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8
9 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

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

Plaintiffs,

15 v.

16 COW PALACE, LLC, a Washington
Limited Liability Company, THE
17 DOLSEN COMPANIES, a Washington
Corporation, and THREE D
18 PROPERTIES, LLC, a Washington
Limited Liability Company,

19 Defendants.

Case No. CV-13-3016-TOR

THIRD AMENDED COMPLAINT

1 **THIRD AMENDED COMPLAINT FOR DECLARATORY AND**
2 **INJUNCTIVE RELIEF**

3 **INTRODUCTION**

4 1. This is a citizen suit for declaratory and injunctive relief against Cow Palace,
5 LLC, The Dolsen Companies, and Three D Properties, LLC, (hereinafter,
6 “Defendants”) for violations of the Solid Waste Disposal Act, also known as the
7 Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), at
8 two dairy facilities, Cow Palace I and Cow Palace II, collectively referred to as
9 “Cow Palace Dairy.”

10 2. This civil action is brought pursuant to the citizen suit provisions of RCRA,
11 42 U.S.C. § 6972(a)(1) (A) and (B).

12 3. As detailed below, Plaintiffs allege that Defendants have violated and
13 continue to violate Section 7002(a) of RCRA by their contribution to the past or
14 present handling, storage, treatment, transportation, and/or disposal of solid or
15 hazardous waste at Cow Palace Dairy in such a manner that may present an
16 imminent and substantial endangerment to health or the environment. 42 U.S.C. §
17 6972(a).

18 4. Plaintiffs further allege that the Defendants employ or allow improper
19 manure management practices at Cow Palace Dairy, including storage or disposal
20 of manure at non-agronomic levels on land owned or previously owned by

1 Defendants, which practices constitute “open dumping” of solid waste in violation
2 of Section 4005(a) of RCRA. 42 U.S.C. § 6945(a).

3 5. Plaintiffs seek declaratory relief establishing that Defendants have violated
4 RCRA. Plaintiffs also seek injunctive relief directing Defendants to modify the
5 handling, storage, treatment, transportation, and disposal of solid and hazardous
6 waste at Cow Palace Dairy such that these practices no longer present an imminent
7 and substantial endangerment to health and the environment. Additionally,
8 Plaintiffs seek injunctive relief obligating Defendants to remediate the
9 environmental contamination they have caused and/or contributed to at or near
10 Cow Palace Dairy, including widespread soil and groundwater contamination.
11 Finally, Plaintiffs request that the Court award Plaintiffs reasonable attorneys and
12 expert witness fees and costs incurred in bringing this action.

13 **JURISDICTION**

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

16 7. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §
17 1331 because this action arises under RCRA and the Declaratory Judgment Act, 28
18 U.S.C. § 2201, *et seq.*

19 8. On October 17, 2012, Plaintiffs gave notice of the violations and their intent
20 to file suit to the Defendant Cow Palace, LLC, Defendant’s registered agent,

1 United States Attorney General, United States Environmental Protection Agency
2 (EPA), EPA Region X, Washington State Office of the Governor, Washington
3 State Office of the Attorney General, and Washington State Department of
4 Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

5 9. On July 3, 2013, Plaintiffs gave supplemental notice of the violations and
6 their intent to file suit to the Defendant Cow Palace, LLC, Defendant's registered
7 agent, the United States Attorney General, United States Environmental Protection
8 Agency (EPA), EPA Region X, Washington State Office of the Governor,
9 Washington State Office of the Attorney General, and Washington State
10 Department of Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. §
11 6972(a).

12 10. On April 17, 2014, Plaintiffs gave notice of violations and their intent to file
13 suit to The Dolsen Companies and Three D Properties, LLC, their registered
14 agents, the United States Environmental Protection Agency, (EPA), EPA Region
15 X, and Washington State Department of Ecology as required by Section 7002(a) of
16 RCRA, 42 U.S.C. § 6972(a).

17 11. More than ninety days have passed since these notices, including the April
18 17, 2014 notice to The Dolsen Companies and Three D Properties, LLC, were
19 served, and the violations complained of in the notices are continuing at this time,
20 or Defendants are reasonably likely to continue to remain in violation of RCRA.

1 Neither the EPA nor the State of Washington has commenced or is diligently
2 prosecuting a civil or criminal action to redress the violations. Any administrative
3 action undertaken by EPA does not address the relief requested by Plaintiffs that is
4 necessary to abate the imminent and substantial endangerment caused by
5 Defendants' practices.

6 **VENUE**

7 12. 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 13. Upon information and belief, Cow Palace, LLC is a Washington limited
12 liability company with one member, The Dolsen Companies, that, in part, owns
13 and operates the dairies Cow Palace I and Cow Palace II (collectively "Cow Palace
14 Dairy"). Cow Palace I and II share common manure and other waste management
15 practices. The Cow Palace Dairy is located at or near 1631 North Liberty Road,
16 Granger, WA 98932.

17 14. Upon information and belief, the Cow Palace Dairy is jointly owned,
18 operated, and/or controlled by Cow Palace, LLC, The Dolsen Companies and
19 Three D Properties, LLC.

20 15. Upon information and belief, Three D Properties, LLC, is a Washington

1 limited liability company that owned or owns all or a part of the following parcels
2 of real property located at or near the Cow Palace Dairy, some of all of which are
3 utilized by the Dairy (parcels identified by Yakima County Assessor's parcel
4 number): 211000-11419, 211001-11414, 211001-11415, 211001-11416, 211001-
5 11421, 211001-11422, 211125-42004, 211126-41001, 211136-12001, 211136-
6 21001, 211136-31001, 211136-34001, 211136-41001, 211136-43401, 211136-
7 43404, 211136-44002, 211136-44005.

8 16. Upon information and belief, Three D Properties, LLC acquired parcels of
9 real property on or about November 7, 2013, after the current litigation began.

10 17. Upon information and belief, The Dolsen Companies is a Washington
11 corporation and the sole member of Cow Palace, LLC. Until approximately
12 November 7, 2013, The Dolsen Companies owned certain parcels of real property
13 that were utilized and may be utilized by the Cow Palace Dairy.

14 18. Upon information and belief, The Dolsen Companies transferred its
15 ownership interest in a number of parcels of real property to Cow Palace, LLC, on
16 or about November 7, 2013, after the current litigation began, including, but not
17 limited to, the following parcels of real property located at or near the Cow Palace
18 Dairy (identified by Yakima County Assessor's parcel number): 211000-11419,
19 211001-11401, 211001-11404, 211001-11405, 211001-11411, 211001-11413,
20 211001-11414, 211001-11415, 211001-11416, 211001-11420, 211001-11421,

1 211001-11422, 211001-11423, 211125-24002, 211125-31001, 211125-32001,
2 211125-33001, 211125-42004, 211125-43403, 211125-43404, 211126-41001,
3 211136-11002, 211136-12001, 211136-14001, 211136-21001, 211136-31001,
4 211136-34001, 211136-41001, 211136-43401, 211136-43404, 211136-44002,
5 211136-44003, 211136-44005, and portions of Tract 29 of Zillah Heights Orchard
6 Tracts.

7 19. Cow Palace, LLC is a “person” within the meaning of Section 1004(15) of
8 RCRA, 42 U.S.C. § 6903(15).

9 20. The Dolsen Companies is a “person” within the meaning of Section
10 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11 21. Three D Properties, LLC is a “person” within the meaning of Section
12 1004(15) of RCRA, 42 U.S.C. § 6903(15).

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

15 23. CARE is a grassroots organization composed of concerned community
16 members. Its mission is to inform Washington state residents about activities that
17 endanger the health, welfare, and quality of life for current and future
18 Washingtonians through education and citizen empowerment. CARE also acts as
19 an advocate to protect and restore the economic, social, and environmental
20 resources of the region. In carrying out its mission, CARE has appeared in

1 numerous local, state, and federal proceedings.

2 24. CARE's organizational purposes are adversely affected by Cow Palace
3 Dairy's violations of RCRA. These violations have caused significant
4 environmental contamination of the soil and groundwater. Furthermore, but for
5 Cow Palace Dairy's unlawful actions, CARE would not have to spend as much of
6 its resources on the environmental problems created by illegal discharges from
7 individual large-scale industrial farming operations, and could direct these
8 resources to other priorities.

9 25. CARE has individual members that reside in Yakima County and in
10 proximity to the Cow Palace Dairy. The environmental, health, aesthetic,
11 economic, and recreational interests of CARE's members have been and will
12 continue to be adversely affected by Cow Palace Dairy's violations of RCRA. For
13 instance:

- 14 a. Members of CARE obtain their drinking water from aquifers that have
15 been contaminated with nitrates, phosphorus, and other pollutants,
16 including hormones and antibiotics, by Cow Palace Dairy's improper
17 handling, storage, treatment, transportation, and disposal of solid and
18 hazardous waste. As a result, drinking water that CARE's members
19 rely upon has been rendered unsafe for human consumption.

20 Consequently, CARE's members have been forced to obtain, or

1 should be obtaining but may not be able to afford, alternative sources
2 of drinking water. CARE's members are concerned that consuming
3 this water is harming or could harm them and their families' health, as
4 well as other community members' health.

5 b. Members of CARE also make domestic and agricultural use of
6 groundwater that has been contaminated with nitrates, phosphorus,
7 and other pollutants as a result of Cow Palace Dairy's improper
8 handling, storage, treatment, transportation, and disposal of solid and
9 hazardous waste. As a result, water that CARE's members' rely upon
10 has been rendered unsafe for domestic and agricultural use.

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

15 CARE's members are concerned that the food they produce and rely
16 upon for sustenance using this water is not safe to consume.

17 c. Members of CARE also live, work, and recreate in the environment
18 that has been negatively impacted by Cow Palace Dairy's improper
19 handling, storage, treatment, transportation, and disposal of solid and
20 hazardous waste. This has lessened CARE's members' enjoyment of

1 their environment. CARE's members' are concerned that their
2 environment has been irreparably injured by Cow Palace Dairy's
3 improper practices.

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

14 27. CFS represents nearly 500,000 members throughout the country that support
15 safe, sustainable and organic agriculture and regularly purchase organic products.
16 CFS has nearly 20,000 members in the state of Washington. CFS members live,
17 work, recreate, and grow food in, and consume food and water from, the Yakima
18 Valley. The environmental, health, aesthetic, economic, and recreational interests
19 of CFS's members have been and will continue to be adversely affected by Cow
20 Palace Dairy's violations of RCRA. CFS members support the public's right to

1 choose food and crops not sourced from or by industrial farming practices, such as
2 CAFOs. CFS's members are impacted by CAFOs through destructive discharges
3 of CAFO pollution into groundwater, air and public waterways, which affects the
4 suitability of drinking water and fish in these waterways for consumption.

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

7 **STATUTORY AND REGULATORY FRAMEWORK**

8 29. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that
9 citizens may commence a citizen suit against "any person," "including any past or
10 present generator, past or present transporter, or past or present owner or operator
11 of a treatment, storage, or disposal facility who has contributed or who is
12 contributing to the past or present handling, storage, treatment, transportation, or
13 disposal of any solid or hazardous waste which may present an imminent and
14 substantial endangerment to health or the environment."

15 30. Section 1002(b) of RCRA states that "disposal of solid waste... in or on the
16 land without careful planning and management can present a danger to human
17 health and the environment;" and that "open dumping is particularly harmful to
18 health, contaminates drinking water from underground and surface supplies, and
19 pollutes the air and the land..." 42 U.S.C. § 6901(b).

