

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX



In the Matter of:	)	Docket No.
	)	CAA (112r)-09-2024-0100
	)	CERCLA-09-2024-0101
	)	EPCRA-09-2024-0102
THE J.R. SIMPLOT COMPANY,	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 1104S, Sections 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A), (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.
2. Pursuant to CERCLA Section 109, 42 U.S.C. § 9609, the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to take enforcement action against persons who violate CERCLA Section 103(a), 42 U.S.C. § 9603(a). The

Administrator delegated this authority to the EPA Regional Administrators by Delegation 14-31, dated May 11, 1994. The Regional Administrator of EPA Region IX, re delegated this authority to the Director of the Enforcement and Compliance Assurance Division ("ECAD") by Delegation R9-14-31, dated May 1, 2019.

3. Pursuant to EPCRA Section 325, 42 U.S.C. § 11045, the Administrator of EPA is authorized to take enforcement action against persons who violate EPCRA Section 304, 42 U.S.C. § 11004. The Administrator delegated this authority to the EPA Regional Administrators by Delegation 22-3A, dated May 11, 1994 (last revised July 20, 2016). The Regional Administrator of EPA Region IX, re delegated this authority to the Director of the Enforcement Division (now ECAD) by Delegation R9-22-3-B, dated February 11, 2013.
4. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator of EPA is authorized to sign consent agreements memorializing settlements of enforcement actions against persons who violate CAA Section 112(r), 42 U.S.C. § 7412(r). The Administrator delegated this authority to the EPA Regional Administrators by Delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region IX re delegated this authority to the Director of the Enforcement Division (now ECAD) by Delegation R9-7-6-A, dated February 11, 2013.
5. The United States Department of Justice granted EPA a waiver from the conditions on administrative actions specified in CAA Section 113(d), 42 U.S.C. § 7413(d), to allow EPA to pursue this administrative action.
6. Complainant is the Director of ECAD.

7. Respondent is the JR Simplot Company ("Respondent"), a corporation licensed to conduct business in California whose principal offices are located at 1099 W Front Street, Boise, Idaho.
8. This Consent Agreement and Final Order ("CA/FO"), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3), (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) - (3).
9. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

**B. PARTIES BOUND**

10. This CA/FO shall apply to and be binding upon Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns, Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.
11. The undersigned representative of Respondent hereby certifies that they are fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

C. GENERAL ALLEGATIONS

12. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in CAA Section 302(e), 42 U.S.C. § 7602(e), CERCLA Section 101(21), 42 U.S.C. § 9601(21), and EPCRA Section 329(7), 42 U.S.C. § 11049(7).
13. At all times relevant to this CAFO, Respondent operated a facility (the "Facility") located at 16777 Howland Road, Lathrop, California, that manufactures ammonium phosphate fertilizers and sulphuric acid.
14. EPA conducted an on-site investigation of Respondent's operations at the Facility pursuant to CAA Section 112(r), 42 U.S.C. § 7412(r), EPCRA Sections 304–12, 42 U.S.C. §§ 11004–12, and CERCLA Section 103, 42 U.S.C. § 9603(a), on January 30, 2020 (the "Inspection"). Respondent has informed EPA that the Facility no longer has any ammonia onsite as of May 24, 2024.

I. CERCLA Section 103

15. CERCLA Section 103(a), 42 U.S.C. § 9603(a), and its implementing regulations, require any person in charge of an onshore facility, as defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9), to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the Reportable Quantity ("RQ").
16. Ammonia is designated as a hazardous substance as defined in CERCLA Sections 101(14) and 102(a), 42 U.S.C. § 9601(14), 9602(a), and 40 C.F.R. § 302.4. The RQ for ammonia is 100 pounds, as specified in 40 C.F.R. § 304.2. At all times relevant to this CA/FO, Respondent exceeded 100 pounds or more of ammonia in one or more processes at the

Facility, and is therefore required, pursuant to CERCLA Section 103, 42 U.S.C. § 9603, to immediately notify the NRC of any release of a hazardous substance in an amount equal to or greater than the RQ, including ammonia.

