

Conciliation Agreement  
Between the  
U.S. Department of Labor Office of Federal Contract Compliance Programs  
And  
JR Simplot CO FG Moses Lake Plant

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the JR Simplot CO FG Moses Lake Plant (Simplot) establishment located at 14124 Wheeler Rd NE PO Box 399, Moses Lake, WA 98837-0000, beginning on January 17, 2020. OFCCP found that Simplot failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at CFR §§60-1, 60-2, 60-300 and 60-741.

OFCCP notified Simplot of the specific violations and the corrective actions required in a Notice of Violation issued on September 22, 2020 (NOV).

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Simplot enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

**II. General Terms and Conditions**

1. In exchange for Simplot's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Simplot violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Simplot's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Simplot will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Simplot of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Simplot and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Simplot agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Simplot submits its final progress report required in Section IV, below, unless OFCCP notifies Simplot in writing before the expiration date that Simplot has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Simplot has met all of its obligations under the Agreement.
11. If Simplot violates this Agreement:
  - a. The procedures at 41 CFR §60-1.34, 41 CFR §60-300.63 and 41 CFR §60-741.63 will govern:
    - i. OFCCP will send Simplot a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. The Simplot shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - iii. If Simplot is unable to demonstrate that it has not violated the Agreement, or if OFCCP's alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
    - iv. In the event of a breach of this Agreement by the Simplot, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.

- b. Simplot may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR §60-1.27, 41 CFR §60-741.66, or 41 CFR §60-300.66, and/or other appropriate relief for violating this Agreement.
12. Simplot neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
15. Each party shall bear its own fees and expenses with respect to this matter.
16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
17. All references to “days” in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

### **III. Technical Violations and Remedies**

1. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot failed to preserve its Affirmative Action Programs (hereinafter AAPs) for the immediately preceding AAP years and failed to maintain accurate records as required by 41 CFR §§ 60-1.12 (a) through (c). Specifically, Simplot failed to maintain and have available records showing entire job group representation at the start of the AAP year (i.e., total incumbents, total minority incumbents, and total female incumbents) and failed to maintain employee and applicant demographic data.

**REMEDY:** Simplot will, as required by 41 CFR §60-1.12, keep and preserve its AAP for the immediately preceding AAP year, keep and maintain accurate and consistent records regarding all personnel activity and will maintain and have available records showing entire job group representation at the start of the AAP year (i.e., total incumbents, total minority incumbents, and total female incumbents).

2. **VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Simplot failed to create and maintain an acceptable job group analysis in accordance with 41 CFR §60-2.12, resulting in the use of inaccurate data in its quantitative analyses required at 41 CFR §§60-2.13 - 60-2.16. Specifically, Simplot failed to appropriately develop its job groups with similar content, wage rates, and opportunities, resulting in inaccurate quantitative analyses; placement of incumbents into job groups, determining availability, comparing incumbency to availability, and placement goals.

**REMEDY:** Simplot will create and maintain an acceptable job group analysis in accordance with 41 CFR §60-2.12. Simplot will include the following quantitative analyses in its EO 11246 AAP and ensure their accuracy: job group analysis, placement of incumbents in job groups, determining availability, comparing incumbency to availability, and placement goals, as required by 41 CFR §§ 60- 2.12 through 60-2.16.

3. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist, as required by 41 CFR §60-2.17(b). Specifically, Simplot failed to create accurate personnel activity records, which resulted in an inaccurate analysis of all of their personnel activities, including referrals, placements, transfers, promotions, terminations, and compensation systems, which limited their ability to find disparities based upon race or gender.

**REMEDY:** Simplot will perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exists, as required by 41 CFR § 60-2.17(b). Specifically, Simplot will evaluate hires, promotions, terminations, and compensation to determine whether there are gender, race, or ethnicity based disparities. Simplot will ensure its demographic information that is to be used for its internal analyses is accurate.

4. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's AAP failed to include the action-oriented programs component specified in 41 CFR §60-2.17(c), as required by 41 CFR §60-2.10(b)(2)(iii).

**REMEDY:** Simplot will include in its AAP the action-oriented programs component specified in 41 CFR §60-2.17(c), as required by 41 CFR §60-2.10(b)(2)(iii).

