J.R. Simplot Company

The attached comments are on behalf of the J.R. Simplot Company regarding Simplot Feeders Draft Permit Updates.

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SUBMITTED ONLINE VIA:
https://wq.ecology.commentinput.com/?id=5esaD7ERA

State of Washington
WQP - Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1265
Attention: Llyn Doremus

Dear Llyn Doremus:

Washington State Department of Ecology (Ecology) is seeking public comment on the proposed draft State Waste Discharge Permit ST0501324 ("Draft Permit", "the Permit") for Simplot Feeders LLC, located at 13981 Dodd Road in Burbank, Washington. J.R. Simplot Company (Simplot) submits these comments in response.

I. Introduction

Simplot is a privately held agribusiness corporation headquartered in Boise, Idaho. The Company is engaged in a number of businesses including food processing, farming, fertilizer manufacturing, mining, ranching, and other enterprises related to agriculture. The Draft Permit requires significant upgrades to the feedlot operations that will require detailed engineering design reports for manure pollution prevention, land treatment, lined lagoon wastewater treatment, and groundwater monitoring. The Draft Permit importantly does not provide sufficient time to complete the required work. Based on the below comments, Simplot requests an opportunity to meet with Ecology to further refine the Draft Permit based on what is economically and technically feasible consistent with the agency's regulatory requirements.

II. Comments, Draft Permit

II. A. General Comments, Draft Permit

While Simplot recognizes that this is a waste discharge permit, the facility is nevertheless a CAFO, and the Draft Permit contains a number of requirements

that are more stringent that the 2023 Ecology General CAFO permit.[1] Ecology should exercise great caution in imposing requirements on a CAFO that are more stringent than the General CAFO permit, especially where (as detailed below) those requirements are not supported by the requisite AKART analysis or site specific information that warrants such requirements. Two key examples include:

- The Draft Permit requires non-compliance reporting for any monitoring well parameter which exceeds an "enforcement limit" in two consecutive sampling events, and lists this under "permit violations". If a downgradient monitoring well demonstrates an exceedance of the proposed "Groundwater Enforcement Limits" (GEL), it should not be considered a violation. Rather, two consecutive exceedances of a GEL should require that the Permittee submit a Corrective Action Plan, including any needed investigation to understand better understand groundwater conditions and contaminant sources. Only when the permittee fails to complete the work associated with the approved Corrective Action Plan should it be considered a violation of the permit. Ecology should revise the Draft Permit to reflect this approach in the final permit. Additional soil monitoring interval is required in the draft permit.

- The Draft Permit requires a synthetic liner for all of the facility's lagoons in an unreasonable timeframe. Such a requirement is not consistent with the 2023 CAFO permit nor required by the Washington Court of Appeals. Furthermore, there is not an AKART determination requiring this level of technology and cost.

Ecology has not provided in the Draft Permit nor in the Fact Sheet the required rationale for imposing these stringent requirements. As stated earlier, Simplot realizes that this is a draft waste discharge permit, however as noted on the permit title page, this is a confined animal feeding operation (CAFO). Thus, there should be site-specific or other technical/regulatory reasons for deviations from the 2023 CAFO General Permit.

II.B. Specific Comments on the Draft Permit

#1 – SUMMARY OF PERMIT SUBMITTALS, Table 1 - Summary of Permit Submittals, Requirement from Permit Section S8.4

The proposed August 1, 2027 deadline for the Groundwater Quality Evaluation Study Report (Evaluation) does not allow for collection of sufficient groundwater samples required to detect potential seasonal variations in groundwater elevation or quality. The Draft Permit requires the Evaluation in 12 months after the

[1] State of Washington, Department of Ecology. *Concentrated Animal Feeding Operation General Permit*. Issuance date December 7, 2022. Effective date January 6, 2023.

Groundwater Quality Evaluation Scope of Work (S8.1) and as little as four (4) months after the installation of the Groundwater Well Network (S8.3), assuming the Workplan (S8.2) is approved immediately. This is not feasible. Simplot suggests revising the deadline for S8.4 be revised to 15 months after the completion of S8.3.

