

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ELMORE

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY; and IDAHO
STATE DEPARTMENT OF AGRICULTURE,

Plaintiff,

v.

J.R. SIMPLOT CO., a Nevada Corporation;
and SIMPLOT LIVESTOCK CO., a Nevada
Corporation,

Defendant.

Case No.

**[DRAFT] CONSENT
JUDGMENT**

Plaintiffs, Idaho State of Environmental Quality (“DEQ”) and Idaho State Department of Agriculture (“ISDA”) (collectively “Plaintiffs” or “the State”), and Defendants, J.R. Simplot Co. and Simplot Livestock Co. (“Simplot” or “Defendants”) consent to the entry of the following Consent Judgment (“Judgment”).

WHEREAS, Plaintiffs have filed a complaint (“Complaint”) alleging that Simplot has violated the Idaho Beef Cattle Environmental Control Act (“BCECA”), I.C. §§ 22-4901, *et seq.*, The Idaho Environmental Protection and Health Act (“EPHA”), I.C. §§ 39-101, *et seq.*, The Idaho Groundwater Quality Rule, IDAPA 58.01.11, the federal Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, *et seq.*, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901, *et seq.*, and the Idaho Solid Waste Management Rules, IDAPA 58.01.06, at Defendant’s beef cattle feedlot located in Elmore County and Owyhee County, Idaho, which is commonly referred to as the Grand View Feedlot (the “Feedlot”);

WHEREAS, the Complaint includes factual allegations, disputed by Simplot, that Defendant’s generation, handling, storage, and application of Manure and Process Wastewater at

the Feedlot has resulted in unauthorized and unpermitted discharges of pollutants to waters of the State, including ground and surface waters, and waters of the United States, including the Snake River; that Defendant's application of Manure and Process Wastewater greatly exceeds agronomic rates, such that the Manure and Process Wastewater are no longer a useful product, and such open dumping constitutes disposal of a solid waste; that Defendant's treatment, storage, handling, and storage of Manure and Process Wastewater may be causing an imminent and substantial endangerment to human health and the environment; and, that Simplot failed to create or maintain records required by applicable federal and state regulations;

WHEREAS, the Parties recognize that there is legal uncertainty regarding the definition of "Solid Waste," as used in RCRA with respect to the generation, handling, storage, and application of Manure and Process Wastewater, where such Manure and Process Wastewater is managed for agronomic value. *See Garrison v. New Fashion Pork LLP*, No. 18-CV-3073-CJW-MAR, 2020 WL 1811373, at *5 (N.D. Iowa Jan. 9, 2020); *Oklahoma v. Tyson Foods, Inc.*, No. 05-CV-0329-GKF-PJC, 2010 WL 653032, at *9 (N.D. Okla. Feb. 17, 2010); *see contra Cmty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC*, 80 F. Supp. 3d 1180, 1223 (E.D. Wash. 2015);

WHEREAS, Simplot denies applicability of RCRA or the Solid Waste Management Rules to generation, treatment, storage, handling, or application of Manure or Process Wastewater generated at the Feedlot as Manure is reused as a beneficial product, and further denies any non-compliance or violation of any law or regulation identified in the Complaint; and maintains that it remains in compliance with the BCECA, EPHA, CWA, RCRA, and applicable regulations, and is not liable for civil penalties or injunctive relief alleged in the Complaint;

WHEREAS, the objectives of the Parties to this Judgment is to resolve the civil claims alleged in the Complaint by prescribing certain agreed-upon injunctive relief whereby Simplot shall change certain operating practices informed by actual data and site-specific conditions with respect to its generation, treatment, storage, and application of Manure and Process Wastewater generated at the Feedlot and implement environmental controls and undertake appropriate studies as set forth herein, and make other changes to operations to reduce potential environmental impacts; and by assessing the appropriate penalty;