20 31. As required by statute, EPA has promulgated criteria under RCRA §

1 6907(a)(3) defining solid waste management practices that constitute open
2 dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These
3 regulations outline certain solid waste disposal practices which, if violated, pose a
4 reasonable probability of adverse effects on health or the environment. 40 C.F.R. §
5 257.3.

6 32. The purpose of RCRA is “to promote the protection of health and the
7 environment[.]” RCRA seeks to accomplish this by “prohibiting future open
8 dumping on the land and requiring the conversion of existing open dumps to
9 facilities which do not pose a danger to the environment or to health....” 42 U.S.C.
10 § 6902(a).

11 33. Section 4005(a) of RCRA prohibits “any solid waste management practice
12 or disposal of solid waste... which constitutes the open dumping of solid waste....”
13 42 U.S.C. § 6945(a).

14 34. Under section 1004(3), “[t]he term ‘disposal’ means the discharge, deposit,
15 injection, dumping, spilling, leaking, or placing of any solid waste... into or on any
16 land or water so that such solid waste or hazardous waste or any constituent thereof
17 may enter the environment or be emitted into the air or discharged into any waters,
18 including ground-waters.” 42 U.S.C. § 6903(3).

19 35. RCRA defines “solid waste” as “any garbage, refuse, sludge from a waste
20 treatment plant... and other discarded material, including solid, liquid, semisolid,

1 or contained gaseous material resulting from... *agricultural operations*....” 42
2 U.S.C. § 6903(27) (emphasis added).

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

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

10 38. “Contaminate” an underground drinking water source means to cause the
11 groundwater concentration of a listed substance to exceed its corresponding
12 maximum contaminant level specified in Appendix I to 40 C.F.R. Part 257, or
13 cause an increase in the concentration of that substance where the existing
14 concentration already exceeds the maximum contaminant level in Appendix I.

15 **FACTS**

16 39. Cow Palace Dairy was founded by Robert and R. William Dolsen and
17 commenced operations in 1972. Dolsen family members own The Dolsen
18 Companies, a Washington corporation. The Dolsen Companies is the only
19 member of Cow Palace, LLC. Cow Palace Dairy is presently managed by Jeff
20 Boivin.

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

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

7 42. Despite due diligence on the Plaintiffs' part to obtain these documents, Cow
8 Palace Dairy's Nutrient Management Plan ("DNMP") and related documents have
9 either not been provided or been partially redacted by various Washington State
10 agencies, thereby preventing citizens from having access to information critical to
11 determining the adequacy of the DNMP itself.

12 43. Upon information and belief, there are two main aquifers underlying Cow
13 Palace Dairy and the surrounding area. These aquifers include a surficial
14 unconfined to semi-confined alluvial aquifer and an extensive basalt aquifer of
15 great thickness underlying sedimentary deposits. Groundwater flows through the
16 surficial aquifer in a manner that generally follows surface topography.
17 Groundwater flows through the upper portions of the underlying basalt aquifer also
18 generally follow surface topography.

19 44. Plaintiffs' members obtain groundwater from one or both of these aquifers.

20 45. The manure generated at Cow Palace Dairy contains numerous organic and

1 inorganic compounds, including phosphorus, veterinary pharmaceuticals,
2 hormones, pathogens (including bacteria, viruses, and protozoa), and steroids.
3 These contaminants are hereinafter collectively referred to as “Other
4 Contaminants.” A list of the possible contaminants is located in Plaintiffs’ July 3,
5 2013 protective supplemental notice of intent to sue, incorporated by reference
6 herein. Attachment 2, pp. 2-3 & pp. 5-6.

7 *Manure Storage Practices*

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

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

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

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

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

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

1 52. Cow Palace Dairy's nine manure storage lagoons are impoundments
2 containing no synthetic liner or other artificial barrier.

3 53. These lagoons have an estimated holding capacity of approximately 40.8
4 million gallons.

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

13 55. 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 56. The NRCS standards for manure lagoons are not designed to protect, nor are
18 capable of protecting, human health or the environment. The standards are not
19 scientifically established to protect groundwater.

20 57. Upon information and belief, the NRCS standards for municipal wastewater

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

6 58. 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 59. 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 60. The seepage of manure waste from the lagoons has contributed and is
13 contributing to the excessive contamination of the groundwater, which is posing, or
14 may pose, an imminent and substantial endangerment to health or the environment.

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

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

1 63. 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, confinement pen, or other permeable surface, is a “discarded
4 material” from an “agricultural operation,” and is therefore a “solid waste” under
5 Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

6 64. Defendants’ improper manure storage practices at Cow Palace Dairy have
7 caused irreparable injury to the environment, contaminating soils, groundwater,
8 and surface waters with excessively high levels of nitrates and related nitrogen
9 compounds and, possibly, Other Contaminants.

10 *Manure Application Practices*

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

15 66. The surface soils to which Cow Palace Dairy applies manure have a high
16 saturated hydraulic conductivity.

17 67. The EPA has conducted a study entitled “Relation Between Nitrate in Water
18 Wells and Potential Sources in the Lower Yakima Valley, Washington,” EPA-910-
19 R-12-003 (September 27, 2012). The purpose of that study was to investigate the
20 contribution from various land uses to the high nitrate levels in groundwater and

1 residential drinking water wells, the predominant source of drinking water for
2 many residents in the Lower Yakima Valley. Plaintiffs hereby incorporate by
3 reference the content of the EPA study into this Complaint. The EPA study may
4 be accessed at
5 <[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)
6 [9-27-2012.pdf](http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf)>.

7 68. 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.”

19 69. The well drained nature of these soils along with high hydraulic conductivity
20 make for highly susceptible soil conditions for groundwater contamination and

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

3 70. 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. Other
7 Contaminants may also bind to soil and leach through soils and into groundwater
8 when manure is applied above agronomic rates.

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

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

18 73. Washington Department of Agriculture inspection reports from November
19 22, 2005 documented elevated phosphorus levels in soils receiving Cow Palace
20 Dairy manure, indicating that the Dairy had applied manure in excess of agronomic

1 rates. The report also cautioned the Dairy to “watch crop uptake rates” for nitrate,
2 indicating that there were also elevated nitrate levels in fields receiving the Dairy’s
3 manure.

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

8 75. 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 76. Upon information and belief, Washington Department of Agriculture
13 inspection reports from 2012 have documented elevated nitrate levels in soils
14 receiving Cow Palace Dairy’s manure, indicating that the Dairy has applied
15 manure in excess of agronomic rates.

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

18 78. According to Washington Department of Ecology records, Cow Palace
19 Dairy was applying manure to a field on the NW corner of N Arms Road and
20 Knowles Road on or about January 2, 2013. At the time, the field to which Cow

1 Palace Dairy was applying manure was frozen and/or snow covered. According to
2 an unidentified eyewitness of the application, manure had been applied in such
3 quantities so as to create a “lake” of ponded manure.

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

8 80. 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 81. According to a Washington Department of Agriculture Inspection Report
15 from January 5, 2006, Cow Palace Dairy had been applying manure to “fields 1
16 and 2,” in such quantities that there was ponding in a low spot of a field adjacent to
17 the Dairy. The Report indicates that the ponding and size of application caused
18 runoff from the fields to occur.

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

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

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

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

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

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

10 88. 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 89. 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. Other Contaminants, depending upon
16 their responsive characteristics in soil, may also migrate down to the nearest
17 groundwater.

18 90. Once nitrates and Other Contaminants enter the water table, they migrate
19 away from the Cow Palace Dairy and into the wells of nearby residents or into
20

1 nearby surface waters depending upon the depth and flow direction of the initial
2 receiving groundwater.

3 91. The contaminated shallow groundwater that likely discharges to surface
4 waters include discharges into the Roza-Sunnyside Board of Joint Control Drains
5 26.6, 27.2 and 28.0 and the Sunnyside Canal. The Joint Drains converge and
6 discharge into the Granger Drain, which in turn then discharges to the Yakima
7 River. The Sunnyside Canal discharges into the Yakima River. These waters are
8 used by members of CARE and CFS and the general public for multiple purposes,
9 including but not limited to recreation, human consumption, irrigation, and
10 sustenance.

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

14 93. Defendants know or should know that applications of manure above
15 agronomic rates – that is, applications above that which the current or planned crop
16 can effectively utilize – will cause manure nutrients, including but not limited to
17 nitrate and phosphorus, along with nutrients that comprise some of the Other
18 Contaminants, to pass through soils before they can be utilized by the planned or
19 active crop and into groundwater. This renders the manure incapable of serving its
20 intended purpose as a fertilizer. The presence of Other Contaminants that are not

1 plant nutrients also indicate that discarded manure is the source of the groundwater
2 contaminants.

3 94. Defendants know or should know that applications of manure to frozen
4 and/or snow covered fields or applications of manure which result in ponding will
5 cause manure nutrients, including but not limited to nitrate, phosphorus, and Other
6 Contaminants to pass through soils before they can be utilized by the planned or
7 active crop and into groundwater. This renders the manure incapable of serving its
8 intended purpose as a fertilizer.

9 95. Manure that has been over-applied on fields and permitted to leach, leak, or
10 otherwise discharge into groundwater is a “discarded material” from an
11 “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of
12 RCRA, 42 U.S.C. § 6903(27).

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

18 97. Washington State regulators have proposed that soil samples containing
19 greater than 45 parts per million (ppm) nitrate constitute “excessive” levels of
20 nitrate within soils.

1 98. The 45 ppm proposal used in drafting the 2006 Washington General CAFO
2 National Pollution Discharge Elimination System (“NPDES”) Permit was the
3 result of political machinations between the dairy and cattle industry and
4 Washington regulators, including the Washington Departments of Ecology and
5 Agriculture.

6 99. The 45 ppm soil number is not scientifically based to be protective of human
7 health or the environment. Soil samples containing less than 45 ppm nitrate may
8 still allow nitrates to leach through soils and into groundwater at levels above the
9 10 mg/l federal Maximum Contaminant Level or “MCL.” A concentration of 45
10 ppm nitrate in the upper two feet of soil would amount to 360 pounds of available
11 nitrogen per acre. This amount of nitrogen is far in excess of the most demanding
12 crop needs.

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

1 101. Defendants' improper manure application practices at Cow Palace Dairy
2 have caused irreparable injury to the environment, contaminating soils and
3 groundwater with excessively high levels of nitrates and other pollutants.

4 ***Contamination of Groundwater in Excess of MCLs***

5 102. The practices mentioned in paragraphs 39-94 are causing or contributing to
6 groundwater contamination beyond the federal MCL for nitrates.

7 103. The EPA has determined that nitrates pose an acute health concern at certain
8 levels of exposure. Nitrates contained in drinking water are colorless and odorless.
9 Ingestion of nitrates, converted to nitrite in the body, interferes with the oxygen
10 carrying capacity of blood, potentially resulting in cyanosis and, at higher levels,
11 asphyxia.

12 104. High levels of nitrate in water can also cause a blood disorder in infants
13 known as methemoglobinemia ("blue baby syndrome") that can be fatal if left
14 untreated.

15 105. Methemoglobinemia is a blood disorder in which an abnormal amount of
16 methemoglobin -- a form of hemoglobin -- is produced. Hemoglobin is the
17 molecule in red blood cells that distributes oxygen to the body. Methemoglobin
18 cannot release oxygen. In methemoglobinemia, the hemoglobin is unable to
19 release oxygen effectively to body tissues.

1 106. High nitrate levels may also affect pregnant women and adults with
2 hereditary cytochrome b5 reductase deficiency.

3 107. In addition, nitrate and nitrite ingestion in humans has been linked to
4 goitrogenic (anti-thyroid) actions on the thyroid gland (similar to perchlorate),
5 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal
6 reproductive complications including spontaneous abortion.