#2 – SPECIAL CONDITIONS, S1.A Effluent Limits, Table 2 – Groundwater Enforcement Limits

The proposed Groundwater Enforcement Limit of 200 mg/L for chloride does not include the flexibility (Agency discretion) consistent with the state's antidegradation determinations. Page 19 of the Fact Sheet states the following:

> "Antidegradation applies to calculation of permit limits in groundwater when background contaminant concentrations are less than criteria in the GWQS. Ecology has discretion to allow the concentrations of contaminants at the point of compliance to exceed background concentrations but not exceed criteria in the GWQS. Ecology grants discretion through an approved AKART engineering analysis of treatment alternatives.
>
> If the preferred treatment alternative predicts that discharges to groundwater will result in contaminant concentrations that fall between background concentrations and the criteria, then the preferred treatment alternative should protect beneficial uses and meet the antidegradation policy. In this case, the predicted concentrations become the permit limits. If the preferred alternative will meet background contaminant concentrations, background concentrations become the permit limits."

Simplot has not been afforded the opportunity to include projected chloride concentrations in the AKART engineering analysis. Groundwater criteria for chloride is 250 mg/L, as noted in Table 9 – Groundwater Quality Criteria and Background Values (Fact Sheet). The final Permit should include a footnote to Table 2 that the chloride Groundwater Enforcement Limit may be subject to change, pending forthcoming engineering reports and/or proposed updated background conditions. This would also be consistent with VI.A, *Permit Issuance Procedures* of the Fact Sheet, which allows for permit modifications "after obtaining new information from sources such as inspections, effluent monitoring, and groundwater studies."

#3 – SPECIAL CONDITIONS, S1.A Effluent Limits, Table 2 – Groundwater Enforcement Limits

The proposed Groundwater Enforcement Limit of 1 cfu/100 mL for Total Coliforms is not included in Washington Administrative Code (WAC) 173-200-040,

(Groundwater) Criteria[2], nor is it discussed in the Fact Sheet along with the other Groundwater Quality-based Effluent Limits. Thus, there is no regulatory or groundwater use that warrants such a groundwater quality standard. This groundwater quality criterion needs to be removed before issuance of the final permit.[3]

#4 – SPECIAL CONDITIONS, S1.B Best management practices/pollution prevention

S.1.B.3. states, "Do not discharge lagoon wastewater within 100 feet of a surface water body or water conveyance including roadside drainage ditches." Not all roadside ditches are included as a Surface Waters of the State (WAC 173-201A-020[4]) nor Waters of the U.S. ("Revised Definition of "Waters of the United States"; Conforming[5]). Ditches, including roadside ditches, are one of the eight exclusions of WOTUS in the January 2023 Rule; these were not amended in the Conforming Rule. Ecology should strike "including roadside drainage ditches" from the Permit prohibition.

#5 – SPECIAL CONDITIONS, S1.B Best management practices/pollution prevention

S.1.B.5. requires that mortalities or incidents of 5 or more sick/injured waterbirds be reported to Washington Department of Fish and Wildlife (WDFW). Simplot requests that this requirement clarify the timeline for such finding (such as, "…5 or more sick/injured waterbirds within a 24-hour period").

#6 – Monitoring Requirements, S2.A Process Wastewater Monitoring

Table 3 - *Monitoring Requirements – Process Wastewater* requires extensive monitoring of process water that is entering Lagoon 14. The Draft Permit requires monitoring of both the wastewater entering Lagoon 14 and the wastewater being applied to land application fields. This is the same water. At a minimum, Simplot requests that the duplicative sampling requirements in S2.B, Irrigation Wastewater

[2] Washington State Legislature. Chapter 173-200 WAC, Water Quality Standards for Groundwaters of the State of Washington. https://app.leg.wa.gov/WAC/default.aspx?cite=173-200 Accessed 2 June 2025.

[3] The criterion proposed by Ecology is a drinking water standard – not a groundwater quality standard. If there is an issue with regional groundwater that is being used for drinking water and there is a microbiological drinking water standard issue, then further discussions with Simplot should occur.