WHEREAS, Simplot anticipates that the injunctive relief set forth herein, including preparation of compliant Nutrient Management Plans, implementation of best management practices, assessment of Process Wastewater Management Infrastructure, preparation of a groundwater and surface water monitoring plan and subsequent implementation of groundwater and surface water monitoring, applying for and entering into a cost recovery agreement for an IPDES permit, and any required operational changes, will cost approximately \$1,000,000; and that any necessary corrective actions identified by the studies required by this Judgment will incur additional costs;

WHEREAS, the Parties have conducted themselves in good faith concerning the violations alleged in the Complaint;

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

WHEREAS, the Parties agree that the Plaintiff's filing of the Complaint and entry into this Judgment constitute diligent prosecution by the State of Idaho, under section 7002 of RCRA, 42 U.S.C. § 6972 and section 505 of the CWA, 33 U.S.C. § 1365, of all matters alleged in the Complaint and addressed by this Judgment through the date of lodging of this Judgment;

WHEREAS, the Parties recognize, and the Court by entering this Judgment finds, that this Judgment has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Judgment 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 Idaho Code §§ 1-705, 22-4909, and 39-108.
2. This Court has personal jurisdiction over Simplot pursuant to Idaho Code §§ 5-514(a) and (c) because, upon information and belief, Simplot has committed acts and omissions within the State of Idaho out of which these causes of action arise, and which violates the laws of the State of Idaho. Additionally, Simplot owns real property within the State of Idaho, which is related to the subject matter involved in this action.
3. Venue is proper in this Court for this matter pursuant to Idaho Code §§ 5-404, 22-4909(3), 39-108(3)(b) and, because the violations and acts and omissions alleged in the Complaint filed in this matter occurred and the action arose in the county in which this Judgment has been issued.
4. The Complaint states claims upon which relief may be granted against Simplot.

5. For purposes of this Judgment and the underlying Complaint, Simplot has waived all objections and defenses that it may have to the filing of the Complaint and the jurisdiction of the Court or to venue in this District and will not challenge the filing of the Complaint, the entry of this Judgment or this Court's jurisdiction and authority to enter and enforce this Judgment.

II. PARTIES BOUND

6. This Judgment will apply and be binding upon Simplot. Unless otherwise agreed to by the State, no change in ownership, corporate, or partnership status relating to the Feedlot or conveyance of title, easement, or other interest in the Feedlot, including but not limited to any lease or transfer of assets or real or personal property, will alter Simplot's obligation to comply with the requirements of this Judgment or to ensure compliance by any successor or assign.
7. Simplot will notify any prospective purchaser of the terms and conditions of this Judgment and the current status of completion of the requirements of this Judgment.
8. Simplot will provide notice to the State of the offer for sale or transfer of the Feedlot, and the identity of the purchaser or party to which the property will be transferred prior to closing of any sale or transfer of the property or any portion thereof.

III. DEFINITIONS

9. Every term expressly defined by this Section shall have the meaning given that term herein, regardless of whether it is elsewhere defined in federal or state law. Every other term used in this Judgment that is also a term used under the following statutes and their corresponding regulations shall have the same meaning in this Judgment as such term has under these statutes and regulations: BCECA, EPHA, CWA, and RCRA and implementing rules. In the case of a conflict between federal and state definitions, federal definitions shall control. For purposes of

this Judgment, whenever the terms defined below are used in this Judgment, such definitions shall apply.

- a. “Application Field” or “Application Fields” means those agricultural fields under Simplot’s ownership or control to which dry Manure or Process Wastewater generated at the Confinement Area is currently applied, or is anticipated to be applied, within the next five years.
- b. “Confinement Area” shall mean the portion of the Feedlot where cattle are confined and fed and no agricultural crops are grown.
- c. “Day” shall mean a calendar Day unless expressly stated to be a business Day. In computing any period of time under this Judgment, where the last Day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next business Day.
- d. “Feedlot” shall mean the beef cattle feedlot located in Elmore County, owned and operated by Simplot Livestock Co., which is commonly known as the “Grand View Feedlot” including the Confinement Area, Manure Storage Areas, Process Wastewater Management Infrastructure, Application Fields, and Commodity storage area(s).
- e. “Idaho Pollutant Discharge Elimination System Permit” or “IPDES Permit” shall mean a permit issued by the DEQ pursuant to IDAPA 58.01.25 and the CWA.
- f. “Process Wastewater Pond” shall mean the existing portion of the Feedlot that is used to capture and store Process Wastewater and storm water that is generated by, or comes in contact with, the Confinement Area.
- g. “Manure” shall include solids, bedding, compost and raw materials or other materials commingled with Manure.