7 108. Ingestion of nitrates in excess of the MCL is also suspected of causing
8 various forms of cancer in the general exposed population, including a variety of
9 carcinogenic outcomes deriving from N-nitrosamines formed via gastric nitrate
10 conversion in the presence of amines, and compromises the health of immuno-
11 compromised individuals and the elderly.

12 109. The MCLs are health-based standards that specify contaminants known to
13 have an adverse effect on human health at levels beyond the parameters set forth
14 by regulations.

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

1 111. The October 17, 2012 notice of intent to sue Cow Palace LLC, attached
2 hereto as Attachment 1 and incorporated herein by reference, cited to the EPA
3 study, which shows the specific location of the wells and other areas that were
4 sampled at the Dairy Cluster sampling area, including areas on and near Cow
5 Palace Dairy, as well as a summary of the results obtained for nitrate.

6 112. The July 3, 2013 protective supplemental notice of intent to sue, attached
7 hereto as Attachment 2 and incorporated herein by reference, also cited to the EPA
8 study. That study showed where wells in the Dairy Cluster area were
9 contaminated with nitrates and Other Contaminants originating from Cow Palace
10 Dairy and its manure, including phosphorus, trace and inorganic elements, a
11 variety of veterinary pharmaceuticals, hormones, steroids, and organic compounds.

12 113. The April 17, 2014 notice of intent to sue to The Dolsen Companies and
13 Three D Properties, LLC, attached hereto as Attachment 3 and incorporated herein
14 by reference, also cited to the EPA study. The April 17 notice letter referenced,
15 *inter alia*, sections of the study showing wells and other sampling locations on and
16 near Cow Palace Dairy, and the sampling results for levels of nitrate and Other
17 Contaminants found in wells and Cow Palace Dairy's manure.

18 114. Observed levels of nitrate in seven wells located downgradient of the Dairy
19 Cluster, which includes Cow Palace Dairy (identified as WW-11 through WW-17),
20 are all in excess of the 10 mg/l MCL and are as follows: Wells WW-11 through

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

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

10 116. EPA took additional groundwater samples on property adjacent to Cow
11 Palace Dairy, both upgradient and downgradient, in December 2012. The results
12 of that sampling revealed that wells located downgradient of Cow Palace Dairy
13 had observed nitrate levels many times greater than the MCL. For instance,
14 downgradient well DC-03 had a nitrate level of 190 mg/l, which is 19 times greater
15 than the MCL. Results of 26 mg/l, 32 mg/l, and 26 mg/l nitrate were also observed
16 in monitoring wells DC-04, DC-05, and DC-14, respectively, all of which exceed
17 the MCL for nitrate. EPA's December, 2012 sampling information is hereby
18 incorporated herein, and is attached hereto as Attachment 4.

1 117. Upon information and belief, Plaintiffs assert that Cow Palace Dairy refused
2 entry to EPA to conduct sampling on the Dairy's property during the fall of 2012
3 and winter of 2012-13.

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

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

12 120. Defendants' storage and application of manure has caused nitrate
13 contamination of these residential wells, forcing Plaintiffs' members and other
14 residents to either consume unsafe drinking water or to obtain alternative sources
15 of drinking water.

16 121. Defendants' manure storage and application practices at Cow Palace Dairy,
17 described in the preceding paragraphs, have caused irreparable injury to the
18 environment, contaminating groundwater with excessively high levels of nitrates
19 and Other Contaminants.

20 **CLAIMS FOR RELIEF**

COUNT I
RCRA Imminent and Substantial Endangerment

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

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

10 124. Defendants are the past and present owners or operators of all or portions of
11 the Cow Palace Dairy--including storage or disposal facilities and/or land owned or
12 previously owned by Defendants that Cow Palace Dairy utilizes for manure storage
13 and disposal. As indicated above, manure is stored and disposed of on land owned
14 or previously owned by Defendants and utilized by Cow Palace Dairy, and in
15 massive earthen pits and other holding structures at the Cow Palace Dairy. As a
16 result, Defendants contribute to the past or present handling, storage, and disposal
17 of a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

18 125. Defendants are past and present generators of manure and other by-product
19 wastes, which manure is “handled” and “transported” by the Defendants, as well as
20

1 disposed of on land owned or leased or utilized by the Defendants. As a result,
2 Defendants contribute to the past or present handling, transportation, or disposal of
3 a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

4 126. Defendants' handling, transportation, storage, and disposal of manure may
5 present an imminent and substantial endangerment to public health and/or the
6 environment.

7 127. Specifically, as alleged above, ground and surface water contamination
8 levels on Defendants' land, and down-gradient and downstream from Defendants'
9 land and facilities, have contamination levels that exceed the maximum safe
10 consumption limits established under state and federal law, establishing a case of
11 imminent and substantial endangerment to public health and/or the environment.

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

17 129. The Washington Water Quality standards were promulgated to protect
18 groundwater and human health pursuant to the Washington Water Pollution
19 Control Act, RCW 90.48.

20

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

5 131. 40 C.F.R. § 257.3-4(a) prohibits a facility or practice from contaminating an
6 underground drinking water source. “Contamination” occurs when a facility or
7 practice introduces a toxic substance that causes the concentration of that substance
8 in groundwater to exceed certain parameters listed in Appendix I to 40 C.F.R. §
9 257.3-4(a).

10 132. The past and continuing practices of Defendants at the Cow Palace Dairy
11 have contaminated and continue to contaminate groundwater and surface water to
12 levels that exceed the maximum limits for safety established under state and
13 federal law. These practices present an imminent and substantial endangerment to
14 the environment and/or public health. Specifically, Cow Palace Dairy is polluting
15 groundwater to the extent that it is hazardous to health and the environment and the
16 shallow contaminated groundwater feeds nearby surface waters including, but not
17 limited to, Roza-Sunnyside Board of Joint Control Drains 26.6, 27.2 and 28.0, the
18 Sunnyside Canal, and the Granger Drain, which discharges into the Yakima River.

19 133. Pursuant to RCRA Section 7002, Defendants may be subject to an injunction
20 under RCRA ordering them to cease and abate any past or present handling,

1 storage, treatment, and/or transportation of any solid waste or hazardous waste at
2 Cow Palace Dairy that may present an imminent and substantial endangerment to
3 public health and/or the environment.

4 134. Plaintiffs' interests are harmed and will continue to be harmed by this
5 imminent and substantial endangerment and by Defendants' failure to abate the
6 endangerment unless the Court grants the relief sought herein.

7 **COUNT II**
8 **RCRA Illegal Open Dumping**

9 135. Plaintiffs incorporate by reference the allegations of the preceding
10 paragraphs of this Complaint.

11 136. Cow Palace Dairy constitutes an "open dump" under RCRA Section
12 1004(14). 42 U.S.C. § 6903(14).

13 137. Defendants' solid waste disposal practices cause groundwater concentration
14 levels of nitrates and other pollutants to exceed the limits set forth in Appendix I to
15 40 C.F.R. Part 257, which constitutes illegal open dumping, and is considered to
16 pose a reasonable probability of causing adverse effects to health and the
17 environment.

18 138. Defendants store and dispose of manure at Cow Palace Dairy, including on
19 land owned or previously owned by Defendants that Defendants allow Cow Palace
20 Dairy to utilize for such storage and disposal. The manure constitutes an

1 agricultural waste and a “solid waste” under section 1004 of RCRA because it is
2 over applied and/or improperly stored, and therefore constitutes a “discarded
3 material” under the statute. 42 U.S.C. § 6903(27).

4 139. Groundwater monitoring data indicates that the disposal of solid wastes at
5 the Cow Palace Dairy, including the fields Cow Palace Dairy uses to apply
6 manure, are causing the contamination of groundwater to exceed the limits set
7 forth in Appendix I to 40 C.F.R. Part 257. Concentrations of nitrate, identified
8 herein, have repeatedly exceeded the maximum contaminant levels, as documented
9 by the EPA study. This practice constitutes illegal open dumping.

10 140. Groundwater monitoring data, including as documented by the EPA study,
11 also indicates that the disposal of solid wastes at the Cow Palace Dairy, including
12 the fields Cow Palace Dairy uses to apply manure, are causing Other Contaminants
13 to contaminate groundwater. This practice is also indicative of illegal open
14 dumping.

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

18 142. Pursuant to Section 7002, 42 U.S.C. § 6972, Defendants may be subject to
19 an injunction under RCRA ordering them to cease open dumping at Cow Palace
20

1 Dairy and remediate the environmental contamination they have caused and/or
2 contributed to, including widespread soil and groundwater contamination. *Id.*

3 143. Plaintiffs' interests are harmed and will continue to be harmed by
4 Defendants' open dumping unless the Court grants the relief sought herein.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiffs CARE and CFS respectfully request that the Court enter
7 a judgment:

8 A. Declaring that Defendants' contribution to the past and/or present
9 generation, handling, storage, treatment, transportation, and/or disposal of solid
10 waste presents, or may present, an imminent and substantial endangerment to
11 public health or to the environment.

12 B. Declaring that Defendants' storage and disposal of manure and its
13 incorporated by-products constitutes disposal and illegal open dumping.

14 C. Issuing a compliance order that requires Defendants to cease and desist from
15 storing manure on any portion of Defendants' land that the Defendants has not first
16 lined adequately with synthetic liners to prevent seepage of pollutants into surface
17 water or groundwater that may, whether by flow or diffusion, transmit such
18 pollutants outside Defendants' property boundaries.

19 D. Issuing a compliance order that requires Defendants to capture, adequately
20 treat, and sequester as necessary all surface water or groundwater on or within their

1 land, except surface water that flows as the direct result of snowmelt or a
2 precipitation event, so that discharges of such water do not cause or contribute to
3 violation of any applicable water quality standards in any water resource that
4 receives such discharge.

5 E. Issuing temporary and/or permanent injunctive relief against Defendants,
6 ordering Defendants to cease all activities constituting the imminent and
7 substantial endangerment to the public health and environment, and to cease all
8 activities constituting illegal open dumping.

9 F. Issuing temporary and/or permanent injunctive relief against Defendants,
10 ordering Defendants to design and implement a program which evaluates the actual
11 amount of manure necessary to provide a specific crop with its anticipated nutrient
12 needs, and to have sufficient land available, as documented in an approved
13 Nutrient Management Plan, to handle the amount of manure produced by
14 Defendants.

15 G. Issuing temporary and/or permanent injunctive relief against Defendants,
16 ordering Defendants to design and implement a regular soil sampling protocol,
17 such protocol to require sampling at one-foot intervals down to at least a four-foot
18 depth, in order to prevent the ongoing migration of nitrate (and other pollutants
19 including Other Contaminants) to the vadose zone and groundwater. Such soil
20

1 sampling protocol must include soil moisture concentrations to be able to convert
2 the soil nitrate data to concentration in the soil solution.

3 H. Issuing temporary and/or permanent injunctive relief against Defendants,
4 ordering Defendants to design and implement a groundwater monitoring program
5 designed to detect the transport of dairy manure nutrients and Other Contaminants
6 into groundwater.

7 I. Issuing temporary and/or permanent injunctive relief against Defendants,
8 ordering Defendants to supply clean, safe drinking water to residents located
9 within at least three (3) miles of Cow Palace Dairy who rely upon well water for
10 consumption.

11 J. Issuing temporary and/or permanent injunctive relief against Defendants,
12 ordering Defendants to sample all surface waters running through or adjacent to
13 Defendants' property to determine whether discharges from the Defendants'
14 operations are impacting surface water.

