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

8
9 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
ENVIRONMENT, INC., a Washington
10 non-profit corporation; FRIENDS OF
TOPPENISH CREEK, a Washington non-
11 profit corporation; *and* CENTER FOR
FOOD SAFETY, a Washington, D.C. non-
12 profit corporation,

Plaintiffs,

13 v.

14 AUSTIN JACK DECOSTER, an individual,
DECOSTER ENTTERPRISES, LLC, a
15 Delaware limited liability company,
AGRICULTURAL INVESTMENT-FUND
16 II, LLC, a Delaware limited liability
company, IDAHO AGRI INVESTMENTS,
17 LLC, an Idaho limited liability company,
IDAHO DAIRY HOLDINGS, LLC, an
18 Idaho limited liability company, DRY
CREEK DAIRIES, LLC, an Idaho limited
19 liability company, WASHINGTON AGRI
INVESTMENTS, LLC a Washington
20 limited liability company, WASHINGTON

Case No. 1:19-CV-03110-TOR

FIRST AMENDED COMPLAINT

1 DAIRY HOLDINGS, LLC, a Washington
limited liability company, DBD
2 WASHINGTON, LLC, a Washington
limited liability company; *and* SMD, LLC, a
3 Washington limited liability company,
Defendants.
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11 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

12 **INTRODUCTION**

13 1. This is a civil action for declaratory and injunctive relief against Austin
14 “Jack” DeCoster, DeCoster Enterprises, LLC, Agricultural Investment-Fund II,
15 LLC, Dry Creek Dairies, LLC, Idaho Agri Investments, LLC, Idaho Dairy
16 Holdings, LLC, Washington Dairy Holdings, LLC, Washington Agri Investments,
17 LLC, DBD Washington, LCC d/b/a DeRuyter Brothers Dairy, and SMD, LLC
18 (collectively hereinafter “the Dairies” or “Defendants”) for violations of the Solid
19 Waste Disposal Act, also known as the Resource Conservation and Recovery Act,
20 42 U.S.C. § 6901 *et seq.* (“RCRA”), at their dairy facilities located at or near 5111

1 Van Belle Road, Outlook, WA 98938 (“DBD”), 211 Nichols Road, Outlook, WA
2 98938 (“SMD”), and 1420 and 1270 Outlook Road, Outlook, WA 98938 (the
3 “Heifer Ranch”).

4 **2.** This action is brought pursuant to the citizen suit provision of RCRA, 42
5 U.S.C. § 6972(a)(1)(A) and (B).

6 **3.** As detailed below, Plaintiffs allege that Defendants have violated and
7 continue to violate Section 7002(a) of RCRA by causing and contributing to the
8 past and present handling, storage, treatment, transportation, and/or disposal of
9 solid waste in such a manner that may, and indeed does, present an imminent and
10 substantial endangerment to health and the environment. 42 U.S.C. § 6972(a).

11 **4.** Plaintiffs further allege that Defendants employ improper manure
12 management practices that constitute the “open dumping” of solid waste in
13 violation of Section 4005(a) of RCRA. 42 U.S.C. § 6945(a).

14 **5.** Plaintiffs seek declaratory relief establishing that Defendants have violated
15 RCRA. Plaintiffs also seek injunctive relief directing Defendants to modify their
16 handling, storage, treatment, transportation, and disposal of solid waste such that
17 these practices no longer present an imminent and substantial endangerment to
18 health and the environment. Additionally, Plaintiffs seek injunctive relief
19 obligating Defendants to remediate the environmental contamination they have
20 caused and/or contributed to, including widespread soil and groundwater

1 contamination. Finally, Plaintiffs request the Court award Plaintiffs' reasonable
2 attorneys' and expert witnesses' fees, and costs, incurred in bringing this action.

3 **JURISDICTION**

4 **6.** This Court has subject matter jurisdiction over this citizen suit pursuant to
5 Section 7002 of RCRA, 42 U.S.C. § 6972(a).

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

9 **8.** On February 11, 2019, Plaintiffs gave notice of the violations and of their
10 intent to file suit to Washington Dairy Holdings, LLC, DBD Washington, LLC,
11 their registered agents, the United States Attorney General, United States
12 Environmental Protection Agency ("EPA"), EPA Region X, Washington State
13 Office of Governor, Washington State Office of the Attorney General, and
14 Washington State Department of Ecology as required by Section 7002(a) of
15 RCRA, 42 U.S.C. § 6972(b). A copy of the notice letter is attached hereto as
16 Exhibit 1 and is incorporated by reference.

17 **9.** On February 11, 2019, Plaintiffs gave notice of the violations and of their
18 intent to file suit to SMD, LLC, its registered agent, the United States Attorney
19 General, EPA, EPA Region X, Washington State Office of Governor, Washington
20 State Office of the Attorney General, and Washington State Department of

1 Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(b). A copy of
2 the notice letter is attached hereto as Exhibit 2 and is incorporated by reference.

3 **10.** On April 17, 2019, 2019, Plaintiffs gave supplemental notice of the
4 violations and of their intent to file suit to Washington Agri Investments, LLC,
5 Washington Agri Investments, LLC's registered agent, the United States Attorney
6 General, EPA, EPA Region X, Washington State Office of Governor, Washington
7 State Office of the Attorney General, and Washington State Department of
8 Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(b). A copy of
9 the notice letter is attached hereto as Exhibit 3 and is incorporated by reference.

10 **11.** On April 3, 2020, Plaintiffs gave the second supplemental notice of the
11 violations and of their intent to file suit to Washington Agri Investments, LLC,
12 Washington Dairy Holdings, LLC, their registered agents, the United States
13 Attorney General, EPA, EPA Region X, Washington State Office of Governor,
14 Washington State Office of the Attorney General, and Washington State
15 Department of Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. §
16 6972(b). A copy of the notice letter is attached hereto as Exhibit 4 and is
17 incorporated by reference.