- h. “Manure Storage Area” shall mean any area where Manure generated at the Confinement Area is stored or processed prior to either being applied to an Application Field or sold to a third-party, the term “Manure Storage Area” does not include the Confinement Area.
- i. “Nutrient Management Plan” or “NMP” shall have the meaning set forth in Idaho Code § 22-4904(11).
- j. “Process Wastewater” shall mean water directly or indirectly used in the operation of the Feedlot for any of the following: spillage or overflow from cattle watering systems; washing, cleaning, or flushing pens, Manure pits, trucks, or other Feedlot facilities; washing or spray cooling of cattle; or dust control. Process Wastewater also includes any water, including spring and storm water, which comes into contact with any raw materials, products, or byproducts including Manure, litter, feed, or bedding.
- k. “Wastewater storage and containment facilities” shall mean the facilities described in 22-4904(16), Idaho Code,” including all ditches, pipes, culverts, drains, the Process Wastewater Pond (currently used for center pivot irrigation), the decommissioned portion of the High Line canal (Runoff Drainage Channel) and any other features such as Emergency Storage Pond located south of the Process Wastewater Pond, used or intended to be used or which may be used to divert, direct, capture, or store Process Wastewater.

IV. INJUNCTIVE RELIEF

- 10. Simplot and Simplot’s agents, successors, and assigns are enjoined from discharging any pollutant from the Feedlot into waters of the United States, unless such discharge complies with the provisions of the CWA and rules promulgated pursuant to the CWA.

11. To resolve the violations alleged in the Complaint, Simplot shall undertake the following actions (the “Work”):

- a. Compliance with Law: The Work, set forth below, shall be undertaken, performed, and completed consistent with all applicable laws and regulations, including, but not limited to the BCECA, EPHA, CWA, and RCRA, the Idaho Groundwater Quality Rule, the Solid Waste Management Rules and the IPDES Permit Rules.
- b. Nutrient Management Plans: Within 90 Days of the effective date of this Judgment, Simplot shall provide to the State, for review, updated NMPs for the Confinement Area and a template NMP for the Application Fields (the “Initial Plans”). All NMPs shall be reflective of current operations and utilize phosphorus indexing as the nutrient management standard.
 - i. Upon submission of the Initial Plans, the State shall have 90 Days to review and approve, or request changes to, the Initial Plans.
 - ii. Upon approval of the Initial Plans, Simplot shall prepare updated NMPs for all Application Fields and submit them to the State as part of the IPDES application referenced in 11.C of this Judgment.
 - iii. All NMPs shall be prepared consistent with Idaho Code § 22-4906, IDAPA 02.04.15, IDAPA 02.04.30, and 40 C.F.R. § 122.42(e); the updated NMPs shall also identify appropriate site-specific conservation practices to be implemented, including buffers or equivalent practices, that control runoff of pollutants to waters of the United States. Once identified, Simplot will propose for the State’s review and approval an implementation plan for these site-specific conservation practices.

