

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

_____)	
UNITED STATES OF AMERICA,)	Civil No. 20-CV-125-F
)	
Plaintiff,)	
)	
v.)	CONSENT DECREE
)	
J.R. SIMPLOT COMPANY and)	
SIMPLOT PHOSPHATES, LLC,)	
)	
Defendants.)	
_____)	

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), (“United States” or “Plaintiff”), has filed a complaint (“Complaint”) alleging that Defendants J.R. Simplot Company and Simplot Phosphates, LLC (“Simplot” or “Defendants”) have violated the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 - 6992k, and implementing federal and state regulations, and the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 - 11050, at Simplot’s phosphoric acid and fertilizer manufacturing plant located near Rock Springs, Wyoming (“Facility”);

WHEREAS, the Complaint includes allegations, disputed by Simplot, that Simplot failed to characterize and illegally treated, stored, or disposed of hazardous wastes from various processes at its Facility, including: the production of granulated fertilizers, such as monoammonium phosphate (“MAP”), and of fluorosilicic acid (“FSA”); wastes generated during cleaning of phosphoric acid, super phosphoric acid (“SPA”) and fertilizer plant equipment; wastewaters generated from the manufacture of SPA and from scrubbers used to control air pollution from the phosphoric acid plant; and other chemical and waste management processes at its Facility without a RCRA permit or interim status. The Complaint also alleges, and Simplot disputes, that Simplot illegally placed hazardous wastes in a Phosphogypsum Stack System dedicated for managing phosphoric acid production wastes excluded from hazardous waste regulation pursuant to 40 C.F.R. § 261.4(b)(7) (the “Bevill Exclusion”), thus violating Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924-25, and the applicable regulations in 40 C.F.R. Parts 260-270, as adopted by reference in the Wyoming Hazardous Waste

Management Rules, Chapter 20-3 of Wyoming Administrative Code (“W.A.C.”), and that those hazardous wastes remain at the Facility;

WHEREAS, the Complaint includes allegations, disputed by Simplot, that Simplot failed to submit complete annual Form R reports to the toxics release inventory, pursuant to EPCRA Section 313, 42 U.S.C. § 11023, to include certain compounds for reporting years 2004 through 2010, and to include certain additional compounds through reporting year 2013, in violation of 40 C.F.R. § 372.30;

WHEREAS, Simplot and the United States engaged in discussions concerning potential methodologies Simplot could use under EPCRA Section 313 to include in its Form R annual reports that would be intended to provide a reasonable estimate of the quantities of certain metals that the United States contends should be considered to have been manufactured (as a consequence of the digestion of ore), processed (as a consequence of placing metal compounds removed from the production process as a byproduct and reintroducing them into the production process), or released at the Facility. As a result of those discussions, Simplot revised its reporting for its annual Form R reports beginning for reporting year 2011, and further revised its reporting for reporting years from 2014 to the present, based on a methodology intended by Simplot to provide such reasonable estimates consistent with the requirements of EPCRA;

WHEREAS, Simplot denies the applicability of Subtitle C of RCRA and the regulations promulgated thereunder to certain waste and materials management practices at the Facility that are the subject of the Complaint; denies the alleged EPCRA reporting violations that are the subject of the Complaint; denies any non-compliance or violation of any law or regulation identified in the Complaint; and maintains that it has been and remains in compliance with

EPCRA and RCRA, in particular the Bevill Exclusion, and is not liable for civil penalties or injunctive relief as alleged in the Complaint;

WHEREAS, Simplot and EPA voluntarily entered into an Administrative Order on Consent pursuant to RCRA § 3013(a), 42 U.S.C. § 6934(a) (“3013 Order”), whereby Simplot agreed to implement soil, sediment, surface water, and groundwater sampling, analysis, monitoring, and reporting at the Facility in an effort 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 to fully determine the nature and extent of the presence and/or release of hazardous wastes at or from the Facility;

WHEREAS, in response to the 3013 Order, Simplot designed and implemented soil, sediment, surface water, and groundwater investigation and monitoring work plans at the Facility with the participation of EPA and the Wyoming Department of Environmental Quality (“Wyoming DEQ”). Simplot has completed investigative work under the 3013 Order to characterize the source(s), potential pathways, and the extent of contamination and has submitted reports to EPA and Wyoming DEQ describing Simplot’s delineation activities and the results, pursuant to which EPA concluded that Simplot met all the requirements of the 3013 Order and closed the 3013 Order on July 19, 2018;

WHEREAS, the objective of the Parties in this Consent Decree is to resolve the civil claims alleged in the Complaint by establishing certain injunctive relief whereby Simplot shall change certain operating practices with respect to its management of hazardous wastes or process materials and Bevill-Excluded Wastes and implement environmental controls and financial assurance as set forth herein; and, by assessing an appropriate penalty;

WHEREAS, Simplot has conducted itself in good faith in its discussions with the Plaintiff concerning the violations alleged in the Complaint, and has already implemented certain operational changes and corrective measures at and with respect to the Facility, thus obviating certain injunctive relief;

WHEREAS, by agreeing to entry of this Consent Decree, Simplot makes no admission of law or fact with respect to the allegations in the Complaint and continues to deny any non-compliance or violation of any law or regulation identified therein or in this Consent Decree. For the purpose of avoiding litigation among the Parties, however, Simplot agrees to the requirements of this Consent Decree;

WHEREAS, the Parties agree that the United States' filing of the Complaint and entry into this Consent Decree constitute diligent prosecution by the United States, under Section 7002(b)(1)(B) of RCRA, 42 U.S.C. § 6972(b)(1)(B), and Section 326(e) of EPCRA, 42 U.S.C. § 11046(e), of all matters alleged in the Complaint and addressed by this Consent Decree through the date of lodging of this Consent Decree; and

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), below, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 325 of EPCRA, 42 U.S.C. § 11045; and 28 U.S.C. §§ 1331, 1332, 1345, and 1355. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1395(a); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3), (c)(4), because the Facility is located in this judicial district and violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to the Court's jurisdiction over this Consent Decree and any such action and over Simplot and further consent to venue in this judicial district.

2. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notice of the commencement of this action has been given to the Wyoming DEQ.

3. For purposes of this Consent Decree only, Simplot agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and implementing federal and state regulations; and Sections 304 and 313 of EPCRA, 42 U.S.C. §§ 11004 and 11023.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and Simplot and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of all or a portion of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Simplot of its

obligation to ensure that the terms of this Consent Decree are implemented, unless: (1) the transferee agrees in writing to undertake the obligations required by this Consent Decree and to be substituted for Simplot as a Party to the Consent Decree and thus be bound by the terms thereof; and (2) the United States consents in writing to relieve Simplot of its obligations pursuant to Section XVII (Modification). At least thirty (30) Days prior to any proposed transfer of ownership, or of Simplot's obligations under this Consent Decree, or such other period agreed to by the Parties in writing Simplot shall: (i) provide a copy of this Consent Decree to the proposed transferee, if not previously provided; and (ii) simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement (subject to Section XIV (Notices) and as may otherwise be agreed in writing) transferring obligations to the transferee, to EPA and DOJ, in accordance with Section XIV (Notices), together with a request for approval. The United States' decision whether to approve the transferee's substitution for Simplot under this Consent Decree and what conditions may attend approval will take into account: (i) the status of the projects in Appendix 6 (Compliance Schedule); (ii) whether the transferee has or will have prior to the transfer the financial and technical capability to comply with this Consent Decree; and (iii) other factors that may be deemed relevant, including but not limited to the environmental compliance history of the proposed transferee and environmental management capabilities of the proposed transferee. Any transfer of ownership or operation of all or a portion of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. The United States' refusal to approve, or approval with conditions for, the substitution of the transferee for Simplot under this Consent Decree shall be subject to dispute

resolution pursuant to Section X (Dispute Resolution), but any judicial review shall be conducted pursuant to Paragraph 71(a).

7. Simplot shall: (1) provide a copy of this Consent Decree to its President/CEO, Senior Vice Presidents, General Counsel, Vice President for Environmental & Regulatory Affairs and Senior Environmental Counsel, and to the Facility General Manager, Facility Environmental Manager, and Maintenance Manager of the Facility, and shall ensure that any employees and contractors whose duties might reasonably include compliance with any provision of this Consent Decree are made aware of this Consent Decree and specifically aware of the requirements of this Consent Decree that fall within such person's duties; (2) place an electronic version of the Consent Decree on its internal environmental website; and (3) post notice of the lodging of the Consent Decree and its availability in a location at the Facility where legal notices are posted. Simplot shall be responsible for ensuring that all employees and contractors involved in performing any Work pursuant to this Consent Decree perform such Work in compliance with the requirements of this Consent Decree.

