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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
ENVIRONMENT, INC., a Washington
Non-Profit Corporation
and
CENTER FOR FOOD SAFETY, INC.,
a Washington, D.C. Non-Profit
Corporation

NO. CV-13-3016-TOR
FIRST AMENDED COMPLAINT

Plaintiffs,

v.

COW PALACE, LLC, a Washington
Limited Liability Company,

Defendants.

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a citizen suit for declaratory and injunctive relief against Defendant

1 Cow Palace, LLC for violations of the Solid Waste Disposal Act, also known as
2 the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”),
3 at Defendant’s two dairy facilities, respectively called Cow Palace I and Cow
4 Palace II (hereinafter collectively referred to as “Cow Palace Dairy” or
5 “Defendant”).
6

7 2. This civil action is brought pursuant to the citizen suit provisions of
8 RCRA, 42 U.S.C. § 6972(a)(1) (A) and (B).

9 3. As detailed below, Plaintiffs allege that Cow Palace Dairy has violated and
10 continues to violate Section 7002(a) of RCRA by contributing to the past and
11 present handling, storage, treatment, transportation, and/or disposal of solid and
12 hazardous waste in such a manner that may present an imminent and substantial
13 endangerment to health and the environment. 42 U.S.C. § 6972(a).
14

15 4. Plaintiffs further allege that Cow Palace Dairy employs improper manure
16 management practices that constitute the “open dumping” of solid waste in
17 violation of Section 4005(a) of RCRA. 42 U.S.C. § 6945(a).
18

19 5. Plaintiffs seek declaratory relief establishing that Cow Palace Dairy has
20 violated RCRA. Plaintiffs also seek injunctive relief directing Cow Palace Dairy
21 to modify its handling, storage, treatment, transportation, and disposal of solid and
22 hazardous waste such that these practices no longer present an imminent and
23 substantial endangerment to health and the environment. Additionally, Plaintiffs
24

1 seek injunctive relief obligating Cow Palace Dairy to remediate the environmental
2 contamination it has caused and/or contributed to, including widespread soil and
3 groundwater contamination. Finally, Plaintiffs request that the Court award
4 Plaintiffs reasonable attorneys and expert witness fees and costs incurred in
5 bringing this action.
6

7 JURISDICTION

8 6. This Court has subject matter jurisdiction over this lawsuit pursuant to
9 Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

10 7. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §
11 1331 because this action arises under RCRA and the Declaratory Judgment Act, 28
12 U.S.C. § 2201, *et seq.*

13
14 8. On October 17, 2012, Plaintiffs gave notice of the violations and their intent
15 to file suit to the Defendant, Defendant's registered agent, United States Attorney
16 General, United States Environmental Protection Agency (EPA), EPA Region X,
17 Washington State Office of the Governor, Washington State Office of the Attorney
18 General, and Washington State Department of Ecology as required by Section
19 7002(a) of RCRA, 42 U.S.C. § 6972(a).
20

21 9. More than ninety days have passed since notice was served, and the
22 violations complained of in the notice are continuing at this time, or Defendant is
23 reasonably likely to continue remain in violation of RCRA. Neither the EPA nor
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1 the State of Washington has commenced or is diligently prosecuting a civil or
2 criminal action to redress the violations. Any administrative action undertaken by
3 EPA does not address the relief requested by Plaintiffs that is necessary to abate
4 the imminent and substantial endangerment caused by Defendant's practices.

5
6 **VENUE**

7 10. Venue properly vests in this Court pursuant to Section 7002(a) of RCRA, 42
8 U.S.C. § 6972(a), because the alleged violations of the aforementioned statutes
9 occurred and continue to occur within the Eastern District of Washington.

10 **PARTIES**

11 11. Upon information and belief, Cow Palace, LLC is a Washington limited
12 liability company that owns and operates the dairies known as Cow Palace I and
13 Cow Palace II. The dairies are located at or near 1631 North Liberty Road,
14 Granger, WA 98932.

15
16 12. Upon information and belief, Cow Palace I and Cow Palace II are jointly
17 owned and controlled by Cow Palace, LLC. The dairies share common manure
18 and other waste management practices.

19
20 13. Cow Palace, LLC is a "person" within the meaning of Section 1004(15) of
21 RCRA, 42 U.S.C. § 6903(15).

22 14. Plaintiff CARE is a non-profit corporation organized under the laws of the
23 State of Washington. CARE's principal office is located in Outlook, Washington.
24

1 15. CARE is a grassroots organization composed of concerned community
2 members. Its mission is to inform Washington state residents about activities that
3 endanger the health, welfare, and quality of life for current and future
4 Washingtonians through education and citizen empowerment. CARE also acts as
5 an advocate to protect and restore the economic, social, and environmental
6 resources of the region. In carrying out its mission, CARE has appeared in
7 numerous local, state, and federal proceedings.

9 16. CARE's organizational purposes are adversely affected by Cow Palace
10 Dairy's violations of RCRA. These violations have caused significant
11 environmental contamination of the soil and groundwater. Furthermore, but for
12 Cow Palace Dairy's unlawful actions, CARE would not have to spend as much of
13 its resources on the environmental problems created by illegal discharges from
14 individual large-scale industrial farming operations, and could direct these
15 resources to other priorities.