- iv. Simplot shall comply with the provisions of the initial and updated NMPs.
- c. Idaho Pollutant Discharge Elimination System (IPDES) Permit: Within 60 Days of State's approval of the initial NMPs, Simplot shall submit an updated individual Industrial IPDES Permit application for the Feedlot including the initial and updated NMP plans to the State; following submission of the updated IPDES Permit application, Simplot shall make such updates and changes to the application, as requested by the State, until the application is deemed complete by the State; following submission of a satisfactory application that is deemed complete by the State, the State will process the application and issue a draft IPDES Permit for the Feedlot consistent with IDAPA 58.01.25.
 - i. Although not binding on the Parties, the Parties anticipate a draft permit will be issued in 2026 and a Final Permit issued no later than 2027.
 - ii. Simplot shall enter into a cost recovery agreement with the State to facilitate expedited processing of the IPDES Permit application within 60 Days of entry of this Judgment.
- d. Groundwater and Surface Water Monitoring Plan:
 - i. Within 180 Days of entry of this Judgment, Simplot shall prepare, and submit to the State for approval, a Groundwater Monitoring Plan ("Monitoring Plan") The Monitoring Plan, which includes a Quality Assurance Project Plan ("QAPP") shall ensure that all information, sample collection analytical data and resulting decisions are technically sound, scientifically valid, and properly administered.

- ii. The Monitoring Plan shall address any areas of concern that pollutants have degraded groundwater or discharged to surface water as identified by a qualified professional engineer and shall be prepared by a qualified professional engineer licensed in the State of Idaho;
- iii. The Monitoring Plan shall include:
 - a) A description of the hydrogeologic setting and aquifer properties
 - b) Description of existing groundwater wells in the near vicinity or within the areas of concern. To the extent information is available, this should include well construction details (screen depth, etc.) and depth to groundwater and groundwater elevation in each well.
 - c) Known groundwater quality data.
 - d) Proposed locations (including coordinates) for the installation of groundwater monitoring wells;
 - e) Upon completion of any well installation, a report shall be furnished to the State that includes the minimum information:
 - a. Monitoring well coordinates;
 - b. A monitoring well network map;
 - c. Well construction details for each well;
 - d. Depth to groundwater and groundwater elevation in each well;
 - e. Provisions for necessary well maintenance;
 - f) Identify appropriate surface water monitoring locations sufficient to assess whether pollutants are impacting the quality of the nearby Snake River.

- g) An implementation schedule.
- iv. Monitoring will be conducted according to the Monitoring Plan approved by the State in Section IV.11.d. with sampling occurring on a quarterly basis beginning the first quarter after approval of the Monitoring Plan.
- v. Within 30 days of completing four full monitoring quarter, an annual monitoring report will be submitted to the State for its review. Simplot will review the previous annual monitoring period's results and provide the State with the outcome of any recommendations or corrective actions proposed, for the State's review and approval. The responsibility lies with Simplot to determine appropriate actions, subject to State approval.
- vi. Within 120 Days after 3 years of monitoring, Simplot shall submit to the State any recommended changes to the Monitoring Plan for the State's review and approval.
- vii. If the annual report shows surface water exceedances of any Waters of the United States, Simplot must request a modification to their Idaho Pollutant Discharge Elimination (IPDES) permit to incorporate any monitoring and remediation deemed necessary by the State to resolve the pollutant discharges.
- viii. If the State determines the results of groundwater monitoring demonstrate significant degradation or that the Feedlot is causing or contributing to a exceedance of state groundwater standards which poses a threat to existing or projected future beneficial uses of groundwater, the State will notify Simplot to submit a corrective action plan to the State, for review and approval, within 60 days of notice.

ix. The corrective action plan will include the provision of alternative drinking water supplies to impacted drinking water wells, alternatives for any other groundwater and irrigation wells, and lining of the Process Wastewater Pond or other feasible engineering solutions based on the site-specific conditions, implementation of approved best management practices, or other measures which the State determines are necessary to minimize impacts to groundwater in accordance with IDAPA 58.01.11.400. The corrective action plan will include a schedule to implement the corrective actions. Upon State approval, the corrective plan shall become binding and enforceable on Simplot.

e. Wastewater Management Infrastructure:

