



Statement of

Paul Derig  
Environment, Health & Safety Manager  
J.R. Simplot Company

On behalf of the Agricultural Retailers Association

before the

U.S. House of Representatives  
Committee on Transportation & Infrastructure  
Subcommittee on Railroads, Pipelines & Hazardous Materials

“Reducing Regulatory Burdens & Ensuring Safe  
Transportation of Hazardous Materials”

April 12, 2011

Thank you, Chairman Shuster and Ranking Member Brown; I appreciate the opportunity to appear before this Subcommittee. My name is Paul Derig, and I am here to testify on behalf of the Agricultural Retailers Association (ARA), a trade association which represents America's agricultural retailers and distributors of crop inputs, equipment and services. ARA members are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

I am the Environmental, Safety and Health Manager for the J.R. Simplot Company. I am directly responsible for the regulatory support and oversight of regulatory programs for the J.R. Simplot AgriBusiness Retail operations, including transportation. Over the past 30 years, I have been involved with many aspects of hazardous materials handling and transportation, both through industry experience and as a public responder. I served as a firefighter and member of the State of Oregon Regional Hazardous Materials Response team, State and National Fire Academy Instructor, and as a Departmental and Regional Training Officer for the public sector. In my Simplot career, I also work with hazardous materials, including leading Hazardous Waste Operations and Emergency Response Standard (HAZWOPER). Because of the dual roles that I have been able to play, I understand the importance of hazardous materials safety in the public and private sectors.

The J.R. Simplot Company is headquartered in Boise, Idaho and is one of the largest privately held firms in the country. In more than 70 years, the company has grown into a global food and agribusiness conglomerate with products that are sold in every state and many foreign countries. Simplot's AgriBusiness Group includes phosphate mining and fertilizer manufacturing operations. Simplot Agribusiness also has a retail farm supply distribution system, Simplot Grower Solutions, and Simplot Partners, comprised of over 100 facilities in 16 western states that provide products, technical and field services to local farmers, horticulturists and landscapers. This hearing is important to the company as the ability to safely and efficiently transport crop input products during planting season is vital to our industry and food production.

I would like to explain the important role that agricultural retailers play in feeding the world. Agricultural retailers provide farmers with crop input products like seed, fertilizer, crop protection products and equipment. Agricultural retailers also provide their farmer customers with crop consulting and custom application services. Agricultural retailers can perform soil sampling so that the right kind and amount of fertilizer is applied in the right place; thus, preventing leaching. Also, agricultural retailers perform approximately 45 percent of crop pesticide application. Agricultural retailers are trained and certified to perform these activities.

Some crop input products like anhydrous ammonia and ammonium nitrate fertilizer and pesticide fumigants are classified as hazardous materials. It is important for these chemicals to be handled at the retail facility, as they become significantly less regulated once they are on the farm.

Agricultural retailers primarily rely on trucks to deliver crop input products to the farm. Retailers usually employ their own drivers and the work is generally seasonal as the business is busiest during planting and harvest seasons.

ARA plays an important role in educating agricultural retailers and distributors on regulatory compliance issues. ARA, with the U.S. Department of Transportation (DOT) and state

agribusiness associations, has hosted several workshops on anhydrous ammonia nurse tank testing. ARA also supported The Fertilizer Institute's December 2009 petition for rulemaking, which asked DOT to promulgate rules to require testing of all anhydrous ammonia nurse tanks.

In 1975, Congress established the Hazardous Materials Transportation Act (HMTA), "to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against risks to life and property which are inherent in the transportation of hazardous materials in commerce."

We understand that Congress will soon consider legislation to reauthorize the HMTA. ARA believes that it is essential for the federal government to be principal in hazardous materials transportation regulation and enforcement. ARA supports this national hazardous material regulatory program because it ensures safety, security and efficiency by instituting uniform standards in training, emergency preparedness, transportation equipment and other aspects of hazardous materials transportation are consistent.

ARA is concerned about the administration of several portions of the HMTA- 1) the Hazardous Materials Safety Permit (HMSP) program, 2) federal DOT preemptive authority of state laws and enforcement and 3) state hazardous materials registration and permitting programs.

### **Hazardous Materials Safety Permit Program**

I would like to share an example from my experience at Simplot. In January 2010, my company was unexpectedly faced with the dilemma of losing the ability to move certain products from our facilities to the local farms because our HMSP renewal was denied based on ineligibility. In other words, Simplot was in the top 30 percent of the national average for Out of Service (OOS) violations in the most current permitting cycle. This determination was derived from a total of 28 hazardous materials inspections with eight OOS inspections (28.57 percent OOS), which is much higher than the 4.76 percent needed in that permitting cycle to qualify for the HMSP.

