

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

J.R. Simplot Company

AGREED ORDER

No. DE 16890

TO: Alan Prouty
Vice President, Regulatory Affairs
J.R. Simplot Company
1099 W Front Street
Boise, ID 83701

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Department of Ecology
Eastern Washington Office

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and J.R. Simplot Company (“Simplot”) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Simplot to implement the Cleanup Action Plan (CAP -Exhibit A). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Simplot agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Simplot’s responsibility under this Order. Simplot shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Warden City Former Water Supply Well No. 4 and Warden City Water Supply Well No. 5 Site (Site) and is generally located at Warden, Grant County, Washington. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors

currently known to Ecology, the Site is generally located at 1800 West First Street, Warden, WA 98857, Grant County Parcel No. 060697000 as shown in the Site Location Diagram (Exhibit B).

- B. Parties: Refers to the State of Washington, Department of Ecology and Simplot.
- C. Potentially Liable Persons (PLP(s)): Refers to Simplot.
- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Simplot:

A. Based upon factors currently known to Ecology, the Site is generally located at 1800 West First Street, Warden, WA 98857, Grant County Parcel No. 060697000 as shown in the Site Location Diagram (Exhibit B). The Site consists of Warden City former water supply well number 4 and Warden City current water supply well number 5, and property owned by Simplot. The Site is located at latitude 46.970 degrees north and longitude 119.061 degrees west using the NAD83(2011) geoid. UTM coordinates are: Zone 11N, 343,225.886 E, 5,203,891.935 N. State planar coordinates (SPC) are: Zone WA S-4602; 609,492.870m E, 182,917.059m N.

B. The Site is listed on Ecology's Hazardous Sites List as the "Warden City Water Supply Wells 4 & 5 Site," Facility Site ID No. 2802409 and Cleanup Site ID No. 1618. Ecology has assigned the Site an overall priority ranking of three (3) pursuant to WAC 173-340-330.

C. Between approximately 1971 and 1992, the Site was used by Simplot for storage, blending, and transport of agricultural chemicals. Between 1971 and 1984 Simplot handled ethylene dibromide (EDB) at the Site until the use of EDB was banned. After 1992 until present day, Simplot uses the Site for storage of agricultural products such as packaged fertilizers. Contamination at the Site is related to blending and storage of EDB formulations. The release of EDB to on-Site soils and groundwater represents a threat to human health or the environment and requires remedial action.

D. Warden City water supply wells numbered 4 and 5 have been contaminated with EDB exceeding health-based standards.

E. Shallow groundwater beneath the Property is contaminated with EDB.

F. Beginning 2006, Ecology conducted investigations at the Site to determine the source of EDB in the city's water supply. Phase I was completed in 2007, and Phase II in 2009. The results indicated the source of EDB contamination was the Simplot Property.

G. Ecology and Simplot entered into Agreed Order No. 8241 on May 27, 2011 to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the Site.

H. Simplot has completed the RI/FS at the Site and after public review submitted a final RI/FS report to Ecology on September 2018.

I. Ecology sent a satisfaction letter for Agreed Order No. 8241 to Simplot on October 17, 2018.

J. Release(s) and/or potential release(s) of hazardous substances occurred at the Site. EDB in soil and groundwater at the Site have been detected at concentrations above MTCA cleanup levels. These hazardous substances have been released, and pose a continuing threat of release into the environment.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Simplot.

A. Simplot is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Simplot dated April 6, 2010, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that

credible evidence supported a finding of potential liability, Ecology issued a determination that Simplot is a PLP under RCW 70.105D.040 and notified Simplot of this determination by letter dated May 11, 2010.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.L. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Simplot take the following remedial actions at the Site. The area within the Site where remedial action is necessary under RCW 70.105D is described in the Remedial Action Location Diagram (Exhibit C). These remedial actions must be conducted in accordance with WAC 173-340:

A. Simplot shall implement the CAP in accordance with the Scope of Work and Schedule attached to this Order (Exhibit D), and all other requirements of this Order. Generally, The CAP requires Simplot to:

1. Drill and sample soil borings to further assess for the presence of EDB and to delineate EDB the soil in more detail, with the purpose to have more data for the design of the remediation system.
2. Excavate approximately 13,000 cubic yards of soil.
3. Treat approximately 1200 cubic yards of excavated contaminated soil by ex-situ vapor extraction (SVE)
4. Backfill excavation with clean and treated soil.
5. Provide for groundwater monitoring to assess effectiveness of soil remedial action.
6. Provide for and maintain institutional controls in the form of environmental covenants in accordance with the Uniform Environmental Covenants Act (UECA – Chapter 64.70 RCW).

B. If Simplot learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, and/or air, Simplot, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. Simplot shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit D) during the current month and any planned deviations in the upcoming month.

4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables for the upcoming month if different from the schedule.

