

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

Simplot Phosphates LLC.
515 South Highway 430
Rock Springs, Wyoming 82901

RESPONDENT

EPA ID No. WYD151663325

) 2013 JUN 25 PM 3:42
) ADMINISTRATIVE
) ORDER ON CONSENT
) EPA REGION VIII
) FIELD OFFICE OF EPA
) Docket No: RCRA-08-2012-0004
)
)
) Proceeding under Section 3013(a) of the
Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6934(a)

**RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT
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RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA" or "Agency") by Section 3013(a) of the Resource Conservation and Recovery Act, ("RCRA" or "the Act"), as amended, 42 U.S.C. § 6934(a). The authority to enter into this Consent Order has been duly delegated jointly to the supervisors in the EPA Region 8 Technical and Legal Enforcement Programs.
2. This Consent Order is entered into by EPA and Simplot Phosphates LLC ("Simplot," "Facility," or "Respondent"), a Utah limited liability company doing business in the State of Wyoming. Respondent consents to and agrees not to contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require Respondent's full or interim compliance with the terms of this Consent Order; or impose sanctions for non-compliance with the terms of this Consent Order; provided, however, that Respondent retains any and all other rights it may have to dispute the merits of any such claims. In entering into this order, Simplot makes no admission of fact or law.
3. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office at 1595 Wynkoop Street, Denver, CO 80202-1129.
4. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the Wyoming Department of Environment Quality ("WDEQ") the authorization to operate a hazardous waste program in lieu of the federal program. Although EPA has granted Wyoming authority to enforce its own hazardous waste program, EPA retains its authority under Section 3013(a) of the Act. WDEQ is not a party to this order, but will be kept informed of the work to be conducted pursuant to this order.

II. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
6. Each undersigned representative of the Parties to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order.
7. No change in ownership, corporate, or partnership status relating to the Facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

8. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Consent Order.

9. Any documents transferring ownership and/or operations of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

III. STATEMENT OF PURPOSE

10. In entering into this Consent Order, the mutual objectives of EPA and Respondent are the protection of human health and the environment through Respondent's implementation of sampling, analysis, monitoring and reporting at the Facility that shall characterize the source(s) of contamination; characterize the potential pathways of contaminant migration; define the degree and extent of contamination; and identify actual or potential human and/or ecological receptors to fully determine the nature and extent of the presence and/or release of hazardous wastes and hazardous constituents at or from the facility.

IV. EPA'S FINDINGS OF FACT

11. Respondent's facility ("Facility") that is the subject of this Consent Order is located approximately 4.5 miles southeast of Rock Springs, Wyoming at 515 South Highway 430, and includes all contiguous property currently under the ownership or control of Respondent.

12. The Facility has been in operation since 1986. Construction of the plant by Chevron Resources Company began in 1984. The plant operations started in 1986. In Spring 1992, SF Phosphates Limited Company purchased the plant in a joint venture between the JR Simplot Company and Farmland Industries, Inc. In 2003, the JR Simplot Company purchased Farmland Industries' interest in the SF Phosphates Company and renamed it Simplot Phosphates, LLC.

13. The Facility produces phosphoric acid (diphosphorouspentoxide) in two concentrations - 54% and 68% (the latter often called super phosphoric acid ("SPA")), monoammonium phosphate ("MAP"), a dry granulated fertilizer, and fluorosilicic acid ("FSA") which is used for water fluoridation and chemical manufacturing.

14. The phosphate ore is mined 12 miles north of Vernal, Utah, at a mine owned by Simplot Phosphates, LLC. The ore is crushed, washed, ground, and concentrated at the mine. It is then mixed with water to form a slurry and then transported by a pressurized pipeline 96 miles to the Rock Springs plant. The other raw materials are molten sulfur received from Wyoming oil fields and liquid ammonia delivered to the Rock Springs plant.

15. The Facility also produces sulfuric acid from the molten sulfur and uses a concentrated sulfuric acid for the digestion of phosphate rock slurry to produce phosphoric acid.

16. Additional operations at the Facility include a phosphogypsum stack system(s), raw material storage and handling, and product handling and shipping.

