EVIDENCE AND SITE CONTROL AGREEMENT

The parties to this Evidence and Site Control Agreement ("Agreement") shall be the West Fertilizer Co. ("West Fertilizer"), the Occupational Safety and Health Administration ("OSHA"), the U.S. Chemical Safety and Hazard Investigation Board ("CSB"), the Environmental Protection Agency ("EPA") and Texas Commission on Environmental Quality ("TCEQ") (collectively referred to as the "Parties").

As a result of an incident that occurred at the West Fertilizer facility on April 17, 2013, West Fertilizer, OSHA, CSB, EPA and TCEQ have initiated separate investigations. As part of those investigations, potentially relevant evidence will need to be secured, removed and stored. The Parties have identified and continue to identify potential items of evidence. The intention is to secure and remove these items in order to preserve the evidence while the parties conduct their on-going investigations.

The purpose of this Agreement shall be to ensure that the Parties: (1) have the opportunity to access the physical evidence and accident site itself in its original condition; (2) agree in advance to an orderly effort by which evidence will be collected, stored, and preserved for additional documentation, testing, and analysis; and (3) to establish basic principles for testing, subject to the future development of specific protocols. Additionally, this evidence removal and site control protocol addresses the collection and removal of loose items on the ground that may have potential relevance to the incident on April 17, 2013.

This Agreement shall not be construed, either expressly or impliedly, to limit the lawful authority of OSHA, CSB, EPA, TCEQ or the U.S. Government to conduct full and thorough investigation as authorized through the respective enabling legislations, nor shall it be construed, either expressly or impliedly, to limit the authority of the EPA or the TCEQ to conduct any response actions, including removal and remedial actions and the taking of samplings and response investigations at the West Fertilizer facility. This Agreement shall not be construed, either expressly or impliedly, to limit any defenses or responses West Fertilizer may have to actions taken by OSHA, CSB, EPA, TCEQ or the U.S. Government in conducting their investigations.

Terms and Conditions

The Parties mutually understand and agree as follows:

A. Site Preservation

1. Notwithstanding the EPA's and the TCEQ's response authority to remove and remediate material contaminated with hazardous substances at or from the West Fertilizer facility, other than as provided elsewhere in this Agreement, or unless subsequently agreed to in writing by the Parties to this Agreement, the Parties shall not intentionally move, alter, destroy, rearrange, or otherwise tamper with any evidence in the exclusion zone and system defined in Paragraph A.1.a. that has potential relevance to the Parties'

investigations.

a. Unless otherwise provided for in this Agreement, the Parties agree that the exclusion zone and system defined as _____, shall remain in an "as is" state until such time as West Fertilizer, OSHA, CSB, EPA and TCEQ begin evidence collection and storage (consistent with the terms of this Agreement), except for planned incident response activities or in the case of an emergency, as those terms are defined below.

b. By mutual written agreement of the parties, the exclusion zone and system under restriction defined in Paragraph A.1.a. may be modified as the situation at the site evolves.

2. For the purposes of this Agreement, any "planned incident response activities" are the actions to be taken by West Fertilizer, the EPA and/or the TCEQ that are not inconsistent with the National Contingency Plan (NCP), the Clean Water Act (CWA) and/or the Comprehensive Environmental Response, Complensation and Liability Act (CERCLA).

a. West Fertilizer shall notify OSHA, CSB, EPA and TCEQ with reasonable notice, meaning at least twelve (12) hours in advance whenever possible, of all such activities.

b. West Fertilizer shall document all changes, including but not limited to changes to equipment, instruments, or piping made to the "as is" state of the exclusion zone in the course of carrying out such activities and provide the documentation of changes to OSHA, CSB, EPA and TCEQ.

c. West Fertilizer shall not physically remove materials, equipment, instruments, or piping from their as-found locations within the exclusion zone unless there is no alternative method for rendering the location safe or unless otherwise directed to do so by the On-Scene Coordinator pursuant to his/her authority under the CWA, CERCLA and/or the NCP . If removal is necessary, West Fertilizer shall document the pre-removal condition, which shall include, at a
minimum, photographs or video of the pre- and post-removal conditions; retain the removed items in a secure location; and provide the documentation, and access to the items, to OSHA, CSB, EPA and TCEQ. Any items removed from the exclusion zone shall be stored according to the terms of paragraph 9 of this Agreement.
.