17. Sulfuric acid is a hazardous substance as defined in CERCLA Sections 101(14) and 102(a), 42 U.S.C. § 9601(14), 9602(a), and 40 C.F.R. § 302.4. The RQ for sulfuric acid is 1,000 pounds, as specified in 40 C.F.R. § 304.2. At all times relevant to this CA/FO, Respondent exceeded 1,000 pounds or more of sulfuric acid in one or more processes at the Facility, and is therefore required, pursuant to CERCLA Section 103, 42 U.S.C. § 9603, to immediately notify the NRC of any release of a hazardous substance in an amount equal to or greater than the RQ, including sulphuric acid. The Facility is an "onshore facility" as defined by CERCLA Sections 101(18) and 101(9), 42 U.S.C. § 9601(18), (9).
18. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by CERCLA Section 101(20), 42 U.S.C. § 9601(20).

II. EPCRA Section 304

19. EPCRA Section 304, 42 U.S.C. § 11004, and 40 C.F.R. § 355.40 require the owner or operator of a facility at which an extremely hazardous substance ("EHS") is produced, used, or stored to immediately notify the appropriate governmental entities of any release that requires notification under CERCLA Section 103, 42 U.S.C. § 9603, and of any release in an amount that meets or exceeds the RQ of an EHS listed under EPCRA Section 302, 42 U.S.C. § 11002.
20. The notification must be immediately given to the designated state emergency response commission ("SERC") for each state likely to be affected by the release and to the

community emergency response coordinator for the Local Emergency Planning Committee ("LEPC") for all areas likely to be affected by the release.

21. Sulfuric acid is an EHS listed in 40 C.F.R. Part 355, Appendix A, promulgated pursuant to EPCRA Section 302, 42 U.S.C. § 11002, with an RQ of 1,000 pounds.
22. At all times relevant to this CA/FO, the California Office of Emergency Services ("Cal OES") was the SERC for the purpose of receiving chemical release notifications. At all times relevant to this CA/FO, the Inland Region 4 Local Planning Emergency Committee was the LEPC for the purpose of emergency response coordination and for the purpose of receiving chemical release notifications.
23. The Facility is a "facility" as defined by EPCRA Section 329(4), 42 U.S.C. § 11049(4).
24. At all times relevant to this CA/FO, Respondent exceeded 1,000 pounds of sulfuric acid in one or more processes at the Facility and is required to immediately notify the SERC and LEPC for any release of an EPCRA Section 302, 42 U.S.C. § 11002, EHS, including sulfuric acid.

III. CAA Section 112(r)

25. Pursuant to CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity ("TQ") must prepare and implement a risk management plan ("RMP") to detect and prevent or minimize accidental release of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
26. CAA Sections 111(a)(3) and 112(a)(3), 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define

“stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”

27. CAA Section 302(g), 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
28. Ammonia (anhydrous) is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. See 40 C.F.R. § 68.130, Tables 1 and 2.
29. Ammonia (concentration 20% or greater) is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 20,000 pounds. See 40 C.F.R. § 68.130, Tables 1 and 2.
30. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).
31. Under CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.

32. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
33. At all times relevant to this CA/FO, the real property and improvements thereto located at the Facility are a "stationary source" as defined by CAA Sections 111(a)(3) and 112(a)(3), 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).
34. At all times relevant to this CAFO, Respondent produced, used or stored more than 10,000 pounds of ammonia (anhydrous) at the Facility.
35. At all times relevant to this CAFO, Respondent produced, used or stored more than 20,000 pounds of ammonia (concentration 20% or greater) at the Facility.
36. At all times relevant to this CAFO, Respondent was subject to Program 3 requirements because there are public receptors within the distance to the endpoint for the worst-case release from its Facility and was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.

#### D. ALLEGED VIOLATIONS

##### Count 1

(Failure to Comply with Process Safety Information Requirements)

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
38. 40 C.F.R. § 68.65(a) requires an owner or operator of a facility to complete a compilation of written process safety information before conducting any process hazard analysis required under the rule. The compilation of written process safety information will enable the owner or operator and the employees involved in operating the process



to identify and understand the hazards posed by those processes involving regulated substances.

