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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

SIMPLOT FEEDERS, LLC,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 17-088

SETTLEMENT AGREEMENT

Respondent, State of Washington, Department of Ecology, represented by Robert W. Ferguson, Attorney General and Christopher H. Reitz, Assistant Attorney General, and Appellant, Simplot Feeders, LLC, represented by Matthew Cohen and Rachel H. Cox of Stoel Rives LLP, hereby submit this Settlement Agreement to the Pollution Control Hearings Board as a full and final settlement of the above-referenced appeal.

I. BACKGROUND

1. Simplot owns and operates a beef cattle feedlot located at 13981 Dodd Road, Burbank, Washington in Walla Walla County. The feedlot includes cattle pens and facilities for the receipt and processing of hay, corn, silage, and other agricultural products used to produce feed for the cattle.

2. On April 15, 2016, Simplot submitted to Ecology a Washington Clean Air Act

1 2. Within fifteen (15) days of the date of this Agreement Ecology will provide
2 notice of the proposed Amended Approval Order for public review by posting it on its website
3 for fifteen (15) days per WAC 173-400-171(2). Ecology will finalize the permit amendments
4 within thirty (30) days of the close of this fifteen (15) day period or within thirty (30) days of
5 the close of any comment period, if one is requested, unless Ecology receives public
6 comments that prevent Ecology from finalizing the proposed amendments.

7 **C. DISMISSAL OF APPEAL**

8 Within forty (40) days of Ecology's issuance of an amended Final Approval Order in the
9 form attached as Attachment A, and assuming that no one files an appeal of the amended
10 approval order, Ecology and Simplot will promptly move the Board to dismiss this appeal. In
11 the event that Ecology does not issue an amended Final Approval Order in the form of
12 Attachment A within thirty (30) days of the close of the public review process described in
13 Paragraph B, Simplot reserves the right to terminate this Agreement and to resume litigation of
14 this appeal.

15 **D. VENUE**

16 Simplot agrees that the venue for any judicial action to enforce this Agreement shall be
17 in Thurston County Superior Court.

18 **E. SIGNATORIES AUTHORIZED**

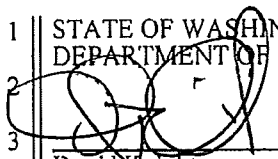
19 The undersigned representatives for Ecology and Simplot certify that they are fully
20 authorized by the party whom they represent to enter into the terms and conditions of this
21 Agreement and to legally bind such party thereto.

22 **F. EXECUTION**

23 This document may be executed in counterparts and may be executed by facsimile
24 and/or electronically, and each executed counterpart shall have the same force and effect as the
25 original instrument.
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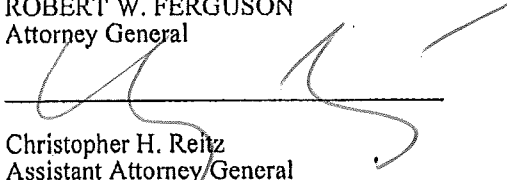
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



David Knight
Air Quality Section Manager
Eastern Regional Office

Dated: 2/5/2018

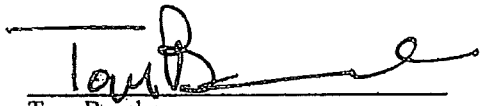
ROBERT W. FERGUSON
Attorney General



Christopher H. Reitz
Assistant Attorney General
Attorneys for Respondent

Dated: 2/5/2018

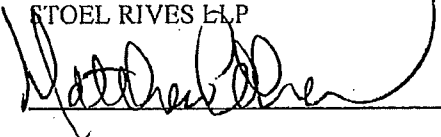
SIMPLOT FEEDERS LLC



Tom Basabe
President, Land and Livestock Division,
J.R. Simplot Company

Dated: 2-5-18

STOEL RIVES LLP



Matthew Cohen
Rachel H. Cox
Attorneys for Appellant

Dated: 2/5/18

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF APPROVING A NEW)
AIR CONTAMINANT SOURCE FOR) Approval Order No. 17AQ-E026
SIMPLOT FEEDERS, LLC)

To: Steve Maggard
Simplot Feeders, LLC
P.O. Box 1306
Pasco, WA 99301

Equipment and activities evaluated for this determination of approval consists of the following:

Hay Processing Facility:

Qty.	Equipment	Rating	Control
	Chain Drive Loading Table		
1	Cooper Equipment Company Model 840 Bale Shredder	40 ton/hr Capacity	4 Donaldson/Torit Dust Collectors Model CPV-12. Controlling shredder, shredder discharge conveyors, and drawing air from the storage building: 4000 cfm max each, 756 ft2 cloth area, 0.002 gr/dscf (filterable plus condensable)
2	Enclosed Belt Conveyors for Processed Hay		
1	Processed Hay Storage Building (70ft. by 40ft. by 35ft.)		

