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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. J.R. SIMPLOT COMPANY, Defendant.	Case No. [_____] COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THIS ACTION

1. This is a civil action brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), (g); Section 113(b) of the Clean Air Act, ("CAA"), 42 U.S.C. §7413(b); Section 109(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609(c)(1); and Section 325(b)(3) and (c)(4) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(b)(3), (c)(4), against J.R. Simplot Company ("Simplot" or "Defendant"). The United States seeks injunctive relief and the assessment of civil penalties for environmental violations at the fertilizer and agricultural products manufacturing facility, known as the Don Plant, owned and operated by Simplot near Pocatello, Idaho ("Facility").

2. As set forth below, Defendant has violated statutory and regulatory requirements applicable to the management and treatment, storage, or disposal of solid and/or hazardous waste, found at Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924, 6925, and the regulations promulgated thereunder, including 40 C.F.R. Parts 261, 262, 264/265, 268, and 270, which are adopted and incorporated by reference in the Idaho Hazardous Waste Management program that EPA has authorized to apply in lieu of the federal requirements. Defendant has also violated Sections 112 and 502 of the CAA, 42 U.S.C. §§ 7412, 7661a, and implementing regulations at 40 C.F.R. Part 63, Subpart AA; 40 C.F.R. Part 70, and Simplot's Title V operating permit issued thereunder; and Idaho State regulations approved in and permits issued under the

Idaho State Implementation Plan ("Idaho SIP"), which are enforceable by EPA under Section 113 of the CAA, 42 U.S.C. §7413. Defendant has also violated the requirements found at CERCLA Section 103, 42 U.S.C. § 9603, and EPCRA Sections 304 and 313, 42 U.S.C. §§ 11004 and 11023, applicable to reporting of hazardous substances, extremely hazardous substances, and toxic chemicals.

JURISDICTION AND VENUE

3. This court has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1); Section 325 of EPCRA, 42 U.S.C. § 11045; and 28 U.S.C. §§ 1331 (federal question jurisdiction), 1332 (diversity), 1345 (jurisdiction when the United States is a plaintiff), and 1355 (jurisdiction over penalties arising under federal claims).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1395(a); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1); and Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3), (c)(4), because Defendant is located and doing business in this District and the violations occurred in this District.

5. Authority to bring this action is vested in the Attorney General of the United States and the Administrator of EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1); Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3), (c)(4); and 28 U.S.C. §§ 516 and 519.

6. EPA has notified the State of Idaho of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). EPA has also provided notice to Defendant and the State of Idaho as provided in Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), of EPA's finding of the violations alleged in this complaint, and the 30-day period established in 42 U.S.C. § 7413(b)(1) between the provision of such notice and the filing of this action has elapsed.

DEFENDANT AND DEFENDANT'S FACILITY

7. Simplot is a privately-held food and agribusiness company, incorporated in Nevada, with its principal corporate offices in Boise, Idaho. Simplot has U.S. operations in ranching, food processing, mining, and fertilizer production and retail in a number of states. Among its production plants is the Facility, Simplot's fertilizer and agricultural products manufacturing plant, known as the Don Plant.

STATUTORY AND REGULATORY BACKGROUND

Resource Conservation and Recovery Act (RCRA)

8. Congress enacted RCRA in 1976 to amend the Solid Waste Disposal Act and enacted the Hazardous and Solid Waste Amendments in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes requirements to be administered by EPA and authorized states for addressing the generation, transportation, treatment, storage, or disposal of hazardous waste. See 42 U.S.C. §§ 6901 - 6992k.

9. RCRA's subchapter III (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6940, known as "Subtitle C"), required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous

wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA's RCRA regulatory hazardous waste program.

10. Section 3006 of RCRA, 42 U.S.C. § 6926, allows EPA to authorize a state to administer its own hazardous waste program in lieu of the federal program when EPA deems the state program to be equivalent to the federal program.

11. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the State of Idaho final authorization to administer its hazardous waste program in lieu of the federal program on March 26, 1990, effective April 9, 1990 (55 Fed. Reg. 11015). There have been subsequent authorized revisions to the base program. Idaho Code, Title 39, Chapter 44, Hazardous Waste Management, provides the statutory authority for the regulatory program "Rules and Standards for Hazardous Waste," Idaho Administrative Procedures Act ("IDAPA") 58.01.05, which includes the regulations that are part of the state program authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. Idaho has incorporated the federal regulations by reference. The Idaho Department of Environmental Quality ("Idaho DEQ") is the State agency designated to implement the authorized RCRA program in Idaho.

12. IDAPA 58.01.05.005 incorporates 40 C.F.R. § 261.2, which defines a solid waste as any discarded material that is not otherwise excluded under 40 C.F.R. 261.4(a), or that is not excluded by variance. A discarded material is any material which is abandoned, recycled, inherently waste-like, or a military munition. Materials are solid waste under 40 C.F.R. § 261.2 if they are abandoned by being disposed of, burned or incinerated, or accumulated, stored, or treated (but not recycled) before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

13. A solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under IDAPA 58.01.05.005, incorporating 40 C.F.R. § 261.4(b), and it exhibits any of the characteristics of hazardous waste identified in 40 C.F.R. Part 261, Subpart C, or it is listed in 40 C.F.R. Part 261, Subpart D.

14. Under IDAPA 58.01.05.005, incorporating 40 C.F.R. Part 261, Subpart C, characteristic hazardous wastes are assigned "D" codes depending on the specific hazardous characteristic that the waste exhibits: a solid waste with a pH of equal to or less than 2.0, or equal to or greater than 12.5, exhibits the characteristic of corrosivity and is assigned the D002 hazardous waste code as set forth in 40 C.F.R. § 261.2; a solid waste is assigned the D006 cadmium hazardous waste code as set forth in 40 C.F.R. § 261.24 (using the Toxicity Characteristic Leaching Procedure), when the extract from a representative sample of the waste contains greater than or equal to 1.0 milligrams per liter of cadmium; and, a solid waste is assigned the D007 chromium hazardous waste code as set forth in 40 C.F.R. § 261.24 (using the Toxicity Characteristic Leaching Procedure), when the extract from a representative sample of the waste contains greater than or equal to 5.0 milligrams per liter of chromium.

15. Under IDAPA 58.01.05.005, incorporating 40 C.F.R. § 261.4(b)(7), certain solid wastes from the extraction, beneficiation, and processing of ores and minerals are excluded from the definition of hazardous wastes ("the Bevill exclusion"). For a mineral processing waste to be excluded from hazardous waste regulation under the Bevill exclusion (i.e., a "Bevill waste" or "Bevill-excluded waste"), it must fall into one of the twenty specific categories of excluded wastes listed at 40 C.F.R. § 261.4(b)(7)(ii).