8. In any action to enforce this Consent Decree, Simplot shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Every term expressly defined by this Section shall have the meaning given that term herein, regardless of whether it is elsewhere defined in federal or state law. Every other term used in this Consent Decree that is also a term used under the following statutes and their corresponding regulations shall have the same meaning in this Consent Decree as such term has under these statutes and regulations: RCRA, 42 U.S.C. §§ 6901 – 6992k, and EPCRA, 42

U.S.C. §§ 11001 - 11050. In the case of a conflict between federal and state definitions, federal definitions shall control. For purposes of this Consent Decree, whenever terms defined below are used in this Consent Decree, such definitions shall apply. Additional definitions of terms used in Appendices 1-8 to this Consent Decree are set forth within those Appendices or in Appendix 9:

(a) “3013 Order” shall mean the Administrative Order on Consent, Docket No. RCRA-08-2012-0004, entered into by Simplot and EPA on June 12, 2012, under RCRA Section 3013(a), 42 U.S.C. § 6934(a);

(b) “Acid Value Recovery System” shall mean the Acid Value Recovery Tanks and wash solution system together with the Acid Value Recovery Units, pumps, piping and controls to enable Simplot to manage and recover the value of cleaning wastes or other materials, as described in Section VI (Compliance Projects) of Appendix 4 (Facility Report);

(c) “Acid Value Recovery Tanks” shall mean the tanks and associated wastewater supply piping and return piping that enable the receiving and recirculating of cleaning wastes or other materials from Acid Value Recovery Units, as identified in Section VI (Compliance Projects) of Appendix 4 (Facility Report);

(d) “Acid Value Recovery Tank Effluent” shall mean the output solution consisting of any or all inputs to Acid Value Recovery Tanks that are described in the Facility Report;

(e) “Acid Value Recovery Units” comprise the Acid Value Recovery Tanks and those units in Downstream Operations from which cleaning wastes or other materials may be circulated to the Acid Value Recovery Tanks for management and/or recovery in designated units in Upstream Operations or Mixed-Use Units or reused as a cleaning solution following

completion of relevant compliance projects, as described in Section VI (Compliance Projects) of Appendix 4 (Facility Report);

(f) “Bevill-Excluded Wastes” shall mean Phosphogypsum and Process Wastewater from phosphoric acid production through mineral processing, which, under 40 C.F.R. § 261.4(b)(7)(ii)(D), (P), are among the solid wastes excluded from hazardous waste regulation pursuant to the Bevill Exclusion;

(g) “Complaint” shall mean the complaint filed by the United States in this action;

(h) “Consent Decree” shall mean this Consent Decree and all Appendices identified in Section XXIV (Appendices) and attached hereto;

(i) “Corrective Action Work” shall mean the activities described in Section IV of Appendix 1.A (Groundwater Requirements) and/or other activities taken at the express direction of EPA pursuant to its legal authorities to address a release into the environment of (1) the following products, including intermediates and wastes: phosphoric acid, sulfuric acid, and FSA; (2) SACS, including entrained wastes and solids; (3) Process Wastewater, including mixtures and entrained wastes and solids; and (4) Phosphogypsum Stack System Wastewater, including mixtures and entrained wastes and solids. Corrective Action Work does not include other activities to be taken at the direction of EPA pursuant to its residual authorities to address other releases of hazardous waste and/or hazardous constituents that may affect human health and the environment, which directions and activities will be undertaken outside of, and will not be subject to, this Consent Decree;

(j) “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall

on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

(k) “DOJ” shall mean the United States Department of Justice and any of its successor departments or agencies;

(l) “Downstream Operations” shall mean all Facility operations involving the storage, management, transport, treatment, disposal, or further processing of the First Saleable Product, manufacturing operations that use the First Saleable Product as a feedstock, and certain FSA operations, except for units designated as a Mixed-Use Unit, Acid Value Recovery Units, or SPA Recovery Units, as described in the Facility Report;

(m) “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

(n) “Effective Date” is defined in Section XV (Effective Date);

(o) “Facility” shall mean Simplot’s manufacturing plants, Phosphogypsum Stack Systems, and such other contiguous or adjacent property owned and/or operated by Simplot, at the following location: approximately 5 miles southeast of Rock Springs, Wyoming, as delineated in Appendix 3 (Site Maps);

(p) “Facility Report” shall mean the report dated May 14, 2020, and attached hereto as Appendix 4, prepared by the Parties and reflecting EPA’s inspections of Simplot’s Rock Springs Facility, which identifies the Facility’s Upstream Operations and Downstream Operations, Acid Value Recovery System, SPA Recovery Units, Mixed-Use Units, compliance projects, and proposed future installations;

(q) “Financial Assurance” shall mean a written demonstration of financial capability or establishment of a financial mechanism (i.e., third-party mechanism(s) for the

benefit of EPA in compliance with the terms of Appendix 2 (Financial Assurance)), to implement closure of the Phosphogypsum Stack System and long-term care, or any future Corrective Action Work if required under Paragraph 22 (Site Assessment, Groundwater Monitoring, and Corrective Action Work), in an amount at least equal to the cost estimate for said activities, and to provide for third-party liability as required under Appendix 2;

(r) “First Saleable Product” shall mean:

(1) Merchant Grade Acid (MGA), whether or not it is actually placed into commerce; or, if applicable,

(2) any intermediate phosphoric acid product with a P_2O_5 content less than or equal to MGA that is diverted from further processing into MGA in order to be placed into commerce, further concentrated above 54% P_2O_5 (by weight), or used as a feedstock in manufacturing MAP/ DAP, SPA, purified acid, or other chemical manufacturing products, as alleged in the Complaint but denied by Simplot;

(s) “FSA” shall mean Fluorosilicic Acid (H_2SiF_6);

(t) “Granulation” shall mean the process of converting liquid phosphoric acid, ammonia, secondary nutrients, and/or micronutrients into solid ammonium phosphate fertilizer in Downstream Operations;

(u) “Granulation Recovery System” shall mean the Granulation recovery tanks and wash solution system together with the Granulation Recovery System Units, a sump, collection tank(s), pumps, and piping to enable Simplot to recover the value of cleaning wastes or other materials in the Granulation plant and recirculate the wash solution between the Granulation Recovery System Units and the Granulation Recovery System, and/or to consume

the wash solution in the Granulation plant, as specified and identified in Section VI.B.2 Project Operations of Appendix 4 (Facility Report);

(v) “Granulation Recovery System Units” comprise the Granulation recovery tank(s) and those units in Granulation from which, as set forth in the Facility Report, cleaning wastes or other materials will be circulated to the Granulation recovery tanks for recovery or reuse as a cleaning solution in the Granulation plant or sent directly to Granulation for recovery;

(w) “Interest” shall mean the interest rate specified in 28 U.S.C. § 1961;

(x) “Leachate” shall mean liquid or drainable pore water that has passed through or emerged from Phosphogypsum and which may be deposited or collected within the Phosphogypsum Stack System or in a seepage collection drain;

(y) “MAP/DAP” shall mean monoammonium phosphate and diammonium phosphate, which are manufactured in Granulation;

(z) “Merchant Grade Acid” (“MGA”) shall mean phosphoric acid that is typically 52% to 54% (by weight) of P_2O_5 but may vary slightly across the phosphoric acid industry, manufactured from the direct reaction of phosphate rock and sulfuric acid and containing less than one percent (1%) solids content;

(aa) “Mixed-Use Unit” shall mean a pollution control device, pipe, tank and/or other production, storage, or transportation unit specifically identified in either of Sections V or VIII of Appendix 4 (Facility Report) as serving both Upstream Operations and Downstream Operations;

(bb) “Non-Hazardous Aqueous Cleaning Solution” (“NHACS”) shall mean an aqueous solution, including without limitation fresh water, non-hazardous condensate, non-hazardous recycled water, and non-hazardous recovered groundwater, used for cleaning pipes,

tanks, or other equipment that, if evaluated as a solid waste before use, is not a RCRA listed or characteristic hazardous waste as defined by 40 C.F.R. Part 261, Subparts C and D;

(cc) “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral;

(dd) “Parties” shall mean the United States and Simplot;

(ee) “Phosphogypsum” shall mean calcium sulfate and byproducts produced by the reaction of sulfuric acid with phosphate rock, or by the reaction of sulfuric acid with fluoride acids such as fluoride process condensate (“FPC”) with phosphate rock, to produce phosphoric acid. Phosphogypsum is a solid waste within the definition of Section 1004(27) of RCRA, 42 U.S.C. § 6903(27);

(ff) “Phosphogypsum Stack” shall mean any defined geographic area associated with a phosphoric acid production plant in which Phosphogypsum is managed, disposed of, or stored, other than within a fully enclosed building, container, or tank;

(gg) “Phosphogypsum Stack System” shall mean the land-based geographic area identified in Appendix 3 (Site Maps), associated with a phosphoric acid production plant in which Phosphogypsum and Process Wastewater (and Leachate) are managed, disposed of, treated, or stored, together with all pumps, piping, ditches, drainage, conveyances, water control structures, collection pools, return (cooling/surge) ponds (including former return ponds), collection ponds, basins, auxiliary holding ponds, evaporation ponds, and any other collection or conveyance system associated with the transport of Phosphogypsum from the phosphoric acid plant to the Phosphogypsum Stack, its management at the Phosphogypsum Stack, and the Process Wastewater return to phosphoric acid production and the management (i.e., placement, storage, treatment, or disposal) of the Process Wastewater and Leachate. This definition

specifically includes toe drain systems and ditches and other Leachate collection systems, but does not include fully-enclosed buildings, containers, tanks, conveyances within the confines of the phosphoric acid or fertilizer production plant, or emergency diversion impoundments used for the temporary storage of Process Wastewater to avoid discharges in emergency circumstances caused by precipitation events of high volume or duration;