15 K. Ordering Defendants to take all such actions as may be necessary to
16 eliminate any present and future endangerment and open dumping practices,
17 including but not limited to:

- 18 (a) funding an independent, comprehensive, scientific study to determine the
19 precise nature and extent of the endangerment and harm caused by open
20 dumping, including a detailed examination of the fate and transport of solid

1 waste from the facility to the waters and soils of the surrounding area, and
2 from the water and soils to biological receptors;

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

7 (c) developing and implementing an appropriate and effective remediation
8 plan, based on the studies described in subparagraphs (a) and (b) above,
9 which will remediate the soil and groundwater contamination caused by or
10 contributed to by Defendants' past and present manure handling, storage,
11 and application practices at Cow Palace Dairy;

12 (d) developing and implementing manure disposal and storage techniques in
13 accordance to the scientific studies described in subparagraphs (a) and (b)
14 above;

15 (e) providing Plaintiffs with complete copies of records from the past twenty
16 years concerning Defendants' soil sampling, manure sampling, groundwater
17 sampling, lagoon construction and sampling, manure applications, third-
18 party manure transfers, and composting operations; and

19 (f) providing Plaintiffs with complete copies of all future records created by
20 Defendants concerning Defendants' soil sampling, manure sampling,

1 groundwater sampling, lagoon construction and sampling, manure
2 applications, third-party manure transfers, and composting operations.

3 L. Ordering Defendants to pay Plaintiffs' reasonable attorneys' fees, expert
4 witness fees, and costs incurred in prosecuting this action pursuant to 42 U.S.C. §
5 6972(e) and 28 U.S.C. § 2412(d); and

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

8 Dated: October 6, 2014.

9 Respectfully Submitted,

10
11 s/ Brad J. Moore
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2014, 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/ Sarah A. Matsumoto

Sarah A. Matsumoto

Law Offices of Charles M. Tebbutt, P.C.

Attachment 1

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 Fax: 541-344-3516

October 17, 2012

Via Registered Mail

Owner or Site Manager
Cow Palace Dairy
1631 N. Liberty Road
Granger, WA 98938

Cow Palace, LLC
Registered Agent: R. William Dolsen
301 N. 3rd St.
Yakima, WA 98901

**RE: NOTICE OF INTENT TO SUE PURSUANT TO RESOURCE
CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(b)(2)(A);
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW
ACT, 42 U.S.C. § 11046(a)(1)(A)(i); AND COMPREHENSIVE
ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY
ACT, 42 U.S.C. § 9659(a)(1).**

Dear Mr. Dolsen:

Pursuant to the 1976 Amendments to the Solid Waste Disposal Act (hereinafter referred to as the "Resource Conservation and Recovery Act" or "RCRA"), 42 U.S.C. § 6972(b)(2)(A), the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046(a)(1)(A)(i) ("EPCRA"), and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659(a)(1), the Community Association for Restoration of the Environment ("CARE") and the Center for Food Safety ("CFS") hereby notifies you that on or after the 90th day from the date of your receipt of this notice, CARE and CFS intend to initiate a citizen suit in Washington Federal District Court against Cow Palace, LLC, (hereinafter "Cow Palace Dairy"), located at 1631 N. Liberty Road, Granger, WA 98938. Cow Palace, LLC operates two adjacent dairy facilities, Cow Palace I and Cow Palace II (hereinafter jointly referred to as "Cow Palace Dairy"). Both are considered part of a "Dairy Cluster," discussed *supra*, as designated by a sampling report published by the Environmental Protection Agency ("EPA").

The lawsuit will allege that Cow Palace Dairy has contributed and is contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment. The lawsuit will also allege that Cow

Palace Dairy is operating an “open dump” in violation of the prohibitions of RCRA and that the Dairy has violated the mandatory reporting requirements of EPCRA and CERCLA by failing to inform the relevant emergency planning commissions of the release of reportable quantities of ammonia and other chemicals emanating from the Dairy. CARE and CFS will seek mandatory injunctive relief requiring Cow Palace Dairy to abate and/or remediate the source(s) of the endangerment to health and the environment, an order requiring Cow Palace Dairy to file the requisite reports under EPCRA and CERCLA, an order requiring Cow Palace Dairy to pay the maximum civil penalties allowable under the law, and an order from the Court requiring Cow Palace Dairy to pay the attorneys and expert witness fees and costs incurred in bringing this enforcement action.

**VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT:
IMMINENT AND SUBSTANTIAL ENDANGERMENT**

Under 42 U.S.C. § 6972(a)(1)(B), citizens are authorized to bring suit against any person who is the “past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” In this case, Cow Palace Dairy is the generator, transporter, and owner and/or operator of a treatment, storage, and disposal facility that is contributing to the past and present storage, treatment, transportation and/or disposal of solid and hazardous wastes, namely liquid and solid manure. The Dairy’s liquid and solid manure constitute “solid wastes” under RCRA because they are “any...discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...” 42 U.S.C. § 6903(27). Cow Palace Dairy’s practices in storing, treating, transporting, applying, and disposing of liquid and solid manure may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

In particular, Cow Palace Dairy and/or its agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes to nearby agricultural fields in amounts that exceed agronomic rates. Washington Department of Agriculture inspection reports from 2012 have documented elevated nitrate levels in soils receiving Cow Palace Dairy manure, a strong indication that the Dairy has applied manure in excess of agronomic rates. Applications beyond that which the current crop can effectively utilize causes nitrates to leach through soil and into groundwater. Once these nitrates enter the local water table, they migrate away from the Cow Palace Dairy and into the wells of nearby residents. The over-application of liquid manure has also resulted and will continue to result in the ponding of liquid manure, which creates a direct pathway for manure and manure constituents to runoff into surface water and discharge into groundwater.

Furthermore, Cow Palace Dairy’s storage of solid and/or liquid manure in unlined earthen lagoons and permeable surfaces has caused and is continuing to cause the

discharge of untreated manure directly into groundwater. Upon information and belief, CARE and CFS estimate that Cow Palace Dairy's manure storage lagoons, which according to Washington Department of Agriculture reports have at least a 9.4 million gallon capacity, but potentially as much as a 40.8 million gallon capacity, are seeping at least 1.606 million gallons of untreated manure into the groundwater annually, but potentially as much as 8.6 million gallons or higher. Upon information and belief, these discharges have been ongoing since the date these lagoons were brought into operation and have been continuous for at least the past five years. These ongoing discharges were confirmed by EPA's sampling of downgradient wells between February and April, 2010. The seeping of untreated solid waste from the lagoons has contributed and is contributing to the excessive contamination of the groundwater, posing an imminent and substantial endangerment to health and the environment. Furthermore, Cow Palace Dairy's storage and/or composting of solid manure on permeable surfaces causes runoff and leachate from the solid manure to enter groundwater, contributing to the contamination of the local water table.

Upon information and belief, these practices and possibly others are responsible for groundwater contamination at levels beyond the Maximum Contaminant Level ("MCL") for specific chemicals. The MCLs are health-based standards that specify contaminants known to have an adverse effect on human health at levels beyond the parameters set forth by regulations. Here, samples taken by the Environmental Protection Agency as part of the "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-R-12-003 (September 27, 2012), indicate elevated levels of nitrate, potassium, magnesium, calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine pharmaceuticals in nearby residential wells downgradient from the "Dairy Cluster," which includes Cow Palace Dairy. Attached hereto is a map from the EPA study showing the specific location of the wells and other areas that were sampled at the Dairy Cluster sampling area, including areas on and near Cow Palace Dairy, as well as a summary of the results obtained for nitrate. Observed levels for nitrate in wells located downgradient of the Dairy Cluster, which includes Cow Palace Dairy (identified as WW-10 through WW-17) range from 22.7 mg/l to 46.7 mg/l.¹ These results exceed the MCL for nitrate, and in one instance by nearly 5 times higher than the 10 mg/l limit. See 40 C.F.R. Part 141 and Appendix I. The results were also significantly higher than the nitrate results obtained from WW-06, the sampled well located upgradient of Cow Palace Dairy, which had a reported value of 0.73 mg/l nitrate. These samples were taken between February and April, 2010. The practices responsible for this contamination have been ongoing since Cow Palace Dairy began its operations and have been continuous for at least the past five years.

¹ WW-10 yielded a result of ND, or "not detected" for this parameter. Wells WW-11 through 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 mg/l, and 22.7 mg/l, respectively. See T. 20 in "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-R-12-003 (September 27, 2012).

Members of CARE and CFS use and consume well water that is downgradient from Cow Palace Dairy. Upon information and belief, and based on the EPA study, these wells are contaminated predominantly because of Cow Palace Dairy's discharges into the groundwater. Human consumption of water containing more than 10 mg/l of nitrate causes a variety of severe health problems, including but not limited to methemoglobinemia ("blue baby syndrome," a fatal condition that affects infants), some forms of cancer and autoimmune system dysfunction. The excessive nitrates and other contaminants contained in these nearby wells are directly attributable to the Cow Palace Dairy's improper practices of storing, treating, transporting, and disposing (through application or otherwise) of liquid and solid manure wastes. As such, these practices may, and indeed do, present an imminent and substantial endangerment to health and the environment.

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who "has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste" that presents an imminent and substantial endangerment to health or the environment to take such action as may be necessary and to apply any appropriate civil penalties under 42 U.S.C. § 6928(g). CARE and CFS intend to seek legal and equitable relief in its lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against Cow Palace Dairy, temporary and/or permanent injunctive relief, and the imposition of the maximum civil penalties authorized by law, as well as attorneys and expert witness fees and costs associated with the suit.

VIOLATION OF RESOURCE CONSERVATION AND RECOVERY ACT: OPEN DUMPING

In addition to presenting an imminent and substantial endangerment to health and the environment, Cow Palace Dairy's improper manure management practices constitute "open dumping" in violation of RCRA. 42 U.S.C. § 6945(a) prohibits the operation of "any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste." "Disposal" means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]" 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA's citizen suit provision. *Id.* As required by statute, EPA has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations prohibit the contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

The definition of "underground drinking water source" includes an aquifer supplying drinking water for human consumption or any aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids. 40 C.F.R. § 257.3-4(c)(4). "Contaminate" means to introduce a substance that would cause: (i) the concentration of that substance in the groundwater to exceed the maximum contaminant

level specified in Appendix I, or (ii) an increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the MCLs specified in Appendix I. 40 C.F.R. § 257.3-4(c)(2).

Appendix I to 40 C.F.R. Part 257 lists the MCL for nitrate as 10 mg/l. Groundwater samples taken by the United States Environmental Protection Agency from wells downgradient from Cow Palace Dairy revealed levels of nitrate in excess of the 10 mg/l MCL.² The lawsuit will allege that Cow Palace Dairy's past and present waste disposal practices have caused nitrate contamination to travel beyond the facility boundaries, in violation of RCRA's open dumping prohibitions. Washington Department of Agriculture inspection reports from 2012 have documented elevated nitrate levels in soils receiving Cow Palace Dairy manure, a strong indication that the Dairy has applied manure in excess of agronomic rates. Applications beyond that which the current crop can effectively utilize causes nitrates to leach through soil and into groundwater, which in turn causes nitrate levels in the groundwater to exceed the MCLs. The lawsuit will further allege that Cow Palace Dairy's storage of liquid and solid manure in unlined earthen lagoons has caused manure to seep into the groundwater and leave the boundaries of the site, also causing nitrate contamination of groundwater in excess of the MCL. These practices have been ongoing since Cow Palace Dairy began its operations and have been continuous for at least the past five years, as confirmed by EPA testing on downgradient wells between February and April, 2010.