- i. Within 180 Days of entry of this Judgment, Simplot shall prepare a preliminary engineering evaluation of the Confinement Area and associated Wastewater Management Infrastructure to identify methods tailored to the site-specific conditions of the Feedlot to optimize storm water and wastewater management and minimize the potential for pollutants to migrate to groundwater and/or to waters of the United States
- ii. The preliminary engineering evaluation shall describe the current Wastewater Management Infrastructure and provide recommendations for best management practices and engineering specifications to reduce the risk, as informed by the data, of pollutants migrating to groundwater or waters of the United States from the Confinement Area or Wastewater Management Infrastructure; establish measures to ensure that clean water is diverted, as practical, away from the Confinement Area; and the preliminary engineering evaluation shall also

- evaluate whether the Wastewater Management Infrastructure is sufficiently sized to prevent unpermitted discharges to waters of the United States from the Confinement Area and shall provide specifications for any necessary upgrades
- iii. Within 180 Days of the effective date Simplot shall submit the preliminary engineering evaluation (including recommendations) to the State for review and approval. Upon finalization of the recommendation and evaluation by the State, Simplot shall implement the upgrades and best management practices within a time frame mutually agreed upon by the Parties;
 - iv. Within 60 days, Simplot shall initiate an approval process for the State to approve of the runoff drainage channel and emergency containment storage pond including emptying of any waste or process water, inspection and validation of proper construction and integrity of the liner under 22-4905, Idaho Code and any applicable rules.

f. Manure Storage Areas and Process Wastewater Pond Monitoring:

- i. Simplot currently operates the following Manure Storage Areas: Cox Manure Storage, Dobaron Manure Storage, Nicholson Manure Storage, Farm 4 Manure Storage, and South Feedlot Manure Storage;
- ii. Simplot also operates a Process Wastewater Pond which stores Process Wastewater and storm water that is generated by, or comes in contact with, the Confinement Area.
- iii. If Simplot desires to store Manure at a location other than the above identified Manure Storage Areas, it shall notify the State of the new storage area and provide information sufficient to allow the State to determine that the new

Manure Storage Area is appropriate for the storage of manure and that such storage will be protective of state waters;

- iv. Within 60 Days of entry of this Judgment, Simplot shall prepare a Manure Sampling Quality Assurance Project Plan (“Manure Sampling QAPP”), which sets forth appropriate sampling methods, parameters, and provides a schedule for sampling Manure stored at the Manure Storage Areas and the Process Wastewater Pond;
- v. Within 60 Days of the effective date, Simplot shall submit the Manure Sampling QAPP to the State for review;
- vi. Simplot shall conduct sampling of Manure managed at the Manure Storage Areas and Process Wastewater Pond consistent with the Manure Sampling QAPP;
- vii. Simplot shall maintain records of Manure sampling, including but not limited to nutrient analyses of Manure managed at the Manure Storage Areas and Process Wastewater Pond, for not less than five years;
- viii. Within 90 Days of the effective date, Simplot shall remove all Manure stored within 100 feet of any water well at any of the Manure Storage Areas and shall modify its Manure storage practices to ensure that no Manure is stored within 100 feet of any water well in the future;
- ix. Simplot shall not store Manure at any location where groundwater underlying the Manure Storage Area is known to exceed maximum contaminant levels (MCL) unless such storage, which may include either engineered methods

and/or best management practices to control pollutants, is specifically approved by the State;

g. Operations Plan:

- i. Within 180 Days of entry of this Judgement, Simplot shall submit an operation and maintenance plan to the State for review and approval that the Parties agree will be binding and enforceable until the issuance of an IPDES permit for the Feedlot;
- ii. The Operations Plan shall include the following elements:
 - a) Monitoring Plan: The Operations Plan shall implement the requirements of the Monitoring Plan including, but not limited to, identifying protocols, sampling and reporting methods.
 - b) Nutrient Management Plans and Land Application Fields. All NMPs shall be reflective of current operations and utilize phosphorus indexing as the nutrient management standard.
 - a. The NMPs developed in Section IV.11.b shall be implemented and followed upon approval by the State.
 - b. Identify protocols for testing Manure, litter, crops, and soil including proper QC/QA methods;
 - c. Establish protocols to land-apply Manure, litter, or Process Wastewater according to site specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the Manure or Process Wastewater;

