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(see signature pages for complete list of counsel for parties represented)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

_____)	
UNITED STATES OF AMERICA,)	
STATE OF IDAHO, and)	
SAN JOAQUIN VALLEY AIR)	
POLLUTION CONTROL DISTRICT)	
)	
	Plaintiffs,)	Case No. [_____]
v.)	COMPLAINT
)	
J. R. SIMPLOT COMPANY,)	
)	
	Defendant.)	
_____)	

COMPLAINT

Plaintiffs, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), the State of Idaho, on behalf of its Idaho Department of Environmental Quality (“IDEQ”), by and

through the Office of the Idaho Attorney General, and the San Joaquin Valley Air Pollution Control District (“SJVAPCD”), file this Complaint and allege as follows:

NATURE OF THIS ACTION

1. This is a civil action brought against J.R. Simplot Company (“Simplot” or “Defendant”) pursuant to Section 113(b) of the Clean Air Act, (“CAA” or “the Act”), 42 U.S.C. § 7413(b), and applicable State Implementation Plans (“SIPs”). Plaintiffs seek injunctive relief and civil penalties for violations of: (a) the CAA’s Prevention of Significant Deterioration (“PSD”) provisions, found at Part C of Title I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21; (b) the CAA’s Title V operating permit program, 42 U.S.C. §§ 7661-7661f, and the implementing federal regulations promulgated thereunder at 40 C.F.R. Part 70; and (c) the federally enforceable SIPs developed by the states of California (including regional air districts), Idaho, and Wyoming pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporate or implement the above requirements, and which establish federally enforceable permitting programs for construction and operation of new and modified sources.

2. As set forth below, Defendant has violated and continues to violate the statutory and regulatory requirements identified in Paragraph 1 above, by constructing, reconstructing or modifying the sulfuric acid manufacturing plants that it owns and operates in Lathrop, California; Pocatello, Idaho; and Rock Springs, Wyoming, without obtaining the proper permits, installing required control technology, meeting emission limits, or complying with the requirements for monitoring, record keeping, and reporting as required by the CAA. As a result of their operation, these sulfuric acid plants emit,

inter alia, sulfur dioxide (“SO₂”), sulfuric acid mist, and fine particulate matter (“PM”) into the atmosphere. SO₂, sulfuric acid mist, and PM (including PM of less than 2.5 micrometers in diameter, known as “PM_{2.5}”) are each a regulated pollutant under the CAA.

3. Defendant modified, and thereafter operated, each of the five sulfuric acid plants involved in this action, without first obtaining appropriate permits authorizing this construction and/or operation of modifications, and without installing the best available control technology (“BACT”) to control SO₂ emissions as required by the Act, the Act’s implementing regulations, and the applicable SIPs. In addition, as set forth below, at one of these sulfuric acid plants, Defendant commenced construction of a major modification without obtaining an appropriate permit that would have required BACT for sulfuric acid mist and PM_{2.5}. Moreover, Defendant failed to comply with the requirements of Title V, *inter alia*, by failing to identify BACT emission limitations as applicable requirements for the modified sulfuric acid plants, failing to operate the modified sulfuric acid plants in compliance with such limitations, and failing to submit a compliance plan for all applicable requirements for which the plants were not in compliance.

4. Defendant’s operation of the sulfuric acid plants following their unlawful modification has resulted in excess amounts of SO₂ being released into the atmosphere.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367.

6. Venue is proper in this judicial district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because some of the violations alleged in this Complaint have occurred, and Defendant is headquartered and conducts business, in this judicial district. Defendant has consented to venue in this district, and to the participation of the State of Idaho and the SJVAPCD as parties to this action.

DEFENDANT AND FACILITIES

7. Simplot is a privately-held food and agribusiness company, incorporated in Nevada, with its principal corporate offices in Boise, Idaho. Simplot has U.S. operations in ranching, food processing, mining, and fertilizer production and retail in several states. Among its operations are fertilizer manufacturing plants located in Lathrop, California (known as the Lathrop facility); Pocatello, Idaho (known as the Don Plant or the Pocatello facility); and Rock Springs, Wyoming (known as the Rock Springs facility, which Simplot operates as part of its subsidiary, Simplot Phosphates, L.L.C.). At each of these locations, Simplot manufactures sulfuric acid from elemental sulfur as part of the process of producing phosphate fertilizer products.

