DAVID ROSSKAM
David.Rosskam@usdoj.gov
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 514-3974
Fax: (202) 514-0097
Attorney for Plaintiff United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, STATE OF IDAHO, and SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT, Plaintiffs, v. J. R. SIMPLOT COMPANY, Defendant.	Case No. 1:15-cv-00562-CWD NOTICE OF LODGING OF CONSENT DECREE

NOTICE OF LODGING OF CONSENT DECREE

Plaintiff, the United States of America, respectfully lodges with the Court the attached proposed consent decree ("Consent Decree") in the above-captioned action. No action is required by the Court at this time. The Consent Decree would resolve the allegations in the complaint filed in this action by the Plaintiffs against J.R. Simplot Company.

Pursuant to Paragraph 97 of the Consent Decree and 28 C.F.R. § 50.7, the public will have thirty (30) days in which to submit comments to the United States Department of Justice on the Consent Decree. The 30-day public comment period will begin on the date notice of the lodging of the Consent Decree is published in the Federal Register. After the public comment period has closed, the United States will inform the Court of its views regarding any comments that may be received and, if the United States believes that entry of the Consent Decree remains warranted, it will at that time move the Court for entry of the Consent Decree.

WHEREFORE, the United States respectfully requests that this Court receive the proposed Consent Decree for lodging only, and that it abstain from acting upon the same until the 30-day public comment period has expired and the United States advises the Court whether, after evaluation of any comments received from the public, the United States supports entry of the Consent Decree.

Dated: December _, 2015

Respectfully submitted,

SAM HIRSCH
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

_s/ David Rosskam_____
DAVID ROSSKAM
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Tel: (202) 514-3974
Fax: (202) 514-0097
david.rosskam@usdoj.gov

WENDY J. OLSON
United States Attorney
District of Idaho

SYRENA CASE HARGROVE, ISB# 6213
Assistant U.S. Attorney
District of Idaho
Washington Group Plaza
800 Park Boulevard, Suite 600
Boise, ID 83712-9903
(208) 334-9122
Syrena.Hargrove@usdoj.gov

OF COUNSEL:

VIRGINIA SORRELL
Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1595 Wynkoop St. (8MSU)
Denver, CO 80202-1129

DAVID KIM
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9 (ORC-2-1)
75 Hawthorne Street
San Francisco, CA 94105

SHELDON MULLER
Senior Attorney
U.S. Environmental Protection Agency
Region 8 (8ENF-L)
1595 Wynkoop St.
Denver, CO 80202-1129

JULIE VERGERONT
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I filed the foregoing document electronically through the CM/ECF system, and that on such date I served the foregoing document via first class mail, postage prepaid, to the following:

Krista K. McIntyre
Stoel Rives LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-7705,
(Attorney for Defendant J.R. Simplot Company)

Lisa J. Carlson
Deputy Attorney General
Office of the Idaho Attorney General
Natural Resources Division
Environmental Quality Section
1410 N. Hilton, 2nd Floor
Boise, ID 83706
(Attorney for Plaintiff State of Idaho)

Matt Beeter
Law Office of Matthew J. Beeter
770 S. 13th St. #9752
Boise, Idaho 83707
(Attorney for Plaintiff San Joaquin Valley Air Pollution Control District)

/s/_____
DAVID ROSSKAM
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Tel: (202) 514-3974
Fax: (202) 514-0097
david.rosskam@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, STATE OF IDAHO, and SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT Plaintiffs, v. J. R. SIMPLOT COMPANY, Defendant.	)	Case No. 1:15-cv-00562-CWD CONSENT DECREE

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint concurrently with this Consent Decree against Defendant, J.R. Simplot Company ("Simplot"), pursuant to Sections 113(b) of the Clean Air Act (the "Act" or "CAA"), 42 U.S.C. § 7413(b), alleging violations at one or all of its sulfuric acid plants in Lathrop, California; Pocatello, Idaho; and Rock Springs, Wyoming (collectively, the "Facilities") of the following statutory and regulatory requirements of the Act:

(1) Prevention of Significant Deterioration ("PSD") requirements found at Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "Federal PSD Rules");

(2) Title V operating permit requirements found at Subchapter V of the CAA, 42 U.S.C. §§ 7661-7661f, and the regulations promulgated thereunder at 40 C.F.R. Parts 70 and 71 (collectively, "Title V Requirements"); and

(3) The federally-enforceable State Implementation Plans ("SIPs") developed by the states of California, Idaho, and Wyoming, which incorporate or implement the above requirements and which establish federally enforceable permitting programs for construction and operation of new and modified sources;

WHEREAS, the Complaint alleges that Simplot has constructed, reconstructed, or modified its sulfuric acid plants without obtaining the proper permits, installing required control technology, meeting emission limits, or complying with the requirements for monitoring, record keeping, and reporting as required by the CAA;

WHEREAS, the State of Idaho ("Idaho") and the San Joaquin Valley Air Pollution Control District ("SJVAPCD") (collectively "Co-Plaintiffs") have joined in this matter alleging

violations of their respective applicable SIP provisions and/or other state and local rules, regulations, and permits incorporating and/or implementing the foregoing federal requirements;

WHEREAS, the Simplot facility in Pocatello, Idaho, is adjacent to the boundary of the Shoshone-Bannock Tribal Reservation and air emissions from Simplot's Pocatello Facility may affect Tribal interests;

WHEREAS, Simplot denies the violations alleged in the Complaint, and maintains that it has been and remains in compliance with the CAA and is not liable for civil penalties or injunctive relief;

WHEREAS, the objective of the Parties in this Consent Decree is to resolve the civil claims for violations of the CAA, alleged in the Complaint, by establishing certain injunctive relief whereby Simplot shall meet emission limits and related compliance assurance provisions for sulfur dioxide emissions from each of its sulfuric acid plants, and for particulate matter with an aerodynamic diameter of 2.5 microns or less and sulfuric acid mist emissions from its #400 sulfuric acid plant in Pocatello, Idaho, and by assessing an appropriate penalty;

WHEREAS, Simplot has conducted itself in good faith in its discussions with the Plaintiff and Co-Plaintiffs concerning the violations alleged in the Complaint, and has already implemented certain operational changes and corrective measures at one or more of its sulfuric acid plants;

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

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

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and over the Parties. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because some of the violations alleged in the Complaint are alleged to have occurred in, and Simplot conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Consent Decree, EPA and Simplot consent to the Court's jurisdiction over this Consent Decree and any such action and over Simplot and further consent to venue in this judicial district. Simplot does not object to the participation of the State of Idaho and the San Joaquin Valley Air Pollution Control District as parties or intervenors in this action.

2. For purposes of this Consent Decree, Simplot agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 113, 165, and 502(a) of the Clean Air Act, 42 U.S.C. §§ 7413, 7475, and 7661a(a).

3. The States of California, Idaho, and Wyoming have actual notice of the commencement of this action in accordance with the requirements of CAA Sections 113(a)(1) and 113(b), 42 U.S.C. §§ 7413(a)(1) and 7413(b).

II. APPLICABILITY

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

5. No transfer of ownership or operation of any of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Simplot of its obligation to ensure that the terms of this Consent Decree are implemented, unless: (1) the transferee agrees in writing to undertake the obligations required by this Consent Decree and to be substituted for Simplot as a Party to the Consent Decree and thus be bound by the terms thereof; and (2) the United States consents in writing to relieve Simplot of its obligations pursuant to Section XIX (Modification) of this Consent Decree. At least thirty (30) Days prior to such transfer, or such other period agreed to by the Parties in writing, Simplot shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement transferring obligations to the transferee, to the United States, EPA, and any Applicable Co-Plaintiff, in accordance with Section XVI (Notices) of this Decree. The United States' determination whether to consent to the transferee's substitution for Simplot under this Consent Decree will take into account the status of Simplot's modifications to the Facilities necessary to allow Simplot to comply with the obligations of this Consent Decree and a demonstration that the transferee has the financial and technical capability to comply with this Consent Decree. Any transfer of

ownership or operation of one or more of the Facilities without complying with this Paragraph constitutes a violation of this Consent Decree.

6. The United States' decision to refuse to consent to the substitution of the transferee for Simplot shall be subject to dispute resolution pursuant to Section XII (Dispute Resolution) of this Consent Decree. If Simplot does not prevail in such judicial review, Simplot shall pay all costs incurred by the United States in connection with such judicial review, including attorney's fees.

7. Simplot shall: (1) provide a copy of this Consent Decree to its President/CEO, Vice President Sustainability, General Counsel, and the Unit Manager, Environmental Manager, and Maintenance Superintendent of each of the Facilities, and shall ensure that any employees and contractors whose duties might reasonably include compliance with any provision of this Consent Decree[1] are made aware of this Consent Decree and specifically aware of the requirements of this Consent Decree that fall within such person's duties; and (2) place an electronic version of the Consent Decree on its internal environmental website. Simplot shall be responsible for ensuring that all employees and contractors involved in performing any Work pursuant to this Consent Decree perform such Work in compliance with the requirements of this Consent Decree.

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

[1] The persons designated may vary by company and/or facility.

III. DEFINITIONS

9. For purposes of this Consent Decree, every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or in state or federal regulations promulgated pursuant to the CAA shall have the same meaning in this Consent Decree as such term has in the CAA or those regulations. In the case of a conflict between federal and state definitions, federal definitions shall control.

a. "100% Sulfuric Acid Produced" shall mean as follows:

(1) For purposes of the Lathrop Plant and #300 Don Plant: "100% Sulfuric Acid Produced" shall mean the quantity of sulfuric acid that would be produced at a Sulfuric Acid Plant multiplied by the concentration of actual sulfuric acid in the product. For example, if a Sulfuric Acid Plant produces 100 tons of a 98% sulfuric acid product, this equals 98 tons of 100% Sulfuric Acid Produced. Simplot shall use a sulfuric acid production meter at the Lathrop Plant and #300 Don Plant to determine production.