16. Only two wastes generated from phosphoric acid mineral processing operations are Bevill-excluded wastes specifically excluded from hazardous waste regulation under the

Bevill exclusion: "[p]hosphogypsum from phosphoric acid production" and "process wastewater from phosphoric acid production," pursuant to IDAPA 58.01.05.005, incorporating 40 C.F.R. § 261.4(b)(ii), (D), (P).

17. Chemical processing wastes, cleaning wastes, and other wastes generated in production involving additional processing and refining, occurring after mineral processing creates the first saleable product, are not "process wastewater from phosphoric acid production" and are not within the Bevill exclusion ("non-Bevill wastes").

18. If phosphogypsum and process wastewater from phosphoric acid production that are Bevill-excluded wastes are mixed with hazardous wastes that are non-Bevill wastes, and if the resulting mixture continues to exhibit a hazardous characteristic of the non-Bevill waste, then the entire mixture is a hazardous waste pursuant to the Bevill Mixture Rule under IDAPA 58.01.05.005, incorporating 40 C.F.R. § 261.3(a)(2)(i).

19. IDAPA 58.01.05.008-.009, incorporating 40 C.F.R. Parts 264/265, apply to owners and operators of facilities that treat, store or dispose of hazardous waste.

20. IDAPA 58.01.05.006, .008-.009, and .011-.012, incorporating EPA regulations set forth in 40 C.F.R. Parts 262, 264/265, 268, and 270, require that owners and operators of facilities that generate hazardous waste must, among other things:

a. determine whether generated solid wastes are hazardous, as set forth in 40 C.F.R. § 262.11;

b. treat, store, and dispose of hazardous waste in compliance with a permit or (if they qualify for interim status) with interim status requirements pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and 40 C.F.R. Part 264 (or Part 265 for interim status), and Part 270;

c. meet certain requirements for waste treatment prior to placement or disposal of hazardous waste on the land, as set forth in 40 C.F.R. Part 268; and

d. meet certain requirements that include having a plan for facility closure and post-closure care, estimating the costs thereof, and establishing financial assurance for closure, post-closure care, and third-party liability, as set forth in 40 C.F.R. Part 264 (or Part 265).

21. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved authorized Idaho hazardous waste program, as well as the federal regulations that remain effective in Idaho, by filing a civil action in United States District Court seeking civil penalties not to exceed $25,000 per day per violation, and injunctive relief.

22. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the amounts specified in the foregoing paragraph increase to a civil penalty of up to $32,500 per day for each violation of RCRA, that occurred after March 15, 2004, through January 12, 2009; up to $37,500 per day for each violation that occurred after January 12, 2009 and through November 2, 2015; up to $87,855 per day for each violation that occurred after November 2, 2015 where penalties are assessed on or after January 6, 2023. Each day of such violation constitutes a separate violation pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

Clean Air Act (CAA)

23. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to submit a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the National Ambient Air Quality Standards ("NAAQS") for approval by EPA. EPA thereafter

retains the authority to enforce any applicable requirement or prohibition of the SIP, including any permit condition issued pursuant to SIP-approved regulations, as provided in Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

24. The Idaho SIP authorizes Idaho DEQ to issue operating permits and construction permits. IDAPA 58.01.01.200-.228 and .400-.410. These provisions, previously codified at IDAPA 16.01.01, have been approved as part of the Idaho SIP since at least August 22, 1986.

25. Terms and conditions in operating permits and construction permits issued under the provisions of IDAPA 58.01.01 that are approved into the Idaho SIP are applicable requirements of the Idaho SIP under 40 C.F.R. § 52.670, and violations of Idaho SIP requirements, including permits issued thereunder, are subject to federal enforcement under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

26. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes EPA to promulgate regulations establishing emission standards (or work practice standards if necessary) for categories of new and existing sources that emit a listed hazardous air pollutant ("HAP"). These standards are known as the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs").

27. Pursuant to Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2, a "major source" is a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a HAP or 25 tons per year or more of a combination of HAPs.

28. Pursuant to Section 112(a)(4) of the CAA, 42 U.S.C. § 7412(a)(4), and 40 C.F.R. § 63.2, a "new source" is a stationary source the construction or reconstruction of which

is commenced after EPA first proposed regulations under 42 U.S.C. § 7412 and 40 C.F.R. Part 63 establishing an emission standard applicable to such source.

29. Pursuant to Section 112(a)(10) of the CAA, 42 U.S.C. § 7412(a)(10), and 40 C.F.R. § 63.2, an "existing source" is any stationary source other than a new source.

30. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated a NESHAP for Phosphate Acid Manufacturing, set forth at 40 C.F.R. Part 63, Subpart AA ("Phosphate Acid Manufacturing NESHAP" or "Subpart AA"), which applies to owners and operators of phosphoric acid manufacturing plants that are "major sources," as defined in 40 C.F.R. § 63.2, and are not "research and development facilities," as defined in 40 C.F.R. § 63.601.

31. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and the implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including "major sources" as defined in 42 U.S.C. § 7661(2).

32. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a subject source, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

33. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6(a) and (c), require that each Title V permit contain enforceable emission limitations and standards and such other conditions as are necessary to assure compliance with requirements of the CAA.

34. EPA granted interim approval of Idaho's Title V permit program on January 6, 1997, and the program became effective on that date. 61 Fed. Reg. 64622 (December 6, 1996).

EPA granted full approval of Idaho's Title V permit program on November 5, 2001. 66 Fed. Reg. 50574 (October 4, 2001).

35. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

36. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes EPA to commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of up to $25,000 per day per violation, or both, whenever any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit or any other requirement or prohibition of, inter alia, Title I or Title V of the CAA, including, but not limited to, a requirement or prohibition of any rule, order, waiver, or permit promulgated, issued, or approved under the CAA.

37. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the amounts specified in the forgoing paragraph increase to up to $27,500 per day for each violation occurring on and after January 31, 1997; up to $32,500 per day for each violation occurring on or after March 15, 2004; up to $37,500 per day for each violation occurring on or after January 12, 2009 and through November 2, 2015; and up to $117,468 per day for each violation that occurred after November 2, 2015 where penalties are assessed on or after January 6, 2023.