5. **VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Simplot failed to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total AAP, as required by 41 CFR §60-2.17(d). Specifically, Simplot failed to create accurate personnel activity records, which resulted in an inaccurate analysis of all their personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation systems, which limited their ability to ensure the nondiscriminatory policies were carried out.

**REMEDY:** Simplot will develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total AAP, as required by 41 CFR §60-2.17(d). Specifically, Simplot will ensure that it monitors all personnel activities including referrals, hires, applicants, placements, transfers, promotions, terminations, and compensation to ensure the effectiveness of its total AAP and to ensure nondiscriminatory policies are carried out.

6. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's VEVRAA AAP failed to include all the contents required by 41 CFR §60-300.44. Specifically, Simplot's VEVRAA AAP failed to include its VEVRAA equal employment opportunity (EEO) policy statement as required by 41 CFR §60-300.44(a).

**REMEDY:** Simplot will include an EEO policy statement in their VEVRAA AAP, and will post the policy statement on the company bulletin boards. The policy statement will indicate the top executive's support for Simplot's AAP, provide for an audit and reporting system and assign overall responsibility for implementation of affirmative action activities, as required by 41 CFR §60-300.44 (a).

7. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's VEVRAA AAP failed to include all the contents required by 41 CFR §60-300.44. Specifically, Simplot's VEVRAA AAP failed to include the results of the assessment of each outreach and positive recruitment activity, and the assessment in totality of outreach and positive recruitment efforts as described in 41 CFR §60-300.44(f)(3).

**REMEDY:** Simplot will include the assessment of each outreach and positive recruitment activity and the assessment in totality of outreach and positive recruitment efforts as described in 41 CFR §60-300.44(f)(3) in its VEVRAA AAP, as required by 41 CFR §60-300.44.

8. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot failed to design and implement an audit and reporting system that will measure the effectiveness of the contractor's AAP, as required by 41 CFR §60-300.44(h). Specifically, Simplot failed to measure the effectiveness of its VEVRAA AAP, which would have indicated the degree to which the contractor's objectives had been attained; determined any need for remedial action and whether known protected veterans had the opportunity to participate in company sponsored activities; measured its compliance with the VEVRAA AAP's specific obligations; and documented the actions taken to comply with VEVRAA.

**REMEDY:** Simplot will design and implement an audit and reporting system in accordance with the regulations at 41 CFR §60-300.44(h).

9. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's VEVRAA AAP failed to include all the contents required by 41 CFR §60-300.44. Specifically, Simplot's VEVRAA AAP failed to include the data collection analysis element described in 41 CFR § 60-300.44(k).

**REMEDY:** Simplot will include the data collection analysis element described in 41 CFR §60-300.44(k) in its VEVRAA AAP, as required by 41 CFR §60-300.44.

10. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's Section 503 AAP failed to include all the contents required by 41 CFR §60-741.44. Specifically, Simplot's Section 503 AAP failed to include its Section 503 EEO policy statement as required by 41 CFR §60-741.44(a).

**REMEDY:** Simplot will include its EEO policy statement in their Section 503 AAP, and must post the policy statement on the company bulletin boards. The policy statement must indicate the top executive's support for Simplot's AAP, provide for an audit and reporting system and assign overall responsibility for implementation of affirmative action activities, as required by 41 CFR §60-741.44 (a).

11. **VIOLATION :** During the period January 1, 2019 through December 31, 2019, Simplot's Section 503 AAP failed to include all the contents required by 41 CFR §60-741.44(b). Specifically, Simplot's Section 503 AAP failed to include its review of personnel processes as described in 41 CFR §60-741.44(b).

**REMEDY:** Simplot must include its review of personnel processes as described in 41 CFR §60-741.44(b) in its Section 503 AAP, as required by 41 CFR §60-741.44.

12. **VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot's Section 503 AAP failed to include all the required contents, as required by 41 CFR §60-741.44(f)(3). Specifically, although Simplot did provide the appropriate assessment, they failed to identify the criteria they used to evaluate the effectiveness of each of their outreach and recruitment efforts.