[4] Washington State Legislature. Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. https://app.leg.wa.gov/WAC/default.aspx?cite=173-201A-020 Accessed 2 June 2025.

[5] Federal Register. "Revised Definition of 'Waters of the United States'; Conforming". https://www.epa.gov/system/files/documents/2023-08/Pre-publication%20Version%20of%20the%20Final%20Rule%20-%20Amendments%20to%20the%20Revised%20Definition%20of%20Waters%20of%20the%20United%20States.pdf Accessed 2 June 2025.

Monitoring, be removed from the final permit.

#7 – Monitoring Requirements, S2.C Supplemental Irrigation Water Monitoring
Table 5 – *Supplemental Irrigation Water Monitoring* in S2.C should include "flow" as a required monitoring parameter; otherwise, the calculated sample types in Table 5 (see footnote b) will not be able to be calculated. Adding "flow" as a monitoring parameter would be consistent to Part S3.C.4.b, *Land treatment annual report* requirements.

#8 – Monitoring Requirements, S2.D Groundwater Monitoring
Table 6 – *Groundwater Monitoring* in S2.D requires groundwater monitoring at MW1, MW4A, MW4B, MW5, and any future monitoring wells on a monthly frequency. Monthly sample collection is excessive and unnecessary. Samples have been collected quarterly from the four existing monitoring wells since 2001. These twenty-four (24) years of data do not demonstrate a significant change in concentrations from quarter to quarter, which indicates that monthly sampling would be an excessive expense without providing unique data. The Fact Sheet includes an analysis which agrees with the lack of seasonal variability. Simplot requests to maintain the quarterly groundwater sampling frequency as required by the current permit.

#9 – Monitoring Requirements, S2.D Groundwater Monitoring
Table 6 – *Groundwater Monitoring* in S2.D requires monitoring for copper, zinc, arsenic, and magnesium. These four (4) constituents are not constituents of concern for wastewater from the feedlot; Simplot requests that they be removed from the analytical suite. Simplot should not be responsible for collection of data that may be of interest to Ecology, but that is not related to the operations covered under this Permit. Additionally, the soil samples will not be analyzed for these parameters; elevated values in groundwater could be attributable to native soils in the region.

#10 – Monitoring Requirements, S2.E Soil monitoring for land treatment fields
Requirement 1.in S2.E states, "Monitor twice per year, once prior to wastewater field application… and once… after the final field application…" Simplot typically collects soil samples after the harvest is complete and no additional wastewater or manure is applied to the field. Unless there is an emergency application of wastewater, soil conditions are not expected to change over the non-growing season. Collecting and analyzing an additional 495 soil cores each year (15 cores per increment X 3 increments per field X 11 fields) is costly and does not provide data that is unique or valuable. Simplot requests to reduce the soil monitoring frequency to once annually after the last harvest or last application of wastewater or manure, whichever is later.

#11 – Monitoring Requirements, S2.F Soil monitoring at fields where manure is applied
S2.F states, "The Permittee must monitor soil at Simplot owned Grandview Farms that received composted manure in the previous 24 months or where manure application is planned in the next 12 months as follows…" Only fields that are receiving manure should be subject to soil sampling. Simplot requests to remove the proposed requirement underlined above.

#12 – Monitoring Requirements, S2.F Soil monitoring at fields where manure is applied
S2.F.1 requires twice-per-year monitoring for fields not in compliance with S2.E. Simplot collects soil samples after the harvest is complete and before manure is applied. Manure is added at agronomic rates determined in part by the soil sampling results and the cropping plan for the coming year. Sampling again after manure application is redundant and costly (if all fields were to receive manure the additional sampling would add another 6,795 soil cores annually). Simplot requests to reduce the sampling frequency to one round of sample collection after the crop is harvested.