8. At all times pertinent to this action, Simplot has owned and operated one sulfuric acid plant at the Lathrop facility; owned and operated two sulfuric acid plants at the Pocatello facility, respectively known as the #300 sulfuric acid plant and the #400 sulfuric acid plant; and operated two sulfuric acid plants at the Rock Springs facility, respectively known as the Lurgi plant and the MEC plant, through its wholly-owned subsidiary Simplot Phosphates, L.L.C.

STATUTORY AND REGULATORY BACKGROUND

9. The CAA is designed to protect and enhance the quality of the nation's air, so as to promote the public health and welfare and the productive capacity of its population. CAA Section 101(b)(1), 42 U.S.C. § 7401(b)(1).

National Ambient Air Quality Standards (NAAQS)

10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for those air pollutants for which air quality criteria have been issued pursuant to Section 108 of the Act, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and secondary NAAQS are to be adequate to protect the public welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air. Pursuant to Section 109 of the Act, EPA has promulgated primary and secondary NAAQS for SO₂ and PM (including PM_{2.5}). 40 C.F.R. §§ 50.4, 50.5, 50.7, 50.13, 50.18.

11. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area. An area that does not meet the NAAQS is termed a "nonattainment" area. An area that cannot be classified due to insufficient data is termed "unclassifiable."

12. Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires each state to submit a State Implementation Plan ("SIP") that provides for the attainment and

maintenance of the NAAQS for approval by EPA. California, Idaho, and Wyoming each have EPA-approved SIPs.

Prevention of Significant Deterioration (PSD) Requirements

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attaining the NAAQS standards or as unclassifiable with respect to the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the “PSD program.” The PSD program (applicable in attainment and unclassifiable areas), along with requirements that apply in areas designated as nonattainment with respect to the NAAQS, are elements of what is collectively referred to as the “New Source Review” (“NSR”) program.

14. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contains a PSD program. A state (or a regional air authority with authority delegated by the state) may comply with Sections 110(a) and 161 by being delegated by EPA with the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations, approved by EPA as part of the state’s SIP, on the basis that the state’s PSD provisions set forth in the SIP are at least as stringent as those set forth in the federal PSD regulations. If a state or regional air authority does not have a PSD program that has been approved by EPA and incorporated into that state’s SIP, the

federal PSD regulations set forth at 40 C.F.R. § 52.21 must be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

15. SJVAPCD has been delegated authority by the State of California to act on the State's behalf with respect to sources within the San Joaquin Valley Air District. SJVAPCD administers an NSR program in the San Joaquin Valley Area under the California SIP. *See* 64 Fed. Reg. 39920 (July 23, 1999) (EPA approval of SJVAPCD NSR rules submitted by the State of California); 40 CFR § 52.270(b). Before November 26, 2012, the effective date of EPA's approval of the addition of SJVACPD's PSD permitting program to the SIP, *see* 77 Fed. Reg. 65305 (Oct. 26, 2012), the federal PSD regulations applied to all new major sources and major modifications within the jurisdiction of the SJVAPCD.

16. EPA approved the State of Idaho PSD program into the federally-enforceable Idaho SIP effective August 22, 1986, and has approved several revisions since that time. *See* 51 Fed. Reg. 22808 (June 23, 1986); 80 Fed. Reg. 18526 (April 7, 2015) (most recent approval); 40 C.F.R. § 52.683.

17. EPA approved Wyoming's PSD program as part of the Wyoming SIP on September 6, 1979, and subsequently approved revisions to that program effective August 27, 2004. *See* 44 Fed. Reg. 51977 (Sept. 6, 1979); 69 Fed. Reg. 44965 (July 28, 2004) (approving restructured and renumbered rules); 40 C.F.R. § 52.2630.

18. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as in "attainment" or as "unclassified" unless a permit has been issued that comports with the requirements of CAA Section 165 and the facility employs BACT for

each pollutant subject to regulation under the Act that is emitted from the facility.

Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates any sulfuric acid plant which emits or has the potential to emit one hundred tons per year or more of any pollutant to be a “major emitting facility.”

19. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” as including “modification” (as defined in CAA Section 111(a), 42 U.S.C. § 7411(a)). “Modification” is defined in CAA Section 111(a)(4), 42 U.S.C. § 7411(a)(4), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” A “major modification” under the federal PSD regulations is “any physical change in or change in the method of operation of a major stationary source” that would result in a significant emissions increase of a regulated pollutant and a significant net emissions increase of that pollutant from a major stationary source, *see* 40 C.F.R. § 52.21(b)(2)(i), and the state SIPs applicable to this action define “major modification” in a substantively identical way. A “significant net emissions increase” under the federal PSD regulations (as well as the state SIPs applicable to this action) is 40 tons per year (tpy) or more for SO₂, 10 tpy or more for PM_{2.5}, and 7 tpy or more for sulfuric acid mist. 40 C.F.R. § 52.21(b)(23)(i).

20. If a major modification triggers the requirements of the PSD program, the federal PSD regulations (as well as the state SIPs applicable to this action) require the owner or operator of a major stationary source that has undergone a major modification to apply for a permit incorporating emissions limitations meeting BACT for each pollutant as to which a significant emissions increase occurred as a result of the

modification. 40 C.F.R. § 52.21(j).

Title V

21. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources” as defined in 42 U.S.C. § 7661(2). The purpose of Title V is to ensure that all “applicable requirements” that a source is subject to under the CAA, including PSD, SIP and NSPS requirements, are collected in one permit. Following earlier interim approval, EPA granted final approval to the Title V programs of SJVAPCD on November 30, 2001, *see* 66 FR 63503 (Dec. 7, 2001) and 68 FR 65637 (Nov. 21, 2003) (revised); of Idaho, effective November 5, 2001, *see* 66 Fed. Reg. 50574 (Oct. 4, 2001); and, of Wyoming, effective April 23, 1999, *see* 64 Fed. Reg. 8523 (Feb. 22, 1999)

22. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Title V programs of SJVAPCD, Idaho, and Wyoming approved by EPA, have at all relevant times made it unlawful for any person to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

23. Section 503(b) – (d) of the Act, 42 U.S.C. § 7661b(b) – (d), the Title V regulations at 40 C.F.R. §§ 70.5(a), (c), and (d), and the SJVAPCD, Idaho, and Wyoming Title V programs, have at all relevant times required the owner or operator of a source to submit an application for a Title V permit that is timely and complete and which, among other things, identifies all applicable requirements (including any requirement to meet BACT pursuant to PSD), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

24. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), implementing regulations of the Act, 40 C.F.R. § 70.6, and the SJVAPCD, Idaho, and Wyoming Title V permit program regulations have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the CAA and the requirements of the applicable SIP, including any applicable PSD requirement to comply with an emission rate that meets BACT.

Enforcement Provisions

25. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the CAA whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of, *inter alia*: (1) the PSD requirements of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), or any rule promulgated thereunder; (2) Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) a SIP or any permit issued thereunder.

26. Section 113(b) of the Act, 42 U.S.C. § 7413 (b), authorizes EPA to initiate a civil judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation and, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. § 19.4, the civil penalty that may be sought has increased to up to \$27,500 per day for each violation occurring on and after January 31, 1997; up to \$32,500 per day for each violation occurring on or after March 15, 2004; and, up to \$37,500 per day for each violation occurring on or after January 12, 2009.

27. IDEQ and SJVAPCD each have independent statutory authority to obtain relief for the violations alleged in this complaint. *See* Idaho Code §§ 39-108 and 39-109; California Health and Safety Code §§ 41513 and 42403, *et seq.*

NOTICES

28. EPA issued a Notice of Violation to Simplot on January 26, 2009 for undertaking major modifications, without applying for or obtaining a PSD permit and a BACT limit for SO₂, at the #300 and the #400 Sulfuric Acid Plants at Simplot's Don Plant (Pocatello facility).

29. EPA issued a Notice of Violation to Simplot on December 3, 2013 for undertaking major modifications, without applying for or obtaining a PSD permit and a BACT limit for SO₂, at the sulfuric acid plant at the Lathrop facility.

