

New Orleans, April 26, 2011

Ms. Denita Stann  
Vice President, Investor and Public Relations  
PotashCorp



## **Regarding PCS imports of phosphate rock from occupied Western Sahara**

Dear Ms. Stann,

Thank you for your email of 18 April 2011 and the reference to PotashCorp's posted views on the purchase of phosphate rock from Western Sahara.

We would like to follow up on some statements contained in the mentioned text, in order to establish the factual record on the legal and political situation surrounding the trade in phosphates from the occupied territory.

### *Legal assessment*

Most importantly, PotashCorp's reference to the 2002 UN Legal Opinion on natural resources in Western Sahara constitutes a selective and erroneous reading. You quote from the opinion that "it was concluded that such activities would be illegal 'only if conducted in disregard of the needs and interests of the people of that Territory'". That is incorrect. The Sahrawi people have the recognized right to self-determination over their land and their resources. More than 100 UN resolutions demand that this right be respected. The right to self-determination is clearly reflected in the Legal Opinion, whose conclusion is, in contrast to your statement, that "if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories". The original UN opinion can be found at: [www.arso.org/Olaeng.pdf](http://www.arso.org/Olaeng.pdf).

PotashCorp's public statement demonstrates that your firm has decided to ignore the UN opinion, and the Sahrawi people's right to be consulted. No reference in your statement is made to the wishes of the Sahrawi people. Thus, the only party your firm has consulted with is your business partner, OCP. As a government-owned Moroccan firm exploiting the phosphates in the occupied territory, OCP's views and position on the development of Saharan phosphates is that of the Moroccan government. Your letter confirms that you do not take the wishes of the Sahrawis into account, and that you have not sought any outside advice.

PotashCorp describes the legal aspects of the trade in a selective manner. It says that: "There has been no determination by the U.N. or any other competent legal authority that the production and use of phosphate from Western Sahara is in violation of the Geneva Convention or any applicable law". As you know, the International Court of Justice has stated that Morocco has no legitimate claims or sovereignty over Western Sahara, something which is also reflected in the

2002 UN Legal Opinion. Entering into purchase agreements for natural resources from an occupied territory, disregarding the wishes of the people of the territory, violates international law generally and the specific UN documents addressing the issue. We commend to you, for example, UN General Assembly Resolution A/Res/65/109, “Economic and other activities which affect the interests of the peoples of Non-Self-Governing Territories” (10 December 2010).

We urge PotashCorp also to consider the international humanitarian law and criminal law implications of its trade in Saharan phosphate. Our point, briefly, is that two streams of law apply to protect the taking of natural resources from occupied Western Sahara: (i) that of a people’s right to permanent sovereignty over such resources, discussed in the 2002 Legal Opinion and in the UN General Assembly resolution above; and (ii) international criminal law (see the recent example of a criminal finding of pillage by the International Criminal Tribunal for the former Yugoslavia, in its April 15, 2011 *Gotovina* judgment). WSRW has commissioned a legal opinion on such criminal liability and will share it with PotashCorp in the coming weeks.

#### *Expressing political support*

We were taken aback by PotashCorp’s reasoning regarding the status of Western Sahara and of Morocco’s continuing occupation of the territory. You write “the security situation is complicated and [...] Morocco’s presence may be a stabilizing influence”. WSRW has been in dialogue with international firms since our establishment in 2004. Never have we heard such a political statement from a firm, explaining or even supporting the brutal and illegal Moroccan annexation of and presence in the territory. PotashCorp in its statement repeatedly defends the Moroccan presence in Western Sahara praising its “stabilizing influence” in Western Sahara. Would PotashCorp say the same about Israel in Palestine? Or about Germany in Europe during the Second World War? No illegal state aggression on another territory can be defended from such a perspective. There has never been a terrorist attack committed in Western Sahara, neither prior to, nor after Moroccan forces occupied the territory. On the other hand, Morocco, which you claim has a “stabilizing” function in Western Sahara, is responsible for serious war crimes in Western Sahara, condemned by the UN and other international organizations, such as illegally annexing a neighboring territory, bombing civilians with napalm and white phosphorous, and forcing a population into exile. Generals responsible for the attack on unarmed Sahrawis in the 1970s and 1980s are now being investigated in Spanish legal system for genocide. The Sahrawis in occupied Western Sahara are essentially living in a state of terror. The annual rankings from the US organization Freedom House place Western Sahara at the very bottom of the scale as one of the most unfree countries in the world; at the level of Libya, North Korea and Burma. The experience from the Arab world revolts taking place shows that stability of illegitimate regimes, and oppression of its people, are two sides of the same coin.