39. Under 40 C.F.R. § 68.65(c)(1)(iii), an owner or operator of a facility must compile information pertaining to the maximum intended inventory of the regulated substances.
40. Based on evidence gathered during the investigation, EPA determined that Respondent did not document the assumptions or calculations required for the maximum intended inventory of ammonia (concentration 20% or greater) stored at the Facility.
41. Based on evidence gathered during the investigation, EPA found that Respondent's calculation of the maximum intended inventory of anhydrous ammonia includes an assumption regarding number of ammonia trailers, which is inconsistent with process safety information.
42. Under 40 C.F.R. § 68.65(d)(1)(ii), an owner or operator of a facility must compile information pertaining to the equipment in the covered process, including piping and instrument diagrams ("P&IDs").
43. During the Inspection, EPA observed some process equipment was not consistent with the P&IDs for the Facility.
44. Under 40 C.F.R. § 68.65(d)(1)(iv), an owner or operator of a facility must compile information pertaining to the safe upper and lower limits for such items as temperatures, pressures, flows or compositions.
45. Based on evidence gathered during the investigation, EPA determined that some of the Facility's pressure relief system design and design basis did not contain accurate

documentation pertaining to the safe upper and lower limits for such items as temperatures, pressures, flows or compositions.

46. Under 40 C.F.R. § 68.65(d)(2), an owner or operator of a facility must document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
47. Based on evidence gathered during the investigation, EPA identified multiple deficiencies at the Facility, and determined that the Facility did not document that equipment complies with RAGAGEP. Specifically:
  - a. The pressure gauges on anhydrous ammonia tank 4925-TK-604 and 4925-TK-605 at the Facility are graduated from 0 to 300 pounds per square inch gauge (“psig”), not the required 0 psig to 400 psig.
  - b. Some facility piping containing RMP covered chemicals lacked labels to indicate the contents in the piping and arrows to indicate direction of flow.
  - c. Respondent did not have an emergency notification sign posted in the Facility’s storage area.
  - d. Several of the emergency stops at the Facility are faded and no longer red and had faded labeling and coloring.
  - e. Emergency shutoff valves 25-HV-011 and 25-HV-114 on the liquid and vapor lines from anhydrous ammonia tank 4925-TK-604 and the emergency shutoff valves 25-HV-017 and 25-HV-121 on the liquid and vapor lines from anhydrous ammonia tank 4925-TK-605 are not easily accessible.

48. For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, under 40 C.F.R. § 68.65(d)(3), the owner or operator must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.
49. Based on evidence gathered during the investigation, EPA determined that the Facility did not document that the deviations from RAGAGEP were designed, maintained, inspected, tested, and operating in a safe manner.
50. Accordingly, EPA alleges that by failing to compile all information pertaining to the maximum intended inventory of the anhydrous ammonia, by failing to compile all information pertaining to the equipment in the covered process including P&IDs, by failing to compile all information pertaining to the safe upper and lower limits for such items as temperatures, pressures, flows or compositions, and by failing to comply with RAGAGEP or document that its existing equipment was safe, Respondent violated the process safety information requirements set forth at CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d).

Count 2

(Failure to Comply with Process Hazard Analysis Requirement)

51. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
52. Under 40 C.F.R. § 68.67, an owner or operator of a facility must perform a Process Hazard Analysis ("PHA") on processes covered by CAA Section 112(r), 42 U.S.C. §

7412(r), requirements to identify, evaluate, and control the hazards involved in the process.

53. Under 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the findings and recommendations of a PHA; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees who may be affected by the recommendations or actions.
54. Based on evidence gathered during the investigation, EPA determined that the 2018 PHA did not adequately address Facility siting. For example, the Pellet Plant locker room and the control room, located above the Pellet Plant's furnace and adjacent to the plant pipe reactor containing anhydrous ammonia and other toxic substances, do not appear to be designed to protect occupants against explosion, fire, and toxic material releases.
55. Accordingly, EPA alleges that by failing to establish a system to promptly address the findings and recommendations and adequately address facility siting of PHAs from May of 2018 to May 2024, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(e).

Count 3

(Failure to Develop and Implement Adequate Operating Procedures)

56. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.

57. Under 40 C.F.R. § 68.69(a), an owner or operator must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, including but not limited to safety and health considerations.
58. Based on evidence gathering during the investigation, EPA determined that Respondent's written emergency shutdown procedures did not include: i) all of the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner; ii) operating limits such as consequences of deviation or steps to correct or avoid deviation; iii) safety and health considerations such as properties of, and hazards presented by, the chemicals used in the process and precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment.
59. Based on evidence gathered during the investigation, EPA determined that Respondent failed to implement safe work practices on September 15, 2018, when one Safe Working Permit and one Confined Space Permit were not properly filled out and implemented.
60. Accordingly, EPA alleges that by failing to adequately develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a).

