

Attachment C - ANNUAL COSTS FOR CLOSURE

FACILITY

Year 20__ CURRENT CONDITION CLOSURE

Period	Sequence Year	Calendar Year	Physical Closure Cost (\$)	Long-Term Care Cost (\$)	Water Volume (billion gallons)			Capital Cost for Treatment (\$)	Annual Average Treatment Rate (gpm)	Annual Water Treatment Cost (\$)	Total Annual Cost (\$)
					Ponded Water Inventory	Drainable Pore Water	Total Annual Water Volume				
15-year Closure Construction Period	1	20__									
	2	20__									
	3	20__									
	4	20__									
	5	20__									
	6	20__									
	7	20__									
	8	20__									
	9	20__									
	10	20__									
	11	20__									
	12	20__									
	13	20__									
	14	20__									
	15	20__									
50-year Post-Closure Construction Long-Term Care Period	1	20__									
	2	20__									
	3	20__									
	4	20__									
	5	20__									
	6	20__									
	7	20__									
	8	20__									
	9	20__									
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	43	20__									
	44	20__									
	45	20__									
	46	20__									
	47	20__									
	48	20__									
	49	20__									
	50	20__									
	100	20__									
Total Construction/Care Cost (\$)											
Total Water Volume (Billion gal)											
Total Water Treatment Cost (\$)											

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 1*

Instructions: The trust agreement for a trust fund, as specified in Appendix 2 of the Consent Decree, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

Trust Agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert “incorporated in the State of ----” or “a national bank”], the “Trustee.”

Whereas, EPA has entered into a Consent Decree with [Defendant and the owner or operator of the Facility(ies)] requiring [Defendant and the owner or operator of the Facility(ies)] to provide Financial Assurance that funds will be available when needed for Stack Closure and/or Long-Term Care of its Facility[ies] covered under the Consent Decree [need to insert additional description of the Consent Decree].

Whereas, the Grantor may elect to establish a trust to provide, in conjunction with other allowable Financial Assurance mechanisms as specified in Appendix 2, for all or part of such Financial Assurance for the Facility[ies] identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:¹

(a) The term “Grantor” means the owner or operator of the Facility[ies] who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any Successor Trustee.

Section 2. Identification of Facility[ies] and Cost Estimates. This Agreement pertains to the Facility[ies] and Cost Estimates identified on attached Schedule A [on Schedule A, for each Facility list the EPA and (abbreviation for State Agency) Identification Number, name, address, and the current Stack Closure and/or Long-Term Care Cost Estimates, or portions thereof, for which Financial Assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of EPA and [abbreviation for State Agency]. The

¹ Any capitalized terms that are not otherwise defined in this Agreement shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

Grantor and the Trustee intend that no Third Party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payment for Stack Closure and Long-Term Care. The Trustee shall make payments from the Fund only as directed in writing by the appropriate EPA Regional Administrator in accordance with Section 14. The Trustee shall provide for reimbursements to the Grantor or other persons from the Fund for the payment of the costs of Stack Closure and/or Long-Term Care of the Facility[ies] covered by this Agreement only as directed in writing by the appropriate EPA Regional Administrator. In addition, the Trustee shall refund to the Grantor only such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his/her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied

against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Semiannual Accounting. The Trustee shall, every six (6) months from the date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator (or the designee), a statement confirming the value of the Trust and a cumulative and calendar year accounting of the amount the Trustee has released from the Fund for reimbursement of Stack Closure and Long-Term Care expenditures. The Trustee shall furnish additional valuation statements and accountings of the released funds to the Grantor and to the appropriate EPA Regional Administrator, as instructed in writing by the EPA Regional Administrator. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the Anniversary Date of establishment of the Fund or no more than sixty (60) days prior to a semi-annual accounting. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The Successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the Successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a Successor Trustee or for instructions. The Successor Trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as

provided in Section 9.

Section 14. Instructions to the Trustee.

(a) All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions.

(b) All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the appropriate EPA Regional Administrator, unless otherwise indicated in instructions to the Trustee as signed by the EPA Regional Administrator. Initial instructions by the EPA Regional Administrator to the Trustee are attached as Exhibit B. New, revised or amended instructions by the EPA Regional Administrator to the Trustee will be dated and appended hereto in this Exhibit and shall be designated Exhibit B followed by a numeric designation (e.g., Exhibit B-1, Exhibit B-2). The Trustee shall act and shall be fully protected in acting in accordance with the EPA Regional Administrator's orders, requests, and instructions.

(c) The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein and found in Exhibit B.