**REMEDY:** Simplot will include the assessment of each outreach and positive recruitment activity and an assessment in totality of outreach and positive recruitment efforts and will identify and provide the criteria they used to evaluate the effectiveness of each of their outreach and recruitment efforts for the current and prior years, as required by 41 CFR §60-741.44 (f)(3).

**13. VIOLATION:** During the period January 1, 2019 through December 31, 2019, Simplot failed to design and implement an audit and reporting system that will measure the effectiveness of the contractor's AAP, as required by 41 CFR §60-741.44(h). Specifically, Simplot failed to measure the effectiveness of its Section 503 AAP, which would have indicated the degree to which the contractor's objectives had been attained; determined any need for remedial action and whether known individuals with disabilities had the opportunity to participate in company sponsored activities; measured its compliance with the Section 503 AAP's specific obligations; and documented the actions taken to comply with Section 503 AAP.

**REMEDY:** Simplot will design and implement an audit and reporting system in accordance with the regulations at 41 CFR §60-741.44(h).

**14. VIOLATION:** Simplot's Section 503 AAP failed to include all the required contents, as required by 41 CFR §60-741.44. Specifically, Simplot's Section 503 AAP failed to include the data collection analysis element described in 41 CFR §60-741.44(k).

**REMEDY:** Simplot will include the data collection analysis described in 41 CFR §60-741.44(k) in its Section 503 AAP, as required by 41 CFR §60-741.44.

**15. VIOLATION:** During the period of January 1, 2019 through December 31, 2019, Simplot's Section 503 AAP failed to evaluate its utilization of individuals with disabilities using the goal established by OFCCP, in violation of 41 CFR §60-741.45. Specifically, Simplot included an individual with a disabilities goal, but did not conduct the utilization analysis by each job group.

**REMEDY:** Simplot will annually evaluate its utilization of individuals with disabilities using the 7 percent goal established by OFCCP, as required by 41 CFR §60-741.45. When conducting this utilization analysis, Simplot will use the job groups established for utilization analyses required by EO 11246, as required by 41 CFR §60-741.45(d)(2). However, if Simplot has a total workforce of 100 or fewer employees, it may, instead, choose to measure the representation of individuals with disabilities in its workforce as a whole, using the 7 percent goal established by OFCCP, as permitted by 41 CFR §60-741.45(d)(2)(i). Should the percentage of individuals with disabilities in one or more job groups or in Simplot's workforce be less than the utilization goal, Simplot will take steps, as required by 41 CFR §60-741.45(e), to determine whether and where impediments to equal employment exist, and will develop and execute action-oriented programs to correct any identified problems, as required by 41 CFR §60-741.45(f).

#### **IV. OFCCP Monitoring Period**

- 1. Recordkeeping.** Simplot agrees to retain all records relevant to the violations cited in Sections III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Simplot will retain the records until

this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

## 2. **Simplot Reports.**

a. **Schedule and Instructions.** Simplot agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

- **Progress Report:** November 15, 2021 (Review period October 1, 2020 – September 30, 2021). All AAP references below refer to the 2021 AAP.

b. In each Progress Report, Simplot will submit the following items:

c. Pursuant to Remedies 1 thru 3:

- a. Evidence that Simplot has developed accurate and consistent job groups based on similarly situated employees (content, opportunity and wages) and that all demographic data that is collected and used for reports is consistent and accurate.
- b. Data on Simplot's employment activity (applicants, hires, promotions, terminations (see 41 CFR §§60-3.4 and 3.15), and compensation (snapshot date January 1, 2021)).
- c. Evidence that Simplot has performed in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exists, as required by 41 CFR §60-2.17(b).
- d. For each job or job group, the breakdown by applicable race, gender and ethnic group of applicants and hires, promotion pools, promotions, termination pools, and terminations.
- e. For each job or job group, the results of Simplot's analysis as to whether its total selection process, promotion process, and termination process, had adverse impact, as defined in 41 CFR §60-3.4D, on those member of groups set forth in subparagraph c, above:
- f. For each case where the total selection process, promotion process, and termination process, has adverse impact, as defined in 41 CFR §60-3.4D, the results of Simplot's evaluation of the individual components of the selection, promotion, and termination processes for adverse impact;
- g. The actions taken by Simplot where action is appropriate, after determining that any component of the selection, promotion, and termination processes have adverse impact on member of groups set forth in subparagraph c, above.