17 17. CARE has individual members that reside in Yakima County and in
18 proximity to the Cow Palace Dairy. The environmental, health, aesthetic,
19 economic, and recreational interests of CARE's members have been and will
20 continue to be adversely affected by Cow Palace Dairy's violations of RCRA. For
21 instance:
22

- 23 a. Members of CARE obtain their drinking water from aquifers that have
24

1 been contaminated with nitrates, phosphorus, and other pollutants,
2 including hormones and antibiotics, by Cow Palace Dairy's improper
3 handling, storage, treatment, transportation, and disposal of solid and
4 hazardous waste. As a result, drinking water that CARE's members'
5 rely upon has been rendered unsafe for human consumption.
6

7 Consequently, CARE's members have been forced to obtain, or
8 should be obtaining but may not be able to afford, alternative sources
9 of drinking water. CARE's members are concerned that consuming
10 this water is harming or could harm them and their families' health.
11

12 b. Members of CARE also make domestic and agricultural use of
13 groundwater that has been contaminated with nitrates, phosphorus,
14 and other pollutants as a result of Cow Palace Dairy's improper
15 handling, storage, treatment, transportation, and disposal of solid and
16 hazardous waste. As a result, water that CARE's members' rely upon
17 has been rendered unsafe for domestic and agricultural use.
18

19 Consequently, CARE's members have been forced to obtain, or
20 should be obtaining but may not be able to afford, alternative sources
21 of water for these uses. CARE's members are concerned that the
22 water used in their homes is harming them and their families' health.
23

24 CARE's members are concerned that the food they produce and rely

1 upon for sustenance using this water is not safe to consume.

2 c. Members of CARE also live, work, and recreate in the environment
3 that has been negatively impacted by Cow Palace Dairy's improper
4 handling, storage, treatment, transportation, and disposal of solid and
5 hazardous waste. This has lessened CARE's members' enjoyment of
6 their environment. CARE's members' are concerned that their
7 environment has been irreparably injured by Cow Palace Dairy's
8 improper practices.
9

10 18. Plaintiff Center for Food Safety (CFS) is a public interest non-profit,
11 membership organization that works to protect human health and the environment
12 by curbing the proliferation of harmful food production technologies and by
13 promoting organic and other forms of sustainable agriculture. CFS's
14 organizational purposes are adversely affected by Cow Palace Dairy's violations of
15 RCRA. These violations have caused significant environmental contamination of
16 the soil and groundwater. Furthermore, but for Cow Palace Dairy's unlawful
17 actions, CFS would not have to spend as much of its resources on the problems
18 created by illegal discharges from individual large-scale industrial farming
19 operations, and could direct these resources to other priorities.
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21

22 19. CFS represents nearly 245,000 members throughout the country that support
23 safe, sustainable and organic agriculture and regularly purchase organic products.
24

1 CFS has approximately 10,000 members in the state of Washington. CFS
2 members live, work, recreate, and grow food in, and consume food and water
3 from, the Yakima Valley. The environmental, health, aesthetic, economic, and
4 recreational interests of CFS's members have been and will continue to be
5 adversely affected by Cow Palace Dairy's violations of RCRA. CFS members
6 support the public's right to choose food and crops not sourced from or by
7 industrial farming practices, such as CAFOs. CFS's members are impacted by
8 CAFOs through destructive discharges of CAFO pollution into groundwater, air
9 and public waterways, which affects the suitability of drinking water and fish in
10 these waterways for consumption.
11

12
13 20. At all relevant times, Plaintiffs were and are "persons" within the meaning
14 of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

15 **STATUTORY AND REGULATORY FRAMEWORK**

16 21. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that
17 citizens may commence a citizen suit against "any person," "including any past or
18 present generator, past or present transporter, or past or present owner or operator
19 of a treatment, storage, or disposal facility who has contributed or who is
20 contributing to the past or present handling, storage, treatment, transportation, or
21 disposal of any solid or hazardous waste which may present an imminent and
22 substantial endangerment to health or the environment."
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24

1 22. Section 1002(b) of RCRA states that “disposal of solid waste... in or on the
2 land without careful planning and management can present a danger to human
3 health and the environment;” and that “open dumping is particularly harmful to
4 health, contaminates drinking water from underground and surface supplies, and
5 pollutes the air and the land....” 42 U.S.C. § 6901(b).
6

7 23. As required by statute, EPA has promulgated criteria under RCRA §
8 6907(a)(3) defining solid waste management practices that constitute open
9 dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These
10 regulations outline certain solid waste disposal practices which, if violated, pose a
11 reasonable probability of adverse effects on health or the environment. 40 C.F.R. §
12 257.3.
13

14 24. The purpose of RCRA is “to promote the protection of health and the
15 environment.” RCRA seeks to accomplish this by “prohibiting future open
16 dumping on the land and requiring the conversion of existing open dumps to
17 facilities which do not pose a danger to the environment or to health....” 42 U.S.C.
18 § 6902(a).
19

20 25. Section 4005(a) of RCRA prohibits “any solid waste management practice
21 or disposal of solid waste... which constitutes the open dumping of solid waste....”
22 42 U.S.C. § 6945(a).
23

24 26. Under section 1004(3), “The term ‘disposal’ means the discharge, deposit,

1 injection, dumping, spilling, leaking, or placing of any solid waste... into or on any
2 land or water so that such solid waste or hazardous waste or any constituent thereof
3 may enter the environment or be emitted into the air or discharged into any waters,
4 including ground-waters.” 42 U.S.C. § 6903(3).

5
6 27. RCRA defines “solid waste” as “any garbage, refuse, sludge from a waste
7 treatment plant... and other discarded material, including solid, liquid, semisolid,
8 or contained gaseous material resulting from... *agricultural operations...*” 42
9 U.S.C. § 6903(27) (emphasis added).

10 28. EPA criteria for solid waste disposal practices prohibit the contamination of
11 any underground drinking water source beyond the solid waste boundary of a
12 disposal site. 40 C.F.R. § 257.3-4(a).