18 **12.** On December 23, 2020, Plaintiffs gave the third supplemental notice of the
19 violations and of their intent to file suit to DeCoster Enterprises, LLC, Agricultural
20 Investment Fund II, LLC, Idaho Agri Investments, LLC, Idaho Dairy Holdings,

1 LLC, Dry Creek Dairies, LLC, and Austin “Jack” DeCoster, and their registered
2 agents, the United States Attorney General, EPA, EPA Region X, Washington
3 State Office of Governor, Washington State Office of the Attorney General, and
4 Washington State Department of Ecology as required by Section 7002(a) of
5 RCRA, 42 U.S.C. § 6972(b). A copy of notice letter is attached hereto as Exhibit 5
6 and is incorporated by reference.

7 **13.** More than ninety days have passed since the notices were served, and the
8 violations complained of in the notices are continuing at this time, or Defendants
9 are reasonably likely to continue to remain in violation of RCRA. Neither the EPA
10 nor the State of Washington has commenced or is diligently prosecuting a civil or
11 criminal action to redress the violations.

12 **VENUE**

13 **14.** Because the alleged violations of the aforementioned statute occurred and
14 continue to occur within the Eastern District of Washington, Venue properly vests
15 in this Court pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a),

16 **PARTIES**

17 **15.** Upon information and belief, Austin “Jack” DeCoster is the owner, founder,
18 and principal member of DeCoster Enterprises, LLC, a Delaware limited liability
19 company. Mr. DeCoster is the primary decision-maker at DeCoster Enterprises,
20

1 LLC. Mr. DeCoster is the ultimate owner and operator of DeCoster Enterprises,
2 LLC and the DBD-SMD dairy facilities.

3 **16.** Upon Information and belief, DeCoster Enterprises, LLC owns and controls
4 1) Agricultural Investment-Fund II, LLC, 2) Idaho Dairy Holdings, LLC, 3) Idaho
5 Agri Investments, LLC, 4) Dry Creek Dairies, LLC, 5) Washington Dairy
6 Holdings, LLC, 6) Washington Agri Investments, LLC, 7) SMD, LLC, and 8)
7 DBD Washington, LLC. Collectively, these corporate Defendants and Mr.
8 DeCoster operate dairy facilities in Idaho and Washington while Mr. DeCoster
9 retains ultimate authority over each and every one.

10 **17.** Upon information and belief, DBD Washington, LLC, SMD, LLC,
11 Washington Dairy Holdings, LLC, and Washington Agri Investments, LLC
12 (collectively referred to herein as “DBD-SMD”) are Washington limited liability
13 companies that own and operate the dairies previously known as DeRuyter
14 Brothers Dairy and Snipes Mountain Dairy. The DBD-SMD dairy facilities are
15 located at or near 5111 Van Belle Road, Outlook, WA 98938, 211 Nichols Road,
16 Outlook, WA 98938, and 1420 and 1270 Outlook Road, Outlook, WA 98938.

17 **18.** Each of the named Defendants are a “person” within the meaning of Section
18 1004(15) of RCRA. 42 U.S.C. § 6903(15).

1 **19.** Plaintiffs are non-profit organizations comprised of members who live,
2 work, and recreate in the State of Washington. Plaintiffs share similar interests in
3 improving, protecting, and preserving regional water bodies and groundwater.

4 **20.** Plaintiff CARE is a non-profit corporation organized under the laws of the
5 State of Washington. CARE's principal office is located in Outlook, Washington.

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

13 **22.** CARE's organizational purposes are adversely affected by DBD's and
14 SMD's violations of RCRA. These violations have caused significant
15 environmental contamination of the soil and groundwater. Furthermore, but for
16 DBD's and SMD's unlawful actions, CARE would not have to spend as much of
17 its resources on the environmental problems created by illegal contamination from
18 individual, large-scale industrial farming operations and could direct these
19 resources to other priorities.

1 **23.** CARE has individual members who reside in Yakima County and in close
2 proximity to DBD and SMD. The environmental, health, aesthetic, economic, and
3 recreational interests of CARE's members have been and will continue to be
4 adversely affected by DBD's and SMD's violations of RCRA. For instance:

5 a. Members of CARE and their neighbors and friends obtain their
6 drinking water from aquifers that have been contaminated with
7 nitrates, phosphorus, and other pollutants, including hormones and
8 antibiotics, by DBD's and SMD's improper handling, storage,
9 treatment, transportation, and disposal of solid waste. As a result,
10 drinking water that CARE's members rely upon has been rendered
11 unsafe for human consumption. Consequently, CARE's members
12 have been forced to obtain, or should be obtaining but may not be able
13 to afford, alternative sources of drinking water. CARE's members are
14 concerned that consuming this water is harming or could harm them
15 and their families' health.

16 b. Members of CARE and their neighbors and friends also make
17 domestic and agricultural use of groundwater that has been
18 contaminated with nitrates, phosphorus, and other pollutants as a
19 result of DBD's and SMD's improper handling, storage, treatment,
20 transportation, and disposal of solid and hazardous waste. As a result,

1 water that CARE's members rely upon has been rendered unsafe for
2 domestic and agricultural use. Consequently, CARE's members have
3 been forced to obtain, or should be obtaining but may not be able to
4 afford, alternative sources of water for these uses. CARE's members
5 are concerned that the water used in their homes is harming them and
6 their families' health. CARE's members are concerned that the food
7 they produce and rely upon for sustenance using this water may not be
8 safe to consume.