d. Pursuant to Remedies 4 and 5:

- i. Evidence that Simplot has developed and implemented an internal audit and reporting system that periodically measures the effectiveness of its total AAP, as required by 41 CFR §60-2.17(d).
- ii. Evidence that Simplot has developed and implemented in their AAP the action-oriented programs component specified in 41 CFR §60-2.17(c).

e. Pursuant to Remedies 6 and 10:

- iii. Documentation that Simplot has include an EEO policy statement in its AAPs (Section 503 & VEVRAA),



- iv. Evidence that Simplot has posted the EEO policy statement on company bulletin boards, both physical and electronic bulletin boards.
- f. Pursuant to Remedies 11:
  - a. Evidence that Simplot has reviewed its personnel processes, as required by 41 CFR §60-741.44(b).
- g. Pursuant to Remedies 8 and 13:
  - a. Evidence that Simplot has designed and implemented an audit and reporting system that will identify any deficiencies found in its Section 503 and VEVRAA AAPs, measure its AAPs' effectiveness, and, where necessary, determine the need for and undertake corrective action to bring the program into compliance, and document actions, as required by 41 CFR §§ 60-300.44(h) and 60-741.44 (h).
- h. Pursuant to Remedies 9 and 14:
  - a. Documentation that Simplot has recorded and maintained accurate computations or comparisons pertaining to applicants and hires on an annual basis, as listed below:
    - i. the number of applicants who self-identified as protected veterans pursuant to §60-300.42(a), or who are otherwise known as protected veterans;
    - ii. the number of applicants who self-identified as individuals with disabilities pursuant to §60-741.42(a), or who are otherwise known to be individuals with disabilities;
    - iii. the total number of job openings and total number of jobs filled;
    - iv. the total number of applicants for all jobs;
    - v. the number of applicants with disabilities hired and the number of protected veteran applicants hired; and
    - vi. the total number of applicants hired.
- i. Pursuant to Remedies 7 and 12:
  - a. A copy of Simplot's VEVRAA & Section 503 AAP components that list: 1) Its outreach activities with supporting documentation; 2) An assessment of the effectiveness of each activity, and the assessment in totality of outreach and positive recruitment efforts.
  - b. If Simplot concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans or individuals with disabilities, it will identify and implement alternative efforts listed in paragraphs §§60-741.44(f)(2) and 300.44(f)(2) in order to fulfill its obligations.
  - c. Copies of all responses or other related correspondence received from each of the organizations used during the reporting efforts to recruit qualified protected veterans and individuals with disabilities.
- j. Pursuant to Remedies 15:
  - a. A copy of Simplot's Section 503 evaluation of its utilization of individuals with disabilities by job groups using the goal established by OFCCP.

Simplot will submit reports to Quanda Evans, Assistant District Director, at 300 Fifth Avenue, Suite 1100, Seattle, WA 98104, or by email at (b) (7)(C), (b) (6)@dol.gov. Simplot and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Simplot provides in accordance with this agreement are customarily kept private or closely-held, and Simplot believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA)

in the event of a FOIA request, Simplot will provide such reports to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Simplot’s final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Simplot in writing within sixty (60) days of the date of the final progress report that Simplot has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Simplot within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Simplot has met all of its obligations under the Agreement.

**V. SIGNATURES**

The person signing this Agreement on behalf of Simplot personally warrants that he or she is fully authorized to do so, that Simplot has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Simplot.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and JR Simplot CO FG Moses Lake Plant, Moses Lake, WA 98837.

**(b) (7)(C), (b) (6)**

James Pegram  
Senior VP of Human Resources  
JR Simplot Company  
1099 W. Front Street  
Boise, ID 83702

DATE: 10/1/2020

**(b) (7)(C), (b) (6)**

Leigh Jones  
District Director  
Seattle District Office  
Office of Federal Contract  
Compliance Programs  
Pacific Region

DATE: \_\_\_\_\_

**(b) (7)(C), (b) (6)**

Quanda Evans  
Assistant District Director  
Office of Federal Contract  
Compliance Programs  
Seattle District Offices

DATE: October 1, 2020

Attachments: None