arkansas River, and it's contaminants, literally run right through the heart of that facility. This type of deliberate indifference to the health and well being of the prisoners housed at C.T.C.F., constitutes gross violations of the Eighth Amendment of the U.S. Constitution.

Deprivation of the Right to be treated as part of humanity, when daily exposure to the various toxins and health hazards that threaten ones' existence while incarcerated at C.T.C.F., is only compounded by the physiological damage being inflicted by the C.D.O.C., its administrators, and their correctional officers, with their righteous indignation and silence. This type of regulation and/or practice is not, and cannot, meet what is approved for the operation of any correctional facility when operated in the United States or it's territories, that are subject to it's fundamental Constitutional laws and Human Rights. In an environment where this degeneration is allowed to exist, the hope of any form of self-improvement or rehabilitation will be non-existent. Those who are knowingly committing these violations of Human Rights and constitutional laws are committing treasonable actions. The

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action of injury to another's health, by silence and denial, while knowing the hazards faced by the inmates, can only be presumed to be criminal in nature, showing deliberate indifference. The Plaintiff also believes that this should result in criminal charges being brought against those who knowingly and wantonly perpetrated these injuries, as well as possibly many deaths of the local citizens and prisoners without their knowledge of these environmental conditions, and who cannot help or protect themselves, and rely on C.D.O.C. officials to provide a safe environment.

Now, the Plaintiff, is afraid that the problems experienced, will escalate as time goes on, with the massive contamination of toxins and lack of clean up by the Defendants in the area where the Plaintiff is located. This is in direct violation of the E.P.A.'s recommendations. The U.S. Constitution's Amendment VIII is, inter alia, intended to protect and safeguard a prison inmate from an environment where degeneration is probable and self-improvement unlikely because of the conditions existing which inflict needless suffering, whether physical or mental. While an inmate does not have a federal constitutional right to rehabilitation, Plaintiff is entitled to be confined in an environment which does not result in his degeneration or which threatens his mental and physical well being. This is deliberate indifference to a serious threat to health and well being, and inhumane treatment by C.D.O.C. and the staff of C.T.C.F., who are all aware of the presence of these toxins and radiation.

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