9 c. Members of CARE and their neighbors and friends also live, work,
10 and recreate in the environment that has been negatively impacted by
11 DBD's and SMD's improper handling, storage, treatment,
12 transportation, and disposal of solid waste. This has lessened CARE's
13 members' enjoyment of their environment. CARE's members are
14 concerned that their environment has been irreparably injured by
15 DBD's and SMD's improper practices.

16 **24.** Plaintiff Friends of Toppenish Creek is a non-profit corporation organized
17 under the laws of the State of Washington.

18 **25.** Friends of Toppenish Creek is an organization composed of concerned
19 community members and is dedicated to protecting the rights of rural communities
20 and improving oversight of industrial agriculture. Friends of Toppenish Creek

1 works through public education, citizen investigations, research, legislation,
2 special events, and direct action. Friends of Toppenish Creek devotes itself to
3 enhancing, preserving, protecting, and monitoring the groundwater in the Yakima
4 area.

5 **26.** Friends of Toppenish Creek's organizational goals are adversely affected by
6 DBD's and SMD's RCRA violations. Friends of Toppenish Creek works tirelessly
7 to protect the rights of communities against groundwater contamination caused by
8 industrial agriculture.

9 **27.** Friends of Toppenish Creek's members live in Yakima County and in close
10 proximity to DBD and SMD. Friends of Toppenish Creek's members and their
11 neighbors and friends have been and continue to be injured, and their interests
12 adversely affected, by DBD's and SMD's RCRA violations. For instance:

- 13 a. Friends of Toppenish Creek's members' and their neighbors and
14 friends aesthetic interests have been, and will continue to be,
15 adversely affected by DBD's and SMD's improper manure storage
16 and disposal. Friends of Toppenish Creek's members have aesthetic
17 interests in not seeing cow manure where it shouldn't be. DBD's and
18 SMD's compost piles, over-topping lagoons, and other manure
19 mismanagement harm Friends of Toppenish Creek's members'
20 aesthetic and environmental interests.

1 b. Friends of Toppenish Creek’s members and their neighbors and
2 friends have suffered actual and threatened injuries to their health and
3 safety caused by DBD’s and SMD’s violations of RCRA, including
4 provisions prohibiting manure stored in lagoons from contaminating
5 the underlying aquifer. Manure-contaminated water has impacted and
6 threatens to impact the safety of members’ drinking water wells and
7 may cause detrimental health effects if consumed.

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

18 **29.** CFS represents nearly 245,000 members throughout the country that support
19 safe, sustainable, and organic agriculture and regularly purchase organic products.
20 CFS has approximately 10,000 members in the state of Washington. CFS members

1 live, work, recreate, and grow food in, and consume food and water from, the
2 Yakima Valley. The environmental, health, aesthetic, economic, and recreational
3 interests of CFS's members have been and will continue to be adversely affected
4 by DBD's and SMD's violations of RCRA. CFS's members support the public's
5 right to choose food and crops not sourced from or by industrial farming practices,
6 such as CAFOs. CFS's members and their neighbors and friends are impacted by
7 CAFOs through destructive leakage and leaching of CAFO pollution into
8 groundwater, which affects the suitability of drinking water for consumption.

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

11 **STATUTORY AND REGULATORY FRAMEWORK**

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

19 **32.** Section 1002(b) of RCRA states that "disposal of solid waste...in or on the
20 land without careful planning and management can present a danger to human

1 health and the environment;” and that “open dumping is particularly harmful to
2 health, contaminates drinking water from underground and surface supplies, and
3 pollutes the air and the land...” 42 U.S.C. § 6901(b).

4 **33.** As required by statute, EPA has promulgated criteria under RCRA §
5 6907(a)(3) defining solid waste management practices that constitute open
6 dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations
7 outline certain solid waste disposal practices which, if violated, pose a reasonable
8 probability of adverse effects on health or the environment. 40 C.F.R. § 257.3.

9 **34.** The purpose of RCRA is “to promote the protection of health and the
10 environment.” RCRA seeks to accomplish this by “prohibiting future open
11 dumping on the land and requiring the conversion of existing open dumps to
12 facilities which do not pose a danger to the environment or to health...” 42 U.S.C.
13 § 6902(a).

14 **35.** Section 4005(a) of RCRA prohibits “any solid waste management practice
15 or disposal of solid waste... which constitutes the open dumping of solid waste...”
16 42 U.S.C. § 6945(a).

17 **36.** Under Section 1004(3), “The term ‘disposal’ means the discharge, deposit,
18 injection, dumping, spilling, leaking, or placing of any solid waste...into or on any
19 land or water so that such solid waste or hazardous waste or any constituent thereof

20

1 may enter the environment or be emitted into the air or discharged into any waters,
2 including ground-waters.” 42 U.S.C. § 6903(3).

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

7 **38.** EPA criteria for solid waste disposal practices prohibit the contamination of
8 any underground drinking water source beyond the solid waste boundary of a
9 disposal site. 40 C.F.R. § 257.3-4(a).

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

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

19 **FACTS**

20 **41.** All preceding paragraphs are incorporated herein.