Section 15. Notice of Payment. The Trustee shall notify the appropriate EPA Regional Administrator of payment to the trust fund, by certified mail within ten (10) days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment and the current value of the trust fund.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor, and/or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Wyoming.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. Whenever the term “EPA Regional Administrator” is used, they shall be construed to include the term “or his/her designee.” The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Attachment D, Form 1 of Appendix 2 of the Consent Decree [*need to insert more information regarding the description of the CD, such as the name of the case, the case number, etc*].

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified Appendix 2 of the Consent Decree.

State of

County of

On this *[date]*, before me personally came *[owner or operator]* to me known, who, being by me duly sworn, did depose and say that she/he resides at *[address]*, that she/he is *[title]* of *[corporation]*, the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 2*

Instructions: A surety bond guaranteeing payment into a trust fund, as specified in Appendix 2 of the Consent Decree, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

[Letterhead of Bond Issuer]

FINANCIAL GUARANTEE BOND

Date Bond Executed: _____

Effective Date: _____

Principal: [Legal name and business address of Defendant]

Type of organization: [Insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety[ies]: [Name(s) and business address(es)]

EPA Identification Number, name, address, and Stack Closure and/or Long-Term Care amount(s) for each Facility guaranteed by this bond [indicate Stack Closure and/or Long-Term Care amounts separately]: _____

Total Penal Sum of Bond: \$ _____

Surety's Bond Number: _____

Know All Persons By These Presents, That we, the Principal and Surety[ies] hereto are firmly bound to EPA in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal, the named Defendant, entered into a Consent Decree, [insert description of the Consent Decree such as name of the case, the case number, etc.] with EPA pursuant to the Resource Conservation and Recovery Act ("RCRA"), as amended, to resolve civil claims by establishing injunctive relief under the Consent Decree;¹

Whereas said Principal is required to provide Financial Assurance pursuant to Paragraph 26 of the Consent Decree for Stack Closure and Long-Term Care; and

¹ Any capitalized terms that are not otherwise defined in this Financial Guarantee Bond shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

Whereas said Principal shall establish a standby trust fund as is required when a financial guarantee bond (“surety bond” or “bond”) is used to provide such Financial Assurance:

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of Stack Closure and Long-Term Care [*or insert, as appropriate, either Stack Closure or Long-Term Care if the Financial Assurance provided is limited to one of the obligations*] of each Facility identified above, fund the standby trust fund in the amount(s) identified above for the Facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin Stack Closure and Long-Term Care [*or insert, as appropriate, either Stack Closure or Long-Term Care if the Financial Assurance provided is limited to one of the obligations*] is issued by EPA or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate Financial Assurance, as specified in Appendix 2 to the Consent Decree and obtain EPA’s written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and EPA from the Surety[ies], then the obligation of the Surety or Sureties, as applicable, shall be null and void; otherwise it is to remain in full force and effect.

The Surety[ies] shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by EPA that the Principal has failed to perform as guaranteed by this bond, the Surety[ies] shall place funds in the amount guaranteed for the Facility[ies] into the standby trust fund as directed by EPA.

The liability of the Surety[ies] shall not be discharged by any payment or succession of payments hereunder, unless and until such payments or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety[ies] hereunder exceed the amount of said penal sum [*insert the following text if more than one Surety is covering the Financial Assurance obligation: “as specified below for each individual Surety”*].

The Surety[ies] may cancel the bond by sending notice of cancellation by certified mail to the Principal, EPA and [*insert abbreviation for State Agency*], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and EPA, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety[ies], provided, however, that no such notice shall become effective until the Surety[ies] receive[s] written authorization for termination of the bond by EPA.

Principal and Surety[ies] hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new Stack Closure and Long-Term Care [*or insert, as appropriate, either Stack Closure or Long-Term Care if the Financial Assurance provided is limited to one of the obligations*] amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of EPA.

In Witness Whereof, The Principal and Surety[ies] have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety[ies] and that the wording of this surety bond is identical to the wording specified in Appendix 2, Attachment D, Form 2 of the Consent Decree for a Financial Guarantee Bond.

FOR THE PRINCIPAL:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

Corporate seal: _____

FOR THE CORPORATE SURETY(IES):

[Name and Address]

State of incorporation: _____

Liability limit: \$_____

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

Corporate seal: _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for the Surety above.]