13
14 29. An “underground drinking water source” includes (1) an aquifer supplying
15 drinking water for human consumption or (2) any aquifer in which the ground-
16 water contains less than 10,000 milligrams per liter of total dissolved solids. 40
17 C.F.R. § 257.3-4(c)(4).

18
19 30. “Contaminate” an underground drinking water source means to cause the
20 groundwater concentration of a listed substance to exceed its corresponding
21 maximum contaminant level specified in Appendix I to 40 C.F.R. Part 257, or
22 cause an increase in the concentration of that substance where the existing
23 concentration already exceeds the maximum contaminant level in Appendix I.

FACTS

1
2 31. Cow Palace Dairy was founded by Bob and Bill Dolsen and commenced
3 operations in 1972. The Dolsens are the owners of The Dolsen Companies, a
4 Washington Limited Liability Company. The Dolsen Companies is the only
5 member of Cow Palace, LLC. Cow Palace Dairy is presently managed by Jeff
6 Boivon.
7

8 32. Cow Palace Dairy is a large dairy CAFO under federal and state law. 40
9 C.F.R. § 412.2; WAC 173-224-030.

10 33. As of January 19, 2011, Cow Palace Dairy has over 6840 milking cows and
11 between 700-1699 dry cows, 300-999 heifers, and 2000-2999 calves housed at the
12 facility. In total, Cow Palace Dairy had a herd size of at least 9,840 animals as of
13 January, 2011. These animals are confined 365 days per year.
14

15 34. Despite due diligence on the Plaintiffs’ part to obtain these documents, Cow
16 Palace Dairy’s Nutrient Management Plan (“DNMP”) and related documents have
17 either not been provided or been partially redacted by various Washington State
18 agencies, thereby preventing citizens from having access to information critical to
19 determining the adequacy of the DNMP itself.
20

21 35. Upon information and belief, there are two main aquifers underlying Cow
22 Palace Dairy and the surrounding area. These aquifers include a surficial
23 unconfined to semi-confined alluvial aquifer and an extensive basalt aquifer of
24

1 great thickness underlying sedimentary deposits. Groundwater flows through the
2 surficial aquifer in a manner that generally follows surface topography.

3 Groundwater flows through the upper portions of the underlying basalt aquifer also
4 generally follows surface topography.

5
6 36. Plaintiffs' members obtain groundwater from one or both of these aquifers.

7 *Manure Storage Practices*

8 37. Like all large dairy CAFOs, Cow Palace Dairy generates significant
9 quantities of solid and liquid wastes, including manure wastes.

10 38. It is estimated that Cow Palace Dairy produces more than 188,570 tons of
11 manure annually.

12
13 39. Cow Palace Dairy composts the solid manure wastes generated by its herd
14 on-site. Composted manure is then used as bedding at the facility or sold off-site.

15 40. Solid manure that is not composted by Cow Palace Dairy is land-applied to
16 agricultural fields.

17 41. Solid manure is stored and/or composted at Cow Palace Dairy on permeable
18 surfaces.

19
20 42. Cow Palace Dairy stores the liquid manure wastes generated by its herd in
21 one of at least nine manure storage lagoons. Wastes are held in these lagoons until
22 such time they are applied to fields through various land-application techniques.

23 43. Cow Palace Dairy's nine manure storage lagoons are impoundments
24

1 containing no synthetic liner or other artificial barrier.

2 44. These lagoons have an estimated holding capacity of approximately 40.8
3 million gallons.

4 45. According to National Resource Conservation Service (“NRCS”) standards,
5 manure lagoons should not be constructed above an aquifer that serves as a
6 domestic water supply. If no reasonable alternative exists, however, NRCS
7 recommends that manure lagoons be built with either (1) a clay liner with a
8 permeability less than 1×10^{-6} centimeters per second; (2) a flexible membrane
9 liner over a clay liner; (3) a geosynthetic clay liner; or (4) a concrete liner designed
10 in accordance with slab on grade criteria for fabricated structures requiring water
11 tightness.
12

13 46. Cow Palace Dairy’s manure lagoons are constructed above an aquifer that
14 serves as a domestic water supply. Upon information and belief, Cow Palace
15 Dairy’s manure storage lagoons do not meet NRCS standards. Under any
16 circumstances, Cow Palace Dairy’s manure storage lagoons leak to groundwater.
17

18 47. The NRCS standards for manure lagoons are not designed to protect, nor are
19 capable of protecting, human health or the environment. The standards are not
20 scientifically established to protect groundwater.
21

22 48. Upon information and belief, the NRCS standards for municipal wastewater
23 treatment plant lagoons are more protective of groundwater than those for manure
24

1 lagoons. Municipal lagoons are required to be lined with, at the very least,
2 synthetic, geomembrane liners. This is true even though municipal waste has far
3 less concentrated effluent than the effluent generated by dairies such as Cow
4 Palace Dairy.

5
6 49. Upon information and belief, Cow Palace Dairy's nine manure storage
7 lagoons are leaking at least 720,000 gallons of manure into groundwater per year,
8 but potentially as high as 8,600,000 gallons, or more, per year.

9 50. Upon information and belief, seepage from the manure waste storage areas
10 has been ongoing since the date these storage areas were brought into operation,
11 some more than 20 years ago, and has been continuous since put into operation.

12
13 51. The seepage of manure waste from the lagoons has contributed and is
14 contributing to the excessive contamination of the groundwater, which is posing, or
15 may pose, an imminent and substantial endangerment to health or the environment.

16 52. Cow Palace Dairy's storage and/or composting of solid manure on
17 permeable surfaces causes runoff and leachate from the solid manure to enter
18 groundwater, further contributing to the contamination of the groundwater.