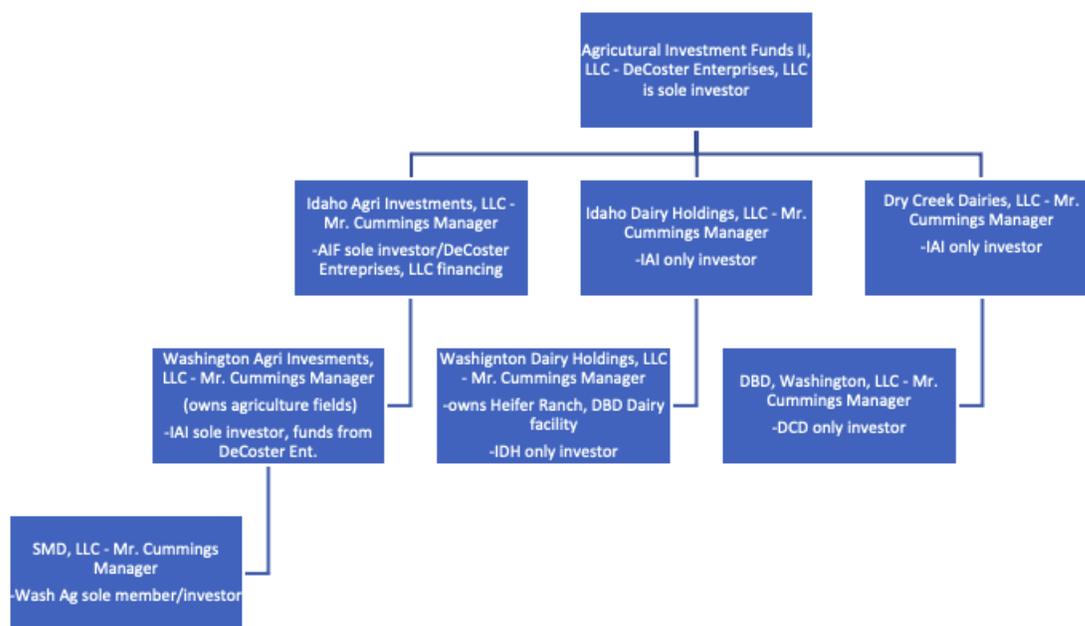
1 **42.** Austin “Jack” DeCoster founded and is the owner and principal decision-
2 maker at DeCoster Enterprises, LLC. DeCoster Enterprises, LLC capitalized and
3 is the sole investor in Agricultural Investment-Fund II, LLC, a Delaware limited
4 liability company. Agricultural Investment-Fund II was formed to capitalize and
5 control Mr. DeCoster’s businesses and investments. Attached hereto as Exhibit 6
6 are excerpts from the transcript of the deposition of Wayne Cummings in support
7 of Paragraphs 42-63.

8 **43.** Idaho Agri Investments, LLC, Idaho Dairy Holdings, LLC, and Dry Creek
9 Dairies, LLC are Idaho limited liability companies that were capitalized and
10 financed by DeCoster Enterprises, LLC through Agricultural Investment-Fund II,
11 LLC. Agricultural Investment-Fund II, LLC is the sole member of Idaho Agri
12 Investments, LLC, Idaho Dairy Holdings, LLC, and Dry Creek Dairies, LLC
13 (collectively “Dry Creek”).

14 **44.** Washington Dairy Holdings, LLC, Washington Agri Investments, LLC, and
15 DBD Washington, LLC all formed and commenced operations on September 1,
16 2016. Idaho Agri Investments, LLC is the sole member of Washington Agri
17 Investments, LLC. Idaho Dairy Holdings, LLC is the sole investor in Washington
18 Dairy Holdings, LLC. Dry Creek Dairies, LLC is the sole investor in DBD
19 Washington, LLC. Washington Dairy Holdings, LLC, Washington Agri
20 Investments, LLC, and DBD Washington, LLC were all financed and capitalized

1 from funds transferred by DeCoster Enterprises, LLC. Upon information and
 2 belief, the following chart depicts the present ownership and control structure of
 3 DeCoster Enterprises, LLC:

DeCoster Enterprises, LLC's Dairy Network



14 **45.** SMD, LLC formed and commenced operations on March 1, 2018.

15 Washington Agri-Investments, LLC is the Governor and sole member of SMD,
 16 LLC. Washington Agri Investments, LLC used funds from DeCoster Enterprises,
 17 LLC to finance the purchase of and capitalize SMD, LLC, at the direction of Mr.
 18 DeCoster.

19 **46.** Wayne Cummings is an employee of DeCoster Enterprises, LLC. Wayne
 20 Cummings has been an employee of DeCoster Enterprises, LLC for at least the

1 past two decades. Wayne Cummings is identified as the manager of 1) Idaho Agri
2 Investments, LLC, 2) Idaho Dairy Holdings, LLC, 3) Dry Creek Dairies, LLC, 4)
3 Washington Agri Investments, LLC, 5) Washington Dairy Holdings, LLC, 6) DBD
4 Washington, LLC, 7) SMD, LLC, and 8) Agricultural Investment-Fund II, LLC.

5 **47.** Mr. Cummings acknowledges that he is manager in title only. Mr.
6 Cummings receives authorization to act on behalf of all the Defendant LLCs from
7 Mr. DeCoster.

8 **48.** 1) Idaho Agri Investments, LLC, 2) Idaho Dairy Holdings, LLC, 3) Dry
9 Creek Dairies, LLC, 4) Washington Agri Investments, LLC, 5) Washington Dairy
10 Holdings, LLC, 6) DBD Washington, LLC, 7) SMD, LLC, and 8) Agricultural
11 Investment-Fund II, LLC do not hold annual meetings or operate as distinct
12 corporate entities.

13 **49.** 1) Idaho Agri Investments, LLC, 2) Idaho Dairy Holdings, LLC, 3) Dry
14 Creek Dairies, LLC, 4) Washington Agri Investments, LLC, 5) Washington Dairy
15 Holdings, LLC, 6) DBD Washington, LLC, 7) SMD, LLC, and 8) Agricultural
16 Investment-Fund II, LLC operate under the control and direction of DeCoster
17 Enterprises, LLC.