(2) For purposes of the #400 Don Plant, Lurgi Plant, and MEC Plant: "100% Sulfuric Acid Produced" shall mean the stoichiometric quantity of sulfuric acid that would be produced at a Sulfuric Acid Plant assuming that all sulfur being fed to the furnace produces sulfuric acid. For example, one mole of sulfur entering the furnace equals one mole of sulfuric acid exiting the plant. Simplot shall use

a sulfur inlet meter at the #400 Don Plant, Lurgi Plant, and MEC Plant to then calculate production.

b. "#300 Don Plant" shall mean the #300 Sulfuric Acid Plant at the Pocatello Facility;

c. "#400 Don Plant" shall mean the #400 Sulfuric Acid Plant at the Pocatello Facility;

d. "Acid Mist" shall mean the pollutant sulfuric acid mist as measured by Method 8 of 40 C.F.R. Part 60, Appendix A consistent with 40 C.F.R. § 60.81(b);

e. "Applicable Co-Plaintiff" shall mean any Co-Plaintiff and its agencies and political subdivisions having jurisdiction over a Facility addressed in this Consent Decree;

f. "CD Emissions Reductions" shall mean any emissions reductions that result from any projects, controls, or any other actions utilized to comply with this Consent Decree;

g. "CEMS" or "Continuous Emission Monitoring System" shall mean the total equipment, required under the CEMS Plan for each Facility attached as Appendix A to this Consent Decree, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters;

h. "CEMS Plan" shall mean the CEMS Plan for the Sulfuric Acid Plants at the Facilities, attached as Appendix A;

i. "Complaint" shall mean the complaint filed by the United States in this action;

j. "Consent Decree" or "Decree" shall mean this Consent Decree and all Appendices identified in Section XXV (Appendices) and attached hereto. In the event of any conflict between this Consent Decree and any Appendix hereto, this Consent Decree shall control;

k. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Idaho;

l. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

m. "Defendant" or "Simplot" shall mean J.R. Simplot Company;

n. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

o. "Effective Date" is defined in Section XVII (Effective Date);

p. "Facilities" shall mean the following manufacturing plants, collectively: the Lathrop Facility, the Pocatello Facility, and the Rock Springs Facility;

q. "IDEQ" shall mean the State of Idaho Department of Environmental Quality and any of its successor departments or agencies;

r. "Interest" shall mean the interest rate specified in 28 U.S.C. § 1961;

s. "Lathrop Facility" shall mean the facility located at 16777 Howland Road, Lathrop, California 95368, which includes one Sulfuric Acid Plant, and which is currently owned and/or operated by Simplot;

t. "Lathrop Plant" shall mean the Lathrop Sulfuric Acid Plant at the Lathrop Facility;

u. "Long-Term SO_2 Limit" shall mean a 365-day rolling average sulfur dioxide emission limit expressed as pounds of sulfur dioxide emitted per ton ("lb/ton") of 100% Sulfuric Acid Produced. Compliance with the Long-Term SO_2 Limit at each Sulfuric Acid Plant shall be determined each day in accordance with the CEMS

Plan attached to this Consent Decree as Appendix A. The Long-Term SO_2 Limit applies at all times, including during periods of Startup, Shutdown, and Malfunction;

v. "Lurgi Plant" shall mean the Lurgi Sulfuric Acid Plant at the Rock Springs Facility;

w. "Malfunction" shall mean, consistent with 40 C.F.R. § 60.2, any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in part by poor maintenance or careless operation;

x. "MEC Plant" shall mean the MEC Sulfuric Acid Plant at the Rock Springs Facility;

y. "NSPS" shall mean the standards of performance for new stationary sources codified at 40 C.F.R. Part 60. General NSPS requirements are codified at 40 C.F.R. Part 60, Subpart A. NSPS requirements specifically for Sulfuric Acid Plants are codified at 40 C.F.R. Part 60, Subpart H;

z. "NSR" shall mean a program for new source review under the CAA. Specifically:

(1) "Non-attainment NSR" and "major NSR" shall mean the non-attainment area new source review program within the meaning of Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501-7515;

(2) "PSD" shall mean the attainment area new source review program (prevention of significant deterioration) within the meaning of Part C of Subchapter I of the CAA, 42 U.S.C. §§ 7470-7492; and

(3) "Minor NSR" shall mean any state, regional or local statutes, ordinances or regulations calling for review and approval of non-major new and modified sources of air pollution;

aa. "O&M Plan" shall mean the operations and maintenance plan for each of the Sulfuric Acid Plants that is discussed in Paragraph 19 below;

bb. "Operating Period" shall mean periods in which elemental sulfur is being fed to the furnace and periods of Shutdown;

cc. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral;

dd. "Parties" shall mean the United States, the Co-Plaintiffs, and Simplot;

ee. "$PM_{2.5}$" shall mean particulate matter with an aerodynamic diameter less than 2.5 microns as measured by EPA Methods 201A and 202. Method 5 may be substituted for Method 201A provided that Method 202 is also used for condensable particulate matter and the test results consider all particulate matter to be $PM_{2.5}$;

ff. "Pocatello Facility" shall mean the facility located approximately 1.5 miles northwest of Pocatello, Idaho, which includes two Sulfuric Acid Plants (known as #300 Don Plant and #400 Don Plant), and which is currently owned and/or operated by Simplot;

gg. "Rock Springs Facility" shall mean the facility located at 515 South Highway 430, Rock Springs, Wyoming 82901, which includes two Sulfuric Acid Plants (known as the Lurgi Plant and the MEC Plant), and which is currently owned and/or operated by Simplot;

hh. "Section" shall mean a portion of this Decree identified by a roman numeral;

ii. "Short-Term SO_2 Limit" shall mean a 3-hour rolling average SO_2 emission limit expressed as pounds of SO_2 emitted per ton ("lb/ton") of 100% Sulfuric Acid Produced. Compliance with the Short-Term SO_2 Limit at each Sulfuric Acid Plant

shall be calculated in accordance with the CEMS Plan attached to this Consent Decree as Appendix A. The Short-Term SO_2 Limit does not apply during periods of Startup, Shutdown, or Malfunction;

jj. "Shutdown" shall mean, consistent with 40 C.F.R. § 60.2, the cessation of operation of a Sulfuric Acid Plant for any purpose. With respect to any Sulfuric Acid Plant, shutdown begins at the time the feed of elemental sulfur to the furnace ceases and ends 3 hours later or when the blower is turned off, whichever is earlier;

kk. "SJVAPCD" shall mean the San Joaquin Valley Air Pollution Control District and any of its successor departments or agencies;

ll. "SO_2" shall mean the pollutant sulfur dioxide;

mm. "Startup" shall mean, consistent with 40 C.F.R. § 60.2, the setting in operation of a Sulfuric Acid Plant for any purpose. With respect to any Sulfuric Acid Plant, startup begins at the time the feed of elemental sulfur to the furnace commences and lasts for no more than 4 hours;

nn. "Sulfuric Acid Plant" or "Plant" shall mean a process unit engaged in the production of sulfuric acid and related products using the contact process at any of the Facilities;

oo. "Title V Permit" shall mean a permit required by or issued pursuant to the requirements of 42 U.S.C. §§ 7661 - 7661f;

pp. "Ton" or "Tons" shall mean short ton or short tons. One Ton equals 2000 pounds;

qq. "United States" shall mean the United States of America, acting on behalf of EPA; and

rr. "Work" shall mean any activity that Simplot must perform to comply with the requirements of this Consent Decree, including Appendices.

IV. CIVIL PENALTY

10. Within thirty (30) Days after the Effective Date of this Consent Decree, Simplot shall pay the sum of $899,000 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging, in accordance with the following subparagraphs and as follows: (1) $732,000 to the United States; and (2) $167,000 to the State of Idaho.

a. Simplot shall pay $732,000 to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice, in accordance with written instructions to be provided by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Idaho to Simplot following lodging of the Consent Decree. Any funds received after 11:00 a.m. (Eastern Time) shall be credited on the next business day. At the time of payment, Simplot shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XVI (Notices) of this Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

The transmittal letter shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. J. R. Simplot

Company, and shall reference the civil action number and DOJ case number 90-7-1-08388/14.

b. Payment of the civil penalty owed to the State of Idaho under this Paragraph shall be made by certified or corporate check made payable to the Department of Environmental Quality and sent to the following address:

Accounts Receivable – Fiscal Office
Air Quality Penalty Payment
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255

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

V. COMPLIANCE REQUIREMENTS

12. **Lathrop Plant SO_2 Limits.**

a. Short-Term SO_2 Limit. Beginning December 1, 2015, during all Operating Periods other than Startup, Shutdown, and Malfunction ("SSM"), Simplot shall meet a Short-Term SO_2 Limit of 2.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

b. Long-Term SO_2 Limit. Beginning on December 1, 2015, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan, but shall have until December 1, 2016 to demonstrate compliance with the Long-Term SO_2 Limit of 1.6 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS

Plan. Thereafter, Simplot shall continue to meet the Long-Term SO_2 Limit of 1.6 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

13. **#300 Don Plant SO_2 and Production Limits.**

a. Short-Term SO_2 Limit. Beginning on December 1, 2015, during all Operating Periods other than SSM, Simplot shall meet a Short-Term SO_2 Limit of 2.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

b. Long-Term SO_2 Limit.

(1) Beginning on December 1, 2015, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan, but shall have until December 1, 2016 to demonstrate compliance with the Long-Term SO_2 Limit of 2.0 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

(2) Beginning on July 1, 2018 or such earlier date as Simplot shall specify in prior written notice to EPA, Simplot shall meet a Long-Term SO_2 Limit of 1.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

c. Production Limit. The maximum production rate shall not exceed 1750 tons of 100% Sulfuric Acid Produced per day until no earlier than 364 days before the emission limit specified in Paragraph 13.b (2) above is in effect, either as a result of the specified compliance date or written notice by Simplot to EPA that Simplot wishes to accept an earlier date, as specified therein.

14. **#400 Don Plant SO_2, Acid Mist, $PM_{2.5}$, and Production Limits.**

a. Short-Term SO_2 Limit. Beginning on December 1, 2015, during all Operating Periods other than SSM, Simplot shall meet a Short-Term SO_2 Limit of 2.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

b. Long-Term SO_2 Limit.

(1) Beginning on December 1, 2015, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan, but shall have until December 1, 2016 to demonstrate compliance with the Long-Term SO_2 Limit of 1.6 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan.

(2) If, prior to termination of this Consent Decree, Simplot applies for a construction permit to replace the converter at the #400 Don Plant, obtains a construction permit to replace the converter at the #400 Don Plant, or commences construction to replace the converter at the #400 Don Plant, no later than 180 days from Startup following such construction, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan, but shall have 365 additional days to demonstrate compliance with the Long-Term SO_2 Limit of 1.2 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

c. Production Limit. The maximum production rate shall not exceed 789,579 tons of 100% Sulfuric Acid Produced in any consecutive 12-month period until no earlier

than 364 days before the emission limit specified in Paragraph 14.b (2) above is in effect.

d. Acid Mist Emission Limit. Beginning on the Effective Date of the Consent Decree, emissions from the #400 Don Plant shall not exceed 0.05 lb of Acid Mist per ton of 100% Sulfuric Acid Produced. Compliance with this limit is to be demonstrated using the performance test required by 40 C.F.R. Part 60, Appendix A, Reference Method 8, or an alternative method approved by EPA. This test may serve as the NSPS performance test required under 40 C.F.R. § 60.8. Simplot shall take all steps necessary to assure accurate measurements of 100% Sulfuric Acid Produced during each test run. Simplot shall conduct the first test no later than six months after the Effective Date of the Consent Decree, as required by and in compliance with Paragraph 21. Thereafter, Simplot shall conduct annual stack tests by December 31 of each calendar year and will submit the results of each test in the first report due under Section IX (Reporting Requirements) that is at least two months after the test.

e. $PM_{2.5}$ Emission Limit. Beginning on the Effective Date of the Consent Decree, emissions from the #400 Don Plant shall not exceed 0.08 lb of $PM_{2.5}$ per ton of 100% Sulfuric Acid Produced. Compliance with this limit is to be demonstrated using EPA Methods 201A and 202, except that Method 5 may be substituted for Method 201A provided that Method 202 is also used for condensable particulate matter and the test results consider all particulate matter to be $PM_{2.5}$. Simplot shall take all steps necessary to assure accurate measurements of 100% Sulfuric Acid Produced during each test run. Simplot shall conduct the first test no later than six

months after the Effective Date of the Consent Decree, as required by and in compliance with Paragraph 21. Thereafter, Simplot shall conduct annual stack tests by December 31 of each calendar year and will submit the results of each test in the first report due under Section IX (Reporting Requirements) that is at least two months after the test. Upon demonstrating through at least five annual tests that the $PM_{2.5}$ emission limit is not being exceeded, Simplot may request EPA and IDEQ approval to conduct tests under this Consent Decree less frequently than annually. Such approval will not be unreasonably withheld.