19
20 53. Cow Palace Dairy's storage of solid and/or liquid manure in lagoons and
21 other permeable surfaces has caused and is continuing to cause the discharge of
22 manure contaminated water into groundwater.

1 54. Manure that has been permitted to leach, leak, or otherwise discharge into
2 groundwater, such as from a leaking lagoon, solid manure storage area, compost
3 storage area, or other permeable surface, is a “discarded material” from an
4 “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of
5 RCRA, 42 U.S.C. § 6903(27).
6

7 55. Cow Palace Dairy’s improper manure storage practices have caused
8 irreparable injury to the environment, contaminating soils and groundwater with
9 excessively high levels of nitrates and other pollutants.
10

11 *Manure Application Practices*

12 56. Upon information and belief, Cow Palace Dairy and/or its agents have
13 applied, continue to apply, and are reasonably likely to continue to apply liquid and
14 solid manure wastes to nearby agricultural fields in amounts that exceed agronomic
15 rates.
16

17 57. The surface soils to which Cow Palace Dairy applies manure have a high
18 saturated hydraulic conductivity.
19

20 58. The EPA has conducted a study entitled “Relation Between Nitrate in Water
21 Wells and Potential Sources in the Lower Yakima Valley, Washington,” EPA-910-
22 R-12-003 (September 27, 2012). The purpose of that study was to investigate the
23 contribution from various land uses to the high nitrate levels in groundwater and
24 residential drinking water wells, the predominant source of drinking water for

1 many residents in the Lower Yakima Valley. Plaintiffs hereby incorporate by
2 reference the content of the EPA study into this Complaint. The EPA study may
3 be accessed at
4 <[http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_](http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf)
5 [9-27-2012.pdf](http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf)>.

6
7 59. The EPA study found that within the approximate property boundary of the
8 Cow Palace Dairy, six soil units have been mapped by the NRCS. All six soil
9 units have a silt loam texture with a “well-drained” classification. Three of the soil
10 units (Esquatzel, Shano, and Warden) represent approximately 81 percent of the
11 surface area. These units have a saturated hydraulic conductivity in the range of
12 1.1 to 4.0 feet per day, which is characterized as “moderately high to high” in their
13 capacity to transmit water. Two of the soil units (Burke and Scoon) represent
14 approximately 19 percent of the surface area and have a saturated hydraulic
15 conductivity in the range of 0.0 to 0.12 feet per day, which is characterized as
16 “very low to moderately low.” One of the soil units (Finlay) represents less than 1
17 percent of the surface area and has a saturated hydraulic conductivity of 4 to 11.9
18 feet per day, which is characterized as “high.”

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21 60. The well drained nature of these soils along with high hydraulic conductivity
22 make for highly susceptible soil conditions for groundwater contamination and
23
24

1 very low potential for any denitrification to decrease nitrate contamination of
2 groundwater.

3 61. Dairy effluent concentrations of ammonia and nitrate can be considerable, as
4 ammonia is produced by hydrolysis of waste fluids. Ammonia is rapidly converted
5 to nitrate when the manure encounters aerobic soils or groundwater. Due to their
6 high solubility, ammonia and nitrate can readily leach into groundwater.
7

8 62. Plants can uptake nitrate and nitrite only in limited quantities. Quantities of
9 nitrate and nitrite in the soil in excess of concentrations which can be used by the
10 currently active crop migrate into the vadose zone and the water table, where they
11 adversely impact ground water quality and its use as a drinking water source.
12

13 Migration to the vadose zone and water table may also occur where well-drained
14 soils cannot hold the nitrate and nitrite in the root zone for a sufficient amount of
15 time to allow for the crops' natural uptake process.

16 63. Elevated nutrient levels found in soils receiving manure are evidence of
17 manure applications in excess of agronomic rates.
18

19 64. Washington Department of Agriculture inspection reports from November
20 22, 2005 documented elevated phosphorus levels in soils receiving Cow Palace
21 Dairy manure, indicating that the Dairy had applied manure in excess of agronomic
22 rates. The report also cautioned the Dairy to "watch crop uptake rates" for nitrate,
23
24

1 indicating that there were also elevated nitrate levels in fields receiving the Dairy's
2 manure.

3 65. Washington Department of Agriculture inspection reports from July 3, 2007
4 have documented elevated nitrogen and phosphorus levels in soils receiving Cow
5 Palace Dairy manure, indicating that the Dairy has applied manure in excess of
6 agronomic rates.

7
8 66. Washington Department of Agriculture inspection reports from January 19,
9 2011 have documented elevated phosphorus levels in soils receiving Cow Palace
10 Dairy's manure, indicating that the Dairy has applied manure in excess of
11 agronomic rates.

12
13 67. Upon information and belief, Washington Department of Agriculture
14 inspection reports from 2012 have documented elevated nitrate levels in soils
15 receiving Cow Palace Dairy's manure, indicating that the Dairy has applied
16 manure in excess of agronomic rates.

17 68. Upon information and belief, the elevated nutrients found in Cow Palace
18 Dairy's fields are evidence of applications of manure in excess of agronomic rates.

19 69. According to Washington Department of Ecology records, Cow Palace
20 Dairy was applying manure to a field on the NW corner of N Arms Road and
21 Knowles Road on or about January 2, 2013. At the time, the field to which Cow
22 Palace Dairy was applying manure was frozen and/or snow covered. According to
23
24

1 an unidentified eyewitness of the application, manure had been applied in such
2 quantities so as to create a “lake” of ponded manure.