(hh) “Phosphogypsum Stack System Wastewater” shall mean wastewater in the Phosphogypsum Stack System containing Bevill-Excluded Wastes commingled with hazardous wastes, as alleged in the Complaint but denied by Simplot;

(ii) “Process Wastewater” shall mean process wastewater from phosphoric acid production. The following waste streams constitute process wastewater from phosphoric acid production: water from phosphoric acid production operations through concentration to the First Saleable Product; process wastewater generated from Upstream Operations that is used to transport Phosphogypsum to the Phosphogypsum Stack; Phosphogypsum Stack runoff (excluding non-contact runoff); process wastewater generated from any uranium recovery in phosphoric acid production; process wastewater from animal feed production (including defluorination but excluding ammoniated animal feed production) of phosphoric acid operations that qualify as mineral processing operations based on the definition of mineral processing that EPA finalized on September 1, 1989; and process wastewater generated from a superphosphate production process that involves the direct reaction of phosphate rock with dilute phosphoric acid that has a concentration less than Merchant Grade Acid [*see* 55 Fed. Reg. 2322, 2338, January 23, 1990];

(jj) “RCRA Requirements” shall mean the requirements of RCRA Subtitle C, the applicable regulations in 40 C.F.R. Parts 260-270, and Chapter 20-3 W.A.C. §§ 260-68, 270;

(kk) “Section” shall mean a portion of this Consent Decree identified by a roman numeral;

(ll) “Simplot” or “Defendants” shall mean J. R. Simplot Company and Simplot Phosphates, LLC;

(mm) “SPA Recovery Units” shall mean the tanks, equipment, and transfer lines associated with the SPA process identified in Section V (Configuration Equipment Designations) of the Facility Report from which Simplot will recover the value of cleaning wastes or other materials as described in Section VI (Compliance Projects) of the Facility Report and in Appendix 5.A (Minimizing and Addressing Spills and Leaks);

(nn) “Sulfuric Acid Cleaning Solution” (or “SACS”) shall mean a solution of sulfuric acid and NHACS, Phosphogypsum Stack System Wastewater, and Acid Value Recovery System Effluent or Process Wastewater used for cleaning pipes, tanks, or other equipment;

(oo) “Sulfuric Acid Plants” shall mean the process units engaged in the production of sulfuric acid, denominated as “the Lurgi Plant” and “the MEC Plant,” at the Facility;

(pp) “Superphosphoric Acid” (or “SPA”) shall mean liquid phosphoric acid (not a solid phosphate product such as granulated triple superphosphoric acid) generally with a P₂O₅ content greater than MGA, resulting from the concentration of wet process acid that does not involve the direct reaction of phosphate ore in such concentration operations;

(qq) “United States” shall mean the United States of America, acting on behalf of EPA;

(rr) “Upstream Operations” shall mean all phosphoric acid mineral processing operations resulting in the manufacture of the First Saleable Product; and

(ss) “Work” shall mean any activity that Simplot must perform to comply with the requirements of this Consent Decree, including Appendices.

IV. CIVIL PENALTY

10. Within thirty (30) Days after the Effective Date of this Consent Decree, Simplot shall pay the sum of \$775,000 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Simplot shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with written instructions to be provided by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of Wyoming to Simplot following the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Simplot shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to: Alan Prouty, Vice President Environmental & Regulatory Affairs, 1099 W. Front Street, Boise, ID 83702, (208) 780-7365, alan.prouty@simplot.com, on behalf of Simplot. Simplot may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices). At the time of payment, Simplot shall send notice that payment has been made: (i) to DOJ via email or regular mail in accordance with Section XIV (Notices) of this Consent Decree; and (ii) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, OH 45268. Such notice shall state that the payment is for the civil penalty owed pursuant to the

Consent Decree in *United States v. J. R. Simplot Company*, and shall reference the civil action number, CDCS Number, and DOJ case number 90-7-1-08388/8.

12. Simplot shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or state or local income tax.

V. COMPLIANCE REQUIREMENTS

RCRA

13. Compliance Projects and Schedule. Simplot shall undertake the actions set forth in Appendix 5.A (Minimizing and Addressing Spills and Leaks) and Section VI (Compliance Projects) of Appendix 4 (Facility Report) to change its waste and materials management practices pursuant to the description and schedule set forth in Appendix 6 (RCRA Project Narrative and Compliance Schedule). For any wastes or materials generated by or managed in units that are identified in Section VI (Compliance Projects) of Appendix 4 (Facility Report) as part of the compliance projects set forth in Appendix 6 (RCRA Project Narrative and Compliance Schedule) requiring installation, construction, modification, shut down, or replacement to cease the commingling of hazardous wastes with Bevill-Excluded Wastes, as alleged in the Complaint but denied by Simplot, and for any wastes or materials that will be managed differently as a result of installing, constructing, modifying, shutting down, or replacing units as specified in Section VI (Compliance Projects) of Appendix 4 (Facility Report), Simplot's waste and materials management obligations under this Section V (Compliance Requirements) shall become effective upon completion of those compliance projects.

14. Hazardous Waste Determinations. Except as otherwise provided in this Paragraph, Simplot shall make a RCRA hazardous waste determination, pursuant to 40 C.F.R.

§ 262.11, of all solid wastes generated at the Facility and, if the wastes are hazardous, Simplot shall manage them in compliance with RCRA Requirements. The requirement to make a hazardous waste determination under this Paragraph does not apply to: (a) Bevill-Excluded Wastes, and (b) those wastes or other materials managed in compliance with Paragraphs 15-18, which allow certain wastes or other materials to be (i) input to Upstream Operations or Downstream Operations, (ii) managed via the Acid Value Recovery System, SPA Recovery Units, or the Granulation Recovery System, or (iii) managed with Bevill-Excluded Wastes.

15. Downstream Operations: Wastes or Other Materials. Unless otherwise authorized by this Paragraph or Paragraphs 16-18 below, Simplot shall manage all wastes or other materials generated from Downstream Operations, if determined to be hazardous pursuant to Paragraph 14, in compliance with RCRA Requirements. This provision (subject to what is otherwise authorized by this Paragraph or Paragraphs 16-18 below) applies to all wastes or other materials from Downstream Operations, pollution control devices, cleaning wastes (liquids and solids), and spills and leaks from all Downstream Operations processes and units, regardless of the use of any Bevill-Excluded Wastes as influent to such Downstream Operations. If any units identified in the Facility Report as Mixed-Use Units are replaced, modified, or reconfigured after the date of the Facility Report such that they serve to manage, store, or transport materials from Downstream Operations that are not identified in the Facility Report as being associated with those units, they will be deemed to serve Downstream Operations, such that any wastes or other materials generated thereafter from such units will be subject to this Paragraph.

(a) Simplot may re-use or recover certain wastes or other materials from Downstream Operations in Upstream Operations or Downstream Operations or via the Acid

Value Recovery System, SPA Recovery Units, or the Granulation Recovery System, as specifically documented in the Facility Report.

(b) Simplot may input certain wastes or other materials to Upstream Operations or Downstream Operations directly or via the Acid Value Recovery System, SPA Recovery Units, or the Granulation Recovery System, as described in the Facility Report and in Appendix 5.A (Minimizing and Addressing Spills and Leaks). However, in the event of a process upset after commencement of operations of the Acid Value Recovery System, SPA Recovery Units, and/or the Granulation Recovery System that prevents the input of wastes or other materials from these systems or units into those Upstream Operations or Downstream Operations (as specified by the Facility Report), Simplot shall make a RCRA hazardous waste determination, pursuant to 40 C.F.R. § 262.11, of the cleaning wastes or other materials generated from those systems or units affected by the process upset. Non-hazardous wastes or other materials from any such process upset may continue to be input to Upstream or Downstream Operations via the Acid Value Recovery System, SPA Recovery Units, or the Granulation Recovery Systems. If the wastes or other materials from any such process upset are hazardous, such wastes or other materials shall be managed in compliance with RCRA Requirements.

16. Upstream Operations: Phosphoric Acid Scrubber Wastes. Liquid wastes from air pollution control devices that are associated with Upstream Operations as identified in the Facility Report, or that are identified as Mixed-Use Units in the Facility Report, may be (a) input to Upstream Operations, or (b) treated, stored, managed, transported, or disposed of together with Bevill-Excluded Wastes, provided that (i) Simplot deposits such wastes only in a Phosphogypsum Stack System subject to and in compliance with the requirements of Appendix 1.A (Groundwater Requirements) and 1.B (Phosphogypsum Stack System Construction and

Operational Requirements) to this Consent Decree, and (ii) EPA has not made a determination that the Financial Assurance provided by Simplot no longer satisfies the requirements of this Consent Decree set forth in Paragraph 26 and Appendix 2 (Financial Assurance), pursuant to Paragraph 21 of Appendix 2.