Pursuant to 42 U.S.C. § 6972(a), CARE and CFS intend to seek legal and equitable relief to remedy the Cow Palace Dairy's practice of open dumping. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, removal, and/or clean-up costs, a requirement that the extent of the contamination be fully investigated and remediated, other necessary temporary and/or permanent injunctive relief, the imposition of the maximum civil penalties (up to \$37,500 per day per violation) authorized by law, and an award of the attorney and expert witness fees and costs incurred in bringing the enforcement action.

**VIOLATIONS OF THE EMERGENCY PLANNING AND COMMUNITY
RIGHT-TO-KNOW ACT AND THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND LIABILITY ACT**

The lawsuit will also allege that Cow Palace Dairy has violated and continues to violate CERCLA, 42 U.S.C. § 9603(a), and EPCRA, 42 U.S.C. § 11004, as well as the federal regulations implementing those statutes, by failing to adequately report to the relevant emergency response commissions the release of reportable quantities of certain hazardous chemicals, including but not limited to ammonia, which emanate from the Dairy on a daily basis. Upon information and belief, CARE and CFS contend that Cow Palace Dairy is releasing, among other substances, more than 100 lbs/day of ammonia into the air without adequately reporting those releases in accordance with the statutory

² In particular, EPA reported nitrate levels of 23, 46.7, 44, 43.4, 30.2, 23.4, and 22.7 mg/l in seven of the eight downgradient wells, all above the MCL.

requirements of EPCRA and CERCLA. Ammonia is a designated extremely hazardous substance under EPCRA with a threshold reporting quantity of 100 pounds per day. 40 C.F.R. Part 355, App. A. Ammonia is also designated an extremely hazardous substance under EPCRA with a threshold reporting quantity of 100 pounds per day. 40 C.F.R. Part 355, App. A. These releases have been ongoing since Cow Palace Dairy began its operations and have been continuous for at least the past five years. Accordingly, Cow Palace Dairy should have been reporting these releases to the requisite emergency response commissions.

The owners and operators of Cow Palace Dairy knew or should have known that the facility was releasing over the reporting threshold of ammonia because Cow Palace is a member of the Washington Dairy Federation and the National Milk Producers Federation, two dairy trade groups that have been active in issues concerning air emissions from dairies and EPCRA compliance. In fact, the National Milk Producers Federation has an entire section of its website devoted to CERCLA & EPCRA reporting requirements, including a link to an industry-accepted ammonia emissions estimator.³ Based on that estimator, and assuming that Cow Palace Dairy maintains more than 6,840 mature dairy cattle and 2,000 to 2,999 heifers and/or calves⁴, the Cow Palace Dairy is releasing more than the reportable quantity of ammonia on a daily basis. These releases have been ongoing since Cow Palace Dairy began its operations, and for at least the past five years.

Members of CARE and CFS live in proximity to Cow Palace Dairy. They have tried to ascertain their potential exposure to hazardous chemicals from Cow Palace Dairy, but have been unable to because of the Dairy's failure to report its releases. This lack of knowledge affects the individual parties' abilities to protect themselves, their friends and family, and their community from potential exposure to hazardous levels of ammonia.

CERCLA authorizes citizen enforcement actions in federal court "against any person...who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter..." 42 U.S.C. § 9659(a). EPCRA likewise authorizes citizen suits for failure to comply with reporting requirements for releases of reportable quantities of hazardous substances. 42 U.S.C. ¶ 11046(a)(1)(A). Cow Palace Dairy has been and remains in violation of these reporting provisions. Accordingly, CARE and CFS will seek civil penalties against Cow Palace Dairy of up to \$37,500 per day for each violation, declaratory relief, injunctive relief from the court to remedy these violations, and an award of its attorney and expert witness fees and costs.

³ See http://nmpf.org/washington_watch/environment/cercla-epcra (last visited October 15, 2012). The estimator is the Koelsch & Stowell Ammonia Emissions Estimator.

⁴ EPA Study at 49. EPA estimated a range for the herd because Cow Palace Dairy would not provide more specific information about the Dairy's herd size.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

Community Association for Restoration of the Environment, Inc.
2241 Hudson Road
Outlook, WA 98938
Tel: (509) 854-1662

Center for Food Safety
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
Tel: (415) 826-2770
Fax: (415) 826-0507

The names, addresses, and phone numbers of Counsel for the parties giving this Notice of Intent to Sue are:

Charles M. Tebbutt
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
Tel: (541) 344-3505
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charlie.tebbuttlaw@gmail.com
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Brad J. Moore
Stritmatter Kessler Whelan Coluccio
200 Second Ave W.
Seattle, WA 98119
Tel: (206) 448-1777
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Local Counsel.

Jessica Culpepper
Public Justice
1825 K Street, NW Suite 200
Washington, DC 20006
Tel: (202) 797-8600
Fax: (202) 232-7203
jculpper@publicjustice.net

Attorneys for Plaintiffs.

CONCLUSION

We will be available to discuss effective remedies and actions that will assure Cow Palace Dairy's future compliance with the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Emergency Planning and Community Right-to-Know Act, and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity, or if you have any questions regarding this letter, please contact the undersigned.

Sincerely,



Charles M. Tebbutt
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.

Via Certified Mail to the following:

Barack Obama, President
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Christine Gregoire, Governor
Washington State Office of the Governor
416 Sid Snyder Ave. SW, Ste. 200
P.O. Box 40002
Olympia, WA 98504

Eric Holder, Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Rob McKenna, Attorney General
Washington State Office of the Attorney
General
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Bldg.
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency,
Region X
1200 6th Ave. Ste. 900
Seattle, WA 98101

Ted Sturdevant, Director
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504

Attachment 2

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 Fax: 541-344-3516

July 3, 2013

Via Registered Mail, Return Receipt Requested

Owner or Site Manager
Cow Palace Dairy
1631 N. Liberty Road
Granger, WA 98938

Cow Palace, LLC
Registered Agent: R. William Dolsen
301 N. 3rd St.
Yakima, WA 98901

**RE: PROTECTIVE SUPPLEMENTAL NOTICE OF INTENT TO SUE
PURSUANT TO RESOURCE CONSERVATION AND RECOVERY ACT,
42 U.S.C. § 6972(b)(2)(A).**

Dear Mr. Dolsen:

The following is a protective supplemental notice of intent to sue Cow Palace LLC located at 1631 N. Liberty Road, Granger, WA 98938 and the two adjacent facilities operated by Cow Palace LLC, Cow Palace I and Cow Palace II (hereinafter collectively referred to as "Cow Palace Dairy"),¹ pursuant to the 1976 Amendments to the Solid Waste Disposal Act (hereinafter referred to as the "Resource Conservation and Recovery Act" or "RCRA"), 42 U.S.C. § 6972(b)(2)(A). On October 17, 2012, the Community Association for Restoration of the Environment ("CARE") and the Center for Food Safety ("CFS") (hereinafter the "Noticing Parties") provided Cow Palace Dairy notice of their intent to sue for alleged violations of RCRA's "imminent and substantial endangerment" and "open dumping" provisions, 42 U.S.C. § 6972(a) and 42 U.S.C. § 6945(a), respectively. The contents of that Notice are incorporated by reference fully herein.

This protective supplemental notice hereby notifies you that on or after the 90th day from the date of your receipt of this notice, CARE and CFS intend to initiate a citizen

¹ Both Cow Palace I and Cow Palace II are considered part of a "Dairy Cluster" as designated by the U.S. Environmental Protection Agency ("EPA") Region 10 in the its study, "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-R-12-003 (September 27, 2012) ("EPA Study"). The EPA Study is hereby incorporated by reference.

suit or amend the existing action, 2:13-cv-03016-TOR, against Cow Palace Dairy in the Eastern District of Washington Federal District Court pursuant to 42 U.S.C. § 6972(b)(2)(A).

The lawsuit will allege that Cow Palace Dairy has contributed and is contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment, and that Cow Palace Dairy is operating an “open dump” in violation of the prohibitions of RCRA. CARE and CFS will seek mandatory injunctive relief requiring Cow Palace Dairy to abate and/or remediate the source(s) of the endangerment to health and the environment, an order requiring Cow Palace Dairy to pay the maximum civil penalties allowable under the law, and an order from the Court requiring Cow Palace Dairy to pay the attorneys and expert witness fees and costs incurred in bringing this enforcement action.

**VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT:
IMMINENT AND SUBSTANTIAL ENDANGERMENT**

Under 42 U.S.C. § 6972(a)(1)(B), citizens are authorized to bring suit against any person who is the “past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” In this case, Cow Palace Dairy is the generator, transporter, and owner and/or operator of a treatment, storage, and disposal facility that is contributing to the past and present storage, treatment, transportation and/or disposal of solid and hazardous wastes, namely liquid and solid manure. The Dairy’s liquid and solid manure constitute “solid wastes” under RCRA because they are “any...discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...” 42 U.S.C. § 6903(27). Here, the liquid and solid manure contains nitrates, phosphorus, and other contaminants, which include minor trace and inorganic elements, and organic compounds.² The minor trace and inorganic elements may include arsenic, barium, bromide, cadmium, chromium, copper, lead, manganese, mercury, selenium, silver, and zinc.³ The organic compounds may include veterinary pharmaceuticals, and steroids and hormones, namely the following:⁴

Veterinary pharmaceuticals

Chlortetracycline (total)
Erythromycin

² See EPA Study, pp. 11, 20 and Table ES-2..

³ EPA Study, p. 21 and Table C6.

⁴ EPA Study, Table 4 and p. 25 (veterinary pharmaceuticals), Tables 5, C13 and C14 and p. 26 (hormones and steroid hormones).

Lincomycin
Monensin
Oxytetracycline
Ractopamine
Sulfachloropyridazine
Sulfadimethoxine
Sulfamerazine
Sulfamethazine
Sulfamethizole
Sulfamethoxazole
Sulfathiazole
Tetracycline
Tiamulin
Tylosin
Virginiamycin

Hormones and Steroid Hormones

11-Keto Testosterone
17-*a*-Hydroxyprogesterone
17-*a*-trenbolone
17- β -estradiol
17- β -trenbolone
4-Androstenedione
17-*a*-estradiol
Androstadienedione
Androsterone
a-Zearalanol
a-Zearalanol
 β -Zearalanol
 β -Zearalanol
Epiandrosterone
Estriol
Estrone
17-*a*-ethynyl-estradiol
Mestranolol Acetate
Progesterone
Testosterone

Collectively, the above-referenced phosphorus, trace and inorganic elements, and organic compounds, are hereinafter referred to as "Other Contaminants." Cow Palace Dairy's practices in storing, treating, transporting, applying, and disposing of liquid and solid manure, which also contains these Other Contaminants may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

The EPA Study documented the presence of Other Contaminants in Cow Palace Dairy and Dairy Cluster lagoons, manure piles, and manure application fields. The EPA Study also showed that Cow Palace Dairy's wells, lagoons, manure piles, application fields, and crop soils contain veterinary pharmaceuticals.⁵ Higher levels of veterinary pharmaceuticals frequently used in dairy production were evident, including monensin, tetracycline, sulfadimethoxine, tylosin, lincomycin, virginiamycin, oxytetracycline, and chlortetracycline (total). Hormones were also detected in Cow Palace Dairy wells, lagoons, manure piles, application fields, and crop soils.⁶ Cow Palace Dairy is also part of the "Dairy Cluster" for purposes of the EPA Study, which also showed the presence of veterinary pharmaceuticals and hormones in downgradient wells.⁷

In particular, Cow Palace Dairy and/or its agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes containing Other Contaminants, as well as possibly thus far unidentified different or similar contaminants, to nearby agricultural fields in amounts that exceed agronomic rates. Washington Department of Agriculture inspection reports from 2012 have documented elevated nitrate and phosphorus levels in soils receiving Cow Palace Dairy manure, a strong indication that the Dairy has applied manure in excess of agronomic rates. Liquid and solid manure applications beyond that which the current crop can effectively utilize causes nitrates and Other Contaminants to leach through soil and into groundwater, eventually making their way into surface water. Once these nitrates and Other Contaminants enter the local water table, they migrate away from the Cow Palace Dairy, into the wells of nearby residents and into surface waters. The over-application of liquid manure has also resulted and will continue to result in the ponding of liquid manure, which creates a direct pathway for manure and manure constituents, including nitrates and Other Contaminants, to runoff into surface water and discharge into groundwater.