f. Opportunity to Request Modification of $PM_{2.5}$ Emission Limit. If during the first five (5) years following the Effective Date of the Consent Decree, stack test results using EPA Method 201A and 202 show that $PM_{2.5}$ emissions at the #400 Don Plant exceed 0.08 lb of $PM_{2.5}$ per ton of 100% Sulfuric Acid Produced, despite best efforts at design, installation, operation, and maintenance of controls, Simplot may submit a request, to EPA and IDEQ, to increase the $PM_{2.5}$ emission limit, not to exceed 0.11 lb $PM_{2.5}$ per ton of 100% Sulfuric Acid Produced. Such request shall include all available $PM_{2.5}$ emissions data for the #400 Don Plant (using the controls existing at that plant as of the Effective Date), as well as a description of any efforts taken by Simplot or its technology vendors, contractors, or consultants to achieve compliance with that emission limit, along with any supporting documentation. The increased limit will be calculated using all available, but no less than five, stack test results that used EPA Methods 201A and 202 for the #400 Don Plant (using the controls existing at that plant as of the Effective Date) and in accordance with the following formula, except that if the calculation exceeds 0.11

lb of $PM_{2.5}$ per ton of 100% Sulfuric Acid Produced then the increased limit would be set at 0.11 lb of $PM_{2.5}$ per ton of 100% Sulfuric Acid Produced:

$$\text{Limit} = \bar{X} + 1.96*\sigma$$

where:

$\bar{X}$ = the sample mean of n stack tests (lb $PM_{2.5}$ / ton 100% Sulfuric Acid Produced)

σ = the standard deviation of n stack tests (lb $PM_{2.5}$ / ton 100% Sulfuric Acid Produced)

n = the number of stack tests that have been performed using EPA Method 201A and 202; n shall be greater than or equal to 5

EPA, after consultation with IDEQ, may grant or deny Simplot's request, in whole or in part, based on Simplot's submission under this Paragraph, including the available $PM_{2.5}$ emissions data for the #400 Don Plant (using the controls existing at that plant as of the Effective Date). If EPA approves Simplot's demonstration and request for an increased $PM_{2.5}$ emission limit, the approved increased limit shall be deemed to have been effective under Paragraph 14.e and in lieu of the previous limit during (a) the time when achievement of the previous limit was infeasible (including any period of time that occurred prior to submittal of the demonstration), (b) the pendency of EPA's review of Simplot's demonstration, and (c) the pendency of any proceeding undertaken pursuant to Section XII (Dispute Resolution).

15. **Lurgi Plant SO_2 Limits.**

a. Short-Term SO_2 Limit.

(1) Beginning on December 1, 2015, during all Operating Periods other than SSM, Simplot shall meet a Short-Term SO_2 Limit of 4.0 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

(2) Beginning on July 1, 2019, during all Operating Periods other than SSM, Simplot shall meet a Short-Term SO_2 Limit of 2.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

b. Long-Term SO_2 Limit.

(1) Beginning on December 1, 2015, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan, but shall have until December 1, 2016 to demonstrate compliance with the Long-Term SO_2 Limit of 3.0 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

(2) Beginning on July 1, 2020, Simplot shall meet a Long-Term SO_2 Limit of 1.2 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

16. **MEC Plant SO_2 Limits.**

a. Short-Term SO_2 Limit. Beginning on December 1, 2015, during all Operating Periods other than SSM, Simplot shall meet a Short-Term SO_2 Limit of 2.5 lb of SO_2 per ton of 100% Sulfuric Acid Produced as provided in the CEMS Plan.

b. Long-Term SO_2 Limit. Beginning on December 1, 2015, Simplot shall commence monitoring its SO_2 emissions in accordance with the CEMS Plan. No later than January 1, 2017, Simplot shall submit, to EPA for review and approval, the CEMS data collected from December 1, 2015 to December 1, 2016 at the MEC Plant, along with a determination of whether that data demonstrates that Simplot is

meeting a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan.

(1) If the CEMS data collected from December 1, 2015 to December 1, 2016 demonstrates that Simplot is meeting a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan, then Simplot shall begin complying with a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan.

(2) If the CEMS data collected from December 1, 2015 to December 1, 2016 fails to demonstrate that Simplot is meeting a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, Simplot shall begin complying with a Long-Term SO_2 Limit of 2.2 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan, and shall, no later than March 1, 2017, submit to EPA a plan with a detailed description of additional work at the MEC Plant designed to achieve a Long-Term SO_2 Limit of no greater than 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced. No later than November 1, 2019, Simplot shall meet a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, as provided in the CEMS Plan.

17. **NSPS Applicability and Requirements.** By no later than the Effective Date, the Lathrop Plant, #300 Don Plant, #400 Don Plant, Lurgi Plant, and MEC Plant shall each be considered an affected facility for purposes of the NSPS, 40 C.F.R. Part 60, Subpart A and

Subpart H. Each Sulfuric Acid Plant shall comply with all applicable requirements for affected facilities under the NSPS 40 C.F.R. Part 60, Subparts A and H, and with the requirements of this Consent Decree, including the requirements of the CEMS Plan. The monitoring methods specified in the CEMS Plan are deemed approved as appropriate alternative monitoring methods for purposes of NSPS, pursuant to 40 CFR 60.13(i), as provided in the CEMS Plan. Satisfactory compliance with the notice and compliance demonstration obligations set forth in this Consent Decree shall be deemed to satisfy all applicable initial notification and compliance demonstration requirements of NSPS Subparts A and H.

18. **Air Pollution Control Practices.** At all times after the Effective Date of this Consent Decree, including periods of SSM, Simplot shall, to the extent practicable, maintain and operate each of its Sulfuric Acid Plants including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions, consistent with 40 C.F.R. § 60.11(d).

19. **Operation and Maintenance Plans.** No later than ninety (90) days after the Effective Date of the Consent Decree, Simplot shall prepare, implement, and submit to EPA, and any Applicable Co-Plaintiff, in the manner set forth in Section XVI (Notices), an Operation and Maintenance Plan ("O &M Plan") for each Sulfuric Acid Plant. The O&M Plans shall describe the operating and maintenance procedures necessary to: a) minimize the frequency of Sulfuric Acid Plant Shutdowns (thereby reducing the number of Startups of each Sulfuric Acid Plant); and b) at all times, including during periods of SSM, maintain and operate each Sulfuric Acid Plant, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. No less frequently than once every three years, Simplot shall review, and update as necessary, the O&M Plan for each Sulfuric Acid Plant

and submit the updated plan to EPA and any Applicable Co-Plaintiff. Upon submission of each O&M Plan, Simplot shall immediately implement the O&M Plan. EPA and any Applicable Co-Plaintiff may provide comments and/or recommendations with respect to each O&M Plan or revision thereof, but each O&M Plan and revision is not subject to Paragraph 22.

20. **Emissions Monitoring.**

a. Installation, Certification, and Calibration. By no later than the following dates, Simplot shall install, certify, and calibrate an SO_2 continuous monitoring system capable of directly measuring the SO_2 emissions rate expressed as lb/ton of 100% Sulfuric Acid Produced and Simplot shall implement the CEMS Plan specified in Paragraph 20.c below:

(1)	Lathrop Plant:	December 1, 2015
(2)	#300 Don Plant:	December 1, 2015
(3)	#400 Don Plant:	December 1, 2015
(4)	Lurgi Plant:	December 1, 2015
(5)	MEC Plant:	December 1, 2015

b. Continuous Operation of SO_2 CEMS and Minimization of SO_2 CEMS Downtime. After the dates set forth in Paragraph 20.a above, Simplot shall maintain and operate the CEMS. Except during CEMS breakdowns, repairs, calibration checks, zero span adjustments, and Plant downtime (i.e. the time period from the end of Shutdown of a Plant until the next Startup of that Plant), the CEMS shall be in continuous operation and shall be used at each of the Sulfuric Acid Plants to demonstrate compliance with the SO_2 emission limits established in Paragraphs 12-16 of this Consent Decree. Simplot shall take reasonable steps to avoid CEMS breakdowns and minimize CEMS downtime. This shall include, but is not limited to, operating and maintaining the CEMS in accordance with best practices and

maintaining an on-site inventory of spare parts or other supplies necessary to make rapid repairs to the equipment.

c. SO_2 CEMS Plan. The CEMS Plan that describes how Simplot shall monitor compliance with the SO_2 emission limits established in Paragraphs 12-16 of this Consent Decree, including the methodology to be used to demonstrate compliance in the event of CEMS downtime lasting longer than 24 hours, is attached as Appendix A. Simplot shall implement the CEMS Plan at the Lathrop Plant, #300 Don Plant, #400 Don Plant, Lurgi Plant, and MEC Plant. The monitoring methods specified in the CEMS Plan are deemed approved as appropriate alternative monitoring methods for purposes of NSPS, pursuant to 40 C.F.R. § 60.13(i), as provided in the CEMS Plan.

21. **Performance Testing.**

a. Dates. Simplot shall conduct the performance tests required in this Paragraph 21 by no later than the following dates:

(1) SO_2

(a) Lathrop Plant: December 1, 2016

(b) #300 Don Plant: December 1, 2016 and July 1, 2018

(c) #400 Don Plant: December 1, 2016 and, only if Simplot replaces the converter, within 180 days of Startup

(d) Lurgi Plant: December 1, 2016 and July 1, 2020

(e) MEC Plant: December 1, 2016 and, only if CEMS data collected from December 1, 2015 to December 1, 2016 fails to demonstrate that Simplot is meeting a Long-Term SO_2 Limit of 1.8

lb of SO_2 per ton of 100% Sulfuric Acid Produced, November 1, 2019

If the compliance date for a more stringent Long-Term SO_2 Limit is accelerated by written notice from Simplot as provided in Paragraph 13.b (2) above, the associated performance test date will be accelerated by the same amount of time.

(2) Acid Mist and $PM_{2.5}$:

(a) #400 Don Plant: 180 days from Effective Date of the Consent Decree, as stated in Paragraphs 14.d and 14.e

Source testing required by applicable permits shall satisfy the requirements of this Paragraph, so long as the obligations outlined in this Paragraph are met.

b. SO_2 Emission Limits. Simplot shall conduct a performance test measuring the emission rate of SO_2 in accordance with the applicable requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 8, and Part 60, Appendix B, Performance Specification 2, or an alternative method approved by EPA. This test shall consist of at least nine method test runs and may serve as the CEMS relative accuracy test required under Performance Specification 2. If applicable, this test may also serve as the NSPS performance test required under 40 C.F.R. § 60.8. Simplot shall take all steps necessary to assure accurate measurements of 100% Sulfuric Acid Production during each test run.

c. Acid Mist Emission Limit. Simplot shall conduct a performance test measuring the emission rate of Acid Mist in accordance with the applicable requirements of 40 C.F.R. Part 60, Appendix A, Reference Method 8, or an alternative method

approved by EPA. This performance test shall be used to demonstrate compliance with the Acid Mist emission limit established in Paragraph 14.d and may serve as the NSPS performance test required under 40 C.F.R. § 60.8. Simplot shall take all steps necessary to assure accurate measurements of 100% Sulfuric Acid Produced during each test run.

d. $PM_{2.5}$ Limit. Simplot shall conduct a performance test measuring the emission rate of $PM_{2.5}$ in accordance with Methods 201A and 202, except that Method 5 may be substituted for Method 201A provided that Method 202 is also used for condensable particulate matter and the test results consider all particulate matter to be $PM_{2.5}$. This performance test shall be used to demonstrate compliance with the $PM_{2.5}$ emission limit established in Paragraph 14.e. Simplot shall take all steps necessary to assure accurate measurements of 100% Sulfuric Acid Produced during each test run.

e. Advance Notification. By no later than forty-five (45) days before any performance test required by this Paragraph 21 is conducted, or such other period agreed upon by the Parties, Simplot shall provide notice of its intent to conduct such test to EPA and any Applicable Co-Plaintiff using the procedures specified in Section XVI (Notices). This notification must include the scheduled date of the test, an emissions test protocol, a description of the planned operating rate and operating conditions, and the procedures that will be used to measure 100% Sulfuric Acid Produced. If EPA, after consultation with the relevant state or local air permitting authority, requires any adjustment of the testing protocol or operating conditions, EPA shall notify Simplot within thirty (30) days of receipt of the notice, and

Simplot shall make such adjustments and conduct the performance test in conformity with EPA's requirements.

f. Report of Results. By no later than sixty (60) Days after conducting a performance test required under this Paragraph 21, or such other period as agreed upon by the Parties, Simplot shall submit to EPA and any Applicable Co-Plaintiff, pursuant to the requirements of Section XVI (Notices), a report documenting the results of the performance tests.

