

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
JR SIMPLOT CO AB DON PLANT

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the JR Simplot Co AB Don Plant ("Simplot") establishment located at 1150 Highway 30 W, Pocatello, ID 83204, beginning on July 18, 2019. OFCCP found that Simplot failed to comply with Executive Order 11246, as amended ("E.O. 11246"), 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 Sections 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 December 31, 2019 ("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. 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 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 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, 2018 through December 31, 2018, Simplot failed to preserve its AAP for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b). 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).

REMEDY: Simplot will keep and preserve its AAP for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b) 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).

2. **VIOLATION:** During the period January 1, 2018 through December 31, 2018, Simplot failed to 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 failed to identify missing applicants for five job groups, missing incumbency information for prior year promotions and terminations, and missing pay rate information in their compensation. Simplot failed to identify problems with missing information necessary to conduct an internal analysis of its total employment processes.

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.

3. **VIOLATION:** 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).

4. **VIOLATION:** During the period January 1, 2018 through December 31, 2018, Simplot failed to develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, Simplot failed to recognize missing applicants for five job groups, missing incumbency information for promotions and terminations as well as missing pay rate information in their compensation submission.

REMEDY: Simplot will develop and implement an internal audit and reporting system that periodically measures the effectiveness of its total affirmative action program, as required by 41 CFR 60-2.17(d). Specifically, Simplot will develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program.

5. **VIOLATION:** Simplot's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Simplot's 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.

6. **VIOLATION:** Simplot's VEVRAA AAP failed to include all the required contents, as required by 41 CFR 60-300.44. Specifically, Simplot's 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.

7. **VIOLATION:** Simplot's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Simplot's AAP failed to 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 60-741.44(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 60-741.44(f)(3) in its Section 503 AAP, as required by 41 CFR 60-741.44.

8. **VIOLATION:** Simplot's Section 503 AAP failed to include all the required contents, as required by 41 CFR 60-741.44. Specifically, Simplot's 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.

9. **VIOLATION:** During the period January 1, 2018 through June 30, 2019, Simplot 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 disability goal, but did not conduct the utilization analysis by job groups.

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 E.O. 11246, as required by 41 CFR 60-741.45(d)(2). Should the percentage of individuals with disabilities in one or more job groups 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 Section 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 report 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.

- i. Pursuant to Remedy 1: Job Group representation at the start of the immediately preceding AAP year (total incumbents, total minority incumbents, and total female incumbents).
- ii. Pursuant to Remedies 2 and 4:
 - a. Evidence that Simplot developed an auditing system to measure its total affirmative action program and communicate results to top management, including:
 - 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. 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.
 - d. 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.
 - e. 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.
 - f. 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
 - g. Evidence that Simplot performed an in-depth analysis of its compensation system to determine whether there are gender, race, or ethnicity based disparities.
 - h. Documentation that program results have been communicated to all levels of management (such as emails, meeting minutes, etc.).
 - i. Documentation (such as emails, meeting minutes, etc.) that top management has been advised of the program's effectiveness, any remedial action identified, recommendations to improve program performance, and the results of any remedial actions or recommendations implemented.
- iii. Pursuant to Remedy 3: A copy Simplot's E.O. 11246 AAP action-oriented programs component specified in 41 CFR 60-2.17(c).
- iv. Pursuant to Remedy 5:
 - a. A copy of Simplot's VEVRAA AAP component described in 41 CFR 60-300.44(f)(3) that lists: 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. Copies of all responses or other related correspondence received from each of the organizations used during the reporting period to recruit qualified

protected veterans.

- v. Pursuant to Remedy 6: Documentation of Simplot's computations or comparisons pertaining to applicants and hires required by 41 CFR 60-300.44(k):
 - a. The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans;
 - b. The total number of job openings and total number of jobs filled;
 - c. The total number of applicants for all jobs;
 - d. The number of protected veteran applicants hired; and
 - e. The total number of applicants hired.

- vi. Pursuant to Remedy 7:
 - a. A copy of Simplot's Section 503 AAP component described in 41 CFR 60-741.44(f)(3) that lists: 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. Copies of all responses or other related correspondence received from each of the organizations used during the reporting period to recruit qualified individuals with disabilities.

- vii. Pursuant to Remedy 8: Documentation of Simplot's computation or comparisons pertaining to applicants and hires as required by 41 CFR 60-741.44(k):
 - a. The number of applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities;
 - b. The total number of job openings and total number of jobs filled;
 - c. The total number of applicants for all jobs;
 - d. The number of applicants with disabilities hired; and
 - e. The total number of applicants hired.

- viii. Pursuant to Remedy 9: A copy of Simplot's Section 503 evaluation of its utilization of individuals with disabilities using the goal established by OFCCP, as described at 41 CFR 60-741.45.

Simplot will submit reports to Quanda Evans, Assistant District Director, 300 Fifth Avenue, Suite 1100, Seattle, WA 98104, (b) (6), (b) (7)(C)@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 AB Don Plant, Pocatello, ID 83204

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

James Pegram
Senior Vice President of Human Resources
JR Simplot Co AB Don Plant
1099 W Front Street
Boise, ID 83702

DATE:

09/04/2020

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

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

DATE:

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

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

DATE: 9/14/2020

Attachments: None