17. Phosphoric acid is produced by digesting phosphate rock slurry with concentrated sulfuric acid. The reaction produces phosphogypsum (calcium sulfate dihydrate) and dilute phosphoric acid. The reaction mixture is filtered to separate phosphogypsum from the dilute phosphoric acid. The dilute phosphoric acid separated from the reaction mixture is concentrated by evaporation. The phosphogypsum separated from the reaction mixture is slurried with acidic process water and pumped to phosphogypsum stacks (also known as "gypstacks") for disposal.

18. In addition to process wastewater and phosphogypsum, other waste material, including tank and pipe cleanout wastes, laboratory wastes, and air pollution control scrubber wastewater have been disposed of at the Facility's phosphogypsum stacks and process wastewater cooling ponds.

19. The Facility has one gypstack, located west of the phosphoric acid manufacturing plant. They are designated as the gypstack, the process water pond, the seepage collection ditch, and the auxiliary water pond.

20. The gypsum stack has received plant wastes since start-up in 1986. There are millions of gallons of acidic wastewaters stored within the interstices of the gypstack.

21. Acidic wastewaters decanted from the gypstack have been directed to the process water pond.

EPA Inspections:

22. On August 31 and September 1, 2004, and on October 23 and 24, 2007, EPA conducted RCRA inspections of the Facility. EPA collected analytical samples for laboratory analysis as part of these inspections. Wastewater samples were collected from several process areas. Sample locations and results exceeding regulatory levels are described in paragraphs 24 through 31 below.

23. EPA laboratory analyses for metals were performed using the Toxicity Characteristic Leaching Procedure (TCLP) (SW-846 Method 1311). The pH was determined according to EPA test method 9040B of SW-846.

24. The sample from the laboratory sump collected during the 2004 inspection had a pH less than 2.0 and a chromium concentration of 14.5 mg/L as analyzed using the TCLP method. This waste exhibited the RCRA hazardous characteristics of corrosivity and toxicity.

25. Simplot operates a SPA air pollution control scrubber that collects emissions from the SPA tank farm and the SPA building. The SPA scrubber controls emissions from the SPA tank farm and the SPA building. The scrubber uses fresh water as its feed, and the acid gases are

scrubbed resulting in a blow down effluent discharged to the Gypsum Pond. This effluent was sampled during the October 2007 inspection (Sample SP-4) and exhibited the hazardous characteristic for corrosivity– D002 (pH = 1.58).

26. During the October 2007 inspection, the A Evaporator was being cleaned with 7% sulfuric acid and water mixture. The spent cleaning solution waste was routed to the gypsum stack. This spent pipe cleaning solution was sampled during the inspection (Samples SP-11 and SP-16) and found to exhibit the hazardous characteristic of corrosivity (pH = 0.69) and toxicity –D007 (Cr 85 mg/kg) for chromium.

27. During the October 2007 inspection, the Tank Farm Sump contents were sampled (Sample SP-12) and found to exhibit the characteristic of corrosivity, having a pH of 0.91. As described in that inspection report sources of wastewater to the Tank Farm Sump include 54% phosphoric acid and granulation feed tank discharges to the Tank Farm containment outer trench.

28. In October 2007, the contents of the Laboratory Sump were sampled (Sample SP-14) and had a chromium concentration of 15 mg/L, resulting in the waste exhibiting the RCRA hazardous characteristic of toxicity D007 for chromium.

29. Simplot currently produces fluorosilicic acid (FSA) by recovering a portion of the fluoride that was previously sent to the gypsum stack. The FSA clarifiers accumulate solids in the conical bottom of the vessels. As noted in the October 2007 inspection report, these solids are removed every 15 loads, or approximately every 5 days. The solids (Sample SP-9) were sampled and exhibited the hazardous characteristic for corrosivity – D002 (pH less than 2.0) and toxicity – D004 (Arsenic 9.2 mg/kg TCLP).

30. The gypsum pond decant water was sampled (Sample SP-10) and had a pH of 1.12 and had a chromium concentration of 75mg/L. This level of pH in aqueous waste exhibits the RCRA hazardous characteristic of corrosivity and chromium at this level exhibits the RCRA hazardous characteristic of toxicity.