22. EPA Review of Submissions. All work plans, reports, and other items that are developed and submitted to EPA for approval pursuant to this Consent Decree shall be complete and technically adequate.

a. After review of any work plan, report, or other item that is required to be submitted, or revised and resubmitted, to EPA for approval pursuant to this Consent Decree, EPA shall in writing: (1) approve the submission; (2) approve the submission upon specified conditions; (3) approve part of the submission and disapprove the remainder; or (4) disapprove the submission. In the event of disapproval of any portion of the submission, EPA shall include a statement of the reasons for such disapproval in its response.

b. If the submission is approved pursuant to Paragraph 22.a (1), Simplot shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 22.a (2) or (3), Simplot shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines

are technically severable from any disapproved portions, subject to Simplot's right to dispute only the specified conditions or the disapproval of portions of the submission under Section XII (Dispute Resolution) of this Consent Decree.

c. If the submission is disapproved in whole or in part pursuant to Paragraph 22.a (3) or 22.a (4), Simplot shall, within thirty (30) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding subparagraphs. If the submission has been previously disapproved, EPA may impose an earlier due date for re-submission, but not less than fourteen (14) Days. If the re-submission is approved in whole or in part, Simplot shall proceed in accordance with the preceding subparagraph.

d. Any stipulated penalties applicable to the original submission, as provided in Section X (Stipulated Penalties) of this Consent Decree, shall accrue during the thirty (30) Day period or other agreed upon period provided in Paragraph 22.c, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Simplot's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

e. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Simplot to correct any deficiencies in accordance with the preceding subparagraphs, may itself correct any deficiencies, or may finally disapprove the submission, subject to Simplot's right to invoke

dispute resolution under Section XII (Dispute Resolution) and the right of EPA to seek stipulated penalties as provided in the preceding subparagraphs. If the resubmission is approved or corrected in whole or in part, Simplot shall proceed in accordance with Paragraph 22.b.

VI. PERMITS

23. Permits Prior to Construction or Installation. Simplot shall obtain all required federal, state, or local permits necessary for performing any compliance obligation under this Consent Decree, including without limitation permits for construction of pollution control technology and the installation of equipment. Simplot may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation if Simplot has submitted timely and administratively complete applications and has taken all other actions necessary to obtain such permit(s) or approval(s).

24. Permit Applications for Permits Incorporating the Limits and Requirements. No later than the dates set forth in Paragraph 25, Simplot shall submit an administratively complete application to the relevant permitting authority to incorporate the following requirements into a federally-enforceable permit (other than a Title V permit) for each Sulfuric Acid Plant, so that the following requirements will survive termination of this Consent Decree:

a. The limits for SO_2 and, for the #400 Don Plant, Acid Mist and $PM_{2.5}$ established in Paragraphs 12-16 of this Consent Decree;

b. The monitoring requirements established in the CEM Plans, which will become approved alternatives under 40 C.F.R. § 60.13(i) upon the execution of this Consent Decree;

c. The performance testing requirements for Acid Mist and PM2.5 for the #400 Don Plant established in Paragraphs 14.d and 14.e of this Consent Decree;

d. The applicable requirements of Part 60, Subparts A and H;

e. The requirement to 1) prepare an O&M plan meeting the requirements of Paragraph 19; (2) implement that plan; and (3) review and, as necessary, update the O&M Plan no less frequently than once every three years;

f. All of Section VII (Emission Credit Generation); and

g. A statement that the above-listed limits, requirements, and restrictions were established pursuant to a Consent Decree with EPA and shall not be deleted or modified without the approval of EPA.

25. Dates for Permit Applications. Simplot shall submit the permit applications required in Paragraph 24 by the following dates:

a. Lathrop Plant: April 1, 2016

b. #300 Don Plant: October 1, 2018

c. #400 Don Plant: December 1, 2019

d. Lurgi Plant: October 1, 2020

e. MEC Plant: If not meeting a Long-Term SO_2 Limit of 1.8 lb of SO_2 per ton of 100% Sulfuric Acid Produced, then November 1, 2017; if meeting that Long-Term SO_2 Limit, then March 1, 2017.

26. Title V. Simplot shall file any applications necessary to incorporate the requirements of those permits obtained in satisfaction of Paragraph 24 into the Title V Permit for the relevant Sulfuric Acid Plant in accordance with state Title V rules. Following submission of the complete permit applications described in Paragraphs 23 and 24, Simplot shall cooperate with

EPA and the relevant state and/or local permitting agencies by promptly submitting to the applicable agency all available information that the applicable agency seeks following its receipt of these permit applications.

27. Permits Required for Termination. Prior to termination of the Consent Decree, Simplot must have obtained permits in accordance with the applications required under Paragraphs 24 and 26 such that all limits, requirements, and restrictions described or referenced by those Paragraphs will survive termination of the Consent Decree.

28. Mechanism for Title V Incorporation. The incorporation of the requirements of this Consent Decree into Title V Permits shall be in accordance with state Title V rules, including applicable administrative amendment provisions of such rules.

29. Enforcement of Permits. Notwithstanding the reference to a Title V permit in this Consent Decree, the enforcement of such permit shall be in accordance with its own terms and the CAA. The Title V permit shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XX (Termination) of this Consent Decree. Nothing in this Consent Decree is meant to preclude enforcement of the underlying permit or terms of the underlying permit included in the Title V permit.

30. Copies of Permit Applications and Permits. Using the procedures set forth in Section XVI (Notices), Simplot shall provide EPA with a copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree that is filed after the Effective Date, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity. If, as of the Effective Date,

Simplot has received any permit necessary to implement the requirements of this Consent Decree and such permits have not already been submitted to EPA prior to the Effective Date, then no later than thirty (30) days after the Effective Date, Simplot shall submit copies of such permits to EPA using the procedures set forth in Section XVI (Notices).

VII. EMISSION CREDIT GENERATION

31. Prohibition. Simplot shall neither generate nor use any CD Emissions Reductions: as netting reductions; as emissions offsets; or to apply for, obtain, trade, or sell any emission reduction credits. Except as provided in Paragraph 33, baseline actual emissions for each unit during any 24-month period selected by Simplot shall be adjusted downward to exclude any portion of the baseline emissions that would have been eliminated as CD Emissions Reductions had Simplot been complying with this Consent Decree during that 24-month period. Any plant-wide applicability limits ("PALs") or PAL-like limits that apply to emissions units addressed by this Consent Decree must be adjusted downward to exclude any portion of the baseline emissions used in establishing such limit(s) that would have been eliminated as CD Emissions Reductions had Simplot been complying with this Consent Decree during such baseline period.

32. Outside the Scope of the Prohibition. Nothing in Paragraph 31 is intended to prohibit Simplot from seeking to:

a. Use or generate emission reductions from emissions units that are covered by this Consent Decree to the extent that the proposed emission reductions represent the difference between CD Emissions Reductions and more stringent control requirements that Simplot may elect to accept for those emissions units in a permitting process;

b. Use or generate emission reductions from emissions units that are not subject to an emission limitation or control requirement pursuant to this Consent Decree; or

c. Use CD Emissions Reductions for compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding PSD and Non-attainment NSR rules, but including, for example, Reasonably Available Control Technology rules) that apply to the Facility; provided, however, that Simplot shall not be allowed to trade or sell any CD Emissions Reductions.

33. Exception to the Prohibition. Notwithstanding the general prohibition set forth in Paragraph 31 above, Simplot may use: 1) past actual emissions from the #300 Don Plant as baseline actual emissions in the actual-to-projected-actual applicability test to determine the emissions increase at that emissions unit from a capacity increase project at that Sulfuric Acid Plant; 2) past actual emissions from the #400 Don Plant as baseline actual emissions in the actual-to-projected-actual applicability test to determine the emissions increase at that emissions unit from a capacity increase project at that Sulfuric Acid Plant, but only if the project includes replacement of the #400 Don Plant converter and compliance with the emissions limit set forth in Paragraph 14.b (2); and 3) up to 56,614 lb per year of SO_2 from the CD Emissions Reductions achieved at the Lathrop Facility as emission reduction credits usable only as nonattainment offsets. Utilization of this exception is subject to each of the following conditions:

a. Under no circumstances shall Simplot use CD Emissions Reductions prior to the time that actual CD Emissions Reductions have occurred;

b. If use of past actual emissions from the #300 Don Plant or #400 Don Plant as baseline actual emissions in the actual-to-projected-actual applicability test leads to

the calculation of a negative (below zero) emissions increase at that emissions unit, the emissions increase at that emissions unit shall be considered equal to zero in determining whether the project will result in a significant emissions increase;

c. Use of past actual emissions under this Exception to the Prohibition does not extend to any use of past actual emissions in determining the net emissions increase from the major stationary source;

d. CD Emissions Reductions may be used only at the Facility that generated them;

e. Simplot shall still be subject to all federal and state regulations applicable to the PSD, Non-attainment NSR, and/or Minor NSR permitting process; and

f. Not later than thirty (30) Days before Simplot seeks to use any CD Emissions Reductions allowed under this Paragraph, Simplot shall provide notice of such projects to EPA (including copies of all permit applications and other relevant documentation submitted to the permitting authority).

VIII. ENVIRONMENTAL MITIGATION

34. Simplot has selected an existing program implemented by the SJVAPCD for an environmental mitigation project ("Project"), as described in this Section of the Consent Decree and in Appendix B. Simplot shall contribute $200,000 to the SJVAPCD to be utilized in the SJVAPCD's existing Burn Cleaner Incentive Program. The Burn Cleaner Incentive Program provides incentives to San Joaquin Valley, California residents to replace their old wood or pellet-burning devices with new cleaner hearth options through rebates, vouchers, discounts, and for income-qualified residential homeowners or tenants, full replacement costs. The Program Guidelines for the existing Burn Cleaner Incentive Program are attached as Appendix C to this Consent Decree. The Project shall be implemented as set forth in this Section of the Consent

Decree and Appendix B in compliance with the schedule and the other terms of this Consent Decree.

35. The funding shall be utilized by the SJVAPCD to provide incentives to residents of San Joaquin Valley, a $PM_{2.5}$ nonattainment area in which the Lathrop Plant is located, to replace their old wood or pellet-burning devices with new cleaner options to reduce particulate matter, which contributes to air pollution.