18 **50.** Mr. DeCoster and DeCoster Enterprises, LLC retain ultimate authority and
19 control over decision at the DBD-SMD dairies related to: 1) real estate transactions
20 and acquisitions; 2) financial transfers and expenditures, including payroll; 3)

1 hiring and/or firing consultants; 4) capital improvements related to manure
2 management, storage, treatment, transportation, and disposal; 5) receiving and
3 certifying state and federal regulatory documents related to manure management;
4 6) purchasing and selling cattle; and 7) acquisition of commodities, such as feed.

5 **51.** Mr. DeCoster implements many of his decisions through Mr. Cummings.
6 Mr. DeCoster regularly communicates with Mr. Cummings via phone for decisions
7 concerning the Dairies.

8 **52.** Mr. DeCoster and DeCoster Enterprises, LLC receive financial transfers
9 from DBD-SMD dairies from selling milk and/or culling the herd. DeCoster
10 Enterprises, LLC transfers funds to: 1) Idaho Agri Investments, LLC, 2) Idaho
11 Dairy Holdings, LLC, 3) Dry Creek Dairies, LLC, 4) Washington Agri
12 Investments, LLC, 5) Washington Dairy Holdings, LLC, 6) DBD Washington,
13 LLC, 7) SMD, LLC, and 8) Agricultural Investment-Fund II, LLC regularly to
14 cover payroll and operating expenses. All financial transactions are authorized by
15 Mr. DeCoster.

16 **53.** On or around June 1, 2017, Washington Dairy Holdings, LLC, Washington
17 Agri-Investments, LLC, and DBD Washington, LLC purchased the integrated
18 dairy operations previously known as DeRuyter Brothers Dairy, including the dairy
19 facilities located at or near 5111 Van Belle Road, Outlook, WA (“DBD”), the
20 “Heifer Ranch” located at or near 1420 and 1270 Outlook Road, Outlook, WA

1 98938, approximately 750 acres of agriculture land around the DBD facility, cattle,
2 rolling stock, and dairy equipment.

3 **54.** Mr. DeCoster negotiated, approved, and authorized this purchase. Upon
4 information and belief, Mr. DeCoster is personally responsible for the financing of
5 this purchase.

6 **55.** Mr. DeCoster authorized the transfer of funds from DeCoster Enterprises,
7 LLC to Washington Dairy Holdings, LLC, Washington Agri-Investments, LLC,
8 and DBD Washington, LLC to accommodate the purchase of the DeRuyter
9 Brothers Dairy operation.

10 **56.** In March 2018, SMD, LLC purchased the dairy operation formerly known
11 as Snipes Mountain Dairy located at or near 211 Nichols Road, Outlook, WA
12 98938 (“SMD”).

13 **57.** Mr. DeCoster negotiated, approved, and authorized the Snipes Mountain
14 Dairy purchase.

15 **58.** Mr. DeCoster authorized the transfer of funds from DeCoster Enterprises,
16 LLC to Washington Agri Investments, LLC to accommodate the purchase of
17 Snipes Mountain Dairy.

18 **59.** Washington Dairy Holdings, LLC owns and operates the real property and
19 DBD dairy facility located at or near 5111 Van Belle Road, Outlook, WA 98938,
20 including, but not limited to, the milking parlor, freestall barns, cow pens, compost

1 area, and wastewater infrastructure. Washington Dairy Holdings, LLC’s DBD
2 facility treats and stores manure and wastewater generated at DBD and SMD. After
3 treatment and storage, Washington Dairy Holding, LLC’s DBD facility disposes of
4 the manure and wastewater by applying amounts in excess of agronomic needs or
5 amounts that crops may use to land owned by Washington Agri Investments, LLC
6 and SMD, LLC.

7 **60.** Washington Dairy Holdings, LLC owns and operates the “Heifer Ranch”
8 located at or near 1420 Outlook Road, Outlook, WA 98938 and 1270 Outlook
9 Road, Outlook, WA 98938. The Heifer Ranch houses heifers from and for both
10 DBD and SMD dairy facilities.

11 **61.** Washington Agri-Investments owns and operates approximately 750 acres
12 of agriculture fields located around DBD dairy facility. Washington Dairy
13 Holdings, LLC’s DBD facility uses Washington Agri Investment, LLC’s land to
14 discard solid waste generated by DBD and SMD.

15 **62.** DBD and SMD are large dairy CAFOs under federal and state law. 40
16 C.F.R. § 412.2; WAC 173-224-030.

17 **63.** DBD and SMD dairies operate as one operational CAFO controlled by Mr.
18 DeCoster and DeCoster Enterprises, LLC.

1 **64.** As of July 24, 2018, DBD had a herd size of at least 6912 animals, including
2 5544 milking cows, 765 dry cows, 514 heifers, and 89 calves. These animals are
3 confined 365 days per year.

4 **65.** As of January 2, 2019, SMD had a herd size of at least 1947 animals,
5 including 1475 milking cows, 397 heifers, and 75 calves.

6 **66.** Upon information and belief, there are two main aquifers underlying the
7 Dairies and the surrounding area. These aquifers include a surficial unconfined to
8 semi-confined alluvial aquifer and an extensive basalt aquifer of great thickness
9 underlying sedimentary deposits. Groundwater flows through the surficial aquifer
10 in a manner that generally follows surface topography. Groundwater flows through
11 the upper portion of the underlying basalt aquifer in a manner that also generally
12 follows surface topography.

13 **67.** Upon information and belief, the groundwater beneath the SMD and DBD
14 dairies is as shallow as five feet below ground surface ("bgs").

15 **68.** Plaintiffs' members and their neighbors and friends obtain groundwater from
16 one or both of these aquifers.