- d. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above and provide for retention of such records for not less than five years;
- e. An annual report shall be prepared by March 31 of each year for Application Fields describing the volume of water added, amounts of Manure, commercial fertilizer or other nutrients added, crop yields, analysis of soil nutrients, and nutrient balance.
- f. The report will also discuss if soil analysis of Application Fields demonstrates that phosphorus or nitrate levels pose a high potential risk to waters of the United States. The Idaho Nutrient Transport Risk Assessment (INTRA) tool and the Phosphorus Site Index (PSI) will be used to provide the risk analysis. Simplot shall revise any NMP to identify application rates supportive of nutrient levels within agronomic rates based on the PSI and INTRA tools as needed. The revised NMP shall be submitted to the State within 60 days of the annual report for review and approval.
- g. Simplot agrees to share NMP information with the State upon request. The State agrees it will treat such information including the initial and updated NMPS as a trade secret until a draft IPDES Permit is issued for public comment.

c) Wastewater Application Fields

- a. The NMPs developed in Section IV.11.b. shall be implemented and followed for fields/units in which Process Wastewater is land applied.
- b. Identify protocols for testing wastewater, crops, and soil, including proper QC/QA methods.
- c. Simplot shall maintain records of all Process Wastewater that has been land applied, or otherwise transferred out of the Process Wastewater Pond, for not less than five years; such records shall include both the total volume of wastewater applied to each Application Field, the volume of wastewater applied per acre, and the date(s) on which wastewater is land applied;
- d. Simplot shall maintain records of all maintenance conducted on equipment used to transfer and/or land apply wastewater for not less than five years;
- e. Simplot shall maintain records of calibrations of all equipment used to determine the rate and/or volume of Process Wastewater land applied for not less than five years;
- f. An annual report shall be submitted to the State by March 31 of each year for land application unit describing the volume of water added, amounts of Process Wastewater, Manure, commercial fertilizer or other nutrients added, crop yields, analysis of soil nutrients, and nutrient balance.

g. The report will also discuss if soil analysis of Application Fields demonstrates that phosphorus, nitrate levels are above agronomic rates based on the PSI and INTRA tools or otherwise demonstrate the potential high risk for impacts to waters of the United States or groundwater. If so, Simplot shall revise the NMP to bring nutrient levels within agronomic thresholds and submit the revised NMP to the State within 60 Days of submitting the annual report.

d) Best Management Practices

a. Ensure chemicals and other contaminants handled on site are not disposed of or stored in any manner that will result in the disposal of Manure, Process Wastewater, or storm water storage or treatment system, unless the system is specifically designed to store or treat such chemicals and other contaminants;

b. Provide for mortality management to ensure that mortalities are not disposed of in a liquid manure, storm water, or Process Wastewater storage or treatment system not specifically designed to treat animal mortalities;

h. Inspections: The State will conduct inspections as needed to ensure compliance with this Consent Judgment. Simplot will allow State inspectors reasonable access to the facility. Simplot agrees to be responsible for costs associated with the inspections including any sampling, and laboratory or other fees associated with compliance of the terms as specified in this Consent Judgment.

V. PENALTIES AND FEES

12. Pursuant to Idaho Code §§ 22-4909(4), 39-108(5), and 39-175E, Simplot shall pay a civil penalty of \$274,000 for violations relating to the violations of DEQ rules and \$60,000 for violations related to violations of ISDA rules, for a total penalty of \$ 334,000 for past and continuing violations as listed in the Complaint. Payment will be made to the State within 90 Days from the Effective Date of this Judgment. Payment will be made to:

Fiscal Office
Idaho Dept. of Environmental Quality
1410 N. Hilton
Boise, ID 83706

13. *Stipulated Penalties*: The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section III (Injunctive Relief):

<u>Penalty Per Violation Per Day:</u>	<u>Period of Noncompliance:</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

14. Stipulated penalties under this Section shall begin to accrue on the day after performance is due and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of this Judgment.