17. Upstream Operations and Mixed-Use Units: Cleaning Wastes or Other Materials. Wastes or other materials generated from the use of Phosphogypsum Stack System Wastewater, Process Wastewater, or NHACS to clean pipes, tanks, process equipment, or other storage or transport units that: (a) are part of Upstream Operations; (b) serve to manage, store, or transport Bevill-Excluded Wastes that are alleged in the Complaint, but denied by Simplot, to have been historically commingled with hazardous waste; or (c) are identified as a Mixed-Use Unit in the Facility Report, may be (i) input to Upstream Operations, or (ii) treated, stored, managed, transported, and disposed of together with Bevill-Excluded Wastes, provided that Simplot deposits such wastes or other materials only in a Phosphogypsum Stack System subject to and in compliance with the requirements of Appendix 1.A (Groundwater Requirements) and 1.B (Phosphogypsum Stack System Construction and Operational Requirements) to this Consent Decree, and EPA has not made a determination that the Financial Assurance provided by Simplot no longer satisfies the requirements of this Consent Decree set forth in Paragraph 26 and Appendix 2 (Financial Assurance), pursuant to Paragraph 21 of Appendix 2, and further provided that Simplot manages the wastes or other materials in accordance with Appendix 5.A (Minimizing and Addressing Spills and Leaks).

18. Acid Value Recovery System: Wastes or Other Materials Placed Directly in Production Processes.

(a) Prior to commencement of operations of the Acid Value Recovery System, as described in Section VI (Compliance Projects) of Appendix 4 (Facility Report), Simplot may continue to manage wastes or other materials generated from Upstream Operations, Mixed-Use Units, Acid Value Recovery Units, SPA Recovery Units, or units that serve to manage, store, or transport Bevill-Excluded Wastes as specifically documented in its “Consolidated Materials Management Practices” report dated April 17, 2020.

(b) Following commencement of operations of the Acid Value Recovery System as described in Section VI (Compliance Projects) of Appendix 4 (Facility Report), the waste streams or other materials specified in Section IV of Appendix 4 (Facility Report) may be input to Upstream Operations and Downstream Operations as described in the Facility Report.

19. Spills and Leaks. Spills and leaks of all grades of phosphoric acid product, sulfuric acid, or other solid wastes from Upstream Operations or Mixed-Use Units are not Process Wastewater and shall be managed in accordance with Appendix 5.A (Minimizing and Addressing Spills and Leaks).

20. FSA.

(a) FSA and wastewater carrying entrained solids from FSA production, both of which are part of Downstream Operations, may be managed as described in Section VI (Compliance Projects) of Appendix 4 (Facility Report).

(b) Hazardous waste solids not entrained in cleaning solutions but instead mechanically removed from FSA production (such as filtration residue, tank bottoms, and filter bags) shall be managed in compliance with the Facility Report and the Best Management Practices (BMP) Plan for Minimizing and Addressing Spills and Leaks, set forth in Appendices 4 and 5.A, respectively.

(c) Wastes generated from FSA production that are not subject to Paragraphs 20(a) and (b) shall be managed in compliance with RCRA Requirements.

21. Sulfuric Acid Plants. Simplot shall manage hazardous wastes generated at the Facility's Sulfuric Acid Plants in accordance with applicable law.

22. Site Assessment, Groundwater Monitoring, and Corrective Action Work. Simplot has already completed and submitted to the United States an interim site assessment report, "Groundwater Investigation Summary Report" (dated April 2016), that details the scope and results of investigations conducted at the Facility as part of Simplot's compliance with the 3013 Order. No Corrective Action Work is required to address the findings of the interim site assessment report. Simplot shall conduct groundwater monitoring and reporting pursuant to Section 3.0-4.0 of the "Groundwater Monitoring Plan October 2018" in Attachment A to Appendix 1.A (Groundwater Requirements). In accordance with Appendix 1.A, based on the results of future groundwater monitoring, Simplot shall notify EPA of any exceedance of Wyoming groundwater standards and any Wyoming-ordered corrective or remedial actions, and perform Corrective Action Work if it is required.

23. Phosphogypsum Stack System. Simplot shall comply with all requirements of Appendix 1 (Operating and Closure Requirements), which requirements are set forth specifically in Appendix 1.A through 1.E.

24. Inspections and Integrity of Tanks, Sumps, and Secondary Containment. Process liquids (aqueous solution of phosphate and sulfate) routed within the Facility shall be managed in

accordance with the scope and provisions of Appendix 5.B (Inspections and Integrity of Tanks, Sumps, and Secondary Containment).

25. Completed Activities. Simplot has already completed the following activities in compliance with the below referenced Consent Decree Paragraphs or Appendices/Attachments to the Consent Decree:

(a) Liners. The Parties agree that the Facility's current Phosphogypsum Stack System liner meets the liner requirements of Appendix 1.B (Phosphogypsum Stack System Construction and Operational Requirements).

(b) Liner Equivalency. The Parties agree that for a proposed expansion of the Facility's Phosphogypsum Stack System, Simplot's proposed HDPE geomembrane liner in contact with sedimented gypsum placed in slurry form, as documented in Appendix 7 (Alternative Liner demonstration), will provide a degree of protection of human health and the environment at least equivalent to the liner requirements of Appendix 1.B (Phosphogypsum Stack System Construction and Operational Requirements), provided that Simplot operates that liner system within its design limits and maintains it in accordance with Appendix 1.B, Sections VI and VIII.

(c) Granulation Recovery System and Granulation Re-slurry System. The Parties agree that Simplot has already constructed and is operating a Granulation Recovery System and a Granulation re-slurry system in its Granulation plant as described and in accordance with the Facility Report.

26. Financial Assurance. Simplot shall secure and maintain Financial Assurance for the benefit of EPA pursuant to the requirements of Appendix 2 (Financial Assurance) of this Consent Decree, in order to ensure coverage for: (a) third-party liability, as described in

Appendix 2; (b) Phosphogypsum Stack System Closure (including long-term care) as required under Appendix 1.C (Closure of Phosphogypsum Stacks/Stack Systems); and (c) Corrective Action Work, if required pursuant to Appendix 1.A (Groundwater Requirements), in which event the Parties agree to modify Appendix 2 to include this requirement. Simplot's inability to secure and/or maintain adequate Financial Assurance shall in no way excuse performance of the Work or any other requirement of this Consent Decree.

27. In addition to the Financial Assurance information included in the reports required pursuant to Section VII (Reporting Requirements) of this Consent Decree, Simplot shall provide to EPA, upon request, any information or reports that Plaintiff is authorized to request pursuant to Section 3007 of RCRA, 40 C.F.R. Part 264, Subpart H, or any other statutory or regulatory information gathering authorities regarding financial mechanism(s) provided by Simplot to meet its obligation for Financial Assurance, and the financial institution or guarantor providing the financial mechanism(s) to secure Simplot's obligations, pursuant to Appendix 2.

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28. Within sixty (60) Days after the Effective Date, Simplot shall revise and resubmit its Form R reports for the Facility required pursuant to 40 C.F.R. § 372.30 for each of the reporting years 2004 through 2013, such that those reports incorporate reasonable estimates of the quantities of hazardous substances manufactured, processed, and/or released at the Facility in accordance with 40 C.F.R. Part 372.

Other Compliance Requirements

29. EPA Review of Submissions. All work plans, reports, and other documents that are developed and submitted to EPA for approval pursuant to this Consent Decree shall be complete and technically adequate. After review of any work plan, report, or other document

that is required to be submitted, or revised and resubmitted, to EPA for approval pursuant to this Consent Decree, EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. In the event of disapproval of any portion of the submission, EPA shall include a statement of the reasons for such disapproval in its response. Plaintiff's receipt or acceptance of information or notice, or approval of a submittal, does not bind Plaintiff to the factual assertions and conclusions of the information, notice, or submittal.

30. If the submission is approved pursuant to Paragraph 29(a), Simplot shall take all actions required by the work plan, report, or other document, in accordance with the schedules and requirements of the work plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 29(b) or (c), Simplot shall, upon written direction from EPA, take all actions required by the approved work plan, report, or other document that EPA determines are technically severable from any disapproved portions, subject to Simplot's right to dispute only the specified conditions, the disapproval, or the determination of the technical severability of portions of the submission under Section X (Dispute Resolution).

31. If the submission is disapproved in whole or in part pursuant to Paragraph 29(c) or (d), Simplot shall, within sixty (60) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other document, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the submission has been previously disapproved, EPA may impose an earlier due date for resubmission, but not less than fourteen (14) Days. If the resubmission is approved in whole or in part, Simplot shall proceed in accordance with the preceding Paragraph.

32. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the sixty (60) Day period or other agreed upon period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Simplot's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

33. If a resubmitted work plan, report, or other document, or portion thereof, is disapproved in whole or in part, EPA may again require Simplot to correct any deficiencies in accordance with the preceding Paragraphs, may itself correct any deficiencies, or may finally disapprove the submission, subject to Simplot's right to invoke dispute resolution under Section X (Dispute Resolution) and EPA's right to seek stipulated penalties under Section VIII (Stipulated Penalties). If the resubmission is approved or corrected in whole or in part, Simplot shall proceed in accordance with Paragraph 30. In the event any work plan, report, or other document that was previously approved by EPA needs to be modified because of (a) material or substantial alterations or additions to the Facility or its operations, (b) the receipt of information that would have justified changes to the submission had the information been available at the time of approval, or (c) new statutory requirements or regulations, EPA may so notify Simplot and require the work plan, report, or other document to be revised in accordance with EPA direction and resubmitted to EPA for approval.