Count 4

(Failure to Conduct Refresher Training)

61. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
62. Under 40 C.F.R. § 68.71, an owner or operator of a facility must train employees involved in operating a covered process in an overview of the process and in the appropriate operating procedures. Under 40 C.F.R. § 68.71(b), the owner or operator must provide refresher training to each employee involved in operating a covered process at least every three years to assure that the employee understands and adheres to the current operating procedures of the process. Under 40 C.F.R. § 68.71(c), the owner or operator must also document the identity of the employee provided the required training, the date of training, and the means used to verify that the employee understood the training.
63. Based on evidence gathered during the investigation, EPA determined that Respondent failed to adequately document refresher training of some employees who work on or near covered processes at least every three years from January 2020 to December 2022.
64. Accordingly, EPA alleges that by failing to adequately document refresher training of some employees who work on or near covered processes at least every three years, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.71(b) and (c).

Count 5

(Failure to Ensure Mechanical Integrity)

65. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
66. Under 40 C.F.R. § 68.73(d), an owner or operator of a facility must perform inspections on process equipment, following RAGAGEP, and must document each inspection and test that has been performed on process equipment.
67. Based on evidence gathered during the investigation, EPA determined that Respondent failed to conduct adequate inspections on process equipment.
68. Under 40 C.F.R. § 68.73(e), an owner or operator of a facility must correct deficiencies in covered equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.
69. Based on evidence gathered during the investigation, EPA determined that Respondent failed to address one expired anhydrous ammonia hose at the Facility that was outside acceptable limits in January 2020.
70. Accordingly, EPA alleges that by failing to perform adequate inspections on process equipment and by failing to correct deficient equipment that are outside acceptable limits before further use, or in a safe and timely manner when necessary means are taken to assure safe operation, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(d).

Count 6

(Failure to Comply with the Management of Change Requirement)

71. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.

72. Under 40 C.F.R. § 68.75(a) and (b), an owner or operator of a facility must establish and implement written procedures to manage changes to process equipment and ensure that such procedures address the technical basis for the change and impact of change on safety and health.
73. Based on evidence gathered during the investigation, EPA determined that Respondent failed to establish and implement adequate written procedures to manage changes to process chemicals, technology, equipment, and procedures, as well as changes to stationary sources that affect a covered process relating to temporary and emergency changes.
74. Accordingly, EPA alleges that by failing to document the technical basis for and impact on safety and health associated with changes to certain process equipment, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.75(a) and (b).

Count 7

(Failure to Perform Incident Investigation and Promptly Address Recommendation)

75. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
76. Under 40 C.F.R. § 68.81(a), an owner or operator of a facility subject to the requirements of CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.
77. Based on evidence gathered during the investigation, EPA determined that Respondent did not investigate all incidents which could reasonably have resulted in a catastrophic release. A July 2018 incident investigation report documented that ammonia was



observed to be dripping during railcar loading. The incident investigation report noted that this was not the first instance in which leaking was observed during railcar loading, and that a similar incident months prior had occurred, but the Facility was unable to locate an incident investigation for the prior leaking event.

78. Under 40 C.F.R. § 68.81(d), an owner or operator of a facility shall document in a written report at the conclusion of the investigation. 40 C.F.R. § 68.81(d)(2) requires that this report include the date the investigation began.
79. Based on evidence gathered during the investigation, EPA determined that Respondent failed to document the date the investigation began in the incident investigation report for an August 10, 2018, release of ammonia at the Facility.
80. Under 40 C.F.R. § 68.81(e), the owner or operator of a facility shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.
81. Based on evidence gathered during the investigation, EPA determined that Respondent did not document that all investigation findings and recommendations were promptly addressed and resolved for the July 2018 incident in which ammonia was observed leaking from a railcar. The incident report for the July 2018 incident did not include the required signatures from the Environmental Health and Safety Manager to document that the recommendations in the report had been addressed and resolved as of the date of EPA's inspection.

82. Under 40 C.F.R. § 68.81(f), the owner or operator of a facility shall review the incident investigation report with all affected personnel whose job tasks are relevant to the incident findings including contract employees, where applicable.
83. Based on evidence gathered during the investigation, EPA determined that Respondent did not provide incident investigation reports to affected personnel whose job tasks are relevant to the incident findings, as evidenced by some late or missing staff acknowledgments on the incident report for the July 2018 incident. The Facility stated that incident investigation reports are provided to managers and supervisors to share with affected personnel whose job tasks are relevant to the incident findings during safety meetings.
84. Accordingly, EPA alleges that by failing to perform or document an adequate incident investigation in response to incidents that could reasonably have resulted in a catastrophic release in 2018, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81.