3 70. According to Washington Department of Ecology records, inspectors did not
4 visit Cow Palace Dairy until nearly one month later, on February 3, 2013. At that
5 time, Cow Palace Dairy was still applying manure to fields that were frozen and/or
6 snow covered.

7
8 71. According to records obtained from the Washington Department of
9 Agriculture, on or about April 9, 2009, Greg Schuler, a former dairy inspector,
10 filed a complaint alleging that Cow Palace Dairy was applying manure through a
11 “big gun” to “Field #4A” in such quantities that the ponding of manure occurred.
12 Field #4A is between 26-65 acres in size. The ponded area was approximately 10-
13 20 feet wide and at least 12 inches deep.

14
15 72. According to a Washington Department of Agriculture Inspection Report
16 from January 5, 2006, Cow Palace Dairy had been applying manure to “fields 1
17 and 2,” in such quantities that there was ponding in a low spot of a field adjacent to
18 the Dairy. The Report indicates that the ponding and size of application caused
19 runoff from the fields to occur.

20
21 73. Upon information and belief, Cow Palace Dairy’s DNMP prohibits
22 applications on frozen and/or snow covered fields.

1 74. Applications of manure to frozen and/or snow covered fields creates
2 pathways for manure to be discharged to surface and/or groundwater.

3 75. Applications of manure to frozen and/or snow covered fields are not
4 agronomic.

5 76. Upon information and belief, Cow Palace Dairy's DNMP prohibits
6 applications when there is a potential for ponding to occur.

7 77. Applications of manure which cause ponding to occur create pathways for
8 manure to be discharged to surface and/or groundwater.

9 78. Applications of manure which cause ponding to occur are not agronomic.

10 79. Applications of manure waste above agronomic rates cause manure
11 nutrients, including but not limited to nitrates, to leach through soil and into
12 groundwater.

13 80. Once nitrates enter the vadose zone, the area below the soil surface from the
14 end of the vegetative root zone to the beginning of a groundwater table, they
15 migrate down to the nearest groundwater.

16 81. Once nitrates enter the water table, they migrate away from the Cow Palace
17 Dairy and into the wells of nearby residents or into nearby surface waters
18 depending upon the depth and flow direction of the initial receiving groundwater.

19 82. The contaminated shallow groundwater likely feeds surface waters such as
20 the Roza-Sunnyside Board of Joint Control Drains 26.6, 27.2 and 28.0 and the
21

1 Sunnyside Canal. The Joint Drains converge and discharge into the Granger
2 Drain, which in turn then discharges to the Yakima River. The Sunnyside Canal
3 discharges into the Yakima River. These waters are used by members of CARE
4 and CFS and the general public for multiple purposes, including but not limited to
5 recreation, human consumption, irrigation, and sustenance.
6

7 83. Upon information and belief, the over-application of liquid manure above
8 agronomic rates has been ongoing since the date Cow Palace Dairy was brought
9 into operation and has been continuous for at least the past five years.

10 84. Cow Palace Dairy knows or should know that applications of manure above
11 agronomic rates – that is, applications above that which the current or planned crop
12 can effectively utilize – will cause manure nutrients, including but not limited to
13 nitrate and phosphorus, to pass through soils before they can be utilized by the
14 planned or active crop and into groundwater. This renders the manure incapable of
15 serving its intended purpose as a fertilizer.
16

17 85. Cow Palace Dairy knows or should know that applications of manure to
18 frozen and/or snow covered fields or applications of manure which result in
19 ponding will cause manure nutrients, including but not limited to nitrate and
20 phosphorus, to pass through soils before they can be utilized by the planned or
21 active crop and into groundwater. This renders the manure incapable of serving its
22 intended purpose as a fertilizer.
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1 86. Manure that has been over-applied on fields and permitted to leach, leak, or
2 otherwise discharge into groundwater is a “discarded material” from an
3 “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of
4 RCRA, 42 U.S.C. § 6903(27).

5
6 87. Manure that has been applied to frozen and/or snow covered fields, or
7 manure that has been applied in such a manner that ponding occurs, causes manure
8 to leach, leak, or otherwise discharge into groundwater. This renders the manure a
9 “discarded material” from an “agricultural operation,” and is therefore a “solid
10 waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

11
12 88. Washington State regulators have proposed that soil samples containing
13 greater than 45 parts per million (ppm) nitrate constitute “excessive” levels of
14 nitrate within soils.

15 89. The 45 ppm proposal used in drafting the 2006 Washington General CAFO
16 National Pollution Discharge Elimination System (“NPDES”) Permit was the
17 result of political machinations between the dairy and cattle industry and
18 Washington regulators, including the Washington Departments of Ecology and
19 Agriculture.

20
21 90. The 45 ppm soil number is not scientifically based to be protective of human
22 health or the environment. Soil samples containing less than 45 ppm nitrate may
23 still allow nitrates to leach through soils and into groundwater at levels above the
24

1 10 mg/l federal Maximum Contaminant Level or “MCL.” A concentration of 45
2 ppm nitrate in the upper two feet of soil would amount to 360 pounds of available
3 nitrogen per acre. This amount of nitrogen is far in excess of the most demanding
4 crop needs.

5
6 91. Accurately measuring quantities of nitrate in soil that can cause groundwater
7 contamination requires more than simply measuring the amount of nitrate in soil at
8 certain levels below the surface. Other factors, including but not limited to,
9 moisture content, irrigation practices, and amount of nitrate contained in the soil
10 solution must also be accounted for. Soil sample results (from below the root
11 zone) that have greater than 10 mg/l nitrate contained in the soil solution are
12 excessive and will likely cause groundwater contamination, which correspond to
13 the metric of the MCL for nitrates, which is also 10 mg/l.