31. In the July 30, 2010 submittal, Process Evaluations and Options for Beville-Related Materials at Rock Springs, in the Draft Summary Table, Simplot noted the following materials which were being sent to the gypsum stack either periodically or routinely displayed one or more hazardous characteristics: a) SPA fluoride scrubber effluent (pH < 2); b) FSA clarification solids (chromium > 5 ppm); c) tank farm containment sump (pH < 2); d) lab sump (chromium > 5 ppm); e) granulation scrubber (chromium > 5 ppm); f) evaporator cleaning waters (chromium > 5 ppm); g) sulfuric acid wastes (chromium > 5 ppm).

32. Arsenic is a known carcinogen and studies have linked long-term exposure to arsenic in drinking water to cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Non-cancer effects of ingesting arsenic include cardiovascular, pulmonary, immunological, neurological, and endocrine effects.

33. Chromium is a known carcinogen and EPA has found chromium to potentially cause the following health effects when people are exposed to it at levels above the Maximum Contaminant Level (MCL) in drinking water (0.1 mg/L) for relatively short periods of time: skin irritation or ulceration. Long-term chromium has the potential to cause the following effects from a lifetime exposure at levels above the MCL: damage to liver, kidney, circulatory and nerve tissues.

34. Cadmium is relatively mobile in aquatic environments and is carcinogenic in animals exposed by inhalation. It may also be carcinogenic in humans. Cadmium is a known animal teratogen and reproductive toxin. It has chronic effects on the kidney and causes tumors in rats. Other toxic effects attributed to cadmium include immunosuppression in animals, anemia in humans, pulmonary disease in humans, possible effects on the endocrine system, defects in sensory function and bone damage.

Environmental Setting:

35. Groundwater in the vicinity of the facility occurs in the Upper Cretaceous Blair Formation, a member of the Mesa Verde Aquifer. Groundwater quality in the Blair Formation along the Rock Springs Uplift ranges from fresh to briny and concentrations of some constituents exceed state and federal water quality standards for domestic, agricultural and livestock use.

36. Simplot collects monthly groundwater level data from 9 monitoring wells completed at the gypsum stack facility and in the seepage collection ditch. Chemical parameter data is collected monthly from 4 of these wells and the seepage collection ditch. The parameters include pH, specific conductance, TDS, chloride, fluoride, sulfate, aluminum, cadmium, chromium, copper, vanadium, radionuclides, and total phosphorous. This monitoring was required by the WDEQ issued permit to construct.

37. Simplot's groundwater samples have consistently exceeded EPA drinking water MCLs and Wyoming water quality standards for at least ten pollutants. The standards which have been exceeded are for the following: sulfate, TDS, aluminum, cadmium, gross alpha, pH, chloride, fluoride, copper, and chromium. Natural groundwater conditions may result in exceedances of these standards for some of these pollutants.

38. Based on water level data, it appears the gypstack seepage has created a local mound of groundwater, flowing away from the gypstack in all directions, with the groundwater flowing northwest from the edges of the gypstack. Moreover, it appears a groundwater plume is bypassing the existing seepage collection trench.

39. Five pollutants have exhibited statistically significant exceedances of background groundwater levels. These include conductivity, pH, total phosphorous, chloride, and sulfate.

40. Arrowhead Springs is a small neighborhood located approximately three miles from the gypsum stack. As of the 2000 census, the population was 68. There were 21 households, of which over 50% had children under the age of 18.

V. EPA'S DETERMINATIONS AND CONCLUSIONS OF LAW

41. The Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).
42. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
43. Respondent is an "owner" and "operator" of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).
44. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27) defines the term "solid waste" to mean "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . ."
45. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" to mean:
- a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-
 - (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
 - (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
46. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and operated by Respondent, is a facility at which hazardous wastes, as that term is defined in 42 U.S.C. § 6903(5), have been treated, stored or disposed of.
47. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that there may be a substantial hazard to human health or the environment due to the presence and/or release of hazardous waste at or from the Facility.
48. EPA has further determined that Respondent, as owner and operator of the Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of the hazard to human health or the environment.

VI. ORDER

49. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent consents to and is hereby ordered to perform the following actions in the manner and by the dates specified herein.

50. The term "days" as set forth herein means calendar days unless otherwise specified.

51. The term "hazardous waste" as set forth herein means hazardous waste as defined at Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and shall include hazardous constituents listed in Appendix VIII to 40 C.F.R. Part 261.