36. Simplot shall maintain, and present to EPA upon request, all documents provided to it by the SJVAPCD that substantiate the funds expended and work completed to implement the Project described in this Section and Appendix B, and shall provide these documents to EPA within thirty (30) Days of a request for the documents.

37. Simplot certifies the truth and accuracy of the following:

a. That Simplot is not otherwise required by law to perform the Project;

b. That Simplot is unaware of any other person who is required by law to perform the Project, and that Simplot will not use the Project, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law; and

c. That Simplot had not otherwise planned to perform the Project generally described in Appendix B.

38. Simplot will have satisfied its obligation to complete the Project upon confirmation by the SJVAPCD that the funds for the Project were received by the SJVAPCD and submission of the Mitigation Project Completion Report, as described in Appendix B. Simplot may place reasonable reliance on the accuracy of the representations, reports or other information provided by the SJVAPCD to satisfy this obligation.

IX. REPORTING REQUIREMENTS

39. After the Effective Date, Simplot shall submit to EPA and any Applicable Co-Plaintiff a semi-annual progress report for each of the Lathrop, Pocatello, and Rock Springs Facilities no later than January 31 and July 31 of each year, with the first report due on July 31, 2016. Each semi-annual progress report shall contain the following information for each Sulfuric Acid Plant with respect to the preceding semi-annual calendar period (i.e. January 1 to June 30 or July 1 to December 31):

a. Work performed and progress made toward implementing the requirements of Section V (Compliance Requirements) above;

b. Any significant problems encountered or anticipated in complying with the requirements of Section V (Compliance Requirements) above, together with implemented or proposed solutions;

c. A summary of the emissions monitoring and testing data collected pursuant to this Consent Decree including the mass of SO_2, Acid Mist, and $PM_{2.5}$ (Acid Mist and $PM_{2.5}$ only applicable to the #400 Don Plant) emitted and the daily and total quantity of 100% Sulfuric Acid Produced during the reporting period;

d. A tabulation of the 3-hour rolling average and the 365-day rolling average SO_2 emission rates expressed in terms of pounds SO_2 emitted per ton of 100% Sulfuric Acid Produced (lb/ton);

e. The actual monthly emissions of SO_2 measured in accordance with the CEMS Plan;

f. A description of all periods of Startup, Shutdown, and Malfunction, including the quantity of SO_2 and, for the #400 Don Plant, Acid Mist and $PM_{2.5}$ emitted and the causes of Malfunction(s);

g. The date and time identifying each period during which each CEMS was inoperative except for zero and span checks and the nature of the system repairs or adjustments;

h. The status of permit applications and a summary of all permitting activity pertaining to compliance with this Consent Decree;

i. A copy of any reports submitted to any state or local permitting authority pertaining to compliance with this Consent Decree;

j. All changes or updates made to the O&M Plans specified in Paragraph 19; and

k. A description of any non-compliance with the requirements of this Consent Decree and an explanation of the likely cause of the non-compliance and the remedial steps taken, or to be taken, to prevent or minimize such non-compliance, and to mitigate any adverse environmental harm.

40. If Simplot violates, or determines that it will violate, any requirement of this Consent Decree, Simplot shall notify EPA and any Applicable Co-Plaintiff of such violation and its likely duration, in writing, within fourteen (14) Days of the day Simplot first becomes aware of the violation, with an explanation of the likely cause of the violation and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Simplot shall so state in the report. Simplot shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the day Simplot becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Simplot of its obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

41. Whenever any event affecting a Facility or Simplot's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Simplot shall comply with any applicable federal and state or local laws and, in addition, shall notify the applicable EPA Region and state and/or local agencies as per Section XVI (Notices) orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Simplot first knew of the violation or event. This notice requirement is in addition to the requirement to provide notice of a violation of this Consent Decree set forth in the preceding Paragraph.

42. All reports shall be submitted to the persons designated in Section XVI (Notices) of this Consent Decree.

43. Each report submitted by Simplot under this Section shall be signed by a plant manager, a corporate official responsible for environmental management and compliance, or a corporate official responsible for plant management of Simplot and shall include the following certification:

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

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

44. The reporting requirements of this Consent Decree do not relieve Simplot of any reporting obligations required by any federal, state, or local law, regulation, permit, or other

requirement. However, the reporting requirements of this Consent Decree shall not require Simplot to re-submit any report, plan, or information submitted by Simplot to EPA and any Applicable Co-Plaintiff prior to the Effective Date of this Consent Decree.

45. Any information provided pursuant to this Consent Decree may be used by the Plaintiff in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law, including EPA's confidential business information regulations, 40 C.F.R. Part 2.

X. STIPULATED PENALTIES

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

47. If Simplot fails to pay the civil penalty required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, Simplot shall pay a stipulated penalty of $1,000 per Day for each Day that the payment is late for the first ten (10) Days, together with Interest. Thereafter, Simplot shall pay $3,000 per Day for each Day that the payment is late, with Interest. Late payment of the civil penalty shall be made in accordance with Section IV (Civil Penalty), Paragraph 10. Stipulated penalties for late payment of the civil penalty shall be paid in accordance with Paragraphs 53, 54, 56, and 57, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree, or

for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 10, above.

48. Compliance and Permitting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements, except as provided in Paragraph 14.f) and Section VI (Permits):

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

49. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the requirements of Section IX (Reporting Requirements) of this Consent Decree:

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

50. Emission Credit Generation Requirements. The following stipulated penalties shall accrue for violations of the requirements of Section VII (Emission Credit Generation) of this Consent Decree:

Pollutant for which reductions were impermissibly used or baseline was not adjusted downward	Penalty per ton of pollutant impermissibly used or counted in baseline
Sulfur dioxide	$25,000
PM2.5	$100,000

Sulfuric Acid Mist	$100,000

In addition to stipulated penalties, 1) Simplot shall purchase and retire the amount of emissions offsets impermissibly used or sold and 2) any PSD, Non-attainment NSR, and/or synthetic Minor NSR permit improperly relying on CD Emissions Reductions in violation of Paragraph 31 will be subject to reevaluation as to whether a significant emissions increase and significant net emissions increase occurred such that the project qualified as a major modification.

51. Other Requirements. The following stipulated penalties shall accrue per violation per day for each violation of any requirement of this Consent Decree not specifically referenced in Paragraphs 48 through 50 above:

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

52. Subject to the provisions of Paragraph 22 above, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

53. The United States or any Applicable Co-Plaintiff(s), or all of the foregoing, may seek stipulated penalties under this Section. Demand from one agency will be deemed a demand from all applicable agencies, but the agencies will consult with each other prior to making a demand. Where both the United States and any Applicable Co-Plaintiff(s) seek stipulated penalties for the same violation of this Consent Decree, Simplot shall pay 50% to the United

States and 50% to the Applicable Co-Plaintiff(s). Simplot shall pay stipulated penalties within thirty (30) Days of a written demand by the United States and/or any Applicable Co-Plaintiff(s), subject to its right to invoke dispute resolution in accordance with Section XII (Dispute Resolution).

54. After consultation with each other, the United States and any Applicable Co-Plaintiff(s) may, in the unreviewable exercise of its discretion, reduce or waive the portion of the stipulated penalties otherwise due to that agency under this Consent Decree.

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

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

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

56. Simplot shall pay stipulated penalties in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

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

58. If Simplot fails to pay stipulated penalties according to the terms of this Consent Decree, Simplot shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or any Applicable Co-Plaintiff from seeking any remedy otherwise provided by law for Simplot's failure to pay any stipulated penalties.

59. Subject to the provisions of Section XIV (Effect of Settlement/ Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or any Applicable Co-Plaintiff for Simplot's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Simplot shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

60. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Simplot, of any entity controlled by Simplot, or of Simplot's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Simplot's best efforts to fulfill the obligation. The requirement that Simplot exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure such that the delay and any adverse effects of the delay are

minimized to the greatest extent possible. Force Majeure does not include Simplot's financial inability to perform any obligation under this Consent Decree.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Simplot shall provide notice orally or by electronic or facsimile transmission as soon as possible to EPA and any Applicable Co-Plaintiff, as provided in Section XVI (Notices) of this Consent Decree, but not later than seven (7) Days after the time when Simplot first knew that the event might cause a delay. Within fourteen (14) Days of such notice, Simplot shall provide written notice to EPA and any Applicable Co-Plaintiff with an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Simplot's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Simplot, such event may cause or contribute to an endangerment to public health, welfare or the environment. Simplot shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Simplot shall be deemed to know of any circumstance of which Simplot, any entity controlled by Simplot, or Simplot's contractors knew or reasonably should have known. Failure to comply with the above requirements regarding an event shall preclude Simplot from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 60 and whether Simplot has exercised its best efforts under Paragraph 60, EPA may, in its unreviewable discretion and after

consultation with any Applicable Co-Plaintiff, excuse in writing Simplot's failure to submit timely notices under this Paragraph.

62. If EPA, after consultation with any Applicable Co-Plaintiff, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for a period equal to the delay or period of noncompliance actually caused by the event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with any Applicable Co-Plaintiff, agrees that the delay is attributable to a force majeure event, EPA will notify Simplot in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If EPA, after consultation with any Applicable Co-Plaintiff, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Simplot in writing of its decision.

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

XII. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree. Simplot's failure to seek resolution of a disputed issue under this Section shall preclude Simplot from raising any such issue as a defense to an action by the United States or a Co-Plaintiff to enforce any obligation of Simplot arising under this Consent Decree (including the payment of stipulated penalties), provided that Simplot had notice prior to such action of the intention of the United States or a Co-Plaintiff to seek enforcement of the obligation (e.g., through a demand for stipulated penalties) and an opportunity to dispute the position of the United States or a Co-Plaintiff under this Section.

66. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations, which may include any third-party assisted, non-binding alternative dispute resolution process agreeable to the Parties. Simplot shall submit a written Notice of Dispute to the United States and any Applicable Co-Plaintiff(s) within thirty (30) Days after receiving written notice from the United States of a decision that Simplot disputes. The dispute shall be considered to have arisen on the date that the United States received a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date that the dispute arises unless that period is modified by written agreement between the United States, any Applicable Co-Plaintiff(s), and Simplot. If the Parties cannot resolve a dispute by informal negotiations, then the position of the United States shall be considered binding, unless Simplot invokes formal dispute resolution procedures as provided in the following Paragraph.

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

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

69. Simplot may seek judicial review of the dispute by filing with the Court and serving on the United States and any Applicable Co-Plaintiff(s), in accordance with Section XVI (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Simplot's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

70. The United States, after consultation with any Applicable Co-Plaintiff(s), shall respond to Simplot's motion within the time period allowed by the Local Rules of this Court. Simplot may file a reply memorandum, to the extent permitted by the Local Rules.

71. Standard of Review. In any dispute brought under this Section, Simplot shall bear the burden of demonstrating that its position complies with this Consent Decree and the Clean Air Act. The Court shall decide the dispute based upon applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law.

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

XIII. INFORMATION COLLECTION AND RETENTION

73. The United States, any Applicable Co-Plaintiff, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any of the Facilities at all reasonable times, upon presentation of appropriate identification, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or a state or local permitting authority in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Simplot or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Simplot's compliance with this Consent Decree.

74. Upon request, Simplot shall provide EPA, any Applicable Co-Plaintiff, or their authorized representatives splits of any samples taken by Simplot. Upon request, EPA, IDEQ, and SJVAPCD shall provide Simplot splits of any samples taken by EPA, IDEQ, SJVAPCD, or their authorized representatives.