14
15 92. Cow Palace Dairy’s improper manure application practices have caused
16 irreparable injury to the environment, contaminating soils and groundwater with
17 excessively high levels of nitrates and other pollutants.

18
19 ***Contamination of Groundwater in Excess of MCLs***

20 93. The practices mentioned in paragraphs 37-92 are causing or contributing to
21 groundwater contamination beyond the federal MCL for nitrates.

22 94. The EPA has determined that nitrates pose an acute health concern at certain
23 levels of exposure. Nitrates contained in drinking water are colorless and odorless.
24

1 Ingestion of nitrates, converted to nitrite in the body, interferes with the oxygen
2 carrying capacity of blood, potentially resulting in cyanosis and, at higher levels,
3 asphyxia.

4 95. High levels of nitrate in water can also cause a blood disorder in infants
5 known as methemoglobinemia (“blue baby syndrome”) that can be fatal if left
6 untreated.

7 96. Methemoglobinemia is a blood disorder in which an abnormal amount of
8 methemoglobin -- a form of hemoglobin -- is produced. Hemoglobin is the
9 molecule in red blood cells that distributes oxygen to the body. Methemoglobin
10 cannot release oxygen. In methemoglobinemia, the hemoglobin is unable to
11 release oxygen effectively to body tissues.

12 97. High nitrate levels may also affect pregnant women and adults with
13 hereditary cytochrome b5 reductase deficiency.

14 98. In addition, nitrate and nitrite ingestion in humans has been linked to
15 goitrogenic (anti-thyroid) actions on the thyroid gland (similar to perchlorate),
16 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal
17 reproductive complications including spontaneous abortion.

18 99. Ingestion of nitrates in excess of the MCL is also suspected of causing
19 various forms of cancer in the general exposed population, including a variety of
20 carcinogenic outcomes deriving from N-nitrosamines formed via gastric nitrate

1 conversion in the presence of amines, and compromises the health of immuno-
2 compromised individuals and the elderly.

3 100. The MCLs are health-based standards that specify contaminants known to
4 have an adverse effect on human health at levels beyond the parameters set forth
5 by regulations.

6
7 101. The EPA has established that the MCL for nitrate in groundwater is 10
8 milligrams per liter (mg/l) or 10 parts per million (ppm). Samples taken by the
9 EPA as part of its study indicate elevated levels of nitrate, potassium, magnesium,
10 calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine
11 pharmaceuticals in nearby residential wells downgradient from the “Dairy
12 Cluster,” which includes Cow Palace Dairy.

13
14 102. The October 17, 2012 notice of intent to sue Cow Palace Dairy, attached
15 hereto as Attachment 1, cited to the EPA study, which shows the specific location
16 of the wells and other areas that were sampled at the Dairy Cluster sampling area,
17 including areas on and near Cow Palace Dairy, as well as a summary of the results
18 obtained for nitrate.

19
20 103. Observed levels of nitrate in seven wells located downgradient of the Dairy
21 Cluster, which includes Cow Palace Dairy (identified as WW-11 through WW-17),
22 are all in excess of the 10 mg/l MCL and are as follows: Wells WW-11 through
23 WW-17 yielded results of 23 mg/l, 46.7 mg/l, 44 mg/l, 43.4 mg/l, 30.2 mg/l, 23.4
24

1 mg/l, and 22.7 mg/l, respectively. *See* T. 20 in "Relation Between Nitrate in Water
2 Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-
3 R-12-003 (September 27, 2012).

4 104. The results exceed the MCL for nitrate, and in one instance by nearly 5
5 times. *See* 40 C.F.R. Part 141 and Appendix I. The results were also substantially
6 higher than the nitrate results obtained from WW-06, the sampled well located
7 upgradient of Cow Palace Dairy, which had a reported value of 0.73 mg/l nitrate.
8 These samples were taken between February and April, 2010.

9 105. EPA took additional groundwater samples on property adjacent to Cow
10 Palace Dairy, both upgradient and downgradient, in December 2012. The results
11 of that sampling revealed that wells located downgradient of Cow Palace Dairy
12 had observed nitrate levels many times greater than the MCL. For instance,
13 downgradient well DC-03 had a nitrate level of 190 mg/l, which is 19 times greater
14 than the MCL. Results of 26 mg/l, 32 mg/l, and 26 mg/l nitrate were also observed
15 in monitoring wells DC-04, DC-05, and DC-14, respectively, all of which exceed
16 the MCL for nitrate. EPA's December, 2012 sampling information is hereby
17 incorporated herein, and is attached hereto as Attachment 2.
18

19 106. Upon information and belief, Plaintiffs assert that Cow Palace Dairy refused
20 entry to EPA to conduct sampling on the Dairy's property during the fall of 2012
21 and winter of 2012-13.
22
23
24

1 107. On or about March 31, 2010, EPA sent Cow Palace Dairy a letter requesting
2 access to the facility to collect soil and other environmental samples on the Dairy's
3 property. The letter also requested Cow Palace Dairy to respond to a questionnaire
4 about the Dairy's practices and management. Upon information and belief, Cow
5 Palace Dairy refused access to EPA and did not respond to the questionnaire.
6

7 108. Upon information and belief, the highest levels of nitrates generally occur in
8 the shallow alluvial aquifer. Plaintiffs' members and other residents have installed
9 domestic wells for drinking water that intersect this shallow aquifer.