52. For purposes of this Order, "phosphogypsum stack system" or "gypstack system" is defined as the phosphogypsum stack, together with all pumps, piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds, auxiliary holding ponds, regional holding ponds and any other collection or conveyance system associated with the transport of phosphogypsum from the plant to the phosphogypsum stack, its management at the stack, and the process wastewater return to the phosphoric acid production or other process. This definition specifically includes toe drain systems and ditches and other leachate collection systems, but does not include conveyances within the confines of the fertilizer production plant or emergency diversion impoundments used in emergency circumstances caused by rainfall events of high volume or duration for the temporary storage of process wastewater to avoid discharges to surface waters of the state.

53. Within thirty (30) days of the effective date of this Consent Order, Respondent shall collect and analyze samples from all existing, functional groundwater monitoring wells identified in collaboration with EPA as having sound integrity. Parameters analyzed for shall include, at a minimum: arsenic, barium, cadmium, chromium, lead, selenium, antimony, beryllium, nickel, thallium, pH, sodium, sulfate, phosphorus, calcium, magnesium, potassium, total dissolved solids, conductivity, fluoride, gross alpha radiation (if gross alpha exceeds 15 pCi/L, analyze for Radium 226/228). Field measurements shall include: conductivity, turbidity, dissolved oxygen, pH and temperature.

54. All data and data collection, unless specifically exempted in writing by the EPA Project Coordinator, must be compliant with the Region 8 Quality Assurance requirements and policies. These include 1) EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5, EPA/240/B-01/003; 2) EPA Requirements for Quality Management Plans, EPA QA/R-2, EPA/240/B-01/002; and 3) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA/240/R-02/009. Analytical methods must be those specified in the most recent version of Test Methods For Evaluating Solid Waste-Physical/Chemical Methods, U.S. EPA Publication No. SW-846, Final Update III, promulgated on June 13, 1997, (See 62 FR 32452), Methods for Chemical Analysis of Water and Wastes, EPA Report 600/4-79-020, March 1983, or alternate methods approved by EPA that will perform equal to or better than SW-846 methods under conditions expected in the investigation.

55. Within thirty (30) days of the groundwater sampling event(s) described in Paragraph 53, Respondent shall submit sampling results along with Quality Assurance/Quality Control data to EPA. If radium 226/228 analyses are required, the results for those analyses will be submitted within forty (40) days of the completion of the groundwater sampling event. The results of the groundwater sampling shall be used to help develop a plan for carrying out required monitoring, testing, and analysis as described below for the Sampling and Analysis Work Plan.

Sampling and Analysis Work Plan

56. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to EPA for approval, an Outline for a Sampling and Analysis Workplan ("Outline"), for carrying out the required monitoring, testing, analysis, and reporting.

57. Within sixty (60) days of EPA's approval of the Outline, Respondent shall submit to EPA a Sampling and Analysis Work Plan ("Work Plan").

58. The Work Plan shall be designed to determine the nature and extent of any environmental contamination from hazardous waste from the source and beyond the Facility's boundaries. The Work Plan shall document the procedures Respondent shall use to assess sampling and analysis data Respondent or EPA has previously generated that relate to the purposes of this Consent Order as well as the procedures Respondent shall use to conduct those activities necessary to: characterize the source(s) of contamination; characterize the potential pathways of contaminant migration; define the degree and extent of contamination; and identify actual or potential human and/or ecological receptors. A specific schedule for expeditious implementation of all activities shall be included in the Work Plan. Respondent's Work Plan shall include the following:

(A) A conceptual site model in accordance with applicable EPA guidance [http://www.epa.gov/osw/hazard/correctiveaction/pdfs/workshop/csm_ref.pdf]. The conceptual site model will be updated as new information is acquired as provided in the Work Plan and included in the Sampling and Analysis Report.

(B) A sediment and soil sampling and analysis section to collect and analyze representative sediment and/or soil samples to determine the nature and extent of potential contamination at or from the Facility, both vertically and horizontally. Areas of sampling shall include areas of historical spills, tankfarms, areas of historical contamination, railcar cleaning stations, stormwater ditches and retention ponds, non-phosphogypsum stack system water ditches and ponds, and any ditches associated with Clean Water Act National Pollutant Discharge Elimination System ("NPDES") outfall(s). The Work Plan shall include the rationale for, and define: the number, location, and depth of the samples, and the parameters for analysis.