D. Pursuant to WAC 173-340-440(11), Simplot shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

E. Within sixty (60) days of the effective date of this Order, Simplot shall submit to Ecology for review and approval an estimate of the costs under this Order for operation and maintenance of the remedial actions at the Site, including institutional controls, compliance monitoring and corrective measures. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Simplot shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

F. Simplot shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of Simplot's fiscal year if the financial test or corporate guarantee is used.
2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval

of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

G. As detailed in the CAP, institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

H. In consultation with Simplot, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and Simplot.

I. After approval by Ecology, Simplot shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the Grant County Auditor as detailed in the Schedule (Exhibit D). Simplot shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

J. As part of the remedial action for the Site, institutional controls may be required on properties not owned by Simplot. Simplot will ensure that the owner of each affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule and Scope of Work (Exhibit D). Upon a showing that Simplot has made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide assistance to Simplot. Simplot shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

K. All plans or other deliverables submitted by Simplot for Ecology's review and approval under the Scope of Work and Schedule (Exhibit D) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

L. If the Parties agree on an interim action under Section VI.E, Simplot shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Simplot shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval

by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Simplot is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

M. If Ecology determines that Simplot has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Simplot, perform any or all portions of the remedial action or at Ecology's discretion allow the Simplot opportunity to correct. In an emergency, Ecology is not required to provide notice to Simplot, or an opportunity for dispute resolution. Simplot shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

N. Except where necessary to abate an emergency situation or where required by law, Simplot shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Simplot must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

Simplot shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, Simplot shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an

identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Christer Loftenius
Department of Ecology, Toxics Cleanup Program, Eastern Region
4601 North Monroe Street
Spokane, WA 99205-1295
Telephone 509-329-3543
clof461@ecy.wa.gov

The project coordinator for Simplot is:

Rachel Roskelley
J.R. Simplot Company
1099 W Front Street
Boise, ID 83701
(208)780-7426
Rachel.Roskelley@Simplot.Com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Simplot, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change. Simplot shall have one

representative who shall also receive and disseminate correspondence to other individuals affiliated within Simplot. The Simplot representative is:

Mrs. Dedra Williams
J.R. Simplot Company
1099 W. Front Street
Boise, ID 83701
Telephone: (208)780-7360
Email: Dedra.Williams@Simplot.com

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220. The supervising professional must have experience and expertise in hazardous waste site investigation and cleanup.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130. The professional engineer must have experience and expertise in hazardous waste site investigation and cleanup.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130. The professional engineer must have experience and expertise in hazardous waste site investigation and cleanup.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Simplot shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Simplot either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Simplot's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Simplot. Simplot shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Simplot where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Simplot unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Simplot shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Simplot shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Simplot pursuant to implementation of this Order. Simplot shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Simplot and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to

the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify Simplot prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, Simplot shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify Simplot prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Simplot that do not receive prior Ecology approval, Simplot shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. City of Warden Public Library
305 S Main Ave,
Warden, WA 98857
- b. Ecology's Eastern Regional Office
4601 North Monroe Street,
Spokane, WA 99205-1295

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Eastern Regional Office in Spokane, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Simplot shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Simplot shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Simplot may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Simplot withholds any requested records based on an assertion of privilege, Simplot shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that Simplot elects to invoke dispute resolution Simplot must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Simplot has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Simplot's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. Simplot may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII. (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. Simplot's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Simplot to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Simplot including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Simplot.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Simplot.

3. Ecology shall act upon any of Simplot's written requests for extension in a timely fashion. Ecology shall give Simplot written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At Simplot's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Simplot. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, Simplot shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner

after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Simplot to cease such activities for such period of time as it deems necessary to abate the danger. Simplot shall immediately comply with such direction.

In the event Simplot determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, Simplot may cease such activities. Simplot shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Simplot shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Simplot's cessation of activities, it may direct Simplot to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Simplot's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Simplot to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Simplot regarding remedial actions required by this Order, provided Simplot complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, Simplot does not admit to any liability for the Site. Although Simplot is committing to conducting the work required by this Order under the terms of this Order, Simplot expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Simplot without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Simplot's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Simplot shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Simplot shall notify Ecology of said transfer. Upon transfer of any

interest, Simplot shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by Simplot pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit A. Simplot has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Simplot, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Simplot must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Simplot pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit A. If additional relevant and appropriate requirements are identified by Ecology or Simplot, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Simplot must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), Simplot may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Simplot shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. Simplot will identify in its Engineering Design Report any state or local permits or approvals that are applicable but procedurally exempt under this section.

4. Simplot has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Simplot determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Simplot shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Simplot shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Simplot and on how Simplot must meet those requirements. Ecology shall inform Simplot in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Simplot shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and Simplot shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

O. Periodic Review

So long as remedial action continues at the Site, and so long as institutional controls are recorded for the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site, the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90)

days prior to each periodic review, Simplot shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

P. Indemnification

Simplot agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Simplot, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Simplot shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Simplot's receipt of written notification from Ecology that Simplot has completed the remedial activity required by this Order, as amended by any modifications, and that Simplot has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

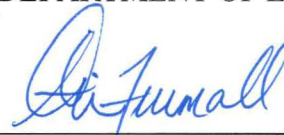
Effective date of this Order: 05/07/2020

J.R. SIMPLOT COMPANY



Alan Prouty
Vice President, Regulatory Affairs
Boise, Idaho
(208) 780-7365

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Ali Furnall
Section Manager
Toxics Cleanup Program
Eastern Regional Office
(509) 329-3436