10 109. Cow Palace Dairy's storage and application of manure has caused nitrate
11 contamination of these residential wells, forcing Plaintiffs' members and other
12 residents to either consume unsafe drinking water or to obtain alternative sources
13 of drinking water.
14

15 110. Cow Palace Dairy's manure storage and application practices, described in
16 the preceding paragraphs, have caused irreparable injury to the environment,
17 contaminating groundwater with excessively high levels of nitrates and other
18 pollutants.
19

20 **CLAIMS FOR RELIEF**

21 **COUNT I**

22 **RCRA Imminent and Substantial Endangerment**

1 111. Plaintiffs incorporate by reference the allegations of the preceding
2 paragraphs of this Complaint.

3 112. Since at least February 1, 2008, Cow Palace Dairy has been discarding
4 manure, and pharmaceutical by-products in the manure, which are “solid wastes”
5 under section 1004 of RCRA, 42 U.S.C. § 6903(27), because the manure is, either
6 when over-applied or leaked through holding areas, a discarded solid, liquid,
7 and/or semisolid material resulting from an agricultural operation.

8 113. Cow Palace Dairy is the past and present owner or operator of a storage or
9 disposal facility. As indicated above, manure is stored and disposed of in massive
10 earthen pits and other holding structures. As a result, Defendant contributes to the
11 past or present handling, storage, and disposal of a solid waste. RCRA, 42 U.S.C.
12 § 6972(a)(1)(B).

13 114. Cow Palace Dairy is a past and present generator of manure and other by-
14 product wastes. Manure is “handled” and “transported” by the Defendant, as well
15 as disposed of on land owned or leased by the Defendant. *Id.*

16 115. Defendant’s handling, transportation, storage, and disposal of manure may
17 present an imminent and substantial endangerment to public health and/or the
18 environment.

19 116. Specifically, as alleged above, ground and surface water contamination
20 levels on the Defendant’s land, and down-gradient and downstream from
21

1 Defendant's land and facilities, have contamination levels that exceed the
2 maximum safe consumption limits established under state and federal law,
3 establishing a case of imminent and substantial endangerment to public health
4 and/or the environment.

5
6 117. The National Primary Drinking Water Standards ("NPDWS") are
7 established under the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, *et*
8 *seq.* The NPDWS are health-based standards that specify contaminants known to
9 have an adverse effect on the health of persons at levels beyond the parameters set
10 forth in the regulations. 42 U.S.C. § 300f(1)(B).

11
12 118. The Washington Water Quality standards were promulgated to protect
13 groundwater and human health pursuant to the Washington Water Pollution
14 Control Act, RCW 90.48.

15 119. Promulgated pursuant to this statute, WAC 173-200-040(2)(a)
16 provides: Groundwater concentrations shall not exceed the criteria listed in Table
17 1, except as described in WAC 173-200-050 (3)(b). The ground-water protection
18 standard for nitrate is the same as the federal MCL of 10 mg/l.

19
20 120. 40 C.F.R. § 257.3-4(a) prohibits a facility or practice from contaminating an
21 underground drinking water source. "Contamination" occurs when a facility or
22 practice introduces a toxic substance that causes the concentration of that substance
23
24

1 in groundwater to exceed certain parameters listed in Appendix I to 40 C.F.R. §
2 257.3-4(a).

3 121. The past and continuing practices of the Cow Palace Dairy have
4 contaminated and continue to contaminate groundwater and surface water to levels
5 that exceed the maximum limits for safety established under state and federal law.
6 These practices present an imminent and substantial endangerment to the
7 environment and/or public health. Specifically, Cow Palace Dairy is polluting
8 groundwater to the extent that it is hazardous to health and the environment and the
9 shallow contaminated groundwater is feeding nearby surface waters including, but
10 not limited to, Roza-Sunnyside Board of Joint Control Drains 26.6, 27.2 and 28.0
11 and the Sunnyside Canal.
12

13
14 122. Pursuant to RCRA Section 7003, Cow Palace Dairy may be subject to an
15 injunction under RCRA ordering it to cease and abate any past or present handling,
16 storage, treatment, and/or transportation of any solid waste or hazardous waste that
17 may present an imminent and substantial endangerment to public health and/or the
18 environment.
19

20 123. Plaintiffs' interests are harmed and will continue to be harmed by this
21 imminent and substantial endangerment and by Defendant's failure to abate the
22 endangerment unless the Court grants the relief sought herein.
23
24

1 **COUNT II**
2 **RCRA Illegal Open Dumping**

3 124. Plaintiffs incorporate by reference the allegations of the preceding
4 paragraphs of this Complaint.

5 125. Cow Palace Dairy constitutes an “open dump” under RCRA Section
6 1004(14). 42 U.S.C. § 6903(14).

7 126. Cow Palace Dairy’s solid waste disposal practices cause groundwater
8 concentration levels of nitrates and other pollutants to exceed the limits set forth in
9 Appendix I to 40 C.F.R. Part 257, which constitutes illegal open dumping, and is
10 considered to pose a reasonable probability of causing adverse effects to health and
11 the environment.
12

13 127. Defendant stores and disposes of manure at the facilities. The manure
14 constitutes an agricultural waste and a “solid waste” under section 1004 of RCRA
15 because it is over applied and/or improperly stored, and therefore constitutes a
16 “discarded material” under the statute. 42 U.S.C. § 6903(27).
17

18 128. Groundwater monitoring data indicates that the disposal of solid wastes at
19 the Cow Palace Dairy, including the fields Cow Palace Dairy uses to apply
20 manure, are causing the contamination of groundwater to exceed the limits set
21 forth in Appendix I to 40 C.F.R. Part 257. Concentrations of nitrate, identified
22
23
24

1 herein, have repeatedly exceeded the maximum contaminant levels, as documented
2 by the EPA study. This practice constitutes illegal open dumping.