(C) A surface water (including run-off) sampling and analysis section to determine the nature and extent of any contaminated surface water and stormwater flowing from the portions of the facility adjacent to and down-gradient from facility operations (gypstacks, process areas, etc.). The Work Plan shall include the rationale for, and define: the number, location, and depth of the samples, and the parameters for analysis.

(D) A groundwater sampling and analysis section to characterize the groundwater quality and the extent of any groundwater contamination at or from the Facility, both vertically and horizontally from the source and beyond the Facility's boundaries. The Work Plan shall include the rationale for, and define: the number, location, and depth of the groundwater samples, and the parameters for analysis.

In addition, the groundwater sampling and analysis section shall identify all well specifications and construction and the procedures to be used in making the above well placement determinations (e.g., well design, well construction, the use of Push Probe technology to aid in the placement of wells, iterative sampling concepts, geophysical investigative methods, groundwater modeling, etc.).

(1) The groundwater monitoring network shall contain up-gradient wells capable of yielding samples representative of background water quality and that are not affected by releases of hazardous waste from the Facility. The number and location of the wells must be sufficient to characterize the spatial variability of background water quality.

(2) The groundwater monitoring network shall contain downgradient wells capable of detecting any release of hazardous waste from the Facility to surface water or groundwater in each hydrogeologic unit. The number and location of these wells must be sufficient to characterize the nature and extent of any such releases, including any such releases which have migrated from the Facility or off-site.

(3) The groundwater monitoring network shall be capable of operating for a period of time sufficient to provide representative groundwater samples during the investigation and for the evaluation and implementation of any corrective measures required at the Facility.

(4) Any existing groundwater monitoring wells at the Facility included in the monitoring network that cannot meet the requirements of (1), (2) and (3) above, shall not be used for work under this Order.

(5) The groundwater sampling and analysis section shall include provisions to evaluate results of sampling and analysis throughout the investigation, and to modify, subject to EPA approval, the monitoring network (including well abandonment) and the QAPP as necessary, based on this evaluation, to meet the objectives of the investigation as set forth in the Project Management Plan.

(E) Identification of well usage and well construction for all non-facility wells within 2 miles of the facility property boundary. Upon confirmation of hazardous constituents moving offsite, propose, for EPA approval, the sampling of a subset of the identified non-facility wells. The Work Plan shall include a schedule for the sampling and identify parameters to be analyzed for, including at a minimum, the analyses identified in Paragraph 53. All data and data collection, unless specifically exempted by the EPA Project Coordinator, must be compliant with the Region 8 Quality Assurance requirements and policies, including 1) EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5, EPA/240/B-01/003; 2) EPA

Requirements for Quality Management Plans, EPA QA/R-2, EPA/240/B-01/002; and 3) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA/240/R-02/009

Analytical methods must be those specified in the most recent version of Test Methods For Evaluating Solid Waste-Physical/Chemical Methods, U.S. EPA Publication No. SW-846, Final Update III, promulgated on June 13, 1997, (See 62 FR 32452), Methods for Chemical Analysis of Water and Wastes, EPA Report 600/4-79-020, March 1983, or alternate methods approved by EPA that will perform equal to or better than SW-846 methods under conditions expected in the investigation

(F) Upon confirmation of an exceedance of applicable Wyoming groundwater standards for any contaminants that may have originated from the facility in any of the potable wells surveyed, sampling and analysis will be extended by ½ mile radial increments in the appropriate direction depending on the results of the initial well survey.

(G) A survey which identifies any wetlands, creeks, or lakes within 2 miles of the Facility property boundary and any waters at or near the Arrowhead Springs development. This survey shall also identify any such bodies of water which are used for public recreational purposes or may contain endangered species.

(H) A Project Management Plan which shall set forth the facility-specific objectives for the Sampling and Analysis Work Plan and include detailed schedules and a description of the technical approach.

(I) A Data Management Plan for sampling and analysis required by this Consent Order.

(J) A timeline for work detailed above and a schedule for the submission of progress reports, including a Sampling and Analysis Report.

59. Concurrent with the submission of the Sampling and Analysis Work Plan, Respondent shall submit for EPA's information, but not approval, a Health and Safety Plan (HASP) with respect to the work to be performed under this Consent Order.