Furthermore, Cow Palace Dairy's storage of solid and/or liquid manure containing nitrates and Other Contaminants in unlined earthen lagoons and on other permeable surfaces has caused and is continuing to cause the discharge of untreated manure, including nitrates and Other Contaminants, directly into groundwater and eventually into surface water. Upon information and belief, CARE and CFS estimate that Cow Palace Dairy's manure storage lagoons, which according to Washington Department of Agriculture reports have at least a 9.4 million gallon capacity, but potentially as much as a 40.8 million gallon capacity, are seeping at least 1.606 million gallons of untreated manure into the groundwater annually, but potentially as much as 8.6 million gallons or higher. Upon information and belief, these discharges have been ongoing since the date these lagoons were brought into operation and have been continuous for at least the past five years. These ongoing discharges were confirmed by EPA's sampling of downgradient wells between February and April, 2010. The seeping of untreated solid waste from the lagoons has contributed and is contributing to the excessive contamination of the groundwater and surface water by nitrates and Other Contaminants, posing an

⁵ EPA Study, Table C12 (WW-09, LG-10 to LG-12, SO-07 to SO-08).

⁶ EPA Study, Tables C13, C14 (WW-09, LG-10 to LG-12, SO-07 to SO-08).

⁷ EPA Study, Tables C12, C13, C14 (WW-06, WW-10 to WW-17).

imminent and substantial endangerment to health and the environment. Furthermore, Cow Palace Dairy's storage and/or composting of solid manure on permeable surfaces causes runoff and leachate from the solid manure to enter groundwater and surface water, contributing to the contamination of the local water table and surface water by nitrates and Other Contaminants.

Upon information and belief, these practices and possibly others are responsible for the presence of nitrates and Other Contaminants in groundwater and surface water. Contamination levels for nitrates and Other Contaminants are in excess of the Maximum Contaminant Level ("MCL") for each specific chemical. The MCLs are health-based standards that specify contaminants known to have an adverse effect on human health at levels beyond the parameters set forth by regulations. Here, samples taken during the EPA Study indicate elevated levels of nitrate, phosphorus, potassium, magnesium, calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine pharmaceuticals, hormones and hormonal steroids (referenced *supra*) in nearby residential wells downgradient from the "Dairy Cluster," which includes Cow Palace Dairy. A map from the EPA study shows the specific location of the wells and other areas that were sampled at the Dairy Cluster sampling area, including areas on and near Cow Palace Dairy, as well as a summary of the results obtained for nitrates and some of the Other Contaminants. See EPA Study, Figures 15-16c. The EPA Study samples were taken between February and April 2010, with additional samples taken in and around December 2012. The practices responsible for this contamination have been ongoing since Cow Palace Dairy began its operations and have been continuous for at least the past five years.

Members of CARE and CFS use and consume well water and surface water that is downgradient from Cow Palace Dairy. Upon information and belief, and based on the EPA Study, these wells are contaminated with nitrates and Other Contaminants predominantly because of Cow Palace Dairy's discharges into the groundwater and, consequently, to surface water. Human consumption of water containing nitrates and Other Contaminants may cause a variety of severe health problems, including but not limited to increased bacterial infections and antibiotic resistance, and interference with natural hormone functions such as growth control and metabolism. Other Contaminants may also affect the environment, for example by altering reproductive and endocrine systems of exposed organisms. Nitrates and Other Contaminants contained in these nearby wells are directly attributable to the Cow Palace Dairy's improper practices of storing, treating, transporting, and disposing (through application or otherwise) of liquid and solid manure wastes containing nitrogen compounds and Other Contaminants. As such, these practices may, and indeed do, present an imminent and substantial endangerment to health and the environment.

In addition to the specific chemical elements and compounds present in the manure, the manure also carries numerous pathogens that can cause harm to human health and the environment. These bacteria, viruses, protozoa, and other pathogens include, but are not limited to:

Escherichia coli (including O157:H7 and other Shiga-toxigenic strains)
Salmonella spp. (including *S. enterica* and various serotypes)
Listeria monocytogenes
Mycobacterium avium subspecies *paratuberculosis*
Campylobacter jejuni
Cryptosporidium parvum
Giardia spp.
Yersinia spp. (including *Y. enterocolitica*)
Clostridium perfringens

(“*spp*” means various subspecies may be present)

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who “has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” that presents an imminent and substantial endangerment to health or the environment to take such action as may be necessary and to apply any appropriate civil penalties under 42 U.S.C. § 6928(g). CARE and CFS intend to seek legal and equitable relief in their lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against Cow Palace Dairy, temporary and/or permanent injunctive relief, and the imposition of the maximum civil penalties authorized by law, as well as attorneys and expert witness fees and costs associated with the suit.

VIOLATION OF RESOURCE CONSERVATION AND RECOVERY ACT: OPEN DUMPING

In addition to presenting an imminent and substantial endangerment to health and the environment, Cow Palace Dairy’s improper manure management practices constitute “open dumping” in violation of RCRA. 42 U.S.C. § 6945(a) prohibits the operation of “any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste.” “Disposal” means “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]” 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA’s citizen suit provision. *Id.* As required by statute, EPA has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. Only if “there is no reasonable probability of adverse effects on health or the environment” may a facility be classified as a sanitary landfill instead of an open dump. 42 U.S.C. § 6944(a). Violation of any of the criteria poses a reasonable probability of adverse effects on health or the environment. 40 C.F.R. § 257.3.

In addition to the notice of 40 C.F.R. § 257.3-4(a) violations raised in the October 17, 2012 Notice Letter, the Noticing Parties hereby notify Cow Palace Dairy that the presence of Other Contaminants also contaminates groundwater. These regulations

prohibit the contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

The definition of “underground drinking water source” includes an aquifer supplying drinking water for human consumption or any aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids. 40 C.F.R. § 257.3-4(c)(4). “Contaminate” means to introduce a substance that would cause: (i) the concentration of that substance in the groundwater to exceed the maximum contaminant level specified in Appendix I, or (ii) an increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the MCLs specified in Appendix I. 40 C.F.R. § 257.3-4(c)(2). Some of the Other Contaminants are regulated as MCLs, including for example arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, 40 C.F.R. Pt. 257, App. I. Lagoon samples taken by the United States Environmental Protection Agency from Cow Palace Dairy’s lagoons exceeded the MCLs for some of the Other Contaminants,⁸ thus creating the possibility of movement of these Other Contaminants into the groundwater or surface waters. Cow Palace Dairy’s lagoons also showed elevated levels of, *inter alia*, barium, bromide, chromium, copper, manganese, mercury, silver, and zinc.

The lawsuit will allege that Cow Palace Dairy’s past and present waste disposal practices have caused contamination by Other Contaminants, in addition to nitrates and other substances as previously noticed, to travel beyond the facility boundaries, in violation of RCRA’s open dumping prohibitions. Washington Department of Agriculture inspection reports from 2012 have documented elevated nitrate and phosphorus levels in soils receiving Cow Palace Dairy manure, a strong indication that the Dairy has applied manure in excess of agronomic rates. Liquid and solid manure applications beyond that which the current crop can effectively utilize causes nitrates and Other Contaminants to leach into and eventually through soil and into groundwater, which in turn can cause Other Contaminant levels in the groundwater and eventually surface water to exceed the MCLs. The Other Contaminants travel with the nitrates, and are indicators that the solid and liquid waste comes from the Cow Palace Dairy and the Dairy Cluster. The lawsuit will further allege that Cow Palace Dairy’s storage of liquid and solid manure in unlined earthen lagoons has caused manure to seep into the groundwater and leave the boundaries of the site, also causing nitrate contamination of groundwater and surface water in excess of the MCL. These practices have been ongoing since Cow Palace Dairy began its operations and have been continuous for at least the past five years, as confirmed by EPA testing on downgradient wells between February and April, 2010.

Groundwater in the Yakima Valley is hydrologically connected to the Yakima River and the tributaries that feed the Yakima River according to multiple reports by the United States Geological Survey. Thus, contamination of the aquifers in the area of the Cow Palace Dairy will eventually reach and contaminate the Yakima River. Similarly, the soils above the aquifers become contaminated with contaminants from the manure, including nitrates and Other Contaminants as defined herein. Thus, the soils

⁸ See EPA Report, Table C6 (LG-10, LG-11, and LG-12).

contaminated by the manure must be remediated to prevent the downward migration of nitrates and Other Contaminants to the aquifer and eventually the Yakima River.

Pursuant to 42 U.S.C. § 6972(a), CARE and CFS intend to seek legal and equitable relief to remedy the Cow Palace Dairy's practice of open dumping. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, removal, and/or clean-up costs of soils and groundwater, a requirement that the extent of the contamination of soils and groundwater be fully investigated and remediated, other necessary temporary and/or permanent injunctive relief, the imposition of the maximum civil penalties (up to \$37,500 per day per violation) authorized by law, and an award of the attorney and expert witness fees and costs incurred in bringing the enforcement action.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

Community Association for Restoration of the Environment, Inc.
2241 Hudson Road
Outlook, WA 98938
Tel: (509) 854-1662

Center for Food Safety
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
Tel: (415) 826-2770
Fax: (415) 826-0507

The names, addresses, and phone numbers of Counsel for the parties giving this Notice of Intent to Sue are:

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Daniel C. Snyder
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eholmes@centerforfoodsafety.org
ptomaselli@centerforfoodsafety.org

Attorneys for Plaintiffs

CONCLUSION

We will be available to discuss effective remedies and actions that will assure Cow Palace Dairy's future compliance with the Resource Conservation and Recovery Act, and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity, or if you have any questions regarding this letter, please contact the undersigned.

Sincerely,



/s/ Charles M. Tebbutt

Charles M. Tebbutt
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.

Via Certified Mail to the following:

Barack Obama, President
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Jay Inslee, Governor
Washington State Office of the Governor
416 Sid Snyder Ave. SW, Ste. 200
P.O. Box 40002
Olympia, WA 98504

Eric Holder, Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Bob Ferguson, Attorney General
Washington State Office of the Attorney
General
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504

Bob Perciasepe, Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Bldg.
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency,
Region X
1200 6th Ave. Ste. 900
Seattle, WA 98101

Maia D. Bellon, Director
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504

Attachment 3

Exhibits B and C referenced in Attachment 3 correspond to Attachments 1 and 2 to the Third Amended Complaint, respectively (prior notice letters of 10/17/12 and 7/3/13). Accordingly, they are not reproduced here.