34. Correction of Non-Compliance.

(a) If Simplot determines, with or without notice from EPA, that it is violating, or will violate, any requirement of Section V (Compliance Requirements) other than

those set forth in Paragraph 26 (Financial Assurance), Simplot shall submit its report of the violation pursuant to Section VII (Reporting Requirements), and shall subsequently implement a correction plan to rectify the violation (“Correction Plan”), if it has not already corrected the violation by the time of the report. The Correction Plan shall include a schedule for correcting the violation.

(b) In the event of a violation subject to Paragraph 34(a), Simplot nevertheless shall be considered to be in compliance with this Consent Decree for purposes of: (1) continuing to manage those wastes or other materials that Paragraphs 15 through 18 allow to be input to Upstream Operations or Downstream Operations directly or via the Acid Value Recovery System, SPA Recovery Units, Granulation Recovery System Units, or together with Bevill-Excluded Wastes; and (2) assessing Simplot’s compliance with this Consent Decree under Paragraphs 36, 79, 80, and 81, provided that: (i) if Simplot deposits wastes or other materials governed by Paragraphs 15-18 in a Phosphogypsum Stack System, it does so only in a Phosphogypsum Stack System subject to and in compliance with the Phosphogypsum Stack System Requirements set forth in Paragraph 23; and (ii) Simplot timely implements and completes its Correction Plan, or refers an allegation of non-compliance with Section V (Compliance Requirements) or with a Correction Plan to dispute resolution pursuant to Section X (Dispute Resolution) and either prevails in dispute resolution or satisfactorily complies with an EPA or judicial directive to correct any instances of non-compliance (collectively, “Continuing Compliance Criteria”). Nothing in this Paragraph shall be construed as EPA approval of Simplot’s correction efforts pursuant to this Paragraph, as a waiver of stipulated penalties for the violation pursuant to Section VIII (Stipulated Penalties), or as limiting the rights reserved by Plaintiff under Section VI (Work Takeover) or Paragraph 82. EPA reserves the right to require,

upon written request, that a Correction Plan be submitted to EPA for approval in accordance with Paragraphs 29 through 33. Simplot's compliance with this Paragraph is without prejudice to its rights under Section IX (Force Majeure) and Section X (Dispute Resolution).

35. Permits. Where any compliance obligation under this Section requires Simplot to obtain a federal, state, or local permit, or other form of approval, Simplot shall submit timely and complete applications and take such actions as are necessary to obtain all such permits or approvals. A request for supplementation by the permitting agency does not constitute a notice or finding that an application was incomplete for the purpose of this Paragraph unless the permitting agency determines that the original application was so deficient as to constitute a material breach of Simplot's obligations under this Consent Decree. Simplot may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Simplot has submitted timely and complete applications and has taken such actions as are necessary to timely obtain all such permits or approvals.

36. Provided that Simplot remains in compliance with Section V (Compliance Requirements) or the Continuing Compliance Criteria set forth in Paragraph 34(b) at the Facility, the Facility shall not be required to operate as a Treatment Storage and Disposal Facility pursuant to Section 3005 of RCRA and its implementing federal and/or state regulations, with respect to: (1) the treatment, storage, transport, management, and disposal of Bevill-Excluded Wastes that have been commingled with hazardous wastes or otherwise managed in violation of law, as alleged in the Complaint but denied by Simplot, prior to the lodging of this Consent Decree, or, as applicable, prior to completing the compliance projects set forth in Appendix 6 (RCRA Project Narrative and Compliance Schedule) as provided by Paragraph 13, or during

timely implementation of a Correction Plan as set forth in Paragraph 34; and (2) wastes or other materials that Paragraphs 15 through 18 allow to be input to Upstream Operations or Downstream Operations, or managed via the Acid Value Recovery System, SPA Recovery Units, Granulation Recovery System Units, or together with Bevill-Excluded Wastes.

VI. WORK TAKEOVER

37. In the event EPA determines that Simplot: (a) has ceased implementation of any portion of the Work; or (b) is seriously or repeatedly deficient or late in its performance of the Work; or (c) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA, with the joint approval of the EPA Region 8 Regional Administrator and the Assistant Administrator for the EPA Office of Enforcement and Compliance Assurance, may issue a written notice (“Work Takeover Notice”) to Simplot. Any Work Takeover Notice issued by EPA shall specify the grounds upon which such notice was issued and shall provide Simplot a period of thirty (30) Days, or such additional time that may reasonably be needed, within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

38. If, after expiration of the period specified in Paragraph 37, the Work Takeover Notice has not been withdrawn by EPA and Simplot has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the Work Takeover Notice, EPA at any time thereafter may undertake takeover of Work by assuming and/or directing the performance of, seeking the appointment of a receiver to direct the performance of, or accessing Financial Assurance to finance the performance of, all or any portions of the Work that EPA deems necessary to correct the violations or conditions that triggered the Work Takeover Notice pursuant to Paragraph 37. In either case, EPA may utilize Financial Assurance for closure of the

Phosphogypsum Stack System, and/or long-term care, as authorized by this Consent Decree, for any Work covered by such Financial Assurance. EPA shall notify Simplot in writing if EPA determines that takeover of Work is warranted under this Section of the Consent Decree. In the event that EPA seeks to appoint a receiver to direct the performance of the Work, Simplot shall not oppose such appointment on grounds other than lack of competence or conflict of interest, but shall retain its right to challenge the underlying takeover of Work in dispute resolution, as set forth in the following Paragraph and Section X (Dispute Resolution). In implementing any takeover of Work, EPA shall make reasonable efforts not to interfere with Facility operations not directly affected by the conditions that triggered the takeover of Work.

39. In the event that Simplot invokes Section X (Dispute Resolution) with respect to EPA's takeover of Work and/or its selection of options set forth in Paragraph 38 (the latter of which, if disputed, must be disputed together with the underlying takeover of Work and pursuant to Paragraph 71(a)), EPA during the pendency of any such dispute may, in its unreviewable discretion, commence and continue a takeover of Work until the earlier of: (a) the date that Simplot remedies, to EPA's satisfaction, the circumstances giving rise to issuance of the Work Takeover Notice; or (b) the date that a final decision is rendered in accordance with Section X (Dispute Resolution) of the Consent Decree requiring EPA to terminate such takeover of Work.

40. After commencement and for the duration of any takeover of Work, EPA or any appointed receiver shall have the immediate benefit of any Financial Assurance provided pursuant to Paragraph 26 and Appendix 2 (Financial Assurance) of this Consent Decree to implement the Work. If EPA or any appointed receiver are unable to access the Financial Assurance, or the Work addressed by the takeover of Work is not covered by Financial Assurance, then any unreimbursed costs incurred by EPA in connection with the takeover of

Work shall be considered a financial obligation owed by Simplot to the United States and collectible in an action to enforce this Consent Decree. Nothing in this Paragraph shall be construed to relieve Simplot of its obligation to provide adequate Financial Assurance pursuant to Appendix 2. In the event that it is determined in dispute resolution that the takeover of Work was not warranted, any unexpended funds in a stand-by trust that originated from a letter of credit, surety bond, or corporate guarantee shall be used to restore any pre-existing trust fund to the pre-takeover of Work level, if necessary, and any balance of unexpended funds shall be released and used to re-establish the original financial mechanism(s).

VII. REPORTING REQUIREMENTS

41. If Simplot determines that it has violated or will violate any requirement of this Consent Decree, Simplot shall (unless otherwise directed by EPA) notify EPA of such violation and its likely duration in writing, within twelve (12) Days of the date Simplot first becomes aware of the violation, with an explanation of the likely cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, Simplot shall so state in the report. Simplot shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of any identifiable cause(s) of the violation, within thirty (30) Days of the date Simplot becomes aware of the violation. Nothing in this Paragraph or Paragraphs 42 and 43 relieves Simplot of its obligation to provide the notice required by Section IX (Force Majeure).

42. Periodic Reporting.

(a) Within forty-five (45) Days after the end of each calendar quarter after lodging of this Consent Decree, until the quarter ending after the two (2) year anniversary of the

date of lodging, Simplot shall submit to EPA a report for the preceding calendar quarter (quarters shall end on March 31, June 30, September 30, and December 31 of each year) that shall include: (i) the status of any construction or compliance measures; (ii) completion of milestones; (iii) problems encountered or anticipated, together with implemented or proposed solutions; (iv) status of permit applications; (v) status of plans for closure and long-term care; and status of permit application, as applicable, for closure or long-term care; (vi) operation and maintenance difficulties or concerns; (vii) status of Financial Assurance; (viii) reports to state agencies concerning matters enumerated in this Paragraph; (ix) a description of any violation of the requirements of this Consent Decree reported under Paragraph 41 and an explanation of the likely cause of such violation and the remedial steps taken, or to be taken, to prevent or minimize such violation; and (x) identification of any confirmed “critical condition” as defined and reported to EPA pursuant to Appendix 1.D (Critical Conditions and Temporary Measures).