60. Upon receipt of EPA approval of the Work Plan, Respondent shall implement the EPA-approved Work Plan in accordance with the terms and schedules contained therein. Upon completion of implementation of the Work Plan, Respondent shall submit to EPA for approval a Sampling and Analysis Report, in accordance with the requirements and schedule contained in the EPA-approved Sampling and Analysis Work Plan.

61. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data that meets the requirements of this Consent Order. This previous work may be used to meet some of the requirements of this Consent Order, upon submission to and formal approval by EPA.

VII. ADDITIONAL WORK

62. Based on work performed under the Work Plan, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of hazardous wastes at or from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the contents of such work plan. Such work plan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL

63. All work performed by the Respondent pursuant to this Consent Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Consent Order.

IX. SUBMISSIONS/EPA REVIEW

64. EPA will review Respondent's work plans, draft and final reports, and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports and HASP, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVII., below.

65. Within thirty (30) calendar days of receipt of EPA's disapproval of the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission. In the event that EPA disapproves the revised submission, Respondent may invoke the dispute resolution procedures of Section XVII., below. Otherwise, EPA reserves the right to revise such submission and seek to recover from Respondent the costs thereof, in accordance with any rights that it may have under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

66. Upon disapproval by EPA of a revised submission, and in the event Respondent does not invoke the dispute resolution procedures of Section XVII., below, Respondent shall submit to

EPA for approval a subsequent revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a subsequent revised submission.

67. In the event EPA and Respondent cannot resolve issues relating to EPA's comments and EPA disapproves of any subsequent revised submission, Respondent may invoke the dispute resolution procedures of Section XVII., below. Otherwise, EPA reserves the right to revise such submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

68. The Respondent shall provide EPA with quarterly progress reports demonstrating that all activities associated with this Consent Order are being carried out. The first such report shall be submitted within three months after the effective date of this Consent Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Consent Order is effective. These quarterly progress reports shall be due on the fifteenth day of the month following the end of the quarter.

69. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Consent Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent, nor shall any failure to comply with the provisions of this paragraph be subject to the dispute resolution provisions set forth in Section XVII., below.

70. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

(A) Unless otherwise approved by EPA, two (2) copies (one hard copy, double-sided if possible and one electronic copy) of all documents to be submitted to EPA shall be hand delivered or sent by overnight mail to:

Ms. Linda Jacobson
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-RC)
Denver, CO 80202-1129
jacobson.linda@epa.gov

(B) One (1) copy of all documents submitted to EPA shall also be sent to:

Robert Breuer
Wyoming Department of Environmental Quality
Casper Field Office
152 N. Durbin St., Suite 100
Casper, Wyoming 82601
robert.breuer@wyo.gov

(C) Documents to be submitted to Respondent shall be sent to:

Mr. Alan Prouty
J.R. Simplot Company
PO Box 27
Boise, ID 83707
alan.prouty@simplot.com

71. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section XI., Project Coordinator, of this Consent Order.

72. The certification required by paragraph 71 above, shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature :

Name:

Title:

X. QUALITY ASSURANCE/QUALITY CONTROL

73. Prior to or with the submission of the Sampling and Analysis Work Plan, Respondent shall submit a Quality Assurance Project Plan (QAPP) supporting all data investigations required by this Attachment and the Order that satisfies the following requirements:

(A) All data and data collection, unless specifically exempted in writing by the EPA Project Coordinator, must be compliant with the Region 8 Quality Assurance requirements and policies (<http://www.epa.gov/region8/qa/reference.html>).

(B) Analytical methods must be those specified in the most recent version of Test Methods For Evaluating Solid Waste-Physical/Chemical Methods, U.S. EPA Publication No. SW-846, Final Update III, promulgated on June 13, 1997, (See 62 FR 32452), Methods for Chemical Analysis of Water and Wastes, EPA Report 600/4-79-020, March 1983, or alternate methods approved by EPA that will perform equal to or better than SW-846 methods under conditions expected in the investigation.

74. The Sampling and Analysis Work Plan shall reference the Quality Assurance Project Plan (QAPP), developed as per the requirements set forth at the EPA quality assurance website cited above. Requirements for a QAPP include those found in: EPA QA/R-5 - EPA Requirements for Quality Assurance Project Plans, EPA/240/B-01/003 March 2001, or the most recent update of this document. Revisions to the QAPP shall be approved by EPA, carefully tracked and recorded on a revisions page within the document.