17 ***Manure Storage Practices***

18 **69.** It is estimated that DBD produces approximately 75,000,000 gallons of
19 liquid waste and 36,864 tons of solid waste annually. It is estimated that SMD
20

1 produces approximately 12,000,000 gallons of liquid waste and 17,619 tons of
2 solid waste annually.

3 **70.** Before May 8, 2019, the Dairies operated their manure storage practices
4 separately. DBD and SMD flushed their alleys, free stall barns, and milking parlors
5 of liquid manure and wastewater into collection pits. The Dairies then piped the
6 liquid manure, litter, and wastewater to solids separators. Solid manure, litter (i.e.,
7 bedding from pens), and other waste was stored and/or composted at both of the
8 Dairies on permeable surfaces. DBD stores the liquid manure wastes generated by
9 its herd in one of its five manure storage lagoons. Before November 30, 2019,
10 SMD stored the liquid manure wastes generated by its herd in one of its four
11 manure storage lagoons. Wastes are placed in these lagoons until such time they
12 are applied to fields through various land-application techniques, including dry
13 spreaders, spreaders, and sprinklers/irrigation.

14 **71.** Upon information and belief, DBD's five manure storage lagoons are
15 unlined or inadequately lined, and are without an appropriate leak detection system
16 to prevent the downward migration and seepage of wastewater into groundwater.
17 Upon information and belief, SMD's four manure storage lagoons are unlined or
18 inadequately lined, and are without an appropriate leak detection system to prevent
19 the downward migration and seepage of wastewater into groundwater.

1 **72.** DBD's five lagoons have an estimated holding capacity of approximately
2 35,447,485 gallons. SMD's four lagoons had an estimated holding capacity of
3 approximately 9,290,240 gallons.

4 **73.** On or around May 8, 2019, DBD and SMD consolidated their liquid manure
5 management processes. SMD began and presently continues to transport its liquid
6 manure via truck to DBD, where it is stored in one of DBD's five lagoons, or to an
7 agriculture field where it is directly applied by DBD.

8 **74.** On or around June 15, 2019, DBD and SMD consolidated their solid manure
9 management processes. SMD began and presently continues to haul its solid
10 manure to the DBD compost area, where it is stored on impermeable surfaces, or to
11 agriculture field(s) where it is directly applied by DBD.

12 **75.** On or around November 30, 2019 SMD closed its four settling lanes and
13 SMD Lagoons 1 and 2. SMD transported the liquid manure waste to DBD Lagoon
14 5.

15 **76.** Upon information and belief, SMD failed to follow any abandonment or
16 decommissioning guidance or regulations for waste storage lagoons.

17 **77.** Upon information and belief, SMD bulldozed and backfilled the lagoons
18 with contaminated soil.

19 **78.** Upon information and belief, soil contaminated with pollutants remains on
20 top of and beneath the previously used SMD Lagoons 1, 2, and 3.

1 **79.** As of November 2019, DBD stores, composts, transports, applies, and
2 disposes of SMD's liquid and solid manure waste.

3 **80.** DBD and SMD's manure lagoons are constructed above an aquifer that
4 serves as a domestic water supply. Upon information and belief, the DBD and
5 SMD manure storage lagoons do not meet NRCS standards. Under any
6 circumstances, the DBD and SMD manure storage lagoons leak to groundwater.

7 **81.** The NRCS standards for manure storage lagoons are not designed to protect,
8 nor are capable of protecting, human health or the environment. These standards
9 are not scientifically established to protect groundwater and specifically allow for
10 lagoons to seep and/or leak manure wastes into the environment.

11 **82.** Upon information and belief, the NRCS standards for municipal wastewater
12 treatment plant lagoons are more protective of groundwater than those for manure
13 lagoons. Municipal lagoons are required to be lined with, at the very least,
14 synthetic, geomembrane liners. This is true even though municipal waste contains
15 far less concentrated effluent than the effluent generated by dairies such as DBD
16 and SMD.

17 **83.** Upon information and belief, seepage from the manure waste storage areas
18 has been ongoing since the date these storage areas were brought into operation.

19 **84.** Public records indicate that the groundwater underlying the Dairies exceeds
20 the Federal and State Ground Water Quality Standards for nitrate (10 mg/L), and

1 show that wells tested in the area, including at the nearby Outlook School, have
2 tested in excess of 10 mg/L nitrate.

3 **85.** The seepage of manure waste from the lagoons has contributed and is
4 contributing to the excessive contamination of groundwater, which is posing, or
5 may pose, an imminent and substantial endangerment to human health or the
6 environment.

7 **86.** DBD and SMD do not, and cannot, use manure nutrients that seep and/or
8 leak from their manure storage lagoons into the environment as crop fertilizers.

9 **87.** DBD and SMD's storage and/or composting of solid manure on permeable
10 surfaces causes leachate from the solid manure to enter groundwater, further
11 contributing to the contamination of groundwater.

12 **88.** DBD and SMD do not, and cannot, use manure nutrients that seep and/or
13 leach through storage and/or composting areas into the environment as crop
14 fertilizers.

15 **89.** DBD and SMD do not remove animal wastes, including manure and urine,
16 from their animal confinement pens. These wastes are allowed to accumulate
17 within the pens, where they seep and/or leach through the soil and into the
18 underlying aquifer.

1 **90.** DBD and SMD do not, and cannot, use manure nutrients that seep and/or
2 leach through animal confinement pens and into the environment as crop
3 fertilizers.

4 **91.** Upon information and belief, DBD and SMD store silage on permeable
5 surfaces, where the nutrients contained there also migrate through the soil and into
6 the underlying aquifer, further exacerbating the contamination of the soil and
7 aquifer.