None of the inspections that affected our permit were on drivers or equipment that transport the two products for which we are required to maintain the HMSP. These two products are seasonal and account for \$12.5 million of annual revenue in my company.

After a lengthy review of the violations, I discovered that half of the OOS inspections were performed by the Minnesota Department of Agriculture on anhydrous ammonia nurse tanks that were not currently in use by Simplot.

The Minnesota Department of Transportation referred to a Minnesota Department of Transportation rule that a cargo tank with more than 10 percent pressure is deemed to be in service. Thus, the Minnesota Department of Transportation was essentially using the Minnesota Department of Agriculture authority to incorrectly enforce state standards as if they were federal rules. Simplot has facilities in 16 states with farmer customers located beyond. Simplot's ability to move product in the entire Western part of the US was threatened by a unique state law, which was enforced by the state's department of agriculture.

After a long and arduous process of disputing the violations with the state and the federal authorities, 14 (50 percent) of the inspections were overturned and the OOS violations were

removed from the system. This left Simplot with only 14 inspections for the year, with only one OOS violation (7.14 percent OOS), which is still not good enough to qualify for the HMSP. It is distressing that one OOS inspection in a year will prohibit approval for the HMSP when the target level moves every permitting cycle and there are barely enough inspections to be statistically valid.

First, I would like to talk about the HMSP. Since its inception in 2005, the HMSP (authorized by 49 CFR §5109) has been fraught with complaints and poor management. Program data is missing. Still records show that there have been thousands of denials, the vast majority of which are administrative because DOT databases are not linked. Every two years, carriers must renew their HMSP permits. The eligibility criteria float each permitting cycle, so that the bottom 30 percent in each category (OOS, crash rate, hazmat) are disqualified for permit renewal. This results in greater than 50 percent of applicants being deemed ineligible for the HMSP.

In Simplot's case, the only violations that the company had were in the OOS category, causing the company to be ineligible for HMSP renewal. The three categories should be aggregated in calculating the eligibility instead of using statistically meaningless information to disqualify carriers from receiving the permit.

Also, the safety level should not float from permitting cycle to permitting cycle. What is determined to be a safe level of compliance in one year should not change two years later.

Furthermore, the system is biased against carriers like agricultural retailers that operate in rural areas. Carriers in rural areas receive far fewer inspections than carriers operating on federal highways in busy areas. In each two-year permitting cycle, DOT does not count the first year of data toward calculating the company's eligibility, so in our case, it was statistically impossible to overcome even one violation.

Unpreventable crashes should not be factored into the carrier's crash rate. If an accident is caused by another's negligence, then the company seeking the HMSP should not be penalized.

We ask that Congress conduct oversight of this program, eliminate the 30 percent floating disqualifier, aggregate the disqualifying categories and consider driver preventability when calculating crash rates.

### **Federal Preemption of State / Local Regulations & Enforcement**

Next, I would like to further explain the importance of US DOT federally preempting state and local regulations that impose an unreasonable burden on commerce (49 CFR §5125). The safe and secure transportation of hazardous materials is best achieved through uniform regulatory requirements.

In the previous example, Simplot was cited by a state enforcement official on a state regulation that had federal regulatory consequences that reached far beyond Minnesota. Although a number of the inspections were eventually overturned and removed from the record, it took a great deal of time and uncertainty regarding the company's federal eligibility. Even though the Federal

Motor Carrier Safety Administration (FMCSA) agreed that the violations were not properly issued, the state seemed to have the final say. For business to move forward, it is very important to have consistency in the rules.

Thus, we suggest that Congress strengthen DOT's preemptive authority in the following ways:

- DOT would be authorized to preempt state/local regulations that impose an unreasonable burden on commerce. Currently, DOT refuses to apply this standard and leaves this analysis to the courts.
- Verbal incident reporting requirements should be federally preempted. Currently, state/local written incident reporting requirements are preempted if they are different than DOT's written incident reports; however, states have been free to impose unique verbal incident reporting requirements. Persons that operate in multiple jurisdictions have difficulty recognizing whether a particular locality has a specific immediate verbal hazmat incident reporting requirement.
- The 2005 HMTA amendments removed all preemptive limitations to state enforcement authority. This creates a loophole through which states could use enforcement authority to impose inconsistent requirements on the regulated community. This limitation on the preemptive effect of the law should be deleted.