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 Fax: 541-344-3516

April 17, 2014

Via Registered Mail, Return Receipt Requested

Three D Properties, LLC
R. William Dolsen, Registered Agent
301 North 3rd Street
Yakima, WA 98901-2340

Three D Properties, LLC (regular mail)
P.O. Box 1726
Yakima, WA 98907

The Dolsen Companies
Denise Anderson, Registered Agent
301 North 3rd Street
Yakima, WA 98901-2340

The Dolsen Companies (regular mail)
P.O. Box 1726
Yakima, WA 98907

**RE: NOTICE OF INTENT TO SUE PURSUANT TO RESOURCE
CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(b)(2)(A).**

To: Three D Properties, LLC, and The Dolsen Companies:

The following is a notice of intent to sue Three D Properties, LLC, and The Dolsen Companies, (collectively the "Dolsen Entities" or "you") pursuant to the 1976 Amendments to the Solid Waste Disposal Act (hereinafter referred to as the "Resource Conservation and Recovery Act" or "RCRA"), 42 U.S.C. § 6972(b)(2)(A). Three D Properties, LLC, and The Dolsen Companies are or were owners of parcels of real property located at and near 1631 North Liberty Road, Granger, Washington. There are two dairy facilities on property located at or near 1631 North Liberty Road, Granger Washington, operated by Cow Palace, LLC -- Cow Palace I and Cow Palace II (herein collectively referred to as "Cow Palace Dairy"). Public records indicate that Three D Properties, LLC owns all or part of the following parcels of real property located at or near the Cow Palace Dairy (hereinafter the "Property"):

21112542004, 21113621001, 21113634001, 21113631001, 21113644002, 21113644003, 21113644005, 21112641001, and 21113612001, 21100111414, 21100111416, 21100111415, 21100111422, 21100111421, and 21100111419.

Discovery documents produced by Cow Palace during the course of existing litigation between the Community Association for Restoration of the Environment (“CARE”) and the Center for Food Safety (“CFS”) in the Federal District Court for the Eastern District of Washington, 2:13-cv-03019-TOR, indicate that The Dolsen Companies was, until recently, an owner of the Property. (Exhibit A).

On October 17, 2012, the Community Association for Restoration of the Environment (“CARE”) and the Center for Food Safety (“CFS”) (hereinafter the “Noticing Parties”) provided Cow Palace Dairy notice of their intent to sue for alleged violations of RCRA’s “imminent and substantial endangerment” and “open dumping” provisions, 42 U.S.C. § 6972(a) and 42 U.S.C. § 6945(a), respectively. The Cow Palace Dairy operates a large industrial dairy operation, also called a concentrated animal feeding operation (“CAFO”), on the real property owned, at least in part, by Three D Properties, LLC, and The Dolsen Companies. The October 17, 2012 Notice to the Cow Palace Dairy is attached hereto as Exhibit B. On July 3, 2013, the Noticing Parties provided Cow Palace Dairy a protective supplemental Notice of Intent to Sue, providing more specificity as to the RCRA violations caused by “Other Contaminants.” The July 3, 2013 Notice is attached hereto as Exhibit C. The contents of those two (2) Notices are incorporated by reference fully herein.

This notice hereby notifies you that on or after the 90th day from the date of your receipt of this notice, CARE and CFS intend to either initiate a citizen suit against you or to amend the existing action in the Federal District Court for the Eastern District of Washington, 2:13-cv-03019-TOR, to add Three D Properties, LLC, and The Dolsen Companies as defendants, pursuant to 42 U.S.C. § 6972(b)(2)(A).

The lawsuit will allege that the Dolsen Entities are past or present owners of land on which a treatment, storage, or disposal facility, located at and near 1631 North Liberty Road, Granger, Washington, is and has been operated, and have contributed and are contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment. The lawsuit will also allege that the Dolsen Entities, as past or present owners of the Property, are operating an illegal “open dump” in violation of the prohibitions of RCRA. CARE and CFS will seek mandatory injunctive relief requiring the Dolsen Entities to abate and/or remediate the source(s) of the endangerment to health and the environment and an order from the Court requiring the Dolsen Entities to pay the attorneys and expert witness fees and costs incurred in bringing this enforcement action.

**VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT:
IMMINENT AND SUBSTANTIAL ENDANGERMENT**

Under 42 U.S.C. § 6972(a)(1)(B), citizens are authorized to bring suit against any person who is the “past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” The Dolsen Entities are the owners of real property upon which Cow Palace Dairy generates, transports, and owns and/or operates a treatment, storage, and disposal facility that is contributing to the past and present storage, treatment, transportation and/or disposal of solid and hazardous wastes, namely liquid and solid manure. The liquid and solid manure produced and disposed of at the Property constitute “solid wastes” under RCRA because they are “any...discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...” 42 U.S.C. § 6903(27). Here, the liquid and solid manure contains nitrogen, ammonia, nitrates, phosphorus, and other contaminants, which include minor trace and inorganic elements, and organic compounds.¹ The minor trace and inorganic elements may include arsenic, barium, bromide, cadmium, chromium, copper, lead, manganese, mercury, selenium, silver, and zinc.² The organic compounds may include veterinary pharmaceuticals, and steroids and hormones, namely the following:³

Veterinary pharmaceuticals

Chlortetracycline (total)
 Erythromycin
 Lincomycin
 Monensin
 Oxytetracycline
 Ractopamine
 Sulfachloropyridazine
 Sulfadimethoxine
 Sulfamerazine
 Sulfamethazine
 Sulfamethizole
 Sulfamethoxazole
 Sulfathiazole
 Tetracycline
 Tiamulin

¹ See Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley Report, (“EPA Study”), pp. 11, 20 and Table ES-2 (Sept. 2012 and revised March 2013) (available at http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_march2013.pdf).

² EPA Study, p. 21 and Table C6.

³ EPA Study, Table 4 and p. 25 (veterinary pharmaceuticals), Tables 5, C13 and C14 and p. 26 (hormones and steroid hormones).

Tylosin
Virginiamycin

Hormones and Steroid Hormones

11-Keto Testosterone
17-*a*-Hydroxyprogesterone
17-*a*-trenbolone
17- β -estradiol
17- β -trenbolone
4-Androstenedione
17-*a*-estradiol
Androstadienedione
Androsterone
a-Zearalanol
a-Zearalanol
 β -Zearalanol
 β -Zearalanol
Epitestosterone
Estriol
Estrone
17-*a*-ethynyl-estradiol
Melengesterol Acetate
Progesterone
Testosterone

Collectively, the above-referenced phosphorus, trace and inorganic elements, and organic compounds, are hereinafter referred to as "Other Contaminants." Cow Palace Dairy's practices on the Property, including storing, treating, transporting, applying, and disposing of liquid and solid manure, which also contains these Other Contaminants may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

The U.S. EPA Region 10 study, "Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-R-12-003 (September 27, 2012, revised March 2013) (hereinafter "EPA Study") documented the presence of Other Contaminants in Cow Palace Dairy's lagoons, manure piles, and manure application fields on the Property and beyond the Property's boundaries. The EPA Study is hereby incorporated by reference.

The EPA Study also showed that Cow Palace Dairy lagoons, manure piles, application fields, and crop soils contain veterinary pharmaceuticals. These pharmaceuticals have been found on the Property and beyond the Property's boundaries.⁴ Higher levels of veterinary pharmaceuticals frequently used in dairy production were

⁴ EPA Study, Table C12 (WW-09, LG-10 to LG-12, SO-07 to SO-08).

evident, including monensin, tetracycline, sulfadimethoxine, tylosin, lincomycin, virginiamycin, oxytetracycline, and chlortetracycline (total). Hormones were also detected in Cow Palace Dairy's lagoons, manure piles, application fields, and crop soils, which in turn have been found on the Dolsen Entities' Property and beyond the Property's boundaries.⁵

In particular, Cow Palace Dairy and/or their agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes containing Other Contaminants, as well as possibly thus far unidentified different or similar contaminants, to Three D Properties, LLC, and The Dolsen Companies' Property and to nearby agricultural fields in amounts that exceed agronomic rates. Washington Department of Agriculture inspection reports from 2012, as well as other years, have documented elevated nitrate and phosphorus levels in soils receiving Cow Palace Dairy's manure, including on the Property and beyond, a strong indication that the Cow Palace Dairy has applied manure in excess of agronomic rates on the Property. Liquid and solid manure applications beyond that which the current crop can effectively utilize causes nitrates and Other Contaminants to leach through soil and into groundwater, eventually making their way into surface water. Once these nitrates and Other Contaminants enter the local water table, they migrate away from the Cow Palace Dairy and the Property, into the wells of nearby residents and into surface waters. The over-application of liquid manure has also resulted and will continue to result in the ponding of liquid manure, which creates a direct pathway for manure and manure constituents, including nitrates and Other Contaminants, to runoff into surface water and discharge into groundwater.

Furthermore, Cow Palace Dairy's storage of solid and/or liquid manure containing nitrates (including other nitrogen compounds) and Other Contaminants in unlined earthen lagoons and on other permeable surfaces on the Property has caused and is continuing to cause the discharge of untreated manure, including nitrates and Other Contaminants, directly into groundwater and eventually into surface water. Upon information and belief, CARE and CFS estimate that Cow Palace Dairy's manure storage lagoons, which according to Washington Department of Agriculture reports have at least a 9.4 million gallon capacity, but potentially as much as a 40.8 million gallon capacity, are seeping at least 1.606 million gallons of untreated manure into the groundwater annually, but potentially as much as 8.6 million gallons or higher from the Property. Upon information and belief, these discharges have been ongoing since the date these lagoons were brought into operation and have been continuous for at least the past five years. These ongoing discharges were confirmed by EPA's sampling of downgradient wells between February and April, 2010. The seeping of untreated solid waste from the lagoons has contributed and is contributing to the excessive contamination of the groundwater and surface water by nitrates and Other Contaminants, posing an imminent and substantial endangerment to health and the environment. Furthermore, Cow Palace Dairy's activities on the Property, including the storage and/or composting of solid manure on permeable surfaces, causes runoff and leachate from the solid manure to enter

⁵ EPA Study, Tables C12, C13, C14 (WW-06, WW-09, WW-10 to WW-17, LG-10 to LG-12, SO-07 to SO-08).

groundwater and surface water, contributing to the contamination of the local water table and surface water by nitrates and Other Contaminants.

Upon information and belief, these practices and possibly others are responsible for the presence of nitrates and Other Contaminants in groundwater and surface water. Contamination levels for nitrates and Other Contaminants are in excess of the Maximum Contaminant Level (“MCL”) for each specific chemical. The MCLs are health-based standards that specify contaminants known to have an adverse effect on human health at levels beyond the parameters set forth by regulations. Here, samples taken during the EPA Study indicate elevated levels of nitrate, phosphorus, potassium, magnesium, calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine pharmaceuticals, hormones and hormonal steroids (referenced *supra*) in nearby residential wells downgradient from the Property. A map from the EPA Study shows the specific location of the wells and other areas that were sampled at and near the Property, as well as a summary of the results obtained for nitrates and Other Contaminants. *See* EPA Study, Figures 12-13. The EPA Study samples were taken between February and April 2010, with additional samples taken in and around December 2012 or January 2013. The practices responsible for this contamination have been ongoing since Cow Palace Dairy began their operations, at least a portion during which time the Dolsen Entities owned the Property, and have been continuous for at least the past five years.

Members of CARE and CFS use and consume well water and surface water that is downgradient from the Property. Upon information and belief, and based on the EPA Study, these wells are contaminated with nitrates and Other Contaminants predominantly because of Cow Palace Dairy’s discharges from the Property into the groundwater and, consequently, to surface water. Human consumption of water containing nitrates and Other Contaminants may cause a variety of severe health problems, including but not limited to increased bacterial infections and antibiotic resistance, and interference with natural hormone functions such as growth control and metabolism. Other Contaminants may also affect the environment, for example by altering reproductive and endocrine systems of exposed organisms. Nitrates and Other Contaminants contained in these nearby wells are directly attributable to the Cow Palace Dairy’s improper practices on the Property of storing, treating, transporting, and disposing (through application or otherwise) of liquid and solid manure wastes containing nitrogen compounds and Other Contaminants. As such, these practices may, and indeed do, present an imminent and substantial endangerment to health and the environment.