Count 8

(Failure to Periodically Evaluate Performance of Contractors)

85. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
86. Under 40 C.F.R. § 68.87(b)(5), an owner or operator of a facility must periodically evaluate the performance of the contract owner or operator in fulfilling their obligations.

87. Based on evidence gathered during the investigation, EPA determined that Respondent did not periodically evaluate the performance of its contractors from January 2020 to January 2023.
88. Accordingly, by failing to periodically evaluate the performance of its contractors, EPA alleges that Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.87(b)(5).

Count 9

(Failure to Comply with the Emergency Response Plan Requirements)

89. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
90. Under 40 C.F.R. § 68.95(a), an owner or operator of a facility must develop and implement an emergency response plan containing procedures for notifying the public and appropriate emergency response authorities about accidental releases and procedures and measures for emergency response after an accidental release. The owner or operator also must develop and implement procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.
91. Based on evidence gathered during the investigation, EPA determined that Respondent failed to develop and implement procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes from January 2020 to October 2022.
92. Accordingly, EPA alleges that by failing to develop and implement procedures to review and update, as appropriate, the emergency response plan to reflect changes at the

stationary source and ensure that employees are informed of changes, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.95(a).

Count 10

(Failure to Correct the RMP)

93. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
94. Under 40 C.F.R. § 68.195(a), an owner or operator of a facility must submit information regarding any accidental release that triggers the five-year accident history reporting criteria of 40 C.F.R. § 68.42 within six months of the release or by the time the RMP is updated, whichever is earlier.
95. Based on evidence gathered during the investigation, EPA determined that Respondent failed to submit until August 6, 2020, information regarding an accidental August 10, 2018, release at the Facility that triggered the five-year accident history reporting criteria of 40 C.F.R. § 68.42.
96. Accordingly, EPA alleges that by failing to timely submit information regarding an accidental release, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.195(a).

Count 11

(Failure to Immediately Report Releases to the National  
Reporting Center)

97. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.

98. Pursuant to CERCLA Section 103, 42 U.S.C. § 9603, any person in charge of an onshore facility is required, as soon as they have knowledge of a release of a hazardous substance from a facility in a quantity equal to or greater than the RQ, to immediately notify the NRC of the release.
99. Based upon information obtained during EPA's investigation, EPA determined that Respondent notified the NRC 1 hour and 19 minutes after the start of a release of 1,742 pounds of sulfuric acid from the Facility on January 17, 2018.
100. Based upon information obtained during EPA's investigation, EPA determined that Respondent notified the NRC 3 hours and 58 minutes after the start of a release of 250 pounds of ammonia from the Facility on July 25, 2018.
101. Accordingly, EPA alleges that by failing to notify the NRC immediately upon having knowledge that a RQ of a hazardous substance had been released at its Facility, Respondent violated CERCLA Section 103, 42 U.S.C. § 9603.

Count 12

(Failure to Immediately Report Releases to the California Office of Emergency Services)

102. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth here in their entirety.
103. Pursuant to EPCRA Section 304, 42 U.S.C. § 11004, if a release of an EHS occurs from a facility at which a hazardous chemical is produced, used, or stored which requires notification of the NRC under CERCLA Section 103, 42 U.S.C. § 9603, the owner or operator of the facility shall immediately provide notice to the SERC of any State likely to be affected by the release.

104. Based upon the information obtained during EPA's investigation, EPA found that Respondent notified Cal OES, the SERC in California, 61 minutes after the start of a release of 1,742 pounds of sulfuric acid from the Facility on January 17, 2018.
105. Accordingly, EPA alleges that by failing to immediately notify the SERC of the release of a RQ of an EHS from the Facility, Respondent violated EPCRA Section 304, 42 U.S.C. § 11004.

E. CIVIL ADMINISTRATIVE PENALTY

106. Respondent agrees to pay a civil penalty in the amount of \$ 363,700 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").
- a. The CERCLA portion of the penalty totals TWENTY-FIVE THOUSAND AND FOUR HUNDRED DOLLARS (\$ 25,400.00).
- b. The EPCRA and CAA portions of the penalty total THREE HUNDRED AND THIRTY-EIGHT THOUSAND AND THREE HUNDRED DOLLARS (\$ 338,300).
107. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. The CERCLA penalty shall be paid pursuant to the Superfund Payments instructions and the EPCRA and CAA penalty shall be paid pursuant to the Civil Penalties instructions. If clarification regarding a particular method of payment remittance is needed, contact

Craig Steffen in the EPA Cincinnati Finance Center at (513) 487-2091 or  
steffen.craig@epa.gov.

108. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket numbers of this Agreement, CAA (112r)-09-2024-0100, CERCLA-09-2024-0101, and EPCRA-09-2024-0102 ,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk  
U.S. Environmental Protection Agency, EPA Region 9  
R9HearingClerk@epa.gov

and

Kathryn Kwiecinski  
Enforcement Division  
U.S. Environmental Protection Agency - Region 9  
Steiner.Cyntia@epa.gov

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
CINWD\_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that Regional Hearing Clerk payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

109. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS [choose "standard" or "large corporate"] underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
  - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
  - c. Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90)



days. Any such amounts will accrue from the Filing Date. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

110. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
  - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
  - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
  - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
111. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to

late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

112. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

F. RESPONDENT'S ADMISSIONS AND WAIVERS OF RIGHTS

113. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent: (i) admits that jurisdictional allegations of this CAFO; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in this CA/FO; and (iv) waives, any right to contest the allegations and its right to appeal the proposed final order accompanying this consent agreement.

I. DELAY in PERFORMANCE/STIPULATED PENALTIES

114. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Complainant.
115. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay; ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay; and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter. Compliance by Respondent shall

include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

116. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within thirty (30) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section E of this CAFO. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the thirty-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with the CAA, CERCLA, EPCRA, and their implementing regulations.
117. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal taxation purposes.
118. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

#### J. CERTIFICATION OF COMPLIANCE

119. In executing this CAFO, Respondent certifies that under penalty of law to EPA that it has taken all steps necessary to return to full compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-12, CAA Section 112(r), 42 U.S.C. §

7412(r), and their implementing regulations, that formed the basis for the violations alleged in this CA/FO.

120. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

**K. RESERVATION OF RIGHTS**

121. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
122. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

**L. MISCELLANEOUS**

123. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
124. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

125. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.
126. Each party to this action shall bear its own costs and attorneys' fees.
127. Respondent consents to entry of this CAFO without further notice.

M. EFFECTIVE DATE

128. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

FOR RESPONDENT, The J.R. Simplot Company:

Sept 3, 2024  
DATE

  
NAME: CHRISTOPHER L MORAN  
TITLE: VP MINING & MANUFACTURING

In the Matter of The JR Simplot Company  
Consent Agreement and Final Order

FOR COMPLAINANT, EPA REGION IX:

**AMY MILLER-**  
**BOWEN**

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2024.09.25 08:41:17  
-07'00'

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Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final in the Matter of The JR Simplot Company (Docket No. CAA (112r)-09-2024-0100 EPCRA-09-2024-0101, CERCLA-09-2024-0102,) be entered, and that Respondent shall pay a civil administrative penalty in the amount of THREE HUNDRED SIXTY THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$ 363,700), and otherwise comply with the terms and conditions set forth in the Consent Agreement.

BEATRICE  
WONG



Digitally signed by  
BEATRICE WONG  
Date: 2024.09.26  
09:23:59 -07'00'

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Beatrice Wong  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the matter of The J.R. Simplot Company (Docket No. CAA(112r)-09-2024-0100, CERCLA-09-2024-0101, and EPCRA-09-2024-0102), has been filed by Regional Hearing Clerk, and that a true and correct copy was served on the parties, via electronic mail, as indicated below:

**RESPONDENT:** Rachel Roskelley  
The J.R. Simplot Company  
1099 W. Front Street  
Boise, ID 83702  
Rachel.roskelley@simplot.com

**COMPLAINANT:** Brianna Fairbanks  
Attorney Advisor  
United States Environmental Protection Agency  
Region IX – Office of Regional Counsel  
75 Hawthorne Street  
San Francisco, CA 94105  
Fairbanks.Brianna@epa.gov

Kathryn Kwiecinski  
Environmental Protection Specialist  
United States Environmental Protection Agency  
R09-ECAD-AWCB-HWCS  
75 Hawthorne Street  
San Francisco, CA 94105  
Kwiecinski.kathryn@epa.gov

**PONLY TU** Digitally signed by  
PONLY TU  
Date: 2024.09.26  
12:54:58 -07'00'

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Ponly Tu  
Regional Hearing Clerk  
U.S. EPA – Region IX