(b) Thereafter (following the expiration of the period specified in Paragraph 42(a)), and for a period of two (2) years, Simplot shall submit such reports to EPA on a semi-annual basis.

(c) Thereafter (following the expiration of the period specified in Paragraph 42(b)), Simplot shall submit such reports annually until such time as Simplot submits the final closure application required for the Facility pursuant to Appendix 1.C (Closure of Phosphogypsum Stacks/Stack Systems) and 1.E (Phosphogypsum Stack System Permanent Closure Application). Simplot shall submit its next report within one hundred eighty (180) Days after submission of the closure application, and annually thereafter until this Consent Decree is terminated.

43. Whenever any violation of this Consent Decree, or any other event affecting Simplot's performance under this Consent Decree or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Simplot shall, unless otherwise directed, notify EPA as per Section XIV (Notices), orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after Simplot first knew of the violation or event, and shall comply with the requirements of Appendix 1.D (Critical Conditions and Temporary Measures). Any violation of this notice requirement shall be deemed to terminate on the date that EPA has received actual notice of the violation or event either based on notice from Simplot or by other means. This notice requirement does not relieve Simplot of its obligation to comply with any federal and state laws applicable to the violation or event. This notice requirement is in addition to the requirement to provide notice of a violation of this Consent Decree set forth in Paragraphs 41 and 42.

44. All reports shall be submitted to the persons designated to receive notices for the Plaintiff in Section XIV (Notices) of this Consent Decree.

45. Each report submitted by Simplot under this Section shall be signed by a responsible corporate official of Simplot (as defined in 40 C.F.R. § 270.11(a)) and shall include the following certification:

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 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.

This certification requirement does not apply to emergency notifications where compliance would be impractical.

46. The reporting requirements of this Consent Decree do not relieve Simplot of any reporting obligations required by RCRA Requirements, or by any other federal, state, or local law, regulation, permit, or other requirement. However, the reporting requirements of this Consent Decree shall not require Simplot to resubmit any report, plan, or information submitted by Simplot to EPA prior to the Effective Date of this Consent Decree.

47. Any information provided pursuant to this Consent Decree may be used by the Plaintiff in any proceeding to enforce the provisions of this Consent Decree, subject to Paragraph 77 and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

48. Simplot shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless otherwise expressly provided for in this Consent Decree or excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

49. Civil Penalty. If Simplot fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Simplot shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late for the first ten (10) Days, together with Interest. Thereafter, Simplot shall pay \$3,000 per Day for each Day that the payment is late, with Interest. Late payment of the civil penalty shall be made in accordance with Section IV (Civil Penalty),

Paragraph 11. Stipulated penalties for late payment of the civil penalty shall be paid in accordance with Paragraphs 52, 53, 55, and 56. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 11.

50. Compliance Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

51. Reporting and Notice Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Section VII (Reporting Requirements), and Paragraph 91 of Section XIV (Notices):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th Day
\$1,000	15th through 30th Day
\$2,000	31st Day and beyond

52. Subject to the provisions of Paragraph 32, and except as otherwise specified in Paragraph 55(b), stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

53. Simplot shall pay stipulated penalties to the United States within twelve (12) Days of a written demand by the Plaintiff, subject to Simplot's right to invoke dispute resolution in accordance with Section X (Dispute Resolution).

54. The Plaintiff, may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the Plaintiff under this Consent Decree.

55. Stipulated penalties shall continue to accrue, as provided in Paragraph 52, during any dispute resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not subject to judicial review or appealed to the Court, Simplot shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision.

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, Simplot shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the final Court decision.

56. Simplot shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

57. Simplot shall not deduct stipulated penalties paid under this Section in calculating its state and federal income tax.

58. If Simplot fails to pay stipulated penalties according to the terms of this Consent Decree, Simplot shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be

construed to limit the United States from seeking any remedy otherwise provided by law for Simplot's failure to pay any stipulated penalties.

59. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/ Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Simplot's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Simplot shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

60. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Simplot, of any entity controlled by Simplot, or of Simplot's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Simplot's best efforts to fulfill the obligation. The requirement that Simplot exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force majeure does not include Simplot's financial inability to perform any obligation under this Consent Decree.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Simplot shall provide notice to EPA orally or by electronic or facsimile transmission as soon as possible, as provided in Section XIV (Notices), but not later than seven (7) Days after the time when

Simplot first knew that the event might cause a delay. Within ten (10) Days thereafter, Simplot shall provide written notice to EPA with an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Simplot's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Simplot, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Simplot shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Simplot shall be deemed to know of any circumstance of which Simplot, any entity controlled by Simplot, or Simplot's contractors knew or reasonably should have known. Failure to comply with the above requirements regarding an event shall preclude Simplot from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction under Paragraphs 60 and 61 whether the event is a force majeure and whether Simplot has exercised its best efforts, EPA may, in its unreviewable discretion, excuse in writing Simplot's failure to submit timely notices under this Paragraph.

62. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Simplot in

writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Simplot in writing of its decision.

64. If Simplot elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Simplot shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Simplot complied with the requirements of Paragraphs 60 and 61. If Simplot carries this burden, the delay at issue shall not constitute a violation by Simplot of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree. Simplot's failure to seek resolution of a disputed issue under this Section shall preclude Simplot from raising any such issue as a defense to an action by the United States to enforce any obligation of Simplot arising under this Consent Decree.

66. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to the Parties. If

Simplot elects to invoke dispute resolution, it shall do so by sending a written Notice of Dispute to DOJ and EPA within thirty (30) Days after Simplot's receipt of the decision Simplot disputes. The dispute shall be considered to have arisen when Simplot sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date that the dispute arises unless that period is modified by written agreement between EPA and Simplot. If the Parties cannot resolve a dispute by informal negotiations, then the position of the United States shall be considered binding, unless Simplot invokes formal dispute resolution procedures as provided in the following Paragraph.

67. Formal Dispute Resolution. If Simplot elects to invoke formal dispute resolution, Simplot shall, within thirty (30) Days after the conclusion of the informal negotiation period, send to DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Simplot's position and any supporting documentation relied upon by Simplot.

68. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Simplot's Statement of Position, or of any supplemental statement the United States may request from Simplot. The United States' Statement of Position shall include or clearly reference, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Simplot, unless Simplot files a motion for judicial review of the dispute in accordance with the following Paragraph.

69. Simplot may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting

judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Simplot's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

70. The United States shall respond to Simplot's motion within the time period allowed by the Local Rules of this Court. Simplot may file a reply memorandum to the extent permitted by the Local Rules.

71. Standard of Review.

(a) Disputes Concerning Matters Accorded Record Review. In any dispute brought under this Section pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by EPA under this Consent Decree; the adequacy of the Work performed pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, EPA shall compile an administrative record of the dispute containing all Statements of Position, including supporting documentation and referenced data or information, and Simplot shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

(b) Except as provided in Paragraph 94, in any other dispute brought under this Section, Simplot shall bear the burden of demonstrating that its position complies with and furthers the objectives of this Consent Decree, and that Simplot is entitled to relief under applicable principles of law.

72. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Simplot under this Consent Decree, unless and until final resolution of the dispute so provides or unless ordered by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 55. If Simplot does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

73. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into Simplot's Facility at all reasonable times, upon presentation of appropriate identification, to:

- (a) monitor the progress of activities required under this Consent Decree;
- (b) verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- (c) obtain samples and, upon request, splits of any samples taken by Simplot or its representatives, contractors, or consultants;
- (d) obtain documentary evidence, including photographs and similar data;
- (e) assess Simplot's compliance with this Consent Decree; and
- (f) conduct, direct, or review Work pursuant to Section VI (Work Takeover).

Upon request, EPA and its authorized representatives shall provide Simplot splits of any samples taken by EPA or its authorized representatives.

74. Simplot shall retain, and shall require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information that are in the possession or

control, or that come into the possession or control, of Simplot or Simplot's contractors or agents, and that relate to Simplot's performance of its obligations under this Consent Decree. The documents, records, or other information subject to the requirements of this Paragraph are those in electronic form or otherwise and include any documents, records, emails, data, or other information (a) underlying the submission of any report required pursuant to Section VII (Reporting Requirements), and (b) relating to Simplot's adherence to the requirements associated with the management of waste or other materials allowed under Paragraphs 15 through 18. This information retention requirement shall apply for a period of five (5) years after the creation of any document, record, or other information subject to this Paragraph, and shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States, Simplot shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to the right under Paragraph 76 to claim privilege.

75. At the conclusion of the information retention period provided in the preceding Paragraph, Simplot shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph. Unless otherwise directed by EPA, Simplot shall require its contractors and agents to provide the same notice to Simplot with respect to their materials, and shall promptly relay any such notices to the United States. Upon request by the United States, Simplot shall deliver any such documents, records, or other information to EPA. Simplot shall not dispose of materials following the expiration of its five (5) year retention period more often than once a year.