15. Simplot shall pay stipulated penalties to the DEQ within 12 Days of a written demand by the DEQ or ISDA, subject to Simplot's right to invoke dispute resolution in accordance with Paragraph 22 (Dispute Resolution).

16. Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to the Plaintiff under this Judgment.

17. Simplot agrees to reimburse the State for 110 hours of attorney fees at \$335 per hour for a total reimbursement of \$36,850.
18. In the event this Court subsequently determines that Simplot has violated the terms of this Judgment, Simplot will be liable to the State for any costs, attorney's fees, or other expenses incurred by the State in any action or proceeding against Simplot for non-compliance with this Judgment.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Simplot may undertake a supplemental environmental project (SEP) to settle up to seventy-five percent (75%) of the penalty amount. The SEP must be in conformance with Idaho Code § 39-108(5)(b) and DEQ Policy Statement PS20-13, "Supplemental Environmental Projects." SEP proposals must be submitted to the Department for review and approval no later than 30 days from the effective date of this Judgment. Any approved SEP proposal must be completed as soon as possible but in no event longer than 3 years from the effective date of this Consent Judgment.

VII. GENERAL PROVISIONS

20. Each Party hereto warrants that it is not relying on any warranties, representations, statements, or promises of the other Party concerning any facts, matters, or events which are the subject of this Judgment and the releases herein, except as expressly set forth in this Judgment.
21. In the event any term of this Judgment is held to be invalid or unenforceable by a court, the remaining terms of the Judgment will remain in force.
22. Nothing herein will be construed to bar, alter, or limit the ability of the State (and the State expressly reserves the right to pursue) any legal or equitable, judicial, or administrative relief to it to remedy any violation of the terms of this Judgment.

23. Except as provided in Section VI (Release and Covenant Not to Sue), *infra*, this Judgment does not relieve Simplot from its obligation to comply with any of the provisions of the EPHA, I.C. §§ 39-101, *et. seq.*, the BCECA, Idaho Code §§ 22-4901, *et. seq.*, the RCRA 42 U.S.C. §6901, *et. Seq.*, Idaho Code § 39-4401, the State's Rules, including the IPDES rules, ISDA's Rules, or other applicable local, State or Federal law. Simplot retains all authority and reserves all rights to take any actions authorized by law to protect human health and the environment. This Judgment does not affect the right of Simplot or the State of Idaho to pursue appropriate relief for any violations not specifically addressed in this Judgement.
24. Nothing in this Judgment, including Simplot's actions undertaken pursuant to this Judgment, will be construed as an admission of fact or law except for the purpose of enforcing this Judgment.
25. *Force Majeure*: Simplot will cause all Work and required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For the purposes of this Judgment, a force majeure is an event arising from circumstances beyond the reasonable control of Simplot which delays performance of any obligations required by this Judgment. Increases in costs will not be considered an event of force majeure. Simplot will notify the State within three (3) calendar Days after any event which Simplot contends is a force majeure through the State's IPDES E-Permitting System. Such notification will describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Simplot to minimize the delay, and the timetable by which these measures will be implemented. Simplot will have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure will be made by Simplot, subject to dispute resolution under this Judgment. Said decision will be

immediately communicated to Simplot in writing. If a delay is attributable to a force majeure, the time-period for performance under this Judgment will be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

26. Dispute Resolution: The parties agree to attempt, in good faith, to resolve through informal dispute resolution methods any dispute arising under this Judgment. If such informal resolution is not successful within 30 Days, either party may seek resolution of the dispute by the Court.

VIII. RELEASE AND COVENANT NOT TO SUE

27. Compliance with Section IV of this Judgment and payment of the Civil Penalty under Section V constitutes full and complete satisfaction of all civil liability for all actions, omissions, and violations alleged in the Complaint.
28. In consideration of Simplot's required performance of the obligations in Section IV of this Judgment and payment of the Civil Penalty under Section V and compliance with the remaining terms of this Judgment, Simplot and the State of Idaho further release, discharge, and covenant not to assert any and all claims for civil liability against Simplot or its successors and assigns based on the facts and alleged violations described in the Complaint. This covenant not to sue is expressly conditioned on Simplot's satisfactory compliance with all terms of Sections IV and V of this Judgment.