3 129. Solid waste disposal practices prohibit the contamination of any surface
4 water source in violation of NPDES requirements or water quality standards. 40
5 C.F.R. § 257.3-3(a). Cow Palace Dairy is operating without a NPDES permit.
6

7 130. Pursuant to Section 3008, 42 U.S.C. § 6928, Cow Palace Dairy may be
8 subject to an injunction under RCRA ordering them to cease open dumping and
9 remediate the environmental contamination they have caused and/or contributed to,
10 including widespread soil and groundwater contamination. *Id.*

11 131. Plaintiffs' interests are harmed and will continue to be harmed by
12 Defendant's open dumping unless the Court grants the relief sought herein.
13

14 **RELIEF REQUESTED**

15 WHEREFORE, Plaintiffs CARE and CFS respectfully request that the Court enter
16 a judgment:

17 A. Declaring that Defendant's past and/or present generation, handling, storage,
18 treatment, transportation, and/or disposal of solid waste presents, or may present,
19 an imminent and substantial endangerment to public health or to the environment.

20 B. Declaring that Defendant's storage and disposal of manure and its
21 incorporated by-products constitutes illegal open dumping.
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1 C. Issuing a compliance order that requires Defendant to cease and desist from
2 storing manure on any portion of Defendant's land that the Defendant has not first
3 lined adequately with synthetic liners to prevent seepage of pollutants into surface
4 water or groundwater that may, whether by flow or diffusion, transmit such
5 pollutants outside Defendant's property boundaries.
6

7 D. Issuing a compliance order that requires Defendant to capture, adequately
8 treat, and sequester as necessary all surface water or groundwater on or within its
9 land, except surface water that flows as the direct result of snowmelt or a
10 precipitation event, so that discharges of such water do not cause or contribute to
11 violation of any applicable water quality standards in any water resource that
12 receives such discharge.
13

14 E. Issuing temporary and/or permanent injunctive relief against Defendant,
15 ordering Defendant to cease all activities constituting the imminent and substantial
16 endangerment to the public health and environment, and to cease all activities
17 constituting illegal open dumping.
18

19 F. Issuing temporary and/or permanent injunctive relief against Defendant,
20 ordering Defendant to design and implement a program which evaluates the actual
21 amount of manure necessary to provide a specific crop with its anticipated nutrient
22 needs, and to have sufficient land available, as documented in an approved
23
24

1 Nutrient Management Plan, to handle the amount of manure produced by
2 Defendant.

3 G. Issuing temporary and/or permanent injunctive relief against Defendant,
4 ordering Defendant to design and implement a regular soil sampling protocol, such
5 protocol to require sampling at one-foot intervals down to at least a four-foot
6 depth, in order to prevent the ongoing migration of nitrate (and other pollutants) to
7 the vadose zone and groundwater. Such soil sampling protocol must include soil
8 moisture concentrations to be able to convert the soil nitrate data to concentration
9 in the soil solution.
10

11 H. Issuing temporary and/or permanent injunctive relief against Defendant,
12 ordering Defendant to design and implement a groundwater monitoring program
13 designed to detect the transport of dairy manure nutrients into groundwater.
14

15 I. Issuing temporary and/or permanent injunctive relief against Defendant,
16 ordering Defendant to supply clean, safe drinking water to residents located within
17 at least three (3) miles of Cow Palace Dairy who rely upon well water for
18 consumption.
19

20 J. Issuing temporary and/or permanent injunctive relief against Defendant,
21 ordering Defendant to sample all surface waters running through or adjacent to
22 Defendant's property to determine whether discharges from the Defendant's
23 operations are impacting surface water.
24

1 K. Ordering Defendant to take all such actions as may be necessary to eliminate
2 any present and future endangerment and open dumping practices, including but
3 not limited to:

4 (a) funding an independent, comprehensive, scientific study to determine the
5 precise nature and extent of the endangerment and harm caused by open
6 dumping, including a detailed examination of the fate and transport of solid
7 waste from the facility to the waters and soils of the surrounding area, and
8 from the water and soils to biological receptors;

9 (b) funding an independent, comprehensive, scientific study, based on the
10 results of the study described in subparagraph (a) above, of appropriate,
11 effective, environmentally-sound means to eliminate the endangerment and
12 harm caused by open dumping;

13 (c) developing and implementing an appropriate and effective remediation
14 plan, based on the studies described in subparagraphs (a) and (b) above,
15 which will remediate the soil and groundwater contamination caused by or
16 contributed to by Cow Palace Dairy's past and present manure handling,
17 storage, and application practices;

18 (d) developing and implementing manure disposal and storage techniques in
19 accordance to the scientific studies described in subparagraphs (a) and (b)
20 above;

(e) providing Plaintiffs with complete copies of records from the past twenty years concerning Defendant’s soil sampling, manure sampling, groundwater sampling, lagoon construction and sampling, manure applications, third-party manure transfers, and composting operations; and

(f) providing Plaintiffs with complete copies of all future records created by Defendant concerning Defendant’s soil sampling, manure sampling, groundwater sampling, lagoon construction and sampling, manure applications, third-party manure transfers, and composting operations.

L. Ordering Defendant to pay Plaintiffs’ reasonable attorneys’ fees, expert witness fees, and costs incurred in prosecuting this action pursuant to 42 U.S.C. § 6972(e) and 28 U.S.C. § 2412(d); and

M. Ordering such other relief as the Court may deem just and proper, including pursuant to 42 U.S.C. § 6972(a)(1).

DATED this 9th day of April, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2013, I presented the foregoing document to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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s/ Jenny Haverkamp

 Jenny Haverkamp