30. EPA issued a request for information to Simplot on September 29, 2008 concerning modifications to the Rock Springs facility's MEC and Lurgi sulfuric acid plants that may have first required a PSD permit. Simplot responded to this information request on January 23, 2009. EPA undertook an initial analysis of Simplot's response to the information request and identified projects undertaken by Simplot at the MEC and Lurgi plants that may have given rise to liability under the PSD provisions of the CAA with respect to SO₂ emissions from these plants.

31. Notice of the commencement of this action has been given to the appropriate State air pollution control agencies in accordance with CAA Section 113(b), 42 U.S.C. § 7413(b). EPA has provided notice to Defendant and to the States of Idaho, Wyoming, and California (through its delegated authority, the SJVAPCD) of its finding of the violations alleged in this complaint, and the 30-day period established in 42 U.S.C.

§ 7413(b)(1) between the provision of such notice and the filing of this action has elapsed.

GENERAL ALLEGATIONS

32. At all times relevant to this Complaint, each of the Lathrop, Pocatello, and Rock Springs facilities has been a “major emitting facility” and “major stationary source,” within the meaning of the Act.

33. At all times relevant to this Complaint, each of the sulfuric acid plants located at the Lathrop and Rock Springs facilities has been located in an area designated as unclassifiable for SO₂; the sulfuric acid plants located at the Pocatello facility has been located in an area designated as attainment or unclassifiable for SO₂ and PM_{2.5}.

FIRST CLAIM FOR RELIEF (PSD Violations)

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. Defendant commenced construction of one or more major modifications, as defined in the Act, of the sulfuric acid plants located at its Lathrop, Pocatello, and Rock Springs facilities.

36. At the sulfuric acid plant at the Lathrop facility, the major modifications Simplot made included one or more physical changes, including, but not necessarily limited to, the interpass tower packing replacement, performed from March to August, 1999, and the replacement of two gas to gas heat exchangers with a single larger heat exchanger, performed from May 2002 to January 2003. Such modifications resulted in significant emissions increases and significant net emissions increases, as defined by the relevant PSD regulations, of SO₂. Each such modification violated the PSD provisions of

the applicable SIP, enforceable by EPA under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

37. At the sulfuric acid plants at the Pocatello facility (the Don Plant), the major modifications Simplot made included, but were not necessarily limited to: (a) repairs and replacements of components (e.g., repairing the 98% pump tank, installing a brick lined dilution tank, replacing the waste heat boiler, repacking the final absorption tower, installing new economizer and cooling tower cell) at the #400 sulfuric acid plant in 1991-92; (b) changes to the #300 sulfuric acid plant in 1996 to increase that plant's production capacity (e.g., re-machining of the primary air mover, upgrading of steam turbine drive, upgrading of sulfur burners and feed pumps, revising size and flow of process air ducts, increasing height of second converter bed, and installing new heat exchanger); (c) changes at the #300 sulfuric acid plant in 2001 to replace aging process equipment (e.g., replacing converter, drying tower, 98% acid pump tank, superheater, boiler feed water pumps, scrubber packing, scrubber demister mesh pad, and scrubber mist eliminators); and (d) replacement of the Main Acid Cooler at the #300 sulfuric acid plant in July 2009. Each of these modifications resulted in significant emissions increases and significant net emissions increases of SO₂, triggering the requirement for Simplot to (1) apply for and obtain a PSD permit prior to construction of the modification, (2) apply BACT on the #300 and #400 sulfuric acid plants, and (3) demonstrate that each modification did not cause a significant deterioration in air quality, all in accordance with the Idaho SIP. Simplot's failure to do so violated the Idaho SIP, enforceable by EPA under Section 113 of the Act, 42. U.S.C. § 7413, and 40 C.F.R. § 52.23.