IX. NOTICES AND SUBMISSIONS

29. Unless otherwise provided herein, notifications to, or communications with Simplot will be deemed submitted on the date they are sent by facsimile, electronic mail, or postmarked and sent by mail service.

30. When documents are required by DEQ to be submitted electronically, Simplot will ensure the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

31. Point of Contact/Communications- DEQ: Unless otherwise directed by the Plaintiffs, all communication required to be sent to the DEQ will be addressed to:

Wastewater Compliance Bureau Chief
Surface and Wastewater Division
Idaho Dept. of Environmental Quality
1410 N. Hilton St.
Boise, ID 83706-1255

The contact phone number for DEQ is (208) 373-0271.

32. Point of Contact/Communications- ISDA: Unless otherwise directed by the Plaintiffs, all communication required to be sent to the ISDA will be addressed to:

Bureau Chief/Dairy
Division of Animal Industries
2270 Old Penitentiary Rd.
Boise, Idaho 83712.

The contact phone number for ISDA is (208) 332-8500.

33. Point of Contact/Communications- Simplot: Unless otherwise directed by Simplot, all communication required to be sent to Simplot will be addressed to:

J.R. Simplot Co.
NAME
TITLE
ADDRESS

The contact phone number for Simplot is

X. RETENTION OF JURISDICTION

34. The Court will retain jurisdiction to enforce the terms of this Judgment and to resolve any disputes arising hereunder until the Judgment has been satisfied and the Judgment is terminated in accordance with the provisions of this Judgment.

XI. MODIFICATION

35. Except as specifically provided for herein, there will be no modifications or amendments of this Judgment without written agreement of the Parties to this Judgment and approval by this Court.

XII. PUBLIC COMMENT

36. This Judgment shall be lodged with the Court for a period of not less than 30 Days for the State's public notice and comment process in accordance with Idaho Code § 39-108(b)(9) and IDAPA 58.01.25.500.04.c. After consideration of public comments, the State reserves the right to withdraw or withhold its consent if the comments regarding the Judgment disclose facts or considerations indicating that this Judgment is inappropriate, improper, or inadequate.

XIII. EFFECTIVE DATE

37. This Judgment will take effect on the date it is entered by the Court.

XIV. TERMINATION AND DISMISSAL

38. The parties, through their counsel, agree that upon completion of the actions required by this Judgment that they will file a stipulated motion requesting that the Court terminate this Judgment and dismiss the Complaint with prejudice, consistent with the terms set forth in the stipulation.

XV. SIGNATORIES AND SERVICE

39. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Judgment and to execute and legally bind such Party to this Judgment.
40. The Parties consent to the entry of this Judgment without further notice.
41. The Parties further agree not to oppose entry of this Judgment by this Court or to challenge any provision of this Judgment.
42. Simplot need not file an answer or other responsive pleading to the Complaint in this action unless or until the Court expressly declines to enter this Judgment, in which case Simplot's responsive pleading to the Complaint would be due in the timeframe set forth in the Idaho Rules of Civil Procedure or in an order of this Court.

THE UNDERSIGNED PARTIES enter into this Consent Judgment in

Case Number _____.

FOR THE STATE OF IDAHO:

JESS BYRNE
Director, Idaho Department of Environmental Quality
Date: _____

CHANEL TEWALT
Director, Idaho State Department of Agriculture
Date: _____

Reviewed and approved as to form:

SCOTT L. CAMPBELL
Deputy Attorney General, Idaho Attorney General's Office
Date: _____

FOR J.R. SIMPLOT CO.

Contact
Job Title
J.R. Simplot Co.
Date: _____

Reviewed and approved as to form:

KEVIN J. BEATON
Counsel for J.R. Simplot Co.
Date: _____

SO ORDERED THIS _____ DAY OF _____ 2025.

District Judge