### **State Registration Programs**

Lastly, I would like to talk about state registration programs (49 CFR §5119 and §5125). States have been free to institute their own hazardous materials registration programs, resulting in varying registration requirements from state to state. More than 15 years have been spent trying to implement the Alliance for Uniform Hazmat Procedures for state hazardous materials registration and permitting as a compromise to eliminate the administrative burden and duplication from having separate state hazardous materials transportation permits.

To date, only six states participate in the program and the burden on motor carriers that operate in multiple states is significant. At the same time the incremental safety benefit is questionable, especially in light of the Pipeline and Hazardous Material Safety Administration's (PHMSA) federal registration requirements and the ability of states to inspect hazardous materials carriers at roadside.

Simplot has operations in two of the test states that have participated in the Uniform Program; Minnesota no longer participates in the Alliance. Since the inception of this test program, we have not seen any type of safety review in our operations. Simplot also has operations in other states requiring state registration and are not a member of the Alliance. These state registration schemes seem to be a redundant system that has increased paperwork and cost with no added value. These state registration programs simply enable participating states to raise revenue from interstate motor carriers that are based outside of the jurisdiction of these states.

Congress should preempt all of these burdensome hazardous materials state registration programs that are ineffectual to safety and security concerns. If Congress is unwilling to

preempt these state registration programs, Congress should consider making membership to the Alliance for Uniform Hazmat Procedures necessary for state hazardous materials registration programs.

## **Conclusion**

In summary, ARA asks Congress to implement improvements to the HMSP program so that the uncertainty and biases are eliminated, strengthen DOT's preemptive authority on state and local regulations that impose a burden on commerce and eliminate the Uniform Program and other state registration programs that amount to a costly and inconsistent paperwork exercise.

We look forward to working with the Committee, Congress and DOT to further improve the HMTA so that agricultural retailers and distributors are able to continue safely and securely transporting these important crop inputs.

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
*Truth in Testimony Disclosure*

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Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

**(1) Name:** Paul Derig

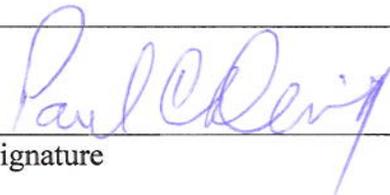
**(2) Other than yourself, name of entity you are representing:** Agricultural Retailers Association (ARA) and J.R. Simplot Company.

**(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?**

YES                      Please find Curriculum Vitae, following.

NO

**(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:** None to my knowledge.

  
\_\_\_\_\_  
Signature

04/07/2011  
Date

# Paul C. Derig

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<p><b>Curriculum Vitae</b></p>	
<p><b>Work experience</b></p>	<p>2001 - Present                      J.R. Simplot Company                      Boise, ID</p> <p><b>Environmental Health and Safety Manager III</b></p> <ul style="list-style-type: none"> <li>▪ Support Corporate regulatory affairs functions at all operating levels with specific responsibility to the AgriBusiness Retail operations.</li> <li>▪ Work with operations and management to ensure compliance with all aspects of their operations.</li> <li>▪ Develop corporate wide programs that reflect the philosophy of the Safety Management System.</li> <li>▪ Provide direction and support to EH&amp;S Managers on staff that have regional responsibility.</li> <li>▪ Represent the Company in trade associations, organizations and activities that bring value to the Company and employees.</li> </ul> <p>1999 – 2001                      J.R. Simplot Company                      Boise, ID</p> <p><b>Environmental Health and Safety Manager II</b></p> <ul style="list-style-type: none"> <li>▪ Assist the Soilbuilder Units, in the Rocky Mountain Area(s), and the AgriSource locations with all aspects pertaining to compliance issues and program development, utilizing a team approach.</li> <li>▪ On a regular basis conduct site assessments to assure Company policies and guidelines have been implemented and are being utilized.</li> <li>▪ Support overall employee training and development to reach the Company goals.</li> <li>▪ As needed support other operating units with special needs, projects, or assessments.</li> <li>▪ Assist in supporting and offering guidance to other Area Environmental &amp; Safety Managers.</li> </ul> <p>1994 - 1999                      J.R. Simplot Company                      Grand Forks, ND</p> <p><b>Retail Safety and Environmental Manager</b></p> <ul style="list-style-type: none"> <li>▪ Assist the Soilbuilder Units in the Plains Region with all aspects pertaining to compliance issues, utilizing a team approach.</li> <li>▪ On a regular basis conduct site assessments to assure Company policies and guidelines are being utilized.</li> <li>▪ Support overall employee training and development to reach the Company goals.</li> </ul> <p>1985 - 1994                      J.R. Simplot Company                      Ontario/Nyssa, OR</p> <p><b>Salesman I</b></p> <ul style="list-style-type: none"> <li>▪ Analyze annual sales strategies.</li> <li>▪ Prioritize and dispatch personnel and equipment.</li> <li>▪ Develop marketing objectives to meet Company goals.</li> </ul>