76. In connection with any request for documents, records, or other information pursuant to this Consent Decree, Simplot may assert that certain documents, records, or other

information are privileged under the attorney client privilege or any other privilege recognized by federal law, provided that Simplot shall not assert a legal privilege for any data, records, or information (excluding legal advice) generated or received in connection with Simplot's obligations pursuant to the requirements of this Consent Decree. If Simplot asserts a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Simplot. If the Plaintiff and Simplot disagree as to whether a particular document or record is privileged, Simplot shall deliver such document or record to the United States unless it invokes dispute resolution pursuant to Section X (Dispute Resolution), in which case Simplot shall not have an obligation to deliver such document or record until a final determination is made, pursuant to the procedures set forth in Section X (Dispute Resolution), that such document or record is not privileged.

77. Simplot may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Simplot seeks to protect as CBI, Simplot shall follow the procedures set forth in 40 C.F.R. Part 2, provided that: Simplot shall not assert a CBI claim with respect to any physical sampling, monitoring, or analytical data other than data related to: development of new or modified products; development of new or modified production processes; production materials or analyses collected for quality control or other manufacturing purposes; or analyses undertaken for competitive business purposes. If Simplot claims any information related to Financial Assurance is CBI, in submissions required pursuant to Appendix 2 (Financial

Assurance), Simplot shall submit two versions: one version with the claimed CBI material redacted, and so identified in the document, which will be publicly available, and a second (unredacted) version that will contain the claimed CBI material.

78. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Simplot to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

79. This Consent Decree resolves the civil claims of the United States for the violations at the Facility alleged in the Complaint filed in this action through the date of the lodging of the Consent Decree. This Consent Decree also resolves such claims, if any, of the United States against Simplot's corporate officers, directors, and employees, acting in their capacities as such, but only as to the liability arising out of Simplot's liability. For continuing violations alleged in the Complaint, provided that Simplot complies with this Consent Decree, as set forth in Paragraph 81, from the date of lodging of the Consent Decree through its Effective Date, these claims shall also be resolved through the Effective Date of this Consent Decree, as of the Effective Date. Provided that Simplot complies with the Consent Decree from the Effective Date of this Consent Decree through the date of termination of this Consent Decree pursuant to Section XVIII (Termination), these claims shall be finally resolved as of the date the Consent Decree terminates.

80. Provided that Simplot is in compliance with this Consent Decree and subject to the reservation set forth below, Plaintiff covenants not to sue or take administrative action under

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), seeking to require Simplot's Facility to comply with RCRA Requirements, with respect to: (a) the generation, treatment, storage, transport, management, and disposal of Bevill-Excluded Wastes that have been commingled with hazardous wastes or otherwise managed in violation of law, as alleged in the Complaint and denied by Simplot, and that are resolved in accordance with Paragraph 79; and (b) wastes or other materials that Paragraphs 15 through 18 allow to be input to Upstream Operations or Downstream Operations directly or via the Acid Value Recovery System, SPA Recovery Units, Granulation Recovery System, or together with Bevill-Excluded Wastes. Nothing in this Paragraph shall affect Plaintiff's rights to determine and require corrective action that may be required at the Facility pursuant to Plaintiff's authorities under federal law.

81. The resolution under this Section XII (Effect of Settlement/Reservation of Rights) of the Plaintiff's civil claims set forth in the Complaint and the Plaintiff's covenants not to sue are expressly conditioned upon Simplot's timely and satisfactory compliance with the requirements of this Consent Decree. For the purposes of this Paragraph (and Paragraphs 79 and 80), and with respect to those wastes or other materials that Paragraphs 15 through 18 allow to be input to Upstream Operations or Downstream Operations directly or via the Acid Value Recovery System, SPA Recovery Units, Granulation Recovery System, or together with Bevill-Excluded Wastes, compliance with the Continuing Compliance Criteria set forth in Paragraph 34(b) constitutes compliance with this Consent Decree.

82. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, and Simplot reserves all legal and equitable defenses available to it in the defense of any such enforcement. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the

federal and state environmental statutes or their implementing regulations, or under other federal or state law regulations or permit conditions, including Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), except as expressly specified in Paragraphs 79 and 80, and Simplot in any such action shall not assert any defense based upon the contention that such claims raised by the Plaintiff were or should have been brought in the instant case under principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other such defense. The United States further retains all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including Corrective Action Work and non-Consent Decree corrective action, and all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Simplot's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

83. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local law or regulation. While this Consent Decree resolves the Parties' dispute regarding the violations alleged in the Complaint as set forth in Paragraph 79, compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws, regulations, or permits. Except as provided in Paragraphs 35, 79, 80, and 81, Simplot is not relieved of its obligation to achieve and maintain compliance with all applicable federal, state, and local laws, regulations, and permits. Simplot's compliance with this Consent Decree shall be no defense to any action commenced by Plaintiff pursuant to any such law, regulation, or permit, except as expressly specified in Paragraphs 35, 79, 80, and 81.

84. This Consent Decree does not limit or affect the rights of the Parties against any third parties (persons not a Party to this Consent Decree), nor does it limit the rights of third

parties except as provided by the doctrine of federal preemption or by other applicable principles of law or precedent.

85. This Consent Decree shall not be construed to create rights or obligations in, or grant any cause of action to, any third party.

86. Nothing in the Complaint filed in this action or in this Consent Decree, including the execution and implementation of this Consent Decree, shall constitute an admission by Simplot of any violation of RCRA Requirements, EPCRA, or of any of the allegations in the Complaint. Simplot reserves all rights to dispute the factual and legal representations of the Complaint and Consent Decree except in an action to enforce this Consent Decree by a Party. The terms of this Consent Decree may not be used as evidence in any litigation between the Parties except (a) pursuant to Section X (Dispute Resolution), (b) in an action to enforce this Consent Decree, or (c) in an action by Plaintiff in which Simplot asserts a defense based on this Consent Decree.

XIII. COSTS

87. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect costs (including attorneys' fees) incurred in any action necessary to access Financial Assurance pursuant to Paragraph 26 and Appendix 2 (Financial Assurance) of this Consent Decree, or to collect any portion of the civil penalty, any stipulated penalties, or other costs due under this Consent Decree but not paid by Simplot.

XIV. NOTICES

88. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree in accordance with Section VII (Reporting

Requirements) they shall be made electronically, unless otherwise requested by EPA, and addressed as follows:

As to DOJ by email:

Eescdcopy.enrd@usdoj.gov
Re: DJ #90-7-1-08388/8

As to DOJ by mail:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington D.C. 20044-7611
Re: DOJ No. 90-7-1-08388/8

via overnight service:

4 Constitution Square
150 M Street, NE
Room 2.900
Washington, DC 20002
Re: DOJ #90-7-1-08388/8

As to EPA by mail:

Director, Enforcement and Compliance Assurance
Division
US EPA Region 8 (8ENF-IO)
1595 Wynkoop St.
Denver, CO 80202-1129

and with respect to notices pertaining to Financial Assurance:

To EPA:

Director, Enforcement and Compliance Assurance
Division
US EPA Region 8 (8ENF-IO)
1595 Wynkoop St.
Denver, CO 80202-1129

To Simplot:

Vice President, Environmental & Regulatory
Affairs
J.R. Simplot Company
1099 W. Front Street
Boise, ID 83702

Senior Environmental Counsel
J.R. Simplot Company
1099 W. Front Street
Boise, ID 83702

89. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

90. Notices submitted pursuant to this Section shall be deemed submitted upon electronic transmission, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

91. Within thirty (30) Days of submission to EPA, Simplot shall also post all (a) documents requiring EPA approval under this Consent Decree, and (b) reports submitted to EPA under Paragraph 42 (Periodic Reporting), either on Simplot's company website or on a dedicated website, in a manner that shall be readily accessible, clearly labeled, and clearly presented to the public. Each document posted shall remain posted for at least five (5) years. Simplot shall include the following language alongside all submissions posted pursuant to this Paragraph: "This submission has been generated in accordance with Simplot's settlement with the United States in *U.S. v. J.R. Simplot Co.*, Civ. No. 20-CV-125-F (D. Wyo.) and may not have been reviewed or verified by U.S. EPA prior to posting. If you have questions about the information in this submission, please contact Alan Prouty, Vice President Environmental & Regulatory Affairs, 1099 W. Front Street, Boise, ID 83702, (208) 780-7365, alan.prouty@simplot.com." Pursuant to Paragraph 94, the parties may by subsequent written agreement modify the requirements of this Paragraph to specify alternative means of providing the public with access to documents and reports under this Paragraph; the Parties anticipate that any such modification would be non-material under Paragraph 94 to the extent the modification ensures that documents and reports under this Paragraph will continue to be made available in a manner that is readily accessible, clearly labeled, and clearly presented to the public.

XV. EFFECTIVE DATE

92. The Effective Date of this Consent Decree shall be the date of a Final Order by which this Consent Decree is entered by the Court or by which a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. The filing or pendency of an appeal of the Court's entry of this Consent Decree shall not stay the Effective Date, except as may be otherwise determined pursuant to Paragraph 94 of Section XVII (Modification). Simplot hereby agrees that it shall be bound from the date of its execution of this Decree to perform obligations scheduled in this Consent Decree to occur prior to the Effective Date.