Your statement that “The United States’ government in its official comments preceding the signing of the U.S. - Morocco Free Trade Agreement praised Morocco for ‘its refusal to accept a terrorist state in the Western Sahara’” is incorrect. The quote you use is from a speech of a pro-Moroccan congressman from Florida, Mr. Diaz-Balart, and not an official statement issued by the US government. To the contrary, then US Trade Representative, Robert B. Zoellick, declared on behalf of the US Government in 2004 that the US-Morocco Free Trade Agreement expressly did not apply or run to Western Sahara. That is consistent with its position in similar cases, for example, Iraq in Kuwait in 1990-91.

PotashCorp's expression "Moroccan Sahara", is only used by Moroccan government, and does not reflect the terminology of the UN, the US, nor of the rest of the international community. The use of deeply pro-Moroccan terminology indicates a politically cultured and non-legal-based stance to the conflict. We urge your firm to use the UN terminology, namely, "Western Sahara", and not expressions that your business partner in the territory might have suggested.

PotashCorp's claim that ceasing to import from Western Sahara since "any decision to cease doing so would constitute a political judgment on our part" is thus ironic. As in other contexts internationally, where firms play a role in prolonging conflicts, the political actors are those who chose to be involved, not the numerous firms that rightfully abstain. In our opinion, PotashCorp clearly contributes to the occupation through its financial payments and legitimizing support as shown in your published statement.

In respect of the information on Sahrawi employment and benefits, we would like to express our doubts to data provided by OCP. Our estimates are much lower. But even if the figures suggested by you are correct, this does not explain why half of the workers are Moroccan settlers who have been moved into the territory in violation of the *Fourth Geneva Convention*.

Even though PotashCorp in its statement downplays its role in importing phosphates from Western Sahara, the actual purchases from your firm remain, in our view, substantial. With approximately half a million tons of phosphates from Western Sahara annually, the PotashCorp trade accounts for a large part of exports from Western Sahara. For almost two decades your firm, and its predecessor company, has been the most important buyer of phosphate rock from the territory, and thus one of the main sources of income for the Moroccan government emanating from the territory it occupies. Therefore, we repeat our request from our letters of 1 October 2008 and of 11 January 2011 urging your firm to immediately terminate the imports from the territory. By doing so, PotashCorp would follow the lead of other responsible phosphate trading companies who have chosen to wait importing from Western Sahara until the conflict is solved.

Several of our earlier questions remain unanswered. We attach a copy of them to this letter and kindly request a reply. In the meantime, we encourage PotashCorp to reconsider your public statement concerning the UN Legal Opinion of 2002, the US government position, the terminology of the territory "Moroccan Sahara", and the assumption that Morocco has a stabilizing function in the territory it has illegally annexed.

We are looking forward to hearing from you.

Sincerely yours,

Christina Kiel  
Western Sahara Resource Watch, Louisiana  
[www.wsrw.org](http://www.wsrw.org)

**Of the five questions we asked in our letter to you on 11 January 2011, the following three were not responded to in the statement you refer to. We invite PotashCorp's response.**

1) What other assessments, apart from requesting information from OCP, has PCS undertaken to investigate whether current arrangements are in accordance with the wishes of or to the benefit of the Sahrawi people? Who carried out these assessments?

2) When does PCS' contract for purchases of Western Sahara phosphate rock terminate?

3) Has PCS considered that maybe the imports of phosphate from Western Sahara have negative consequences for the UN peace process, as well as the right to self-determination for the people of Western Sahara?

**Furthermore, based on PotashCorp's April 2011 public statement, we would like to receive from PotashCorp an explanation to the following questions:**

4) Why does your firm chose to ignore the wishes of the Sahrawis, as the conclusion of the 2002 UN Legal Opinion sets as a prerequisite for the legality of the trade?

5) Your firm states that the "economic development in the region . . . is a necessary precursor for any resolution involving local self determination to take place". From our knowledge of former UN decolonisation processes and international law, as well as of our knowledge of the history and nature of the Western Sahara conflict, we would argue the exact opposite. The financial income from the phosphate exports are a direct cause of Morocco's continued denial of the Sahrawi people's right to self-determination.

We would like to get a clarification from your firm on what legal or empirical grounds this claim is made.