Hazardous/Toxic Chemicals Reporting Under CERCLA and EPCRA

38. Congress enacted CERCLA in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities. CERCLA also included notification requirements concerning releases of hazardous

substances. Section 103 of CERCLA, 42 U.S.C. § 9603, requires that any person in charge of an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to or greater than the reportable quantity established pursuant to CERCLA Section 102, 42 U.S.C. § 9602, to report the release. EPA promulgated regulations implementing the requirements of CERCLA Section 103, which are set forth at 40 C.F.R. Part 302.

39. Congress enacted EPCRA in 1986, imposing requirements for federal, state and local governments, tribes, and industry. These requirements covered emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. See 42 U.S.C. §§ 11001 - 11050. Pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

40. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 address owners and operators of facilities that have 10 or more full-time employees; are in a specific Standard Industrial Classification (SIC), for which the corresponding North American Industry Classification System (NAICS) codes are included under 40 C.F.R. §§ 372.23(b) and (c); and manufacture, process, or otherwise use a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in quantities exceeding the threshold set forth in 40 C.F.R. § 372.25. The reporting threshold under 40 C.F.R. § 372.25 for years beginning with 1989 is 25,000 lbs. per year.

41. Under Section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (Form R) ("Form R" or "toxic release report"), for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds.

42. Section 313(b)(1)(C)(i) of EPCRA, 42 U.S.C. § 11023(b)(1)(C)(i), defines "manufacture" to mean "to produce, prepare, import, or compound a toxic chemical." Any toxic chemical produced coincidentally during the manufacture, processing use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mix of chemicals as an impurity is "manufactured." 40 C.F.R. § 372.3.

43. Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(3), and Section 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. § 11045(b)(3), (c)(4), authorize EPA to commence a civil action to assess and recover a civil penalty of up to $25,000 per day for each violation, whenever any person has violated or is in violation of any requirement of Section 103 of CERCLA or of Section 313 of EPCRA.

44. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the amounts specified in the foregoing paragraph increase to a civil penalty of up to $27,500 per day for each violation occurring on and after January 31, 1997, up to $32,500 per day for each violation occurring on or after March 15, 2004, to $37,500 per day for each violation occurring on or after January 12, 2009, and up to $67,544 per day for each violation occurring after November 2, 2015 where penalties are assessed on or after January 6, 2023.

GENERAL ALLEGATIONS

Facility and Process Description

45. The Facility is located approximately 2.5 miles west of Pocatello, Idaho. Simplot has owned and operated the Facility since 1944. Simplot principally manufactures phosphoric acid and other liquid and granular phosphate products at the Facility, which Simplot

markets as fertilizer and animal feed ingredients. The Facility has occupied approximately 1025 acres; Simplot acquired an additional 713.67 acres of adjacent land on December 15, 2020, pursuant to a land exchange with the U.S. Department of the Interior, Bureau of Land Management (BLM). Litigation challenging BLM's authorization of the land exchange is currently pending in this district following a March 31, 2023 ruling on cross motions for summary judgment.

46. On October 3-4, 2005, EPA conducted an on-site compliance evaluation inspection of the Facility ("the October 2005 inspection"). The inspection included a comprehensive review of the Facility's processes and operations, discussions with Facility personnel, sampling of waste streams, and analysis of the samples. On July 27, 2006, EPA conducted a site visit to acquire additional information regarding the operation of the Facility and determine the Facility's compliance with state and federal RCRA requirements. Based on its inspections, and Simplot's February 8, 2008 response to EPA's December 10, 2007 request for information, EPA informed Simplot of EPA's findings and specifically identified what EPA believed were ongoing violations at the Facility. EPA performed a subsequent re-inspection of the Facility in 2010.

47. The Facility manufactures phosphoric acid, an ingredient in both the liquid and dry (granulated) products produced there. The Facility's liquid products include superphosphoric acid ("SPA"), purified phosphoric acid ("PPA"), and ammonium polyphosphate ("APP"). The Facility's dry fertilizer or animal feed products include monoammonium phosphate ("MAP"), diammonium phosphate ("DAP"), triple superphosphate, ammonium phosphate-sulfate, and dicalcium phosphate.

48. Phosphoric acid is produced by the reaction of phosphate rock with sulfuric acid in one isothermal reactor (mineral processing). The sulfuric acid used in this process is produced on-site at plants separate from the phosphoric acid plant. Phosphate ore mined at Simplot's Smoky Canyon Mine in southeast Idaho, approximately 60 miles from the Facility, is beneficiated (separated from sand and clay) and delivered to the Facility via a slurry pipeline where the ore is reacted with sulfuric acid. The calcium phosphate in the phosphate rock is converted by reaction with concentrated sulfuric acid within a reactor known as a "digester," yielding phosphoric acid as well as solid calcium sulfate and other byproducts, known as "phosphogypsum" (or "gypsum"). Phosphogypsum is filtered from the phosphoric acid on four belt filters, slurried with process wastewater in a large vessel (known as a gypsum launder) and two slurry tanks, and the resultant gypsum slurry is pumped to a lined phosphogypsum stack ("gypsum stack") for disposal there.

49. The gypsum stack is part of a "Phosphogypsum Stack System," comprised of the gypsum stack and various decant ponds, pumps, piping, ditches, drainage, conveyances, overflow ponds, water control structures, gypsum thickeners, sluice tanks, and other units.

50. The production of phosphoric acid is a water-intensive process and water is used throughout the process (e.g., for acid dilution, evaporators, condensers, cleaning pipes and tanks, cooling, air pollution scrubbing, and transporting gypsum to the Phosphogypsum Stack System). Approximately 200 million to 400 million gallons of process wastewater are constantly stored in and circulating throughout the Phosphogypsum Stack System and the phosphoric acid production process. The gypsum stack and decant process wastewater return pond ("gypsum pond") are lined with a synthetic 16 oz. non-woven polypropylene geotextile beneath a 60 mil high density polyethylene liner. The lining of the gypsum stack occurred from 2011-2016; prior

to that time, wastewater in the gypsum stack was released into the soil and groundwater, eventually migrating to the Portneuf River. Some wastewater remains below where the liner has been installed and it continues to leach into the environment, although Simplot is subject to the remedial action requirements addressing releases to the environment from the previously unlined gypsum stack set forth in a 2002 CERCLA consent decree and 2010 amendment thereto. The Facility is authorized to discharge specific industrial wastewater streams to permitted farmland under a wastewater reuse permit issued by Idaho DEQ, but otherwise is not authorized to discharge any process water to the environment.