Grain Mill:

Qty.	Equipment	Rating	Control
2	Receiving Pits	120 tons/hr	Choke Flow Operations
	Enclosed Screener		Enclosed with no Vents to Atmosphere
2	Dry Storage Silos	1051 tons	Passive Venting
2	Dry Storage Silos	1067 tons	
2	Augurs With Water Spray Nozzles	50 tons/hr	Enclosed with no Vents to Atmosphere
1	Water Tank for Augur Spray	10 gallons	
4	Wet Storage Silos	446 tons	Corn Soaking in water

Corn Flaking Operation:

Qty.	Equipment	Rating	Control
2	Steam Grain Flakers	280,320 tons/year and 40 tons/hr	Fully Enclosed
	Conveyor System; Wet Flaked Grain to Storage Pile		High Moisture Product
2	Natural Gas Boilers	8.368 MMBtu/hr	Use of Natural Gas, Ultra-Low NOx Boilers

Feedlot:

Qty.	Equipment	Rating	Control
	Feedlot	80,000 Head	Sprinklers in pens and BMPs for manure management

Contracted Equipment: Manure Preparation and Handling:

Qty.	Equipment	Rating	Control
	Windrow Turning and Screening	Varies	Elevated Moisture of Manure (~40-60% by weight)
	Screen Drive Engine	Varies	Tier 3 Nonroad Engine Certification

Other Equipment:

- Two Ingersoll/Rand air compressors and one SullAir dryer (electric)
- 5-Feed storage pits
- Concrete Slab for Silage Storage
- 2-Liquid Feed Storage Tanks, each with 110 ton capacity
- 1-Tallow Storage Tank, 85 ton capacity
- Concrete Slab for feed loading to mix trucks
- Pen Scraping and transfer

Inoperable Equipment:

- WHO Hay Chopper and associated cyclones and baghouse
- Diesel Generator (250 hp)

DETERMINATIONS

In relation to the above equipment and the evaluation outlined in the Technical Support Document associated with this Order, the Department of Ecology, State of Washington, pursuant to RCW 70.94.152, WAC 173-400-110, and WAC 173-460-040, makes the following determinations:

- The proposed facility, if operated as herein required, will be in accordance with applicable rules and regulations, as set forth in Chapter 173-400 WAC and 173-460 WAC and the operation thereof, at the location proposed, will not result in ambient air quality standards being exceeded.
- The proposed facility, if operated as herein required, will provide all known, available, and reasonable methods of emission control.

THEREFORE, IT IS ORDERED that the project as described in the Notice of Construction application and more specifically detailed in plans, specifications, and other information submitted to Ecology is approved for construction and operation, provided the following conditions are satisfied:

APPROVAL CONDITIONS:

- 1. ADMINISTRATIVE:** This Approval Order rescinds and replaces Approval Order No. 15AQ-E605 and all previously issued Approval Orders for this site.
- 2. FACILITY-WIDE:**
 - 2.1.** Simplot Feeders shall maintain current and legal authorization for sufficient water for stock cooling, dust control, and other associated feedlot uses.
 - 2.2. Control of Fugitive Dust**
 - 2.2.1.** ~~Operation of the feedlot shall include implementation of BMPs to control fugitive emissions in accordance with WAC 173-400-040. Fugitive emission control measures shall be sufficient to prevent emissions from any fugitive sources from crossing the Simplot property line. During~~

operation of the feedlot, Simplot shall follow the fugitive dust control plan submitted to Ecology, and modified annually in accordance with the facility Operations and Maintenance (O&M) Plan. Fugitive dust control measures shall be sufficient to prevent dust from any fugitive or point sources from crossing the Simplot property line.

3. HAY PROCESSING AND FEED PREPARATION

- 3.1. The bale shredder shall process no more than 40 tons per hour.
- 3.2. The bale shredder in-feed area shall be watered or otherwise controlled to reduce dust emissions to ten (10) percent opacity or less, averaged over 6 minutes, measured in accordance with Condition 7.1.1.
- 3.3. Hay processing conveyors, transfer points, and the hay storage building shall be enclosed to reduce dust emissions to ten (10) percent opacity or less, averaged over 6 minutes, measured in accordance with Condition 7.1.1.
- ~~3.4. Hay and other feed material handling and transfers shall be controlled to reduce dust emissions. The handling and transfer activities and corrective measures for the additional control of emissions in excess of 10% from feed mill preparation area activities or 5% from the hay process filters shall be incorporated into the facility Operations and Maintenance Manual required in Condition 9. Uncontrolled hay and other feed material handling and transfers shall be controlled to reduce fugitive emissions. No visible emissions shall be observable past the Simplot property boundary.~~
- ~~3.4.3.5.~~ PM10 emissions in the exhaust of any of the 4 dust collectors controlling hay processing and handling shall not exceed 0.002 grains per dry standard cubic foot or 0.07 pounds per hour, measured in accordance with Condition 7.1.2.
- ~~3.5.3.6.~~ The 4 dust collector(s) exhaust shall not exceed five (5) percent opacity in any 3 minute period, measured in accordance with Condition 7.1.1.