75. Simplot shall retain, and shall require its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, emails or other information in electronic form) in its or its contractors or agents possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Simplot's performance of its obligations under this Consent Decree until five years after the termination of this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States or any Applicable Co-Plaintiff, Simplot shall provide copies of any documents, records, or other information required to be maintained under this Paragraph, subject to the right under Paragraph 77 to claim privilege.

76. At the conclusion of the information retention period provided in the preceding Paragraph, Simplot shall notify the United States and any Applicable Co-Plaintiff at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or any Applicable

Co-Plaintiff, Simplot shall deliver any such documents, records, or other information to the requesting Party.

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

78. Simplot may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Simplot seeks to protect as CBI, Simplot shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

80. This Consent Decree resolves the civil claims of the United States and the Co-Plaintiffs for the violations at the Facilities alleged in the Complaint filed in this action, as well as for any associated violations of the New Source Performance Standards applicable to the Sulfuric Acid Plants under Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. Part 60, Subparts A and H, through the date of the lodging of the Consent Decree.

81. The resolution under this Section XIV (Effect of Settlement/Reservation of Rights) of the Plaintiff's and Co-Plaintiffs' civil claims set forth in the Complaint and the Plaintiff's and Co-Plaintiffs' covenants not to sue are expressly conditioned upon Simplot's timely and satisfactory compliance with the requirements of this Consent Decree. The United States and the Co-Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, and Simplot reserves all legal and equitable defenses available to it in the defense of any such enforcement. This Consent Decree shall not be construed to limit the rights of the United States or the Co-Plaintiffs to obtain penalties or injunctive relief under the federal and state environmental statutes or their implementing regulations, or under other federal or state law regulations or permit conditions, except as expressly specified in Paragraph 80, and Simplot in any such action shall not assert any defense based upon the contention that such claims raised by the Plaintiff or Co-Plaintiffs were or should have been brought in the instant case under

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other such defense. The United States and the Co-Plaintiffs further retain all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment, including all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Simplot's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

82. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local law or regulation. While this Consent Decree resolves the Parties' dispute regarding the violations alleged in the Complaint as set forth in Paragraph 80, compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws, regulations, or permits. Simplot is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, or regulations. Simplot's compliance with this Consent Decree shall be no defense to any action commenced by Plaintiff and/or a Co-Plaintiff pursuant to any such law, regulation, or permit, except as expressly specified in Paragraph 80.

83. This Consent Decree does not limit or affect the rights of the Parties against any third parties (persons not a Party to this Consent Decree), nor does it limit the rights of third-parties except as provided by the doctrine of federal preemption or by other applicable principles of law or precedent.

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

85. Nothing in the Complaint filed in this action or in this Consent Decree, including the execution and implementation of this Consent Decree, shall constitute an admission by Simplot of any violation of the CAA, or of any implementing regulation, or of any of the allegations of the Complaint. The terms of this Consent Decree may not be used as evidence in any litigation between the Parties except (a) pursuant to Section XII (Dispute Resolution), (b) in an action to enforce this Consent Decree, or (c) in an action by Plaintiff and/or a Co-Plaintiff in which Simplot asserts a defense based on Paragraph 80 of this Consent Decree.

XV. COSTS

86. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect costs (including attorneys' fees) incurred in any action to collect any portion of the civil penalty or any stipulated penalties or other costs due under this Consent Decree but not paid by Simplot.

XVI. NOTICES

87. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email:
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-7-1-08388/14

As to the United States by mail:
EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-7-1-08388/14

As to the EPA by email:
Whitmore.Scott@epa.gov

As to the EPA by mail:
Director, Air Enforcement Division
Office of Civil Enforcement
USEPA Headquarters, MC 2242A

1200 Pennsylvania Ave, NW
Washington, DC 20460

Director, Air & Toxics Technical Enforcement Program
Office of Enforcement, Compliance & Environmental Justice
Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-AT)
Denver, CO 80202

Manager, Air & TRI Section
Enforcement Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Director, Office of Compliance and Enforcement
EPA Region 10
1200 Sixth Avenue, Suite 900 (OCE-101)
Seattle, WA 98101

As to the State of Idaho:
Mike Simon, Program Manager
Air Program
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

As to the San Joaquin Valley Air Pollution Control District:
Annette Ballatore-Williamson
District Counsel
San Joaquin Valley Unified Air Pollution Control District
1990 E. Gettysburg Ave.
Fresno, CA 93726

As to Simplot:
Burl Ackerman
Environmental Director
PO Box 27
Boise, ID 83707
burl.ackerman@simplot.com

Sheila Bush
Assistant General Counsel
PO Box 27
Boise, ID 83707
sheila.bush@simplot.com

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

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

XVII. EFFECTIVE DATE

90. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. Simplot hereby agrees that it shall be bound from the date of its execution of this Decree to perform obligations scheduled in this Consent Decree to occur prior to the Effective Date.

XVIII. RETENTION OF JURISDICTION

91. The Court shall retain jurisdiction over this case until termination of this Consent Decree, pursuant to Section XX (Termination), for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

XIX. MODIFICATION

92. The terms of this Consent Decree may be modified only by a subsequent written agreement of the Parties to this Consent Decree as set forth herein. Changes to provisions of this

Consent Decree that expressly allow for change upon written agreement may be made without approval by the Court upon written agreement among Simplot, any Applicable Co-Plaintiff(s), and EPA. Any such changes shall become enforceable under this Consent Decree upon execution by Simplot, any Applicable Co-Plaintiff(s), and EPA, shall be available to the public, and shall periodically be filed with the Court. Any other modifications that do not constitute a material change to this Consent Decree may be made upon the written agreement of the Parties, and upon execution shall become enforceable under this Consent Decree and shall be filed with the Court. Any other modifications agreed to by the Parties shall be effective only upon approval by the Court. A Party's refusal to agree to a modification of this Consent Decree shall not be subject to dispute resolution or judicial review.

93. In the event that a potential transferee under Section II (Applicability) of this Consent Decree has agreed to become a party to this Consent Decree and subject to all its terms and provisions, it may do so upon written consent of the United States pursuant to Section II (Applicability) of this Consent Decree, in which event a supplemental signature page will be affixed to this Consent Decree and filed with the Court.

XX. TERMINATION

94. After Simplot has satisfied and complied with all requirements of this Consent Decree, has complied with all emission limits as set forth in Section V (Compliance Requirements) for a period of three years at all Facilities, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Simplot may serve upon the United States and the Co-Plaintiffs a Request for Termination, stating that Simplot has satisfied those requirements, together with all necessary supporting documentation.

95. Following receipt by the United States of Simplot's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Simplot has satisfactorily complied with the requirements for termination of this Consent Decree, including documentation of compliance with and completion of each requirement. If the United States, after consultation with the Co-Plaintiffs, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree. If the United States, after consultation with the Co-Plaintiffs, does not agree that the Decree may be terminated, Simplot may invoke Dispute Resolution under Section XII (Dispute Resolution). However, Simplot shall not seek Dispute Resolution of any dispute regarding termination until ninety (90) days after service of its Request for Termination.

96. If the United States, after consultation with the Co-Plaintiffs, does not agree that the Consent Decree may be terminated, Simplot may invoke dispute resolution under Section XII (Dispute Resolution) of this Consent Decree. However, all time periods and deadlines established under Section XII (Dispute Resolution) shall be extended by sixty (60) Days, or more by the agreement of the Parties.

XXI. PUBLIC PARTICIPATION

97. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Simplot consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the

Court or to challenge any provision of the Consent Decree, unless the United States has notified Simplot in writing that it no longer supports entry of the Consent Decree.

XXII. SIGNATORIES/SERVICE

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

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

XXIII. INTEGRATION

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

XXIV. FINAL JUDGMENT

101. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, Idaho, SJVAPCD, and Simplot.

XXV. APPENDICES

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

Appendix A: CEMS Plan for SO_2 Emissions

Appendix B: Environmental Mitigation

Appendix C: Program Guidelines for SJVAPCD Burn Cleaner Incentive Program

Dated and entered this __ day of _____, 201_.

_____

UNITED STATES DISTRICT JUDGE
DISTRICT OF IDAHO

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES OF AMERICA:

Date: 12/2/15

/s/
SAM HIRSCH
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Date: 11/13/15

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

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES OF AMERICA:

Date: _12/2/15_____

WENDY J. OLSON
United States Attorney
District of Idaho

By:

/s/_____
SYRENA CASE HARGROVE, ISB# 6213
Assistant U.S. Attorney
District of Idaho
Washington Group Plaza
800 Park Boulevard, Suite 600
Boise, ID 83712-9903
(208) 334-9122
Syrena.Hargrove@usdoj.gov

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 11/19/15

/s/
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 11/17/15

/s/
SUSAN SHINKMAN
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 11/16/15

/s/
PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U. S. Environmental Protection Agency

Date: 11/2/15

/s/
VIRGINIA SORRELL
Attorney, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U. S. Environmental Protection Agency

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8:

Date: 10/26/15

/s/
SUZANNE J. BOHAN
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 10/26/15

/s/
CYNTHIA J. REYNOLDS
Director
Air & Toxics Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 10/27/15

/s/
SHELDON H. MULLER
Senior Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

Date: _11/9/15_____

/s/_____
JARED BLUMENFELD
Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10:

Date: 11/12/15

/s/
DENNIS MCLERRAN
Regional Administrator
USEPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Date: 11/2/15

/s/
JULIE VERGERONT
Assistant Regional Counsel
USEPA Region 10, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE STATE OF IDAHO:

Date: 11/25/15

/s/
JOHN H. TIPPETS
Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Date: 11/25/15

/s/
LISA J. CARLSON
Deputy Attorney General
Office of the Idaho Attorney General
1410 N. Hilton, 2nd Floor
Boise, ID 83706

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR THE SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT:

Date: _11/16/15_____

/s/_____
ANNETTE A. BALLATORE-WILLIAMSON
District Counsel
San Joaquin Valley Unified Air Pollution Control District
1990 E. Gettysburg Avenue
Fresno, CA 93726
(559) 230-6033

Signature Page for *United States of America et al. v. J. R. Simplot Company*.

FOR J.R. SIMPLOT COMPANY:

Date: _October 26, 2015_____

/s/_____
David Spurling
Senior Vice President, Secretary & General Counsel

APPENDIX A

CEMS Plan for SO_2 Emissions
JR Simplot

Principle

This CEMS Plan is the mechanism for determining compliance with the SO_2 emission limits in the Consent Decree for J.R. Simplot's Lathrop plant, Don 300 and 400 plants, and the Rock Springs MEC and Lurgi Sulfuric Acid Plants. The methodology described in this CEMS Plan will provide a continuous real-time indication of compliance with the emission limits established in the Consent Decree for the Sulfuric Acid Plants by determining the emission rate in terms of pounds of SO_2 emitted per ton of 100% Sulfuric Acid Produced ("lb/ton"). The system will utilize the following analyzers: one to measure stack SO_2 concentration, one to measure stack oxygen ("O_2") concentration, and one to measure the 100% Sulfuric Acid Production Rate[1]. From these data, the SO_2 emission rate, expressed as lb/ton, will be directly calculated using Equations 1 and 2 below.