51. Reaction of the phosphate rock in the digester results in a dilute liquid phosphoric acid (28%) and gypsum solids. The slurry of dilute phosphoric acid and gypsum is pumped to belt filters where the liquid acid is drawn off the bottom and gypsum is scraped off the top. The gypsum (also called filter cake) is rinsed with process water to recover residual phosphate values, slurried with process water, and then pumped to the gypsum stack where a portion of the mixture remains. Some of the fluorine present in the phosphate rock is also released as hydrogen fluoride gas. The phosphoric acid is then further concentrated by driving off the excess water by use of the steam heated evaporators in the phosphoric acid plant.

52. Various manufacturing processes at the Facility utilize phosphoric acid at concentrations of approximately 28%, 42% and 52-54%. Phosphoric acid with a concentration of approximately 52-54% is known as "merchant grade acid" ("MGA"). In addition to being sold as a product, some MGA is used at the Facility as feedstock to manufacture fertilizer and animal feed products.

53. After processing phosphate ore to make phosphoric acid, Simplot utilizes further processing and refining to manufacture PPA, a purified form of phosphoric acid. Using

phosphoric acid at approximately 42% concentration, Simplot removes impurities using limestone and specialized filters, and then evaporates the resulting purified acid to a concentration of approximately 54-55%. Simplot sells PPA for use as a fertilizer in drip irrigation systems and in specialty liquid mixes.

54. After processing phosphate ore to make phosphoric acid, Simplot utilizes further processing and refining to manufacture SPA. From phosphoric acid with a concentration of approximately 52%, Simplot further evaporates water until a phosphoric acid product of approximately 68-69% is produced. The acid is evaporated in the phosphoric acid plant area of the Facility and further refined by means of cooling, mechanical agitation, filtering of precipitated impurities, and final polishing. Simplot sells SPA to customers, who mostly use it to produce ammonium polyphosphates principally for agricultural, and some industrial, applications. Simplot also uses SPA to manufacture APP at the Facility by reacting SPA with ammonia.

55. PPA and SPA manufacturing generates wastes and other materials. Condensates and evaporation wastes from SPA production are routed to the Phosphogypsum Stack System for disposal in the gypsum stack. Filter solids from SPA production have a high phosphate content and are a feedstock used in further fertilizer manufacturing at the Facility.

56. After processing phosphate ore to make phosphoric acid, Simplot utilizes further chemical processing and refining to manufacture granular products at the Facility. It manufactures MAP and DAP by reacting phosphoric acid with ammonia, which produces the crystalline compounds MAP and DAP. Some filter solids from the phosphoric acid, PPA and SPA plants are sent to the ammonium phosphate plant where they are mixed with ammonia in a reactor vessel. The resultant phosphate slurry is then fed to a granulator to create pellets which

are subsequently dried. This solid material then passes through a system of sizing screens and mills to achieve the desired granule size.

57. Phosphate ore mined in Idaho contains approximately 25-30% phosphate but also contains a variety of metals and mineral compounds including aluminum, arsenic, chromium, copper, lead, magnesium, manganese, mercury, nickel, and zinc. These metals/minerals of concern found in phosphate ore typically are not present in their elemental state (i.e., existing in nature uncombined with other elements), but are present as metal/mineral compounds (e.g., metal silicates, metal carbonates, metal oxides or metal sulfides). During the manufacturing processes at the Facility, metal compounds are released (liberated) from phosphate ore and chemically converted to other metal compounds as a result of being dissolved in the phosphoric and sulfuric acids, and fluorine is liberated as hydrogen fluoride. These converted compounds are considered to be byproducts or impurities associated with the manufacturing process, depending upon whether the compounds are separated from the product or remain in the product. As a result of the process of digesting ore in reactor vessels, some metals remain predominantly in solution, some are almost entirely precipitated by reaction with sulfate ions, and some partition between product acid, the gypsum waste, and the process wastewaters. Some of the metal compounds end up in the fertilizer products.

58. The Facility uses water in various production processes, including, but not limited to, condensers, flash coolers, air pollution control devices (scrubbers), and equipment cleaning and maintenance. This results in the accumulation of contaminants (including fluorides) in the water, resulting in aqueous wastes. Approximately 4,700 gallons per minute (gpm) of aqueous wastes are sent from production processes at the Facility to the

Phosphogypsum Stack System for disposal in the gypsum stack. Fluorides and other contaminants precipitate from aqueous wastes in the gypsum stack.

59. Flash coolers and evaporators generate heat that is continuously removed by the process wastewater that flows through these process units. The heated process wastewater is directed to a concrete bunker known as "the Hot Pit" and then to a set of three evaporative cooling towers ("the Reclaim Cooling Towers"), consisting of a total of eight individual cooling cells, in which the hot water falls in a spray. Air is pumped upwards through the towers, which contacts the water droplets and removes heat as the water is evaporated. The cooled water is then directed to a concrete bunker known as "the Cold Pit" for subsequent use in phosphoric acid production at the Facility.

60. Particles and vapors emitted from the phosphoric acid production and chemical processing processes are captured from the reactor, belt filters, and other production equipment (e.g. clarifiers, process tanks and storage tanks) using air pollution control devices commonly referred to as scrubbers. The scrubbing liquid for each of these scrubbers is process wastewater and/or fresh water, which is pumped through the scrubbers to collect emissions before being discharged to the gypsum stack.

61. Cleaning operations occur at various tanks and units at the Facility on a regular basis, typically involving the circulation of fresh water or water from the gypsum stack system into various tanks and other units to remove contamination. Upon being removed from the tank or other unit, the spent cleaning solution, designated D002 (corrosive), D006 (cadmium), and D007 (chromium) hazardous wastes, is placed in the gypsum stack.

62. In Simplot's phosphoric acid and fertilizer production areas, spills and leaks of phosphoric acid and sulfuric acid occasionally occur. Based on EPA's knowledge of the

Facility's processes, these spills and leaks can commingle with process wastewater being transported from the production areas to the Phosphogypsum Stack System.

63. The wastes detailed above that are routed to the Phosphogypsum Stack System are combined into a slurry. In the stack, the slurry separates into solid and liquid fractions. The liquid portion is decanted off the top, temporarily stored in decant ponds, and combined with leachate draining from the gypsum stack and returned to the plant at the rate of approximately 4,300 gpm for reuse. The solid portion (phosphogypsum) settles to the bottom and continually increases the size of the gypsum stack, which has grown to approximately 500 acres in size and up to about 200 feet tall. Simplot does not remove or reuse the solid fraction that remains in the gypsum stack.

64. Wastes from manufacturing, cleaning, and emission control operations associated with dry (granular) products at the Facility, such as MAP and DAP, are not managed in the gypsum stack but are stored at the Facility before being recycled back into the granulation process.