4. GRAIN FLAKING OPERATION

- 4.1. The production rate of the grain flaking operation shall not exceed 280,320 tons/year.
- 4.2. The wet grain product pile shall not exceed the height of the storage pile wall height of 6.1 meters.
- 4.3. Annual fuel consumption for boilers 1 and 2 shall be limited to 143.76 million scf of natural gas per year.

5. FEEDLOT

- 5.1. The number of cattle on the feedlot at any time shall not exceed 80,000.
- 5.2. Best Management Practices (BMPs) for manure management and lagoon odor control shall be identified in the Operations and Maintenance manual required by Condition 9 of this approval.

6. MONITORING REQUIREMENTS

- 6.1. The hay processing dust collector(s) shall be equipped with properly maintained filter failure instrumentation (magnehelic or other manufacturer's recommended instrument) that produces an audible or visible filter failure indication in a location where operators are present during operation.
- 6.2. The hay shredder shall be equipped with a properly maintained hours meter to indicate hours of shredder operation.
- 6.3. At least once per week during periods of operation of the bale shredder and feed mix trucks, a visible emission survey, conducted in accordance with Approval Condition 7.1.3, shall be conducted of the bale infeed area, the hay transfer to the storage building, the storage building, the interim piles, and the feed mix truck loading area. Upon a determination that there are visible emissions from these areas, the survey shall be conducted at the nearest downwind property boundary. Operation or control of any source determined to be contributing to visible emissions at the nearest downwind property boundary shall be modified to eliminate the visible emissions at the property boundary using, but not limited to the corrective measures identified in the facility O&M manual required in Condition 9.

7. TESTING REQUIREMENTS

- 7.1. Performance testing shall utilize the following test methods unless an alternative method is requested by the permittee and approved by Ecology in writing:
 - 7.1.1. Visual determination of the opacity of emissions from stationary sources per Title 40 Code of Federal Regulations, Part 60, Appendix A, Method 9. (referenced as Method 9)
 - 7.1.2. PM10 per 40 CFR 60, Appendix A, Method 5 with 40 CFR 51, Appendix M, Method 202
 - 7.1.3. Plant surveys for the presence of opacity shall be performed using the techniques and procedures in 40 CFR 60, Appendix A, Method 22.
- 7.2. Testing Logistics - The permittee shall provide testable emission points, sampling ports, safe access to sampling points and ports, and utilities for sampling and testing.
- 7.3. Number of Test Runs - Performance or compliance testing of each piece of pollution control equipment shall consist of three separate runs of at least 60-minutes each.
- 7.4. Throughput during Testing - During testing, the process shall be operated at a minimum of ninety percent (90%) of permitted capacity. Testing at less than the specified minimum may be proposed, but may result in an operational restriction that will be amended to this Approval Order.
- 7.5. Submittal of Performance Test Plan - A written test protocol that includes a description of the equipment to be tested, the process and control device operating information to be collected during the test, and the sampling and analytical method(s) proposed, shall be submitted to Ecology at least 30 calendar days prior to the start of any performance test.
- 7.6. Notification of Inability to Conduct Performance Test - If the permittee is unable to conduct any performance test as scheduled, Ecology shall be notified at least 24-hours before the test at the address under "Reporting", Condition 10.1, or via telephone at 509-329-3400.

- 7.7. Plant Operator during Testing - The plant process equipment shall be operated and controlled by normal plant operators during the period when the performance testers are on-site to conduct testing and during actual testing.
- 7.8. Performance or Compliance Testing Results - The results of all initial performance testing and all other periodic performance testing shall be sent to the address at Approval Condition 10.1. One copy of the completed test report shall be submitted no later than 60-days after the last day of the testing.

8. RECORDKEEPING REQUIREMENTS

- 8.1. Records shall be maintained of the date, time, and observations made during the visible emission surveys required in Condition 6.3 above. The survey records shall be made available to Ecology on request.
- 8.2. No less frequently than weekly, the hours of operation of the hay shredder and the tons processed by the shredder shall be recorded. These records shall be made available to Ecology on request.