	1993 - 1994	Woodgrain Millwork, Inc.	Fruitland, ID
		<b>Prefinish Operator</b>	
		<ul style="list-style-type: none"> <li>▪ Achieve quality output with minimum amount of waste or re-work.</li> <li>▪ Safely work in potentially flammable atmospheres.</li> <li>▪ Utilize quality and teamwork concepts to accomplish Company objectives.</li> </ul>	
	1983 - 1984	J.R. Simplot Company	Tulelake, CA
		<b>Unit Manager</b>	
		<ul style="list-style-type: none"> <li>▪ Analyze long-term decisions for capital expenditures.</li> <li>▪ Motivate personnel to achieve high levels of productivity working together.</li> <li>▪ Build mutual trust and understanding for long-term customer relationships.</li> </ul>	
	1981 - 1983	J.R. Simplot Company	Mesa, WA
		<b>Salesman I</b>	
		<ul style="list-style-type: none"> <li>▪ See Salesman I above</li> </ul>	
	1979 - 1981	J.R. Simplot Company	Caldwell, ID
		<b>Office Manager</b>	
		<ul style="list-style-type: none"> <li>▪ Dispatching, invoicing, maintaining inventory.</li> </ul>	
		<b>District Warehouseman</b>	
		<ul style="list-style-type: none"> <li>▪ Responsible for timely product delivery throughout the district, and warehouse inventory.</li> </ul>	
		<b>Field Applicator</b>	
		<ul style="list-style-type: none"> <li>▪ Safe and prudent application of Fertilizer and Pesticide products.</li> </ul>	
	1977 - 1979	J.R. Simplot Company	Caldwell, ID
		<b>Veterinary Crew</b>	
	1976	N-Bar Land and Cattle Co.	Grassrange, MT
		<b>Ranch Hand</b>	
	1975	Silver King Mines	Cuprum, ID
		<b>Crusher Operator</b>	
		<ul style="list-style-type: none"> <li>▪ Maintain ore supply to the mill.</li> </ul>	
<b>Education</b>	1963 - 1975	Weiser Public Schools	Weiser, ID
	1975 - 1976	University of Idaho	Moscow, ID
		<b>Geological Engineering</b>	
	1977 - 1979	Treasure Valley Community College	Ontario, OR
		<b>Range and Ranch Management</b>	

<p><b>Accreditations and Certifications</b></p>	<ul style="list-style-type: none"> <li>▪ Environmental, Health and Safety Law</li> <li>▪ Safety Management Techniques</li> <li>▪ Principles of Occupational Health and Safety</li> <li>▪ EPA/OSHA Asbestos Inspector</li> <li>▪ Ammonia Field Tank Safety Controller</li> <li>▪ California Agricultural Safety Certification Program</li> <li>▪ American Society of Safety Engineers – Safety Management Certification</li> <li>▪ Hazardous Material Specialist</li> <li>▪ Incident Commander</li> <li>▪ Emergency Medical Technician</li> <li>▪ CPR Instructor</li> <li>▪ State Emergency Response Instructor</li> <li>▪ Certified Crop Advisor</li> <li>▪ Pesticide Applicator</li> <li>▪ Private Pilot</li> <li>▪ Commercial Driver License with endorsements including HM</li> <li>▪ Scuba</li> <li>▪ Mine Rescue</li> <li>▪ National Fire Academy Instructor</li> </ul>
<p><b>Other experience</b></p>	<ul style="list-style-type: none"> <li>▪ Emergency response: Fire, Ambulance, and Hazardous Materials.</li> <li>▪ Instructor for local, state, and industrial levels for Emergency responders.</li> <li>▪ Past President of the Snake River Valley Training Officers Association.</li> <li>▪ Oregon Fire Instructors Association and Idaho Vocational Training.</li> <li>▪ Fruitland Fire Department Training Officer.</li> <li>▪ Annually provided instruction for, Ag in the Classroom for Freshman Ag students.</li> </ul>

	<ul style="list-style-type: none"><li>▪ Den Leader for Cub Scouts</li><li>▪ Assistant Scoutmaster BSA Troop 360</li><li>▪ Idaho State Department of Agriculture – Fertilizer, Soil and Plant Amendment Advisory Committee.</li><li>▪ President Last Chance Ditch Company Board of Directors</li><li>▪ Vice Chair – Interregional Coordinating Council Transportation and Distribution Committee</li></ul>
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