Bond premium: \$_____

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 3*

Instructions: A performance bond guaranteeing performance, as specified in Appendix 2 of the Consent Decree, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

[Letterhead of Bond Issuer]

PERFORMANCE BOND

Date Bond Executed: _____

Effective Date: _____

Principal: [Legal name and business address of Defendant]

Type of organization: [Insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety[ies]: [Insert name(s) and business address(es)]

EPA Identification Number, name, address, and Stack Closure and/or Long-Term Care amount(s) for each Facility guaranteed by this performance bond [indicate Stack Closure and/or Long-Term Care amounts separately]: _____

Total Penal Sum of Bond: \$ _____

Surety's Bond Number: _____

Know All Persons By These Presents, That we, the Principal and Surety[ies] hereto are firmly bound to EPA in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal, the named Defendant, entered into a Consent Decree, [insert description of the Consent Decree such as name of the case, the case number, etc.] with EPA pursuant to the Resource Conservation and Recovery Act ("RCRA"), as amended, to resolve civil claims by establishing injunctive relief under the Consent Decree;¹

Whereas said Principal is required to provide Financial Assurance pursuant to Paragraph 26 of the Consent Decree for Stack Closure and Long-Term Care, and

¹ Any capitalized terms that are not otherwise defined in this Performance Bond shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such Financial Assurance:

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform Stack Closure, whenever required to do so, of each Facility for which this bond guarantees Stack Closure, in accordance with the Closure Plan and other requirements of the Consent Decree as such Closure Plan and Consent Decree may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And if the Principal shall faithfully perform Long-Term Care, of each Facility for which this bond guarantees Long-Term Care, in accordance with the Closure Plan and other requirements of the Consent Decree as such Closure Plan and Consent Decree may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate Financial Assurance as specified in Appendix 2 to the Consent Decree, and obtain the EPA's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and EPA from the Surety[ies], then this obligation shall be null and void, otherwise it is to remain in full force and effect. The Surety[ies] shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

If EPA issues a Work Takeover Notice pursuant to Section VI (Work Takeover) of the Consent Decree stating that the Principal has failed to perform Stack Closure in accordance with the Closure Plan and Consent Decree for a Facility for which this bond guarantees performance of Stack Closure, and the Principal fails within thirty (30) Days to remedy the circumstances giving rise to EPA's issuance of such notice, the Surety[ies] shall either perform Stack Closure in accordance with the Closure Plan and the Consent Decree or place the Stack Closure amount guaranteed for the Facility into the standby trust fund as directed by the EPA.

If EPA issues a Work Takeover Notice pursuant to Section VI (Work Takeover) of the Consent Decree stating that the Principal has failed to perform Long-Term Care in accordance with the Closure Plan and Consent Decree for a Facility for which this bond guarantees performance of Long-Term Care, and the Principal fails within thirty (30) Days to remedy the circumstances giving rise to EPA's issuance of such notice, the Surety[ies] shall either perform Long-Term Care in accordance with the Closure Plan and the Consent Decree or place the Long-Term Care amount guaranteed for the Facility into the standby trust fund as directed by the EPA.

Upon notification by EPA that the Principal has failed to provide alternate Financial Assurance as required by Appendix 2 to the Consent Decree, and obtain written approval of such assurance from EPA during the 90 days following receipt by both the Principal and EPA of a notice of cancellation of the bond, the Surety[ies] shall place funds in the amount guaranteed for the Facility[ies] into the standby trust fund as directed by EPA.

The Surety[ies] hereby waive[s] notification of amendments to the Consent Decree, Initial Closure Plan, Permanent Closure Plan, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its [their] obligation on this bond.

The liability of the Surety[ies] shall not be discharged by any payment or succession of payments hereunder, unless and until such payments or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety[ies] hereunder exceed the amount of said penal sum.

The Surety[ies] may cancel the bond by sending notice of cancellation by certified mail to the Principal and EPA, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and EPA, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety[ies], provided, however, that no such notice shall become effective until the Surety[ies] receive[s] written authorization for termination of the bond by EPA.

Principal and Surety[ies] hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new Stack Closure and/or Long-Term Care amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of EPA.

In Witness Whereof, The Principal and Surety[ies] have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety[ies].

FOR THE PRINCIPAL:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

Corporate seal: _____

FOR THE CORPORATE SURETY(IES):

[Name and Address]

State of incorporation: _____

Liability limit: \$_____

Date: _____

By *[signature]*: _____

Printed name: _____

Title: _____

Corporate seal: _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for the Surety above.]

Bond premium: \$_____

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 4*

Instructions: A letter of credit guaranteeing payment into a trust fund, as specified in Appendix 2 of the Consent Decree, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT¹

Regional Administrator, Region __, EPA

Dear Sir(s) or Madam(s): We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [*Defendant's, name and address, the owner and/or operator of the Facility(ies)*] up to the aggregate amount of [*insert amount in words*] U.S. dollars \$[*insert amount in numbers*], available upon presentation by you of

(1) your sight draft, bearing reference to this letter of credit No. __, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to Consent Decree [*case name/docket information for consent decree*] entered into pursuant to the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit is effective as of [*date*] and shall expire on [*date at least 1 year later*], but such expiration date shall be automatically extended for a period of [*at least 1 year*] on [*date*] and on each successive expiration date, unless, at least 120 Days before the current expiration date, we notify both you and [*Defendant's name, the owner and/or operator of the Facility(ies)*] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight drafts for 120 Days after the date of receipt by both you and [*Defendant's name, the owner and/or operator of the Facility(ies)*], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the entire amount of the draft directly into the Trust Fund (Account No.____) created by the Trust Agreement entered by [*insert Defendant's name, the owner and/or operator of the Facility(ies)*], dated ____ 20__, in accordance with your instructions.