General RCRA Allegations

65. Defendant is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes corporations.

66. Defendant is and has been at all times relevant to this action an owner and/or operator of the Facility within the meaning of IDAPA 58.01.05.002, incorporating 40 C.F.R. § 260.10.

67. The gypsum and the wastewaters generated at the Facility from phosphoric acid production processes are, respectively, "[p]hosphogypsum from phosphoric acid production" and "process wastewater from phosphoric acid production" under 58.01.05.005, incorporating 40

C.F.R. § 261.4(b)(7)(ii)(D) and (P), and therefore are Bevill-excluded wastes, i.e., they are not hazardous wastes under the Bevill exclusion.

68. Other wastes generated at the Facility, including wastes generated from chemical or other processing that occurs after the first saleable product, scrubber wastes, spills and leaks, and cleaning wastes are not "process wastewater from phosphoric acid production" are non-Bevill wastes that do not qualify for the Bevill exclusion. When these non-Bevill wastes exhibit a hazardous characteristic and are discarded, they are "solid wastes" and "hazardous wastes" within the relevant provisions of the authorized Idaho hazardous waste program and RCRA.

General CAA Allegations

69. Simplot is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and an "owner or operator" of the Facility as defined in 40 C.F.R. § 63.2.

70. The Facility is a "major source" of HAPs as defined in Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. § 63.2, and is also a Title V "major source" as defined in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and in 40 C.F.R. § 70.2.

71. On December 3, 1999, Idaho DEQ issued a Tier II operating permit to Simplot for the Facility, Tier II Permit Number 077-00006, the requirements of which are currently set forth in Permit to Construct No. 2016-0055, issued by Idaho DEQ on January 20, 2023 ("Simplot SIP Permit").

72. On December 24, 2002, Idaho DEQ issued a Tier I operating permit to Simplot for the Facility, Permit No. 077-00006, which was renewed and/or modified at several times subsequently, including Permit No. T1-2017.0024, which Idaho DEQ issued on June 10, 2022. The Simplot Tier I permit, including all renewals and modifications issued by Idaho DEQ, was

issued by Idaho DEQ under its EPA-approved Title V operating permit program, under Idaho regulations implementing 42 U.S.C. §§ 7661-7661f, and is a Title V permit (hereinafter referred to as the "Simplot Tier I/Title V Permit").

General CERCLA/EPCRA Allegations

73. Simplot is a "person" as defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and 40 C.F.R. § 302.3, and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

74. Simplot is an "owner or operator" Simplot is the "owner or operator" of the Facility, which is a "facility" as that term is defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), with 10 or more "full-time employees" as defined in EPCRA Section 329(4) and 40 C.F.R. § 372.3.

75. The Facility is within a Standard Industrial Classification (SIC) for which a corresponding North American Industry Classification System (NAICS) subsector or industry code is included in 40 C.F.R. § 372.23. Specifically, the Facility is within SIC code 2874 and NAICS code 325312 for chemical manufacturing and for phosphoric acid production facilities, respectively.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(RCRA - Failure to Determine if a Solid Waste is a Hazardous Waste)

76. The allegations in paragraphs 1-22 and 45-68 are re-alleged and incorporated herein by reference.

77. IDAPA 58.01.05.006, incorporating 40 C.F.R. § 262.11, requires, among other things, that a person who generates a solid waste must determine if that waste is a hazardous waste.

78. Since at least the time of the October 2005 inspection of the Facility, and thereafter to the present, Defendant routinely generated the following solid wastes at the Facility:

a. Air control scrubber pollution blowdown (effluent), including but not limited to scrubber effluent from the digester, belt filters, and tank farm – a D002 (corrosive) and D006 (cadmium) hazardous waste, managed in the gypsum pond;

b. Wastewaters and solids generated from cleaning tanks, piping and other equipment associated with phosphoric acid manufacturing and fertilizer manufacturing, including but not limited to washing of belt filters, evaporators, the digester, tank underflow lines, the MRC Clarifier/Tank 50, and SPA reactor – D002 (corrosive) and D006 (cadmium) hazardous wastes, managed in the gypsum stack;

c. Condensate water from the manufacture of PPA and SPA – a D002 (corrosive) and D006 (cadmium) hazardous waste;

d. Gypsum stack decant water – a D002 (corrosive), D006 (cadmium), and D007 (chromium) hazardous waste, generated in the gypsum stack and returned to the phosphoric acid production area for re-use; and

e. By-products from production processes, including "SPA Muds" – a D002 (corrosive) hazardous waste, and filter solids and filtrate from the manufacture of PPA – D002 (corrosive), D006 (cadmium), and D007 (chromium) hazardous wastes.

79. The solid wastes enumerated in paragraph 78 above were hazardous for the characteristics listed there for each.

80. Since at least the time of the October 2005 inspection and thereafter as to some or all of the above wastes, Defendant did not determine if any of the solid wastes enumerated in paragraph 78 were hazardous wastes, in violation of IDAPA 58.01.05.006, incorporating 40 C.F.R. § 262.11.

81. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a), (g), for each day they failed to make a hazardous waste determination for solid wastes generated at the Facility.

SECOND CLAIM FOR RELIEF

(RCRA - Treatment, Storage, or Disposal of Hazardous Waste in the Gypsum Stack Without a Permit or Interim Status)

82. The allegations in paragraphs 1-22 and 45-68 are re-alleged and incorporated herein by reference.

83. RCRA Section 3005(a), 42 USC § 6925(a), 40 C.F.R. Parts 264/265 and 270, Idaho Code 39-4409, and IDAPA 58.01.05.008-.009, .012, incorporating the requirements of 40 C.F.R. Parts 264/265 and 270, require, among other things, that the owner and operator of a hazardous waste management unit must have a permit (or interim status) for the treatment, storage, or disposal of any hazardous waste during the active life of the unit.

84. Since at least the time of the October 2005 inspection, and continuing thereafter to the present, Defendant routinely circulated gypsum slurry in the Facility's Phosphogypsum Stack System. The gypsum slurry is a mixture which has at times included all, and currently includes some, of the following hazardous wastes:

a. Air pollution control scrubber blowdown (effluent), including but not limited to scrubber effluent from the digester, belt filters, and tank farm -- a D002

(corrosive) and D006 (cadmium) hazardous waste, managed in the gypsum pond;

b. Wastewaters and solids generated from cleaning tanks, piping and other equipment associated with phosphoric acid manufacturing and fertilizer manufacturing, including but not limited to washing of belt filters, evaporators, the digester, tank underflow lines, the MRC Clarifier/Tank 50, and SPA reactor -- D002 (corrosive) and D006 (cadmium) hazardous wastes, managed in the gypsum stack;

c. Condensate water from the manufacture of PPA and SPA – a D002 (corrosive) and D007 (chromium) hazardous waste, managed in the gypsum stack.