8 **92.** Manure that has been permitted to leach, leak, or otherwise contaminate the
9 groundwater, such as from a leaking lagoon, solid manure storage area, animal
10 confinement pen, agricultural field, compost storage area, or other permeable
11 surface, is a “discarded material” from an “agricultural operation” and is therefore
12 a “solid waste” under Section 1004(27) of RCRA. 42 U.S.C. § 6903(27).

13 **93.** DBD and SMD’s improper manure storage practices have caused irreparable
14 injury to the environment, contaminating soils and groundwater with excessively
15 high levels of nitrates, phosphorus, and other pollutants, including but not limited
16 to pharmaceutical products.

17 *Manure Application Practices*

18 **94.** Upon information and belief, the Dairies and/or their agents have applied,
19 continue to apply, and are reasonably likely to continue to apply liquid and solid
20

1 manure wastes to nearby agricultural fields in amounts that exceed agronomic
2 rates.

3 **95.** Elevated nutrient levels found in soils receiving manure are evidence of
4 manure applications in excess of agronomic rates.

5 **96.** Soil tests submitted to the Washington State Department of Ecology and
6 Washington Department of Agriculture show elevated nutrient levels of both
7 nitrate and phosphorus at DBD. For Fall 2017 sampling results, 11 of the fields to
8 which DBD applies nutrients showed nitrate levels greater than 400 lbs./acre in the
9 top three feet of the soil column, with four fields exhibiting nitrate levels
10 exceeding 600 lbs./acre in the top three feet of the soil column. Additionally, in
11 Fall 2017, all but four of DBD's fields recorded greater than 100 ppm phosphorus.

12 **97.** Soil tests submitted to the Washington Department of Ecology from Fall
13 2018 showed an even greater increase in elevated nutrients in the top three feet of
14 the soil column of DBD. In fact, at least two of DBD's fields to which it applies
15 manure showed nitrate levels exceeding 1,600 lbs./acre in the top three feet of the
16 soil column. In total, for Fall 2018, the number of DBD's fields exhibiting at least
17 600 lbs./acre of nitrate or in the top three feet of soil more than doubled.

18 **98.** According to DBD's 2018 Annual Report, DBD applied manure and
19 nutrients beyond agronomic rates to at least twelve fields for which its own
20 agronomist recommended zero or minimal nutrient applications.

1 **99.** Soil tests submitted by SMD in 2018 show excessively high levels of nitrate
2 in the top three feet of the soil column. Fields 1, 3, and 5 showed elevated nitrate
3 levels ranging from 500 lbs./acre increasing to values as high as 800 lbs./acre in
4 the top three feet.

5 **100.** According to SMD's Annual Report, SMD applied manure and nutrients
6 beyond agronomic rates to least three fields for which its own agronomist
7 recommended zero or minimal applications.

8 **101.** Upon information and belief, the elevated nutrients found in both DBD and
9 SMD's fields are the result of application of manure in excess of agronomic rates.

10 **102.** Applications of manure nutrients above and beyond what a specific crop can
11 uptake as fertilizer causes excess nutrients to move past the crop's root zones,
12 where they will migrate into the groundwater. Such nutrients, including but not
13 limited to nitrate and phosphorus, are lost to the environment and, consequently,
14 cannot be used by DBD and SMD for fertilization purposes.

15 **103.** Upon information and belief, the over-application of liquid manure above
16 agronomic rates has been ongoing since the date DBD and SMD commenced
17 operations.

18 **104.** Beginning in 2017 and continuing each crop year thereafter, Defendants
19 applied manure to their agricultural fields in amounts that exceeded the agronomic
20 recommendations of Defendants' agronomist.

1 **105.** In dozens of instances, Defendants applied manure to their agricultural fields
2 even though their agronomist determined that no additional fertilization was
3 necessary for the crops being grown.

4 **106.** Beginning in 2017 and continuing each crop year thereafter, Defendants
5 applied millions of gallons of liquid manure to their agricultural fields, even
6 though the crops being grown did not require any additional fertilization.

7 **107.** Applications of manure waste above agronomic rates cause manure
8 nutrients, including, but not limited to, nitrates, and sometimes phosphorus, to
9 leach through the soil and into groundwater. Other pollutants such as
10 pharmaceutical products may also be present in soil and groundwater as a result of
11 over-applications.

12 **108.** The surface soils to which DBD applies, Warden, Senlac, and Esquatzel soil
13 series, have a high saturated hydraulic conductivity. All three of these soils are
14 classified as “well drained” and have a saturated hydraulic conductivity in the
15 range of 1.1 to 4.0 feet per day, exhibiting a “moderately high to high” capacity to
16 transmit water.

17 **109.** The surface soils to which SMD applies, the Esquatzel, Outlook, Sinloc, and
18 Warden soil series, have a saturated hydraulic conductivity in the range of 1.1 to
19 4.0 feet per day, which is characterized as “moderately high to high.”
20

1 **110.** The well-drained nature of these soils along with the high hydraulic
2 conductivity make for highly susceptible soil conditions for groundwater
3 contamination and very low potential for denitrification to decrease nitrate
4 contamination of groundwater.

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

9 **112.** Plants can uptake nitrate and nitrite only in limited quantities. Quantities of
10 nitrate and nitrite in the soil in excess of concentrations that can be used by the
11 currently active crop migrate into the vadose zone and the water table, where they
12 adversely impact groundwater 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 **113.** Once nitrates enter the vadose zone, the area below the soil surface from the
17 end of the vegetative root zone to the beginning of the groundwater table, they
18 migrate down to the nearest groundwater.

1 **114.** Once nitrates enter the water table, they migrate away from DBD and
2 SMD's property and into the wells of nearby residents depending on the depth and
3 flow direction of the initial receiving groundwater.