3. For the purposes of this Agreement, an "emergency" is a situation (other than planned incident response activities) that poses an imminent and substantial endangerment to the public health or welfare or the environment under Section 106 of CERCLA, 42 U.S.C. § 9606, or a substantial threat of a discharge of a hazardous substance into navigable waters of the U.S. under Section 311 of the CWA, 33 U.S.C. § 1321(c).

a. In the event West Fertilizer must move or alter some or all of the physical evidence in the exclusion zone due to an emergency, West Fertilizer shall notify OSHA, CSB, EPA and TCEQ as quickly as possible and, if possible, prior to moving or altering the evidence, in order to allow OSHA, CSB, EPA and TCEQ the opportunity to comment on the proposed alteration or to further document the evidence/site.

b. If such prior notice as outlined in Paragraph A.3.a. is not possible, West

Fertilizer must provide written notice to OSHA, CSB, EPA and TCEQ as soon as

possible thereafter, meaning at least twelve (12) hours after moving or altering the evidence as set forth in Paragraph A.3.a., which includes the following information: (a) a complete explanation as to why notice could not be provided prior to moving or altering the evidence; (b) a complete description of all actions taken to rectify the emergency; (c) identification of all personnel involved in moving or altering the evidence; (d) a timeline of events; and (e) photographic or video evidence, or other documentation that shows the change in the evidence and/or site.

c. When the emergency has ended, any actions that can change or modify evidence or the accident site itself must cease.

4. West Fertilizer shall continue to be responsible for the continued security and protection of its own site, and any real or personal property therein, as well as any physical or documentary evidence present on its premises or under the control of its officers, employees, attorneys, agents, or contractors.

5. This Agreement does not relieve West Fertilizer of its obligations under law to protect the life, health and safety of its employees or any other people affected by the incident under investigation, its property, or any other operations at the West Fertilizer facility.

6. All written notifications shall be made to the Parties designated representatives via facsimile and/or email as follows:

OSHA _____;
CSB _____;
EPA ____;
TCEQ ____; and
West Fertilizer _____.

7. This Agreement does not relieve West Fertilizer of its obligations under any other federal, state or local law.

B. Safety

West Fertilizer shall follow all applicable OSHA regulations and all West Fertilizer safety procedures and
exclusion zone safety plan requirements.

C. Evidence Collection & Storage

8. All Parties will have an opportunity to identify and request items they wish to be retained in accordance with the following Evidence Selection and Securing Protocol. Once an item or piece of equipment is identified:

a. If necessary, before removing items, the following steps shall be

performed to render the item safe for removal:

i. West Fertilizer operations and maintenance will verify items for removal are blinded and blocked.

ii. As needed, unsupported piping shall be reinforced or supported.

iii. LEL testing shall be performed at each location prior to cutting.

iv. An appropriate fire watch shall be enacted prior to cutting.

v. Items shall be removed by appropriate methods and may require the execution of a separate written protocol.

b. The evidence will be identified and documented undisturbed in place.

c. When an item is identified, it will be photographed in its "as is state" without tags.

d. Close up photographs will be taken to include distinguishing features and scales.

e. An identification tag will be affixed to the item. The tag will be numbered. The item will be recorded in an "evidence log" that will contain information regarding the date and time, tag number, description of the item and the person making the evidence log entry. The location will also be marked on a drawing of the area. The item will be photographed subsequent to tagging.

f. If a tagged item is not attached to another piece of equipment and can be easily removed, it will be removed from the incident area and transported to the storage area(s).

g. If a tagged item is attached to another piece of equipment and can not be easily removed, the dismantling process will be photographed or videoed.

h. Before any item is removed and transported from the incident area to the storage area, it will be photographed or videoed and documented.

i. If needed, items shall be decontaminated in accordance with the instructions of the On-Scene Coordinator before being removed.