Equation 1:

$$E_{\frac{lb}{ton}} = \frac{Cs \cdot S}{(0.264 - 0.0126 \cdot \%O_2 - 7.61 \cdot Cs)}$$

Equation 2:

$$M_{SO_2 Stack} = E_{\frac{lb}{ton}} \cdot P_{H_2SO_4}$$

Where:

$P_{H_2SO_4}$ = 100% Sulfuric Acid Production, tons per unit of time

$M_{SO_2 Stack}$ = Mass SO_2 stack emission rate, lb per unit of time

$\%O_2$ = Stack O_2 concentration, percent by volume dry basis

Cs = Stack SO_2 concentration, lb/DSCF (to convert parts per million by volume, dry basis (ppmvd) to lb/DSCF, multiply by 1.661×10^{-7})

$E_{\frac{lb}{ton}}$ = lb SO_2 per ton 100% Sulfuric Acid Produced

S = the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;

Definitions

Terms used in this CEMS Plan that are defined in the Clean Air Act ("CAA") or in federal or State regulations promulgated pursuant to the CAA shall have the meaning assigned to them in the CAA or such regulations, unless otherwise defined in the Consent Decree. The terms used in this CEMS Plan that are defined in the Consent Decree shall have the meaning assigned to them therein.

[1] Computed from data acquired by a sulfuric acid production meter at the Don 300 and Lathrop plants and by a sulfur inlet meter at the Don 400, Rock Springs MEC, and Rock Springs Lurgi plants.

Emissions Monitoring

Emissions monitoring will be done using an O_2 analyzer at the exit stack and an SO_2 analyzer at the exit stack. Except for any analyzer downtime, associated repairs, and required quality assurance or control activities (including calibration checks and required zero and span adjustments), Simplot will conduct monitoring at each Sulfuric Acid Plant during all Operating Periods.

- At least once every 15 minutes, the analyzers will measure the stack SO_2 concentration (lb/DSCF or ppmvd) and the stack O_2 concentration (percent by volume).
- During routine calibration checks and adjustments of any analyzer, the pre-calibration level will be used to fill in any analyzer data gaps that occur pending completion of the calibration checks and adjustments.
- If any one or more than one analyzer is/are not operating, a like-kind replacement (*i.e.*, a redundant analyzer) may be used as a substitute.
- If any one or more than one analyzer is/are not operating for a period of 24 hours or greater and no redundant analyzer is available, data gaps in the array involving the non-operational analyzer(s) will be filled in as follows:
    - Exit stack gas will be sampled and analyzed for SO_2 at least once every three hours, while the relevant Sulfuric Acid Plant is operating. Sampling will be conducted by Reich test or other established method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
    - O_2 in the exit stack gas will be sampled and analyzed at least once every three hours, while the relevant Sulfuric Acid Plant is operating. Sampling will be conducted by Orsat test or other method (*e.g.*, portable analyzer). The most recent 3-hour average reading will be substituted for the four 15-minute average measurements that would otherwise be utilized if the analyzer were operating normally.
- If any one or more than one analyzer is/are not operating for a period of less than 24 hours, Simplot will either: (i) follow the requirements set forth for a 24-hour or greater period of downtime to fill in the data gaps; or (ii) use the data recorded for the 3-hour average immediately preceding the affected analyzer's(s') stoppage to fill in the data gap.

Emissions Calculations

1-Hour Average

At the top of each hour, the CEMS will maintain an array of the 15-minute average measurements of each of the monitored parameters collected for that hour (or partial hour, in the case of a Shutdown) and perform the calculation specified in Equation 3.

Equation 3:

$$E_{1hravg} = \frac{\overline{Cs} \cdot S}{(0.264 - 0.0126 \cdot \overline{\%O_2} - 7.61 \cdot \overline{Cs})}$$

Where:

$\overline{\%O_2}$ = Stack O_2 concentration, percent by volume dry basis, arithmetic average of hourly measurements

$\overline{Cs}$ = Stack SO_2 concentration, lb/DSCF, arithmetic average of hourly measurements

S = the acid production rate factor, 11,800 DSCF/Ton of 100% Sulfuric Acid Produced;

E_{1hravg} = 1-hour average lb SO_2 per ton 100% Sulfuric Acid Produced

3-Hour Rolling Average

At the top of each hour, the CEMS will calculate the 3-hour rolling average SO_2 emission rate (E_{3hravg}) by maintaining an array of the three most recently calculated values of E_{1hravg} and performing the calculation specified in Equation 4.

Equation 4

$$E_{3hravg} = \frac{\sum_i^3 E_{1hravg\ i}}{3}$$

$E_{1hravg\ i}$ = 1-hour average lb SO_2 per ton 100% Sulfuric Acid Produced for hour *i*

E_{3hravg} = 3-hour rolling average lb SO_2 per ton 100% Sulfuric Acid Produced

Daily Mass SO_2 Emissions

The daily mass SO_2 emissions (M_{SO_2Day}) (which are based on a calendar day) will be calculated for each Sulfuric Acid Plant using the hourly values of E_{1hravg}, the estimated 100% Sulfuric Acid Production rate, and Equation 5.

Equation 5:

$$M_{SO_2Day} = \sum_i^n \left(E_{1hravg\ i} \cdot P_{H_2SO_4Hour\ i}\right)$$

Where:

$E_{1hravg\ i}$ = 1-hour average lb SO_2 per ton 100% Sulfuric Acid Produced during hour *i*

$P_{H_2SO_4Hour\ i}$ = 100% Sulfuric Acid Produced during hour *i*, tons

M_{SO_2Day} = Mass emissions of SO_2 during a calendar day, lb

n = Number of operating hours in the day

365-Day Rolling Average

For the purposes of calculating a 365-day rolling average lb/ton SO_2 emission rate, the system will maintain an array of M_{SO_2Day} and $P_{TonsH_2O_4}$ each day for 365 days. Every day, the system will add the values from that day to the array and exclude the readings from the oldest day.

The 365-day rolling average lb/ton SO_2 emission rate ($E_{365-Day\ Avg}$) will be calculated for each Sulfuric Acid Plant using Equation 6:

Equation 6:

$$E_{365-Day\ Avg} = \frac{\sum_i^n M_{SO_2 Day\ i}}{\sum_i^n P_{H_2SO_4 Day\ i}}$$

Where:

$M_{SO_2 Day\ i}$ = Mass emissions of SO_2 during a calendar day *i*, lb

$P_{H_2SO_4 Day\ i}$ = 100% Sulfuric Acid Produced during day *i*, tons

$E_{365-Day\ Avg}$ = 365-day rolling average lb SO_2 per ton 100% Sulfuric Acid Produced

Rounding of Numbers Resulting from Calculations

Upon completion of the calculations, the final numbers will be rounded as follows:

E_{3hravg}: Rounded to the nearest tenth

$E_{365-Day\ Avg}$: Rounded to the nearest hundredth

The number "5" shall be rounded up (*e.g.*, a short-term rate of 2.05011 shall be rounded to 2.1).

Rounding of Variables: $Cs, \%O_2$, and $P_{H_2SO_4}$

Rounding of the variables identified as $Cs, \%O_2$, and $P_{H_2SO_4}$ in the equations set forth in this CEMS Plan shall be done based on the accuracy of the measuring device as provided by the manufacturer of the device.

Compliance with Consent Decree SO_2 Limits

Nothing in this CEMS Plan shall preclude the use of other credible evidence or information, as authorized under Section 113 of the Clean Air Act and 40 C.F.R. §§ 60.11(g) and 61.12, to determine whether Simplot's Sulfuric Acid Plant are, or would have been, in compliance with the SO_2 Emissions Limits required by the Consent Decree if the appropriate performance or compliance test had been performed.

Short-Term SO_2 Limits

The Short-Term SO_2 Limits do not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods, the Simplot Sulfuric Acid Plants will be in compliance with the Short-Term SO_2 Consent Decree Limit if E_{3hravg} for each Sulfuric Acid Plant does not exceed the applicable Short-Term SO_2 Limit listed in the Consent Decree. If Simplot contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of an applicable Short-Term SO_2 Limit, after the period of the Malfunction(s) end(s), Simplot will recalculate E_{3hravg} to exclude measurements recorded during the period(s) of the claimed Malfunction(s).

NSPS SO_2 Limits

The NSPS SO_2 Limit does not apply during periods of Startup, Shutdown, or Malfunction. During all other Operating Periods, Simplot will be in compliance with the NSPS SO_2 Limit if E_{3hravg} does not exceed 4.0 lb of SO_2 per ton of 100% Sulfuric Acid Produced. If Simplot contends that emissions during a Malfunction(s) resulted in a calculated 3-hour rolling average emission rate(s) in excess of 4.0 lb/ton after the period of the Malfunction(s) end(s) Simplot will recalculate E_{3hravg} to exclude measurements recorded during the period(s) of the claimed Malfunction(s).

Long-Term SO_2 Limits

The Long-Term SO_2 Limits include periods of Startup, Shutdown, and Malfunction. The Simplot Sulfuric Acid Plants will be in compliance with the Long-Term SO_2 Limits if $E_{365-Day\ Avg}$ does not exceed the applicable Long-Term SO_2 Limit listed in the Consent Decree (measured as lbs of SO_2 per ton of 100% Sulfuric Acid Produced).

Retention of All CEMS Data, including Data during Startup, Shutdown, and Malfunction

Simplot will retain all data generated by its SO_2 analyzers, O_2 analyzers, and production rate analyzers including all data generated during Startup, Shutdown, and/or Malfunction ("SSM") of the Simplot Sulfuric Acid Plants in accordance with Section XIII (Information Collection and Retention) of the Consent Decree.

Analyzer Specifications

The analyzers will meet the following specifications:

Table 1

Parameter	Location	Range
SO_2, parts per million, dry basis (to convert to lb/DSCF, multiply by 1.661×10^{-7})	Stack	Dual range: Normal: 0 – 500 ppm SO_2 SSM: 0 – 3,600 ppm SO_2
O_2, percent, dry basis	Stack	Single range: 0 – 20.9 % O_2

Each SO_2 and O_2 CEMS will meet all applicable requirements of 40 C.F.R. §§ 60.11, 60.13, Performance Specifications 2, 3, and 6 in 40 C.F.R. Part 60, Appendix B, and the Quality Assurance and Quality Control Procedures in 40 C.F.R. Part 60, Appendix F, Procedure 1.

RATA Requirements

After the Effective Date, pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, Simplot shall conduct a Relative Accuracy Test Audit (RATA) at least once every four calendar quarters at each Simplot Sulfuric Acid Plant.

RATAs will be performed to determine the relative accuracy of the equipment, methods, and procedures required by this CEMS Plan. In addition to all other applicable procedures required by 40 C.F.R. Part 60, Appendix F, Procedure 1, 5.1.1, RATA testing will compare the concentrations of SO_2 and O_2, as measured by the CEMS installed or operated as part of the Consent Decree, with the concentrations of SO_2 and O_2 measured during the RATA testing. In addition, RATA testing will compare the pounds of SO_2 emissions/ton of 100% Sulfuric Acid Produced, as calculated by Equation 1, with the pounds of SO_2 emissions/ton of 100% Sulfuric Acid Produced calculated during the RATA testing pursuant to 40 C.F.R. § 60.85.

Beginning with the initial RATA under this CEMS Plan, and thereafter for every triennial RATA (*i.e.*, year 1, 4, 7, etc.), Simplot will utilize the reference methods and procedures specified in 40 C.F.R. § 60.85(b) to generate the Reference Method (RM) values for calculating the relative accuracy. In intervening years (*i.e.*, year 2, 3, 5, 6, etc.) Simplot may use the alternative method at 40 C.F.R. § 60.85(c) to calculate the RM values.