XVI. RETENTION OF JURISDICTION

93. The Court shall retain jurisdiction over this case until termination of this Consent Decree, pursuant to Section XVIII (Termination), for the purpose of resolving disputes arising under this Consent Decree (including disputes under any trust agreements entered pursuant hereto) or entering orders modifying this Consent Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

XVII. MODIFICATION

94. The terms of this Consent Decree may be modified only by a subsequent written agreement of the Parties to this Consent Decree as set forth herein. Any modifications to the provisions of Appendices 1 through 9 hereto, and any other modifications to any other provisions of this Consent Decree that do not constitute a material change to this Consent Decree, may be made without approval by the Court upon written agreement between the Parties. Any such non-material changes shall become enforceable under this Consent Decree upon execution by both

Simplot and the United States, shall be made available to the public by EPA (except to the extent such changes contain information determined to be CBI pursuant to Paragraph 77 and 40 C.F.R. Part 2), and shall periodically be filed with the Court. Any other modifications agreed to by the Parties shall be effective only upon approval by the Court. Except as otherwise provided in this Paragraph and Paragraph 96, a Party's refusal to agree to a modification of this Consent Decree shall be subject to dispute resolution, but a Party seeking judicial review of such a refusal shall bear the burden of demonstrating that it is entitled to the requested modification based on a significant change in factual conditions or the law or other reason that would make inequitable the continued application of the Consent Decree without the modification sought.

95. In the event that a potential transferee under Section II (Applicability) has agreed to become a party to this Consent Decree and subject to all its terms and provisions, it may do so upon written approval of the United States pursuant to Section II (Applicability) and Section XVII (Modification), without further order from the Court, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

XVIII. TERMINATION

96. Periodic Review of Work Status. Once every three (3) years following the Effective Date, Simplot may request a meeting to review the status of the Work and to evaluate whether discrete portions of the Work have either been completed or may be accomplished and supervised under an administrative order or permit in lieu of this Consent Decree. If the Parties agree to such a modification, such agreement shall be memorialized in a written modification to this Consent Decree pursuant to Section XVII (Modification) and shall not require judicial approval. If the Parties agree that such modifications allow this Consent Decree to be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the

Consent Decree. The Parties' inability to reach agreement under this Paragraph shall not be subject to dispute resolution or judicial review.

97. Completion of Work. Within ninety (90) Days after Simplot concludes that all Work required under this Consent Decree has been fully performed, Simplot shall notify EPA of its intention to request an Acknowledgement of Completion under this Paragraph and offer EPA the opportunity to conduct an inspection of the Facility to be attended by EPA and Simplot at a mutually agreeable time. If EPA conducts such inspection, then following the inspection, and correction of any problems or deficiencies noted by EPA, Simplot shall submit one or more written reports by a third-party registered professional engineer, in the relevant technical field, certifying compliance with Section V (Compliance Requirements) that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report(s) shall indicate the case name and civil action number, and shall be submitted, together with a request for Acknowledgment of Completion, in accordance with Section VII (Reporting Requirements). Third-party engineer certification of any of the written reports may be waived at EPA's discretion. If, following Simplot's notification under this Paragraph, EPA notifies Simplot that EPA declines the opportunity to conduct an inspection of the Facility, or if EPA does not respond within forty-five (45) Days, Simplot shall submit the report(s) specified in this Paragraph in support of a request for Acknowledgment of Completion.

98. If, after review of the written report(s) and certification, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Simplot in writing of the activities and/or obligations that must be undertaken to complete the Work. Without prejudice to the United States' right to enforce this Consent Decree or to assess penalties for Simplot's failure to complete any portion of the Work in accordance with

this Consent Decree, EPA will set forth in the notice a schedule for performance of the activity or activities and/or obligation(s) required under the Consent Decree, or will require Simplot to submit a schedule for EPA approval pursuant to Section V (Compliance Requirements). Simplot shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to Simplot's right to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution).

99. If EPA concludes, based on the initial or any subsequent request for an Acknowledgment of Completion by Simplot, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify Simplot in writing, which notice shall constitute the Acknowledgment of Completion.

100. Termination. After Simplot has completed the requirements set forth in Paragraphs 97 and 98 of this Section, has obtained an Acknowledgment of Completion, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Simplot may serve upon the United States a Request for Termination, stating that Simplot has satisfied those requirements, together with all necessary supporting documentation.

101. Following receipt by the United States of Simplot's Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Simplot has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

102. If the United States does not agree that the Consent Decree may be terminated, Simplot may invoke dispute resolution under Section X (Dispute Resolution). However, all time

periods and deadlines established under Section X shall be extended by sixty (60) Days, or more by the agreement of the Parties.

103. The parties acknowledge the possibility that future federal or state laws or regulations may be enacted concerning requirements established under the Consent Decree and, if so, might form the basis for a modification to the Consent Decree under Paragraph 94, or under Fed. R. Civ. P. 60(b). Nothing in this Paragraph is intended to waive Plaintiff's right to oppose a request or motion for modification, or to waive any argument that such modification would be unwarranted.

XIX. PUBLIC PARTICIPATION

104. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Simplot consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Simplot in writing that it no longer supports entry of the Consent Decree.

XX. SIGNATORIES/SERVICE

105. Each undersigned representative of Simplot and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, or his/her designee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

106. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Simplot agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the Complaint unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

107. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Consent Decree, and the Consolidated Materials Management Practices report referenced in Paragraph 18, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXII. FINAL JUDGMENT

108. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Simplot. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

109. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 7; Section V (Compliance Requirements), Paragraphs 13-30, 34 (except with respect to dispute resolution), 35, and related Appendices 1, 2, 4, 5 and 6; Section VII (Reporting Requirements), Paragraphs 41-42 and 44-45; Section XI (Information Collection and Retention), Paragraphs 73-75; and Section XIV (Notices), Paragraph 91, is restitution or required to come into compliance with law.

XXIV. APPENDICES

110. The following Appendices are attached to and part of this Consent Decree:

Appendix 1 sets forth the following Operating and Closure Requirements:

- A. Groundwater Requirements;
- B. Phosphogypsum Stack System Construction and Operational Requirements;
- C. Closure of Phosphogypsum Stacks/Stack Systems;
- D. Critical Conditions and Temporary Measures;
- E. Phosphogypsum Stack System Permanent Closure Application;

Appendix 2 sets forth requirements for Financial Assurance;

Appendix 3 contains Site Maps of the Simplot Rock Springs Facility;

Appendix 4 is the Facility Report;

Appendix 5 is the Best Management Practices (BMP) Plan, and includes:

- A. Minimizing and Addressing Spills and Leaks;
- B. Inspections and Integrity of Tanks, Sumps, and Secondary Containment;

Appendix 6 is the RCRA Project Narrative and Compliance Schedule;

Appendix 7 contains the Alternative Liner Demonstration;

Appendix 8 is the Initial Closure Plan for the Facility; and

Appendix 9 sets forth Additional Definitions of Terms Used in Appendices.

Dated and entered this ___ day of _____, 2020.

UNITED STATES DISTRICT JUDGE
DISTRICT OF WYOMING

WE HEREBY CONSENT to the entry of the Consent Decree in *United States v. J. R. Simplot Company*, Civil Action No. 20-CV-125-F, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Date: July 1, 2020

/s/David Roskam
DAVID ROSSKAM
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-3974

WE HEREBY CONSENT to the entry of the Consent Decree in *United States v. J. R. Simplot Company*, Civil Action No. 20-CV-125-F, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

MARK A. KLAASSEN
United States Attorney
District of Wyoming

Date: July 9, 2020

/s/Nicholas Vassallo
NICHOLAS VASSALLO
Assistant United States Attorney
District of Wyoming
P.O. Box 668
Cheyenne, Wyoming 82003
Telephone: (307) 772-2124

WE HEREBY CONSENT to the entry of the Consent Decree in *United States v. J. R. Simplot Company*, Civil Action No. 20-CV-125-F, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: July 6, 2020

/s/Susan Bodine
SUSAN BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: July 6, 2020

/s/Ann Stephanos
ANN STEPHANOS
Attorney-Advisor
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of the Consent Decree in *United States v. J. R. Simplot Company*, Civil Action No. 20-CV-125-F, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: June 18, 2020

/s/K.C. Schefski
K.C. SCHEFSKI
Regional Counsel
United States Environmental Protection Agency
Region 8

Date: June 18, 2020

/s/Max Greenblum
MAX GREENBLUM
Assistant Regional Counsel
United States Environmental Protection Agency
Region 8 (8ORC-LEC)
1595 Wynkoop St.
Denver, CO 80202-1129

WE HEREBY CONSENT to the entry of the Consent Decree in *United States v. J. R. Simplot Company*, Civil Action No. 20-CV-125-F, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR SIMPLOT:

Date: June 17, 2020

/s/James B. Alderman
JAMES B. ALDERMAN
Senior Vice President, General Counsel and
Secretary
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707

Date: June 17, 2020

/s/Alan L. Prouty
ALAN L. PROUTY
Vice President, Environmental & Regulatory
Affairs
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707

Date: June 17, 2020

/s/Thomas C. Perry
THOMAS C. PERRY
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J.R. Simplot Company
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