75. The contact person(s), name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable work plan(s).

76. All work plans required under this Consent Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

77. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require re-sampling and additional analysis.

78. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of the each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, re-sampling and additional analysis may be required.

XI. PROJECT COORDINATOR

79. EPA hereby designates as its Project Coordinator:

Ms. Linda Jacobson
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-RC)
Denver, CO 80202-1129
Email: jacobson.linda@epa.gov
Phone: 303-312-6503

80. Respondent hereby designates as its Project Coordinator:

Mr. Alan Prouty
J.R. Simplot Company
PO Box 27
Boise, ID 83707
alan.prouty@simplot.com
Phone: 208.389.7365

81. Each Project Coordinator shall, on behalf of the party that designated him/her, oversee the implementation of this Consent Order and function as the principal project contact.

82. All communication between Respondent and EPA, and all documents, reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order shall be directed through the Project Coordinator.

83. Respondent shall provide EPA and EPA shall provide Respondent with a written notice of any change in its Project Coordinator. To the extent possible, such notice shall be provided at least ten (10) calendar days prior to the change in Project Coordinator.

84. The absence of the EPA Project Coordinator shall not be cause for the stoppage or delay of work.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

85. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Consent Order.

86. Unless otherwise agreed to by EPA, Respondent shall notify EPA and WDEQ, in writing and by electronic mail, at least ten (10) days in advance of engaging in any field activities at the Facility conducted pursuant to this Consent Order.

87. At the request of EPA or WDEQ, Respondent shall provide or allow EPA and WDEQ or their authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any

samples collected by EPA under this Consent Order, provided that such sampling shall not delay EPA's proposed sampling activities.

88. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to any applicable law, including, but not limited to, RCRA.

89. EPA will make available to the Respondent the results of sampling and/or tests or other data from the Facility generated by, or on behalf of, EPA.

XIII. ON-SITE AND OFF-SITE ACCESS

90. Respondent shall provide access at all reasonable times to the Facility and to all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Consent Order to EPA and WDEQ and their employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Facility, following reasonable site specific health and safety rules, including rules that visitors be accompanied by an employee of Respondent, in order to conduct activities which EPA or WDEQ determine to be necessary.

91. To the extent that activities required by this Consent Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

92. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law.

XIV. RECORD PRESERVATION

93. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to:

Director, Technical Enforcement Program (RCRA)
U.S. Environmental Protection Agency Region 8
1595 Wynkoop Street (8ENF-RC)
Denver, CO 80202-1129

94. Additionally, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five (5) year period at the written request of EPA.

XV. INFORMATION SUBMITTED TO EPA

95. Respondent may assert a business confidentiality claim in the manner described in 40 CFR § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. In accordance with 40 CFR § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 CFR Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

96. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document (subject, author, # of pages), the privilege claimed and the basis therefore in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable case law. EPA may dispute any such claim of privilege pursuant to the dispute resolution provisions set forth in Section XVII., below.

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

97. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVIII, Force Majeure, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of a written demand by EPA.

98. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

Period of Failure to Comply	Penalty Per Violation Per Day
1st day through 15th day	\$500
15th day through 30 th	\$1000
30th day and each day after that	\$1500

99. All stipulated penalties shall begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

100. All stipulated penalties owed to EPA under this section shall be due within thirty (30) calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures under Section XVII., below. Such demand for payment shall describe the noncompliance and shall indicate the amount of stipulated penalties due.

101. All stipulated penalty payments shall be made by certified check, cashier's check, or wire transfer. Checks shall be payable to the Treasurer of the United States of America and shall be remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Wire transfer payments shall be made to the following:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

102. All payments shall reference the Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator at the address in paragraph 79 and to the EPA Regional Hearing Clerk, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

103. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVII., Dispute Resolution. Stipulated penalties shall continue to accrue, but are not required to be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within twenty-one (21) calendar days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in Paragraphs 101 and 102 of this Section.

104. Neither the filing of a petition to resolve a dispute nor the payment of stipulated penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

105. The assessment of stipulated penalties set forth in this section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

106. EPA in its sole discretion may reduce or waive stipulated penalties.

XVII. DISPUTE RESOLUTION

107. If a dispute arises under this Consent Order, the procedures of this section shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.

108. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefore, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision. EPA's decision shall be incorporated into and become an enforceable part of this Order.

109. Except as provided in Paragraph 108 above, the existence of a dispute, as defined in this section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

XVIII. FORCE MAJEURE

110. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. A *force majeure* does not include: increased costs of performance; changed economic circumstances; failure to obtain federal, State or local permits, if and only if Respondent has not timely and adequately applied for said permits; reasonably foreseeable weather conditions; or weather conditions which could have been overcome by due diligence.

111. Respondent shall notify EPA, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

112. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order will be extended, upon EPA approval, for a reasonable period. This shall be accomplished through a modification or amendment to this Consent Order pursuant to Section XXII., Subsequent Modification of Order. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVII., Dispute Resolution.

XIX. RESERVATION OF RIGHTS

113. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, work plans, or in this Consent Order, consistent with the objectives of this Consent Order.

114. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.

115. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, or reporting it deems necessary to protect public health or welfare or the environment. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions, pursuant to any right it may have under applicable law.

116. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

XX. OTHER APPLICABLE LAWS

117. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

118. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

119. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall timely obtain or cause its representatives to timely obtain all permits and approvals necessary under such laws and regulations. The time for Respondent's performance under this Consent Order may be extended upon written approval by EPA while Respondent uses its best efforts to obtain state and local permits required for any activities required by the Work Plan.

XXI. OTHER CLAIMS

120. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

121. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXII. SUBSEQUENT MODIFICATION OF ORDER

122. Except as provided in paragraphs 62, 108-112, 119, and 124 of this section, the provisions of this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order. Any oral agreement between EPA and

Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Respondent, shall have as its effective date the date of such oral agreement.

123. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to enforcement, including the stipulated penalty provisions included in Section XVI., Delay in Performance/Stipulated Penalties.

124. Modifications in the studies, techniques, procedures, designs, work plans or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

125. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXIII. SEVERABILITY

126. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall not be affected thereby and shall remain in full force.

XXIV. TERMINATION AND SATISFACTION

127. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to: Section XIV., Record Preservation; Section XIX, Reservation of Rights; Section XX., Other Applicable Laws; and Section XXI., Other Claims.

XXV. ATTORNEYS' FEES AND COSTS

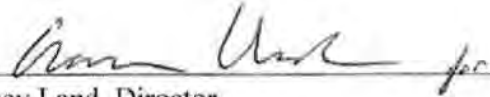
128. Respondent shall bear its own costs and attorneys' fees.


XXVI. EFFECTIVE DATE

129. The effective date of this Consent Order shall be the date on which Respondent receives a true and correct copy of the fully executed Consent Order.

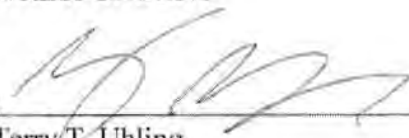
IT IS SO AGREED AND ORDERED:

FOR EPA

DATE: 6.25.2012 BY: 
Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program

DATE: 6.25.2012 BY: 
James H. Eppers, Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program

FOR RESPONDENT

DATE: June 20, 2012 BY: 
Terry T. Uhling
General Counsel, Secretary, and Senior Vice-
President, EHS

CERTIFICATE OF SERVICE

IN THE MATTER OF: SIMPLOT PHOSPHATES LLC

2012 JUN 25 PM 3:42

Docket No.: RCRA-08-2012-0004

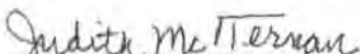
FILED
EPA REGION VIII
DENVER, CO

I hereby certify that I have caused a copy of the foregoing RCRA 3013 Administrative Order on Consent ("Order") to be served upon the person designated below on the date below, by causing said copy to be deposited in the U.S. Mail, First Class (Certified Mail # 7009 3410 0000 2592 0523, Return Receipt Requested, postage prepaid), at Denver, Colorado, in an envelope addressed to:

Mr. Alan Prouty
J.R. Simplot Company
PO Box 27
Boise, ID 83707

I have further caused the original and one copy of the Order and this Certificate of Service to be filed with the EPA Regional Hearing Clerk, 15695 Wynkoop St, Denver, CO 80202 on the date specified below.

Dated this 25 day of June, 2012.



Judith McTernan, Secretary
Legal Enforcement Program