85. Defendant did not have a RCRA hazardous waste permit (or interim status) for treatment, storage, or disposal in the Facility's Phosphogypsum Stack System, and therefore have been in continuous violation of Section 3005 of RCRA, 42 U.S.C. § 6925, Idaho Code 39-4409, and IDAPA 58.01.05.008-.009, .012, incorporating the requirements of 40 C.F.R. Parts 264/265 and 270. Nor did Defendant have a RCRA hazardous waste permit (or interim status), or qualify for a storage exemption, for short-term accumulation of hazardous wastes associated with production of granulated fertilizers, prior to those wastes being recycled back into the granulation process. As of the October 2005 inspection and continuing thereafter, in some cases to the present, Defendant did not comply with applicable RCRA hazardous waste permit requirements, including the requirements for the owner and operator of a facility:

a. to develop and follow a written waste analysis plan describing the procedures that will be carried out to comply with the requirements set forth at 40 C.F.R. § 264.13(a), and to keep this plan at the facility (40 C.F.R. § 264.13(b));

b. to have a contingency plan for the facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water (40 C.F.R. § 264.51(a)); IDAPA 58.01.05.008);

c. to have a written closure plan and post-closure plan for the facility, and contingent closure and post-closure plans for certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure, and to submit the required closure and post-closure plans for approval as part of a permit application (40 C.F.R. §§ 264.112(a), 264.118(a); IDAPA 58.01.05.008);

d. to have a detailed written estimate, in current dollars, of the cost of closing the facility and for post-closure monitoring and maintenance of the facility, in accordance with applicable closure and post-closure regulations (40 C.F.R. §§ 264.142(a), 264.144; IDAPA 58.01.05.008);

e. to establish financial assurance for closure and post-closure care of the facility in accordance with the approved closure and post-closure plans for the facility and choose from the specified financial assurance options set forth in 40 C.F.R. § 264.143(a) - (f) (40 C.F.R. §§ 264.143, 264.145; IDAPA 58.01.05.008); and

f. to demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the facility by maintaining liability coverage for non-sudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs (40 C.F.R. § 264.147(b); IDAPA 58.01.05.008).

86. Defendant is liable for injunctive relief and civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a), (g), for their continuing treatment, storage, or disposal of hazardous waste without a permit (or interim status), and their continuing failure to comply with some or all of the requirements associated therewith.

THIRD CLAIM FOR RELIEF

(RCRA - Failure to Meet Land Disposal Restrictions for Prohibited Hazardous Wastes)

87. The allegations in paragraphs 1-22 and 45-68 are re-alleged and incorporated herein by reference.

88. IDAPA 58.01.05.011, incorporating 40 C.F.R. Part 268, Subpart A, requires, among other things, that a prohibited waste which exhibits a characteristic under 40 C.F.R. Part 261, subpart C may not be land disposed unless the waste complies with the treatment standards under subpart D of 40 C.F.R. Part 268 (40 C.F.R. § 268.9(c)); that a generator of hazardous waste must determine if the waste needs to be treated before it can be land disposed (40 C.F.R. § 268.7(a)); and that the initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of 40 C.F.R. Part 268, Land Disposal Restrictions (LDRs) (40 C.F.R. § 268.9(a)).

89. IDAPA 58.01.05.011, incorporating 40 C.F.R. § 268.40(a), requires, among other things, that a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For D002 corrosive wastewaters, the waste must meet the DEACT code and also meet 40 C.F.R. § 268.48. For D006 (cadmium) and D007 (chromium) wastewaters, the waste must have no more than the specified concentrations (0.69 milligrams per liter (mg/l) and 2.77 mg/l, respectively) and must meet 40 C.F.R. § 268.48 standards.

90. Since at least the time of the October 2005 inspection, and continuing thereafter to the present, Defendant routinely disposed of hazardous waste, which is prohibited from land disposal pursuant to IDAPA 58.01.05.011, incorporating 40 C.F.R. §§ 268.9(c), 268.40(a), and 268.48 ("prohibited waste"), in the Facility's gypsum stack. Nor did Defendant comply with other LDR requirements of 40 C.F.R. Part 268, incorporated by IDAPA 58.01.05.011, including requirements to determine if the waste needed to be treated before being land disposed, and to determine the applicable waste code(s) necessary to determining the applicable treatment standards for such waste.

91. At the time of the October 2005 inspection, the following hazardous wastes were eventually being disposed of in the gypsum stack, a practice that continued thereafter to the present for some or all of these wastes:

a. Air pollution control scrubber blowdown (effluent), including but not limited to scrubber effluent from the digester, belt filters, and tank farm -- a D002 (corrosive) and D006 (cadmium) hazardous waste, managed in the gypsum stack;

b. Wastewaters and solids generated from cleaning tanks, piping and other equipment associated with phosphoric acid manufacturing and fertilizer manufacturing, including but not limited to washing of belt filters, evaporators, the digester, tank underflow lines, the MRC Clarifier/Tank 50, and SPA reactor -- D002 (corrosive) and D006 (cadmium) hazardous wastes, managed in the gypsum stack;

c. Condensate water from the manufacture of PPA and SPA – a D002 (corrosive) and D007 (chromium) hazardous waste, managed in the gypsum stack.

92. At the time of the October 2005 inspection, slurry from the gypsum thickeners and disposed of in the Phosphogypsum Stack System was a characteristic hazardous waste, containing 23.1 mg/l cadmium, 67.4 mg/l chromium and had a pH of 0.8. This waste was a prohibited waste in that it was the result of treatment of a D002 and D006 hazardous waste, did not meet the treatment standards for hazardous waste set forth at 40 C.F.R. § 268.40(a) and incorporated by IDAPA 58.01.05.011, and did not meet the Universal Treatment Standards for chromium set forth at 40 C.F.R. § 268.48 and incorporated by IDAPA 58.01.05.011.

93. At the time of the October 2005 inspection, the gypsum stack decant water in the west portion of the gypsum stack, and the gypsum solids there saturated with decant water, which were placed on the land, were a characteristic hazardous waste and contained at least 3.18 mg/l of cadmium, at least 6.86 mg/l of chromium, and had a pH of 1.4. This waste was a prohibited waste, in that it was the result of treatment of D002 and D006 hazardous waste, was also a D007 hazardous waste, did not meet the treatment standards for hazardous waste set forth at 40 C.F.R. § 268.40(a) and incorporated by IDAPA 58.01.05.011, and did not meet the

Universal Treatment Standards for cadmium and chromium set forth at 40 C.F.R. § 268.48 and incorporated by IDAPA 58.01.05.011.