In addition to the specific chemical elements and compounds present in the manure, the manure also carries numerous pathogens that can cause harm to human health and the environment. These bacteria, viruses, protozoa, and other pathogens include, but are not limited to:

***Escherichia coli* (including O157:H7 and other Shiga-toxigenic strains)**
***Salmonella spp.* (including *S. enterica* and various serotypes)**
Listeria monocytogenes
Mycobacterium avium* subspecies *paratuberculosis

Campylobacter jejuni
Cryptosporidium parvum
Giardia spp.
Yersinia spp. (including Y. enterocolitica)
Clostridium perfringens

(“spp” means various subspecies may be present)

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who “has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” that presents an imminent and substantial endangerment to health or the environment to take such action as may be necessary and to apply any appropriate civil penalties under 42 U.S.C. § 6928(g). CARE and CFS intend to seek legal and equitable relief in their lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against Three D Properties, LLC, and The Dolsen Companies as the current or prior Property owners, temporary and/or permanent injunctive relief, and the imposition of the maximum civil penalties authorized by law, as well as attorneys and expert witness fees and costs associated with the suit.

**VIOLATION OF RESOURCE CONSERVATION AND RECOVERY ACT:
 OPEN DUMPING**

In addition to presenting an imminent and substantial endangerment to health and the environment, Cow Palace Dairy’s improper manure management practices on the Property constitute “open dumping” in violation of RCRA. 42 U.S.C. § 6945(a) prohibits the operation of “any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste.” “Disposal” means “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]” 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA’s citizen suit provision. *Id.* As required by statute, EPA has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. Only if “there is no reasonable probability of adverse effects on health or the environment” may a facility be classified as a sanitary landfill instead of an open dump. 42 U.S.C. § 6944(a). Violation of any of the criteria poses a reasonable probability of adverse effects on health or the environment. 40 C.F.R. § 257.3.

In addition to the notice of 40 C.F.R. § 257.3-4(a) violations raised in the October 17, 2012 Notice Letter, the Noticing Parties hereby notify Three D Properties, LLC, and The Dolsen Companies that the presence of nitrates and Other Contaminants also contaminates groundwater. These regulations prohibit the contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

The definition of “underground drinking water source” includes an aquifer supplying drinking water for human consumption or any aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids. 40 C.F.R. § 257.3-4(c)(4). “Contaminate” means to introduce a substance that would cause: (i) the concentration of that substance in the groundwater to exceed the maximum contaminant level specified in Appendix I, or (ii) an increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the MCLs specified in Appendix I. 40 C.F.R. § 257.3-4(c)(2). Some of the Other Contaminants are regulated as MCLs, including for example arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, 40 C.F.R. Pt. 257, App. I. Lagoon samples taken by the United States Environmental Protection Agency from Cow Palace Dairy’s lagoons on the Property exceeded the MCLs for some of the Other Contaminants,⁶ thus creating the possibility of movement of these Other Contaminants into the groundwater or surface waters. Cow Palace Dairy’s lagoons on the Property also showed elevated levels of, *inter alia*, barium, bromide, chromium, copper, manganese, mercury, silver, and zinc.

The lawsuit will allege that Cow Palace Dairy’s past and present waste disposal practices conducted on the Property have caused and continue to cause contamination by Other Contaminants, in addition to nitrates and other substances as previously noticed, to travel beyond the facility boundaries, in violation of RCRA’s open dumping prohibitions. Washington Department of Agriculture inspection reports from 2012 have documented elevated nitrate and phosphorus levels in soils receiving manure from the Cow Palace Dairy, including on the Property, a strong indication that the Cow Palace Dairy has applied manure in excess of agronomic rates on the Property and beyond. Liquid and solid manure applications beyond that which the current crop can effectively utilize causes nitrates and Other Contaminants to leach into and eventually through soil and into groundwater, which in turn can cause Other Contaminant levels in the groundwater and eventually surface water to exceed the MCLs. The Other Contaminants travel with the nitrates, and are indicators that the solid and liquid waste comes from Cow Palace Dairy and the Property. The lawsuit will further allege that Cow Palace Dairy’s storage of liquid and solid manure in unlined earthen lagoons on the Property have caused manure to seep into the groundwater and leave the boundaries of the site, also causing nitrate contamination of groundwater and surface water in excess of the MCL. These practices have been ongoing since Cow Palace Dairy began its operations on the Property, and have been continuous for at least the past five years, as confirmed by EPA testing on downgradient wells between February and April, 2010.

Groundwater in the Yakima Valley is hydrologically connected to the Yakima River and the tributaries that feed the Yakima River, as well as the Columbia River, according to multiple reports by the United States Geological Survey. Thus, contamination of the aquifers in the area of the Cow Palace Dairy and the Property will eventually reach and contaminate the Yakima River. Similarly, the soils above the aquifers become contaminated with contaminants from the manure, including nitrates and

⁶ See EPA Report, Table C6 (LG-10, LG-11, and LG-12).

Other Contaminants as defined herein. Thus, the soils contaminated by the manure must be remediated to prevent the downward migration of nitrates and Other Contaminants to the aquifer and eventually the Yakima River.

Pursuant to 42 U.S.C. § 6972(a), CARE and CFS intend to seek legal and equitable relief to remedy the contamination leaving the Property, on which the practice of open dumping has occurred. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, removal, and/or clean-up costs of soils and groundwater, a requirement that the extent of the contamination of soils and groundwater be fully investigated and remediated, other necessary temporary and/or permanent injunctive relief, the imposition of the maximum civil penalties (up to \$37,500 per day per violation) authorized by law, and an award of the attorney and expert witness fees and costs incurred in bringing the enforcement action.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

Community Association for Restoration of the Environment, Inc.
2241 Hudson Road
Outlook, WA 98938
Tel: (509) 854-1662

Center for Food Safety, Inc.
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
Tel: (415) 826-2770
Fax: (415) 826-0507

The names, addresses, and phone numbers of Counsel for the parties giving this Notice of Intent to Sue are:

Charles M. Tebbutt
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
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gkimbrell@centerforfoodsafety.org

Attorneys for Plaintiff CFS

CONCLUSION

We will be available to discuss effective remedies and actions that will assure and Three D Properties, LLC's, and The Dolsen Companies' future compliance with the Resource Conservation and Recovery Act, and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity, or if you have any questions regarding this letter, please contact the undersigned.

Sincerely,



Charles M. Tebbutt
Law Offices of Charles M. Tebbutt, P.C.

Via U.S. Mail to the following:

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20004

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region X
1200 6th Ave. Ste. 900
Seattle, WA 98101

*Via e-mail to: (courtesy copy w/o
enclosures)*

Brendan V. Monahan
bvm@stokeslawrence.com

Maia D. Bellon, Director
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504

Debra K. Kristensen
dkk@givenspursley.com

EXHIBIT A

Real Estate ownership
2005-present

Parcel #

Dates & Ownership

21125-42004	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21126-41001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-12001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-21001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-31001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-34001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-41001	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-44002	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
21136-44005	1/1/2005-12/30/2009 - 50% Estate of Robert R Dolson, 50% Ruth Dolson;	12/30/2009-present	Three D Properties, LLC
211001-14222	1/1/2005-6/14/2011 - Kelly Layton;	6/14/2011-11/7/2013	Adam Dolson; 11/7/2013-present - Three D Properties, LLC
211001-14221	1/1/2005-6/14/2011 - Jose Sanchez;	6/28/2011-11/7/2013	Adam Dolson; 11/7/2013-present - Three D Properties, LLC
211000-14419	1/1/2005-4/12/2011 - Michael Olson (Fannie Mae);	4/12/2011-11/7/2013	Adam Dolson; 11/7/2013-present - Three D Properties, LLC
211001-14146	1/1/2005-2/17/2012 - Fernando Carcagno;	2/17/2012-present	Three D Properties, LLC
21136-43401	1/1/2005-4/13/2012 - Linda McCrone;	4/13/2012-present	Three D Properties, LLC
21136-43404	1/1/2005-4/13/2012 - Linda McCrone;	4/13/2012-present	Three D Properties, LLC
211001-14145	1/1/2005-5/18/2006 - Luvene Hilde;	5/18/2006-12/19/2011	Jose Valdivinos; 12/19/2011-present - Three D Properties, LLC
211001-14144	1/1/2005-12/7/2007 - Luvene Hilde;	12/7/2007-1/06/2012	Ingaio Lopez; 1/06/2012-present - Three D Properties, LLC
211001-14141	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21125-24002	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21125-31001	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21125-32001	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21125-33001	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21125-43404	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21136-11002	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21136-14001	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
21136-44003	1/1/2005-11/7/2013 - The Dolson Companies;	11/7/2013-present	Cow Palace, LLC
211001-14401	1/1/2005-4/24/2006 - Carpenter Farms, Inc.;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
211001-14404	1/1/2005-4/24/2006 - Carpenter Farms, Inc.;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
211001-14405	1/1/2005-4/24/2006 - Carpenter Farms, Inc.;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
211001-14413	1/1/2005-4/24/2006 - Carpenter Farms, Inc.;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
211001-14420	1/1/2005-4/24/2006 - Carpenter Farms, Inc.;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
211001-14423	1/1/2005-4/24/2006 - David Pearson;	4/24/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC
21125-43403	1/1/2005-7/13/2006 - Michael Schafar;	7/13/2006-11/7/2013	The Dolson Companies; 11/7/2013-present - Cow Palace, LLC

Attachment 4

**Lower Yakima Valley
Monitoring Well Locations and Nitrate Concentrations**

Well No.	EPA Sample ID	Well Location	Well Coordinates		Total Well Depth (feet)	Top of Casing Elevation (feet aMSL)	Depth to Water	Water Level Elevation (feet aMSL)	Sample Collection Date	Nitrate as N mg/L
			Northing	Easting						
DC-01	12534005	Upgradient	396035.927	1731673.203	160	1199.56	150.50	1049.06	1/4/2013	9.8
DC-03	12534000	Downgradient	384172.901	1729718.927	85	911.09	72.40	838.69	1/2/2013	190
DC-04	12534003	Downgradient	382789.225	1733514.588	51	877.82	32.68	845.14	1/3/2013	26
DC-05	12534009	Downgradient	382770.202	1736263.732	86	912.51	68.31	844.20	1/4/2013	32
DC-07	12534002	Downgradient	385390.146	1730842.184	61	889.91	44.11	845.80	1/3/2013	2.8
DC-09	12534004	Downgradient	390744.768	1736012.372	196	1049.10	144.13	904.97	1/3/2013	6.0
DC-14	12534001	Downgradient	390726.492	1731319.001	151	1037.13	130.61	906.52	1/3/2013	26
HK-10	12534006	Upgradient	382948.949	1766885.828	66	1053.99	48.66	1005.33	1/4/2013	0.94
HK-11	12534007	Downgradient	380157.444	1766995.687	66	978.47	12.55	965.92	1/4/2013	31
HK-12	12534008	Downgradient	380186.496	1768204.215	76	998.65	25.70	972.95	1/3/2013	47

Abbreviations

DC - Dairy Cluster

HK - Haak Dairy

aMSL - above mean seal level

mg/L - milligrams per Liter