9. OPERATION AND MAINTENANCE MANUALS

A site-specific O&M manual for the hay processing filters, any feedlot sprinklers or cross fencing systems or other feedlot Best Management Practices (BMPs), monitoring equipment, monitoring procedures, and monitoring schedules for the feedlot control (BMPs) measures shall be developed and followed. The manual shall be updated to incorporate the grain flaking operation within 60 days of the issuance date of this approval.

The O&M manual shall be reviewed no less frequently than annually, and updated as necessary to reflect any modifications of the equipment or operating or maintenance or monitoring procedures. Manufacturers' operating instructions and design specifications for the feed mill and hay processing equipment shall be included in the manual.

Emissions that result from failure to follow the operating procedures contained in the O&M manual or manufacturer's operating instructions may be considered proof that the equipment was not properly installed, operated, and/or maintained. The O&M manual shall at a minimum include:

- 9.1. Normal Equipment operating parameters and design specifications.
- 9.2. Maintenance schedules.
- 9.3. Monitoring procedures and schedules.
- 9.4. The current Manure Management Plan (MMP).
- 9.5. Actions to be taken in the event of a hay processing dust collector filter failure.
- 9.6. Corrective measures to be implemented in the event of the detection of non-zero visible emissions at the facility boundary, or visible emissions in excess of those allowed by conditions 3 and 4.

10. REPORTING

- 10.1. An annual summary report shall be prepared and sent to Ecology's Eastern Regional Office at the following address:

Washington State Department of Ecology
Regional Air Quality Section
4601 N. Monroe, Suite 202
Spokane, WA 99205-1295

Annual reports may also be submitted electronically to: emissions.inventory@ecy.wa.gov

10.2. The report must contain at least the following information:

10.2.1. Annual summary of air contaminant emissions, annual hay grinding throughput, annual corn flaking operation throughput, annual natural gas usage, annual average number of animals on-site and annual total hours of operation of the hay grinder.

10.3. A written notification of any updates to the O&M manual required by Condition 9 above shall be provided to Ecology when the updates are made.

11. GENERAL CONDITIONS

11.1. Visible Emissions - No visible emissions shall be allowed beyond the property line, as determined by opacity readings.

11.2. Commencing/Discontinuing Construction and/or Operations - This Approval Order shall become void if construction is not commenced within eighteen (18) months following the date of this Approval Order, or if construction is discontinued for a period of eighteen (18) months. Ecology may extend the 18-month period upon satisfactory showing by the permittee that an extension is justified.

11.3. Compliance Assurance Access - Access to the source by EPA or Ecology shall be allowed for the purposes of compliance assurance inspections. Failure to allow access is grounds for revocation of this Approval Order and enforcement under applicable regulations.

11.4. Availability of this Approval Order - Legible copies of the Order approving the NOC application shall be available to employees in direct operation of the facility and be available for review upon request by Ecology.

11.5. Equipment Operation - Operation of the facility shall be conducted in compliance with all data and specifications submitted as part of the NOC application and in accordance with the O&M manual.

11.6. Activities Inconsistent with this Approval Order - Any activity undertaken by the permittee or others, in a manner that is inconsistent with information in the NOC application or this Approval Order, shall be subject to Ecology enforcement under applicable regulations.

11.7. Obligations under Other Laws or Regulations - This Approval Order shall not be construed to relieve the permittee of its obligations under any local, state or federal laws or regulations.

11.8. Authorization may be modified, suspended, or revoked in whole or part for cause including, but not limited to, the following:

11.8.1. Violation of any terms or conditions of this authorization;

11.8.2. Obtaining this authorization by misrepresentation or failure to disclose fully all relevant facts.

All plans, specifications, and other information submitted to Ecology relative to this project and further documents and any further authorizations or approvals or denials in relation thereto shall be kept at the Eastern Regional Office of the Department of Ecology in the "Air Quality Controlled Source" files and by such action shall be incorporated herein and made a part hereof.

The provisions of this authorization are severable and, if any provision of this authorization, or application of any provisions of this authorization to any circumstance, is held invalid, the application of such provision to their circumstances, and the remainder of this authorization, shall not be affected thereby.

YOUR RIGHT TO APPEAL

You have a right to appeal this Approval Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Approval Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Approval Order:

- File your appeal and a copy of this Approval Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Approval Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website:

<http://www.eho.wa.gov><http://www.eluho.wa.gov/> To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>

DATED at Spokane, Washington this ~~19th~~ day of September, 2017.

Simplot Feeders -
Animal Feeding Operation
Approval Order No. ~~17AQ-E026~~

September 19, 2017

Page 8 of 8

PREPARED BY:

APPROVED BY:

Robert Koster, P.E.
Regional Air Quality Section
Eastern Regional Office
Department of Ecology
State of Washington

Section Manager
Regional Air Quality Section
Eastern Regional Office
Department of Ecology
State of Washington