94. Because the wastes described in paragraphs 92 and 93 did not meet the treatment standards for land disposal of hazardous waste at 40 C.F.R. § 268.40(a), Simplot's failure to comply with those standards violated IDAPA 58.01.05.01, incorporating 40 C.F.R. §§ 268.9(c), 268.40(a), and 268.48.

95. Defendant is liable for injunctive relief and civil penalties, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a), (g), for their continuing failure to meet the standards for prohibited waste being land disposed in the gypsum stack.

FOURTH CLAIM FOR RELIEF

(CAA – Exceeding Fluoride Limit for the Reclaim Cooling Towers)

96. The allegations in paragraphs 1-7, 23-37, 45-64, and 69-72, are re-alleged and incorporated herein by reference.

97. Condition 12.5 of the Simplot SIP Permit, which contains conditions applicable to the Reclaim Cooling Towers, limits fluoride emissions from each cooling tower cell to 4.9 pounds per hour ("lb/hr") of fluoride. This requirement is incorporated in Condition 13.4 of the Simplot Tier I/Title V Permit.

98. Based on source testing conducted on the Reclaim Cooling Towers, fluoride emissions from one or more Reclaim Cooling Tower cells exceeded 4.9 pounds/hour (lb/hr) on one or more occasions on or after May 19, 2004.

99. Defendant is liable for injunctive relief and civil penalties pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for operating the Reclaim Cooling Towers with fluoride emissions exceeding 4.9 lb/hr on one or more days between approximately May 19, 2004 and the present. Such operation violates Condition 12.5 of the Simplot SIP Permit and

Condition 13.4 of the Simplot Tier I/Title V Permit, and thus violates Sections 113 and 502(a) of the CAA, 42 U.S.C. §§ 7413, 7661a(a).

FIFTH CLAIM FOR RELIEF

(CAA – Introducing Scrubber Effluent to the Reclaim Cooling Towers)

100. The allegations in paragraphs 1-7, 23-37, 45-64, and 69-72, are re-alleged and incorporated herein by reference.

101. The Facility is subject to the Phosphate Acid Manufacturing NESHAP (Subpart AA), because the Facility is a "phosphoric acid manufacturing plant" within the meaning of 40 C.F.R. § 63.600(b) that is not a "research and development facility" as defined in 40 C.F.R. § 63.601.

102. Subpart AA applies to each evaporative cooling tower at a phosphoric acid manufacturing plant subject to Subpart AA pursuant to 40 C.F.R. § 63.600(b)(2).

103. The three Reclaim Cooling Towers at the Facility are "evaporative cooling towers" as defined in Subpart AA, 40 C.F.R. § 63.601.

104. Subpart AA, 40 C.F.R. § 63.602(c), provides that, beginning on June 10, 2002, no owner or operator of a phosphoric acid manufacturing plant shall introduce into any evaporative cooling tower that commenced construction on or before December 27, 1996, any liquid effluent from any absorber (also referred to as a wet scrubbing device) installed to control emissions from process equipment. This prohibition applies to each of the Reclaim Cooling Towers at the Facility, the construction of each of which occurred on or before December 27, 1996.

105. Condition 12.7 of the Simplot Tier I/Title V Permit incorporates the requirements of 40 C.F.R. § 63.602(c).

106. Liquid effluents from wet scrubbing devices installed to control emissions from process equipment at the Facility are introduced into the Reclaim Cooling Towers.

107. Defendant is liable for injunctive relief and civil penalties pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for introducing into the Reclaim Cooling Towers liquid effluent from wet scrubbing devices (installed to control emissions from process equipment at the Facility) during each day of operation after June 10, 2002. Such operation violates 40 C.F.R. § 63.602(c) and Condition 12.7 of Simplot's Tier I/Title V Permit, and thus violates Sections 112 and 502(a) of the CAA, 42 U.S.C. §§ 7412, 7661a(a).

SIXTH CLAIM FOR RELIEF

(CERCLA – Reporting of Releases of Hazardous Substances)

108. The allegations in paragraphs 1-7, 38, 43-64, and 73-75, are re-alleged and incorporated herein by reference.

109. "Hazardous substances" within the meaning of CERCLA are designated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and are listed in 40 C.F.R. § 302.4, Table 302.4, where EPA has established a specific reportable quantity for each hazardous substance.

110. 40 C.F.R. § 302.6(a) requires in relevant part that any person in charge of a facility, as soon as he or she has knowledge of a release of a hazardous substance from the facility that has occurred in any 24-hour period (other than a federally permitted release) in a quantity equal to or exceeding the reportable quantity established by EPA, to report that release immediately to the National Response Center (NRC).

111. Hydrogen fluoride (HF) is listed in Table 302.4 as a hazardous substance with a reportable quantity of 100 pounds.

112. "Unlisted hazardous wastes characteristic of corrosivity" (denoted by the RCRA hazardous waste code D002) is listed in Table 302.4 as a hazardous substance with a reportable quantity of 100 pounds.

113. "Unlisted hazardous wastes characteristic of toxicity" (denoted by the RCRA hazardous waste codes D006 and D007) are listed in Table 302.4 as hazardous substances each with a reportable quantity of 10 pounds.

114. From at least 2004 to approximately 2016, Defendant released HF to the environment in quantities exceeding the reportable quantity of 100 pounds, and the releases were not federally permitted.

115. From at least 2004 to approximately 2016, Defendant released unlisted hazardous wastes characteristic of corrosivity (denoted by the RCRA hazardous waste code D002) to the environment in quantities exceeding the reportable quantity of 100 pounds. The release by the facility of unlisted hazardous wastes exhibiting the characteristic of corrosivity was not federally permitted.

116. Since at least 2004, Defendant has released to the environment from its facility unlisted hazardous wastes exhibiting the characteristic of toxicity (denoted by the RCRA hazardous waste codes D006 and D007) in quantities exceeding the reportable quantity of 10 pounds in a 24-hour period. The release by the facility of unlisted hazardous wastes exhibiting the characteristic of toxicity is not federally permitted.

117. Defendant did not report to the National Response Center the daily releases from the Facility of HF until 2010. Defendant did not report unlisted hazardous wastes characteristic of corrosivity, nor unlisted hazardous wastes characteristic of toxicity.

118. Defendant's failure to report to the National Response Center its daily releases from the Facility of HF, unlisted hazardous wastes exhibiting the characteristic of toxicity, and unlisted hazardous wastes exhibiting the characteristic of corrosivity violated 40 C.F.R. § 302.6(a). Defendant is liable for civil penalties pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), for each such failure to report.