38. At the Pocatello facility (Don Plant), Simplot undertook changes in 2012 to the #400 sulfuric acid plant (e.g., replacing final absorbing tower, including mist eliminators). Simplot sought prior authorization (via permit application) for these changes from the IDEQ. However, Simplot began actual construction of these changes without first receiving a permit. The project was a major modification with respect to PM_{2.5} and sulfuric acid mist, triggering the requirement for Simplot to (1) apply for and obtain a PSD permit prior to construction of the modification, (2) apply BACT on the #400 sulfuric acid plant, and (3) demonstrate that the proposed modification did not cause a significant deterioration in air quality, all in accordance with the Idaho SIP. Simplot's failure to do so violated the Idaho SIP, enforceable by EPA under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

39. At the sulfuric acid plants at the Rock Springs facility, after a reasonable opportunity for further investigation or discovery, it is likely that the evidence will show, and it is therefore alleged, that Defendant undertook one or more major modifications to the Lurgi and/or MEC sulfuric acid plants that resulted in significant emissions increases and significant net emissions increases of SO₂. Each such modification violated the PSD provisions of the Wyoming SIP, enforceable by EPA under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

40. Unless restrained by this Court, these violations will continue.

41. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), these violations subject Defendant to injunctive relief and civil penalties.

SECOND CLAIM FOR RELIEF

(Title V Violations)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. As set forth above, Defendant modified the sulfuric acid plants at the Lathrop, Pocatello, and Rock Springs facilities in a manner that required compliance with the applicable PSD and SIP regulations. These modifications triggered the requirements to, *inter alia*, undergo a BACT determination, to obtain a PSD permit establishing emissions limitations that meet BACT requirements pursuant to such a determination, and to operate in compliance with such limitations. Defendant failed to satisfy these requirements.

44. Defendant failed to submit a complete application for a Title V operating permit for each of the facilities so modified that would have identified all applicable requirements, accurately certified compliance with such requirements, and contained a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to meet BACT pursuant to a determination under PSD). Defendant failed to obtain a proper or adequate Title V operating permit for any of its sulfuric acid plants that contained emission limitations for SO₂ (or, where applicable, sulfuric acid mist and PM_{2.5}) that met BACT. Defendant thereafter operated each of its sulfuric acid plants without meeting such limitations and without having a valid operating permit that required compliance with such limitations or that contained a compliance plan for all applicable requirements for which the source was not in compliance, in violation of Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§

7661a(a), 7661b(c), and 7661c(a), and the state Title V operating permit program requirements.

45. Unless restrained by this Court, these violations will continue.

46. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), these violations subject Defendant to injunctive relief and civil penalties.

PRAYER FOR RELIEF

WHEREFORE, based on the allegations set forth above, Plaintiffs request that this Court:

1. Permanently enjoin Defendant from operating the sulfuric acid plants at the Lathrop, Pocatello, and Rock Springs facilities identified herein, including the construction of future modifications, except in accordance with the Clean Air Act and the applicable SJVAPCD, Idaho, and Wyoming regulatory requirements;

2. Order Defendant to remedy the violations by, among other things, requiring Defendant to install and operate BACT on each of the sulfuric acid plants at the Lathrop, Pocatello, and Rock Springs facilities for the control of SO₂ emissions, and for the control of sulfuric acid mist and PM_{2.5} at the #400 Plant at the Pocatello facility;

3. Order Defendant to apply for and comply with permits for each of the sulfuric acid plants at the Lathrop, Pocatello, and Rock Springs facilities that are in conformity with the requirements of the PSD provisions of the Act and each applicable SIP, as well as the requirements of Title V;

4. Assess a civil penalty against the Defendant of up to \$25,000 per day for each violation occurring prior to January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 and through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 and through January 12, 2009; and, up to \$37,500 per day for each violation occurring after January 12, 2009.

5. Award Plaintiffs their costs of this action; and,

6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ _____

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FOR THE SAN JOAQUIN VALLEY AIR
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/s/ _____
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CERTIFICATE OF SERVICE

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

Krista K. McIntyre
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101 S. Capitol Boulevard, Suite 1900
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(Attorney for Defendant J.R. Simplot Company)

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/s/ _____
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America, State of Idaho, San Joaquin Valley Air Pollution Control District

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) (see attachment)

DEFENDANTS

J.R. Simplot Company

County of Residence of First Listed Defendant Ada County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Krista K. McIntyre, Stoel Rives LLP, 101 S. Capitol Boulevard, Suite 1900, Boise, ID 83702-7705, kkmcintyre@stoel.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Clean Air Act (CAA), 42 U.S.C. §§ 7401 to 7671(q)

Brief description of cause:

injunctive relief, civil penalties under CAA §§ 7413(b), 7477 for modifications without meeting permit requirements

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/03/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/David Roskam



FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

Attachment to Civil Cover Sheet

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