[*Signature(s) and title(s) of official(s) of issuing institution*] [*Date*]

This credit is subject to [*insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"*].

¹ Any capitalized terms that are not otherwise defined in this Irrevocable Standby Letter of Credit shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

U.S. Environmental Protection Agency
Regional Administrator
Region ____

[*Insert State Agency designation*]
Director

Attention: [*Specify EPA Office and State Office*]

Dear Sir(s) or Madam(s):

In accordance with Appendix 2 of Consent Decree [*case name/docket information for consent decree*] we have established Irrevocable Standby Letter of Credit No. _____ issued by [*name of issuing institution*] on [*issuing date*] in the amount of [*insert amount in words*] U.S. dollars (\$[*insert amount in numbers*]) for the following Facility[ies]:

- [*Insert Facility Name*]
- [*EPA Id Number*]
- [*Facility Address*]
- [*Coverage for Stack Closure and/or Long-Term Care*]

I certify that the letter of credit provider is a federally insured financial institution. I certify that the wording of the letter of credit is identical to the wording specified in Attachment D, Form 4, of Appendix 2, of the Consent Decree [*case name/docket information for consent decree*].

Sincerely,

[*Insert Name*]
Chief Financial Officer
[*Insert Company/Defendant Name*]

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 5*

Instructions: A certificate of insurance, as specified in Appendix 2 of the Consent Decree, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**CERTIFICATE OF INSURANCE FOR
STACK CLOSURE AND/OR LONG-TERM CARE¹**

Name and Address of Insurer:
(herein called the "Insurer"): _____
Name and Address of Insured:
(herein called the "Insured"): _____

Facilities Covered: *[List for each Facility: The EPA Identification Number, name, address, and the amount of insurance for Stack Closure and/or the amount of insurance for Long-Term Care (these amounts for all Facilities covered must total the face amount shown below).]*

Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for *[insert "Phosphogypsum Stack System Closure" or "Stack Closure and Long-Term Care" or "Long-Term Care"]* for the Facility~~ies~~ identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of *Paragraph 10.d of Section III, Appendix 2 of the Consent Decree (including Consent Decree name and docket information)*, and as such requirements were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such requirements of *Paragraph 10.d of Section III, Appendix 2 of the Consent Decree* is hereby amended to eliminate such inconsistency.

Whenever requested by the EPA Regional Administrator~~s~~ of the U.S. Environmental Protection Agency ("EPA"), the Insurer agrees to furnish the EPA Regional Administrator~~s~~ of the EPA a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in *Attachment D, Form 5 of Appendix 2 of the Consent Decree* and as such requirements were constituted on the date shown immediately below.

[Authorized signature for Insurer] _____
[Name of person signing] _____
[Title of person signing] _____
Signature of witness or notary: _____
[Date] _____

¹ Any capitalized terms that are not otherwise defined in this Certificate for Insurance shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

*Simplot Rock Springs Consent Decree
Appendix 2, Attachment D, Form 6*

Instructions: A surety bond guaranteeing payment into a trust fund for third-party liability, as specified in Appendix 2 of the Consent Decree, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

[Letterhead of Bond Issuer]

FINANCIAL GUARANTEE BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each Facility guaranteed by this bond: _____

	Sudden Accidental Occurrences	Nonsudden Accidental Occurrences
Penal Sum Per Occurrence	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the Facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

The Principal (the named Defendant) entered into a Consent Decree, [insert description of the Consent Decree such as name of the case, the case number, etc.] with EPA pursuant to the Resource Conservation and Recovery Act (“RCRA”), as amended, to resolve civil claims by establishing injunctive relief under the Consent Decree.¹

The Principal is required to provide Financial Assurance pursuant to Paragraph 26 of the Consent Decree for third-party liability.

¹ Any capitalized terms that are not otherwise defined in this Financial Guarantee Bond shall have the meaning as set forth in the Consent Decree, or Appendices 2 and 9, as attached thereto.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the Facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert Principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

(4) Personal property in the care, custody or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third-party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] Facility should be paid in the amount of \$[].

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date;

or,

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's Facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice

to the Regional Administrator forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the USEPA Regional Administrator for Region [Region #], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Regional Administrator, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded Facility(ies) is (are) located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix 2, Attachment D, Form 6 of the Consent Decree.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation:

Liability Limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$