SEVENTH CLAIM FOR RELIEF

(EPCRA – Notification of Releases of Hazardous Substances)

119. The allegations in paragraphs 1-7, 39-64, and 73-75, are re-alleged and incorporated herein by reference.

120. Section 304(a) of EPCRA, 42 U.S.C. § 1104(a), and 40 C.F.R. § 355.30, provide that if the owner or operator of a facility that produces, uses, or stores a hazardous chemical and releases a reportable quantity of an extremely hazardous substance, and such release requires a notification under CERCLA Section 103(a), then that the owner or operator of the facility shall provide notice of the release to designated local and state emergency response authorities (the Local Emergency Planning Committee (LEPC) (or other relevant local emergency response personnel if there is no LEPC) and the State Emergency Response Commission (SERC).

121. Notice of the release of an extremely hazardous substance subject to the release notification requirement of CERCLA Section 103(a) must be made in accordance with the provisions of 40 C.F.R. § 355.42(a).

122. On a daily basis from at least 2004 to approximately 2016, Defendant released HF, an extremely hazardous substance subject to the release notification requirement of CERCLA Section 103(a), from the Facility to the environment in excess of the daily reportable quantity, but Defendant did not notify the designated local or state emergency response

authorities of these releases with either an immediate or written follow-up emergency notification.

123. 40 C.F.R. § 355.31 lists releases that are exempt from the emergency release reporting provisions of 40 C.F.R. § 355.30. None of the listed exemptions apply to Defendant's releases of HF from the Facility.

124. Defendant violated 40 C.F.R. § 355.42(a)(1) when it failed to provide an immediate notification of its daily releases of HF to the LEPC from at least 2004 to approximately 2016 in accordance with the procedures specified at 40 C.F.R. § 355.40(a).

125. Defendant violated 40 C.F.R. § 355.42(a)(2) when it failed to provide an immediate notification of its daily releases of HF to the SERC from at least 2004 to approximately 2016 in accordance with the procedures specified at 40 C.F.R. § 355.40(a).

126. Defendant violated 40 C.F.R. § 355.42(a)(1) when it failed to provide written follow-up emergency notification of its daily releases of HF to the LEPC from at least 2004 to approximately 2016 in accordance with the procedures specified at 40 C.F.R. § 355.40(b).

127. Defendant violated 40 C.F.R. § 355.42(a)(2) when it failed to provide written follow-up emergency notification of its daily releases of HF to the SERC from at least 2004 to approximately 2016 in accordance with the procedures specified at 40 C.F.R. § 355.40(b).

128. Defendant is liable for civil penalties pursuant to EPCRA Section 325(b)(3), 42 U.S.C. § 11045(b)(3), for each failure to notify the LEPC and SERC of its daily releases.

EIGHTH CLAIM FOR RELIEF

(EPCRA - Failure to Submit Complete Annual Toxic Release Reports)

129. The allegations in paragraphs 1-7, 39-64, and 73-75, are re-alleged and incorporated herein by reference.

130. The toxic metal compounds in phosphate ore that have been chemically converted to different compounds through the acid digestion process at the Facility have been "manufactured" within the meaning of EPCRA Section 313, 42 U.S.C. § 11023. In each of years of 2004 through 2010, Defendant manufactured, processed, or otherwise used at the Facility, in excess of the reporting threshold of 25,000 pounds set forth in 40 C.F.R. § 372.25, compounds containing the following toxic chemicals listed in 40 C.F.R. § 372.65: barium, cadmium, chromium, copper, lead, manganese, nickel, selenium, vanadium, and zinc. Plaintiff believes that, after a reasonable opportunity for further investigation and discovery, it is likely that the evidence will show that in each of years 2011 and 2012, Defendant likewise manufactured, processed, or otherwise used the foregoing toxic metal compounds at the Facility in excess of the reporting threshold of 25,000 pounds, and therefore this fact is also alleged.

131. Pursuant to Section 313(c) of EPCRA and 40 C.F.R. § 372.30, Defendant has been required to submit to EPA and to the State in which the facility is located, a Form R toxic release report for each calendar year in which any of the toxic chemicals listed in 40 C.F.R. § 372.65 were "manufactured, processed or otherwise used" at the Facility in excess of 25,000 lbs.

132. Defendant did not submit a Form R toxic release report to EPA or to the State of Idaho for reporting years 2004 through 2010 that included a listing of the quantities of the compounds listed in paragraph 130 above that were manufactured, processed, or otherwise used at the Facility in each of those years, although their quantities each exceeded the reporting threshold. Plaintiff believes that, after a reasonable opportunity for further investigation and discovery, it is likely that the evidence will show that Defendant did not file complete toxic release reports, listing all or some of these same toxic chemicals manufactured, processed, or

otherwise used at the Facility in excess of the reporting threshold, for the reporting years 2011 and 2012, and therefore this fact is also alleged.

133. Defendant's failure to submit complete toxic release reports as required for reporting years 2004 through 2012 violated the requirements of EPCRA Section 313 and 40 C.F.R. § 372.30.

134. Defendant is liable for civil penalties pursuant to Sections 325(b)(3) and (c)(4) of EPCRA, 42 U.S.C. §§ 11045(b)(3) and (c)(4), for failure to submit complete annual Form R toxic release reports for reporting years 2004 through 2013.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Permanently enjoin Defendant from further violations of RCRA and its implementing regulations that are incorporated, respectively, into the authorized Idaho hazardous waste program;

2. Permanently enjoin Defendant from further violations of the CAA and its implementing regulations, including Subpart AA, the federally enforceable requirements of the Idaho SIP, and federally enforceable requirements of permits issued by Idaho DEQ pursuant to the SIP and Idaho's Title V permit program;

3. Order Defendant to complete expeditiously all actions necessary to achieve and maintain compliance at the Facility with the statutory and regulatory requirements cited in this Complaint;

4. Assess civil penalties against the Defendant for up to the maximum amounts for the applicable periods of violation provided in RCRA, the CAA, CERCLA, and EPCRA, and as provided by 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. Part 19; and,

5. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

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_/s/ David Rosskam_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 11, 2023, the foregoing **COMPLAINT** was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following person(s):

N/A

And, I hereby certify that I caused the following listed non-registered CM/ECF participant to be served by U.S. Mail, postage prepaid:

James B. Alderman
Sr. Vice President, Secretary &
General Counsel
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707

/s/ David Rosskam
David Rosskam
Senior Counsel