For each RATA performed, stack flow shall be measured using Method 2, 2F, 2G, or 2H, or a combination thereof.

If a CEMS or the measurement of pounds of SO_2 emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) is deemed to be "out of control" pursuant to 40 C.F.R. Part 60, Appendix F, Procedure 1, § 5.2, Simplot shall take all necessary corrective actions required by that procedure, including performing a follow-up ("verification") RATA meeting the requirements of this CEMS Plan. All necessary corrective actions and the verification RATA shall be completed within 30 days after the initial RATA testing. If the verification RATA determines that a CEMS or the measurement of pounds of SO_2 emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, Simplot shall take all necessary corrective actions to eliminate the problem, including, but not limited to, submitting, for EPA review and approval, a revised SO_2 CEMS Plan that considers: a) installation of direct stack flow meters and b) a monitoring methodology that accurately measures emissions of SO_2/ton of 100% Sulfuric Acid Produced, but is not based on the S-Factor.

If the verification RATA determines that a CEMS or the measurement of pounds of SO_2 emissions/ton of 100% Sulfuric Acid Produced (as calculated by Equation 1) remains out of control, Simplot shall also be subject to stipulated penalties as set forth in Section X of the Consent Decree.

Compliance with the NSPS: 40 C.F.R. Part 60, Subpart H

In addition to the requirements in this CEMS Plan, Simplot also will comply with all of the requirements of the NSPS relating to monitoring except that, pursuant to 40 C.F.R. § 60.13(i), this CEMS Plan will supersede the following provisions of 40 C.F.R. Part 60, Subpart H:

- The requirement at 40 C.F.R. § 60.84(a) that the stack SO_2 analyzer have a span value of 1000 ppm. In lieu of this, Simplot will utilize the span values specified in Table 1 above; and

- The procedures specified at 40 C.F.R. § 60.84(b) for converting monitoring data into the units of the applicable standard. In lieu of this, Simplot will utilize the procedures specified in this CEMS Plan for calculating compliance with the NSPS SO_2 Limit.

APPENDIX B
ENVIRONMENTAL MITIGATION

Simplot shall contribute $200,000 to the SJVAPCD to be directly allocated to the SJVAPCD's existing Burn Cleaner Incentive Program (Project). The SJVAPCD shall implement the Project consistently with the Requirements set forth below.

A. Project Purpose

The Project shall be for the purpose of mitigating environmental harm allegedly caused by the operation of the Lathrop Plant.

B. Requirements

1. The Project shall provide funds for the wood-burning appliance replacements and retrofits through the SJVAPCD's Burn Cleaner Program, which provides economic incentives to San Joaquin Valley, CA residents to replace their old wood or pellet-burning devices with new cleaner hearth options through rebates, vouchers, discounts, and for income-qualified residential homeowners or tenants, full replacement costs.

2. Use of the funds contributed by the Project, shall conform to all requirements of the SJVAPCD's existing Burn Cleaner Incentive Program. Program Guidelines attached as Appendix C.

3. The Project shall be implemented within San Joaquin Valley, CA. In selecting from the specific applicants to implement this Project within the aforementioned geographic area, the SJVAPCD shall give priority to: (a) households located in San Joaquin County or Stanislaus County; and (b) qualified low income households.

4. Each Project participant shall receive information related to proper operation of their new appliance and the benefits of proper operation (e.g., lower emissions, better efficiency), including, if applicable, the importance of burning dry seasoned wood.

5. All of the funds provided by Simplot for the Project shall be directed by the SJVAPCD to residential vouchers with the exception of administrative costs of 5% of the total funding contribution.

C. Environmental Benefit

The Project shall provide incentives to San Joaquin Valley, CA residents to replace their old wood or pellet-burning devices with new cleaner options to reduce particulate matter, which contributes to air pollution.

D. Schedule for Funding and Implementation of Project

Simplot shall contribute the funds for the Project within 120 days of the Effective Date. The SJVAPCD shall expend the Project funds in accordance with the Requirements of this Appendix B within three years after the Effective Date.

E. Provision of Project Information by the SJVAPCD to Simplot

The SJVAPCD shall provide Simplot written confirmation of receipt of funds and the information necessary for Simplot to submit a Mitigation Project Completion Report as required in Paragraph F below, including (a) the total number and type of appliances made available through the Project, (b) the cost per unit, (c) the value of the rebate or incentive per unit, and (d) a statement as to the completion of spending of the funds contributed by Simplot on the SJVAPCD Burn Cleaner Incentive Program.

F. Mitigation Project Completion Report

1. Within 60 days after the SJVAPCD has provided Simplot with the information specified in Paragraph E, Simplot shall submit a Mitigation Project Completion Report ("Report") to the United States. The Report shall include: (a) the total number and type of appliances made available through the Project, (b) the cost per unit, (c) the value of the rebate or incentive per unit, and (d) written certification of project completion. For purposes of this Report, Simplot may place reasonable reliance on the accuracy of representations, reports or other information provided to it by the SJVAPCD.

2. Once EPA concludes based on the Mitigation Project Completion Report that the Project was completed in accordance with the requirements of this Appendix B, EPA will approve completion of the Project for purposes of the Consent Decree.

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

BurnCleaner Fireplace and Woodstove Change-out

VOUCHER GUIDELINES

Eligible funding amount may include the total purchase and installation costs of the new device.

Application Type	Eligible Funding
Standard for any eligible device below	**Up to $1,000**
Low-income for any eligible device below	**Up to $2,500**
Additional incentive towards gas device (for both Standard and Low-income)	**Up to $500***

Applies **only to eligible installation costs beyond the funding amount.*

	REPLACEMENT OPTIONS		
Old Device Type	**New Freestanding Gas Stove, Gas Insert or Gas Fireplace[2]**	**New Certified Freestanding Pellet Stove or Certified Pellet Insert[1]**	**New Certified Wood Stove or Certified Wood Insert[1]**
Open-hearth fireplace or wood-burning firebox	✓	✓	✓
Non-certified wood insert or stove	✓	✓	✓
Certified wood insert or stove	✓	✓	✗
Pellet stove or insert	✓	✗	✗

1. New certified wood or pellet devices must be identified on the list of EPA Certified Wood Heaters to be eligible for Burn Cleaner.

2. To be eligible, the gas fireplace must be certified as heater-rated, which are tested using the American National Standard ANSI Z21.88/CSA 2.33 (Vented Gas Fireplace Heaters). Gas fireplaces that are designed exclusively for aesthetic and decorative use are not eligible.

REQUIREMENTS & ELIGIBILITY

- **Do not** make any non-refundable payments or install your new device until you receive a District Voucher.
- Gas stoves, gas inserts, gas fireplaces, or devices with a gas log are **not eligible** for replacement through this program.
- The applicant is limited to one voucher per device address.
- The applicant of the real property must not be subject to any related District, state or federal rules or regulations that require a replacement or permanent destruction of the old device, such as District Rule 4901 – Wood Burning Fireplaces and Wood Burning Heaters (i.e., you can not be purchasing the new device in preparation for the sale of a house).
- The real property, where the device is to be installed, must be located within the San Joaquin Valley (SJV) air basin, which includes the following counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and the SJV portion of Kern County.
- Installation of a new device must be conducted by the contracted Retailer; a third-party contractor under the approval and supervision of the Retailer; or by a certified technician. Self-installation or installation by non-licensed contractor is not eligible under this program.
- New device must be purchased from a contracted retailer, for a list of retailers visit www.valleyair.org/burncleaner.
- Priority will be given to low-income applicants, those purchasing natural-gas devices and those that reside in an area without piped natural-gas service. Low-income Eligibility Form available at www.valleyair.org/burncleaner.
- The new device must be installed at the device address for a minimum of three years.
- **Before and After photos are required**, see photo guidelines below:
  1. Two pre-installation photos of the old device are required during Phase 1.
     - First photo should clearly show device and background, second photo should be a close up with any screen doors open.
     - Photos must:
       a. Show device in its original location and have all original parts intact (i.e. panels, screens, etc.). For freestanding stoves, the Applicant must provide a photo with pipe and ventilation system intact.
       b. Be taken before any installation of parts for new device (i.e. new electrical outlets, etc).
  2. One post-installation photo is required during Phase 3.
     a. Please provide an explanation if the background is different *(i.e. major reconstruction)*.

San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

BurnCleaner Fireplace and Woodstove Change-out

VOUCHER GUIDELINES *(Continued)*

ADDITIONAL DOCUMENTATION REQUIRED for Tenants and Low-Income Applicants

Applicant Status	Required Documentation to be submitted with Voucher Application
Standard Tenants applying for new device	☐ Rental Property Owner/Tenant Approval Form. ☐ Current proof of residence for tenant at the device address *(i.e. most recent utility bill)*. ☐ Copy of the signed lease agreement with a minimum of six (6) months remaining from the date of the application submittal. **If you cannot provide this documentation, please contact Program staff.**
LOW-INCOME APPLICANTS MUST FALL WITHIN ONE OF THE CATEGORIES BELOW:	
Homes owned by local Public Housing Authorities and multi-unit residential complexes with more than two units are **ineligible.**	
Low-income Homeowner applying for new device	☐ Low-Income Eligibility form and required verification documents.
Property Owner with Low-Income Tenant applying for new device on their behalf	☐ Rental Property Owner/Tenant Approval Form. ☐ Low-Income Eligibility form and required verification documents *(to be completed* **by tenant***)*. ☐ Current proof of residence for tenant at the device address *(i.e. most recent utility bill)*. ☐ Copy of the signed lease agreement between the property owner and occupied tenant with a minimum of six (6) months remaining from the date of the application submittal. **If you cannot provide this documentation, please contact Program staff.** ☐ If the lease agreement is part of the Housing Choice Vouchers Program *(formerly Section 8)*, provide a copy of the housing assistance payments (HAP) contract or other documents, as approved by the District.
Low-Income Tenant applying for new device	☐ Rental Property Owner/Tenant Approval Form. ☐ Low-Income Eligibility form and required verification documents. ☐ Current proof of residence at the device address *(i.e. most recent utility bill)*. ☐ Copy of the signed lease agreement between the property owner and occupied tenant with a minimum of six (6) months remaining from date of application submittal. **If you cannot provide this documentation, please contact Program staff.** ☐ If the lease agreement is part of the Housing Choice Vouchers Program *(formerly Section 8)*, the **property owner** must provide a copy of the housing assistance payments (HAP) contract or other documents, as approved by the District.

PAYMENT PROCESS

Payment Options	Steps
Instant Reduction *Only available to qualified low-income applicants who purchase from a retailer offering the Instant Reduction option. See Burn Cleaner Retailers List for retailers who provide this payment option.*	• After receipt of an approved voucher, applicant purchases an eligible new device from a retailer participating in the Instant Reduction Option and only pays for the cost of the new device and installation that exceeds the voucher amount. Voucher amount is applied directly at point of purchase through the retailer to reduce the out-of-pocket cost. • Applicant signs the voucher and gives the claim for payment packet to the retailer, who will submit it directly to the District for reimbursement of the reduced amount. For installations completed by a subcontractor (not retailer), applicant will need to submit a separate claim directly to the District for reimbursement of any remaining voucher amount.
Reimbursement *Available to all qualified applicants. See Burn Cleaner Retailers list for all contracted retailers.*	• After receipt of an approved voucher, applicant purchases an eligible new device from participating program retailer and pays for the entire cost of the new device, including installation. • After making full payment, applicant submits a completed claim for payment packet to the District for reimbursement to the applicant.