j. Transfer of evidence. If any items of evidence are transferred from secure storage, a chain of custody form will be completed, which will include:

i. Item number

ii. Description of item

iii. Destination

iv. Analysis planned, if applicable

v. Name, date, time and signature of person relinquishing item

vi. Name, date, time and signature of person receiving item

9. All of the evidence will be transported to and secured in a mutually agreed upon

storage area(s). However, if such storage area(s) will be on the grounds of the West Fertilizer facility, such transportation and storage shall be at the direction of the On-Scene Coordinator to avoid interference with cleanup response efforts. OSHA, CSB, EPA and TCEQ will control access to the storage area. No party shall be able to access the evidence without providing the other parties reasonable, advance notice, meaning at least

twelve (12) hours whenever possible, unless 1) conditions exist that require a response to prevent, abate, mitigate, and/or minimize the release or threatened release of hazardous substances at or from the storage area, or; 2) until the parties come to some other subsequent agreement, entered into in writing, appropriately supplementing this Agreement. All parties may be present at all times during predetermined meetings where the other parties have access to the evidence at issue in order to ensure the integrity of the preserved evidence and the chain of custody of such evidence. Access by any parties to the physical evidence in this case shall be documented in an evidence control log, annotating who accessed what evidence, what (if any) alterations to the evidence occurred, and the duration of each visit.

10. West Fertilizer shall keep and maintain the evidence log and evidence control log and shall provide them to OSHA, CSB, EPA and TCEQ upon request.

B. Testing

11. Any party desiring to perform non-destructive testing of the evidence covered by this Agreement shall first notify all other Parties and obtain the mutual agreement of all Parties to protocols for removal, chain-of-custody, preservation, and testing. The Parties shall not unreasonably withhold consent.

a. Any party may be present to observe and document non-destructive testing conducted by any other party.

b. If the Parties cannot reach an agreement on the non-destructive testing of the evidence, OSHA or CSB may seek to compel the production of evidence as provided under 29 U.S.C. § 657(b) and 42 U.S.C. § 7412 (r)(6)(L), respectively, and conduct its own non-destructive testing. In this event, OSHA and CSB will allow all Parties to observe and document the non-destructive testing.

c. Any destructive testing must be agreed to by all the Parties and shall be covered under separate protocols that must be mutually agreed upon by the Parties.

C. Samples and Sampling

12. The Parties may take relevant samples, as they deem necessary and appropriate, in furtherance of their respective investigations. If the Parties determine that the available amount of a particular material is insufficient to allow a split sample and testing by multiple parties or a previously taken sample by West Fertilizer is deemed to be the superior evidence by OSHA, CSB, EPA and TCEQ, all Parties shall be notified and a joint sampling and testing protocol will be developed for that particular material.

D. Additional Terms

13. Any terms or conditions contained within this Agreement apply to the Parties

themselves, as well as their officers, employees, agents, attorneys, contractors, successors in interest, and subrogees, as well as all such personnel employed by any other related business entities, including but not limited to parent companies, holding companies,

subsidiaries, and business partners of any sort.

14. This Agreement shall remain in effect until such time as the parties mutually agree that it is no longer necessary, or until a party gives written notice to all other parties that it no longer intends to be bound by such Agreement.

15. This Agreement cannot be changed, modified, or supplemented except as mutually agreed in writing by the parties hereto.

16. This agreement shall become effective on the date of the last signature hereto.

17. This Agreement constitutes the entire agreement between West Fertilizer, OSHA, CSB, EPA and TCEQ regarding evidence preservation associated with the fire and explosion at the West facility on April 17, 2013 and merges any and all prior discussions and negotiations. Any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding on any party except as incorporated in this Agreement itself. Specifically, OSHA, CSB, EPA and TCEQ, through their respective authorized signatories, each acknowledge that it is not relying on any promises, oral or written, other than those terms and conditions contained in this Agreement.

18. Should the OSHA, CSB, EPA or TCEQ determine that West Fertilizer is not abiding by the terms of any provisions contained within this Agreement, West Fertilizer understands that the OSHA, CSB, EPA or TCEQ may, as it deems appropriate, issue one or more subpoenas to West Fertilizer for any and all evidence, and/or seek appropriate court orders and/orother necessary relief in the local federal district court.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

APPROVED AND AGREED TO BY:

_____
Printed Name: _____
Authorized Representative, Title
West Fertilizer
Executed this ____ day of April, 2013.

_____
Printed Name: _____
Authorized Representative, Title
Occupational Safety and Health Administration
Executed this ____ day of April, 2013.

_____
Printed Name: _____
Authorized Representative, Title
U.S. Chemical Safety and Hazard Investigation Board
Executed this ____ day of April, 2013.

_____
Printed Name: _____
Authorized Representative, Title
Environmental Protection Agency
Executed this ____ day of April, 2013.

_____
Printed Name: _____
Authorized Representative, Title
Texas Commission on Environmental Quality
Executed this ____ day of April, 2013.