#13 – Monitoring Requirements, S2.H Manure Monitoring
S2.H.3 refers to "on-farm compost and biosolids". Simplot refers to this material as screened, dried manure. Simplot requests to strike the "on-farm compost and biosolids" and replace it with "screened, dried manure." The manure applied to the farm fields does not meet the definition of biosolids as defined in WA 173-308-080[6] and is not considered compost under the FDA regulations (must be treated by the process defined by the FDA in 21 CFR 112.54(a)[7]).

#14 – Reporting and recording requirements, S3.C Land treatment annual report
S3.C.9.b refers to compost and biosolids. Simplot requests that this instead be referred to as "screened, dried manure". See comment #12 above.

#15– Reporting and recording requirements, S3.C Land treatment annual report
S3.C.11.e requires a proposed schedule for herbicide and pesticide applications be included in the annual report. This SWDP is specific to land application of wastewater and manure. Application of commercial fertilizers in addition to manure and/or wastewater is relevant to compliance with permit conditions; application of herbicides and pesticides is not. Simplot requests to strike the requirement to provide a proposed schedule for herbicide and pesticide application.

[6] Washington State Legislature. Chapter 173-308 WAC, Biosolids Management. https://app.leg.wa.gov/WAC/default.aspx?cite=173-308 Accessed 2 June 2025.
[7] US National Archives. Code of Federal Regulations. 21 CFR 112.54. https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-112/subpart-F/section-112.54 Accessed 2 June 2025.

#16 – Reporting and recording requirements, S3.D Records retention
S3.D requires that, "The Permittee must retain all records pertaining to the monitoring of solids, manure, compost, and sludge removed from the lagoons for a minimum of five years."

Simplot requests that "compost" be struck; consistent to previous comments.

Simplot also requests that any sludge removed from the lagoons only be held to S2.3, *Soil monitoring for land treatment fields*, and only if the sludge is applied to onsite land treatment fields. The sludge is likely to be land applied or disposed of properly offsite; additional sampling would be redundant.

#17 – Reporting and recording requirements, S3.G Reporting permit violations
S3.G.2 requires that any samples with concentrations that result in a permit exceedance be repeated and reported to Ecology immediately. If groundwater sampling frequency is not maintained at a quarterly cadence (see Comment #8), Simplot requests to remove this provision as the wells will already be sampled on a monthly frequency.

#18 – Reporting and recording requirements, S3.G Reporting permit violations
S3.G.2.a requires twenty-four (24) hour reporting for any monitoring well parameter which exceeds an "enforcement limit" in two consecutive sampling events, and lists this under "permit violations". If a downgradient monitoring well demonstrates an exceedance of the proposed "Groundwater Enforcement Limits", it should not immediately be considered a violation. Rather, two consecutive exceedances of a GEL should require that the Permittee submit a Corrective Action Plan for Ecology's approval. That Corrective Action Plan may need to include investigations so as to understand better groundwater conditions and contaminant sources.

#19 – Solid wastes, S.5.C Manure Processing
S.5.C requires that for composted manure, Chapter 173-350-220(4),(5) and (6) be followed. The feedlot produces dry, screened manure (not compost) and is not subject to the referenced regulation. Refer to similar comments above.

#20 – Groundwater Quality Evaluation (Hydrogeologic Study), S.8.1
S.8.1 requires that the Hydrogeologic Study include the wastewater application fields. Wastewater reuse systems in the State of Washington have been using for many years soil sampling data to monitor for constituent migration through the soil profile of fields receiving wastewater. This data is site specific and provides a clear picture of which fields, if any, are demonstrating potential constituent(s) of concern migration to groundwater. A large-scale monitoring network will capture data that

may be reflective of historic and current agricultural practices that are unrelated to Simplot's application of wastewater at agronomic rates. Simplot requests to remove this provision and maintain the existing requirement to collect samples and analyze samples from the soil profile.

#21 – Emergency Response Plan, S.9.B Bypass procedures
S.9.B.3 requires at least a 30-day notice before the planned date of anticipated bypass which has the potential to result in noncompliance of the Permit. Simplot proposes to change this requirement to: "The Permittee must notify Ecology as soon as possible but no later than ten (10) days before the planned date of bypass." Simplot recommends this language change for two reasons: (1) most of the time, a bypass will occur due to a malfunction or breakdown. Thus providing 30-day notice is excessive for such situations. (2) 40 CFR 403.17.(c)(1)[8] provides for a 10-day notification. These changes would make the permit consistent with federal rules.

#22 – Emergency Response Plan, S.9.B Bypass procedures
S.9.B.3 requires, "A statement of compliance with SEPA" for planned bypasses with the potential to result in noncompliance of the Permit.

SEPA is not applicable to a bypass situation. SEPA is for the review of projects: see WAC 197-11-704 (2)(a). A bypass is typically not a project; it is an operational issue and therefore it is not an action. Projects (actions) are what are regulated by SEPA.

#23 – Application for permit renewal or modification for facility changes, S.10
S.10 requires that the Permittee submit an application for permit renewal one year prior to expiration. Typically, Simplot's discharge permits require an application 180 to 240 days prior to expiration. Simplot proposes to decrease the timeframe from one year to 180 days.

#24 – *Lined Lagoon Engineering Design, S6*
This section needs a significant re-write. The draft permit references WAC 173-240. This is an incorrect reference for a CAFO and highlights the importance of Ecology recognizing that though this is a Waste Discharge Permit, this facility is a CAFO. A CAFO process water and manure storage lagoon is not an industrial wastewater treatment facility. Thus, references to BOD, maintaining a dissolved oxygen concentration of 8.0 mg/L, treatment for nitrogen, coliforms, etc. are not applicable. *There is no treatment that occurs in such a lagoon; it is storage.* Simplot recommends that the language in S6 should be deleted and replaced

[8] US National Archives. Code of Federal Regulations. 40 CFR 403.17. https://www.ecfr.gov/current/title-40/chapter-I/subchapter-N/part-403/section-403.17 Accessed 2 June 2025.

with a requirement that one year after the effective date of this new permit that an engineering report consistent with the requirements of Section S.4.C. of the 2023 General CAFO permit be prepared. This report can also provide the AKART analysis that is needed to determine the appropriate technology for the lagoons.

The Draft Permit prescriptively requires liners for the wastewater lagoons, rather than allowing for Washington's "all known, available, and reasonable methods of prevention, control, and treatment" (AKART) analysis. Simplot recommends that Section S6 be changed to allow the engineering report to be the basis of technology chosen for the lagoons to protect groundwater.

#25. Land Treatment System Engineering Design Report, S7
This section of the draft permit requires that BOD_5 be included in the land application system plan. This requirement should be stricken. Simplot is not aware of how a biochemical oxygen demand (BOD) concentration or mass load of BOD_5 applied is relevant to the management of a land application system.

III. Comments, Fact Sheet

#23 – Other Permit Conditions, V.E Emergency Response Plan
V.E.1, third bullet states that, "Ecology may require the facility to reuse the wastewater". This is overly prescriptive to specifically require reuse. Simplot proposes to replace the three bullets with, "Ecology may authorize the discharge, treatment, reuse, or appropriate offsite disposal of the wastewater."

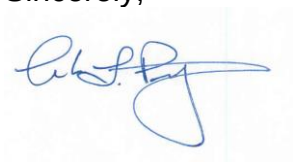
IV. Conclusion

The Draft Permit has a number of new requirements for the Pasco feedlot that are more stringent than the Ecology 2023 General CAFO Permit without proper justification. Furthermore, a number of the requirements, including some monitoring requirements, are not warranted (or provide Simplot with sufficient time) in regard to providing information that is needed to ensure that the feedlot is operated in compliance with Ecology's rules and standards.

As such, Simplot believes that a number of elements of the Draft Permit are problematic and need significant revision before issuing a final permit. Simplot requests an opportunity to meet with Ecology. Such a discussion would be helpful towards developing a final permit that is consistent with existing regulatory requirements and meeting the State of Washington's groundwater criteria.

Please let me know if you have any questions or would like to discuss further these comments. I can be reached at (208) 780-7365.

Sincerely,



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