4 **115.** DBD and SMD know or should know that application of manure above
5 agronomic rates – that is, application above which the current or planned crop can
6 effectively utilize – will cause manure nutrients, including, but not limited to,
7 nitrate and phosphorus, to pass through soils before they can be utilized by the
8 planned or active crops into groundwater. This renders the manure incapable of
9 serving its intended purpose as a fertilizer. Phosphorus also runs off the surface
10 during storm events and into surface waters, causing eutrophication and other
11 adverse effects to surface waters, plants, and wildlife.

12 **116.** Manure that has been over-applied on fields and permitted to leach, leak, or
13 otherwise contaminate the groundwater is a “discarded material” from an
14 “agricultural operations,” and is therefore a “solid waste” under Section 1004(27)
15 of RCRA. 42 U.S.C. § 6903(27).

16 **117.** DBD and SMD's improper manure application practices have caused
17 irreparable injury to the environment, contaminating soils and groundwater with
18 excessively high levels of nitrate and other pollutants, including but not limited to
19 pharmaceutical products.

20 *Contamination of Groundwater in Excess of MCL*

1 **118.** The practices mentioned in the preceding paragraphs, which are hereby
2 incorporated herein, are causing or contributing to groundwater contamination
3 beyond the federal MCL for nitrate.

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

9 **120.** High levels of nitrate in water can also cause a blood disorder in infants
10 known as methemoglobinemia (“blue baby syndrome”) that can be fatal if left
11 untreated.

12 **121.** Methemoglobinemia is a blood disorder in which an abnormal amount of
13 methemoglobin – a form of hemoglobin – is produced. Hemoglobin is the
14 molecule in red blood cells that distributes oxygen to the body. Methemoglobin
15 cannot release oxygen. In methemoglobinemia, the hemoglobin is unable to release
16 oxygen effectively to body tissues.

17 **122.** High nitrate levels may also affect pregnant women and adults with
18 hereditary cytochrome b5 reductase deficiency.

19 **123.** In addition, nitrate and nitrite ingestion in humans has been linked to
20 goitrogenic (anti-thyroid) actions on the thyroid gland (similar to perchlorate),

1 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal
2 reproductive complications including spontaneous abortion.

3 **124.** Ingestion of nitrates in excess of the MCL is also suspected of causing
4 various forms of cancer in the general exposed population, including a variety of
5 carcinogenic outcomes deriving from N-nitrosamines formed via gastric nitrate
6 conversion in the presence of amines, and compromises the health of immune-
7 compromised individuals and the elderly.

8 **125.** The MCLs are health-based standards that specify contaminants known to
9 have an adverse effect on human health at levels beyond the parameters set forth
10 by regulations.

11 **126.** Water samples taken from residential wells surrounding the Dairies show
12 elevated levels of nitrate in the groundwater.

13 **127.** Upon information and belief, the highest levels of nitrate generally occur in
14 the shallow alluvial aquifer. Plaintiffs' members and other residents have installed
15 domestic wells for drinking water that intersect the shallow aquifer.

16 **128.** DBD and SMD's storage and application of manure has caused nitrate
17 contamination of these residential wells, forcing Plaintiffs' members and other
18 residents to either consume unsafe drinking water or to obtain alternative sources
19 of drinking water.

20 **CAUSES OF ACTION**

1 **Count I: RCRA Imminent and Substantial Endangerment**

2 **129.** Plaintiffs incorporate by reference the allegations of the preceding
3 paragraphs of this Complaint.

4 **130.** Since at least November 16, 2017, Defendants have been discarding manure,
5 and pharmaceutical products in the manure, which are “solid wastes” under
6 Section 1004 of RCRA, 42 U.S.C. § 6903(27), because the manure is, either when
7 over-applied or leaked through holding areas, a discarded solid, liquid, and/or
8 semi-solid material resulting from an agricultural operation.

9 **131.** Defendants are the past and present owners or operators of a solid waste
10 storage or disposal facility. As indicated above, manure is stored and disposed of in
11 massive earthen pits and other holding structures, and over-applied to agricultural
12 fields. As a result, Defendants contribute to the past or present handling, storage,
13 and disposal of a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

14 **132.** Defendants are past and present generators of manure and other by-product
15 wastes. Manure is “handled” and “transported” by the Defendants, as well as
16 disposed of on land owned or leased by Defendants. *Id.*

17 **133.** Defendants’ handling, transportation, storage, and disposal of manure may
18 present an imminent and substantial endangerment to public health and/or the
19 environment.

1 **134.** Specifically, as alleged above, groundwater contamination levels under
2 DBD and SMD’s land, and down-gradient from DBD and SMD’s land and
3 facilities, have contamination levels that exceed the maximum safe consumption
4 limits established under state and federal law, establishing a case of imminent and
5 substantial endangerment to public health and/or the environment.

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

11 **136.** The Washington Water Quality Standards were promulgated to protect
12 groundwater and human health pursuant to Washington Water Pollution Control
13 Act. RCW 90.48.

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

18 **138.** Federal regulations prohibit a facility or practice from contaminating an
19 underground drinking water source. 40 C.F.R. § 257.3-4(a). “Contamination”
20 occurs when a facility or practice introduces a toxic substance that causes the

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

3 **139.** The past and continuing practices of Defendants have caused contamination
4 and continue to contaminate groundwater to levels that exceed the maximum limits
5 for safety established under state and federal law. These practices present an
6 imminent and substantial endangerment to public health and/or the environment.
7 Specifically, Defendants are polluting groundwater to the extent that it is
8 hazardous to health and the environment.

9 **140.** Pursuant to RCRA Section 7002, Defendants are subject to an injunction
10 under RCRA ordering them to cease and abate any past or present handling,
11 storage, treatment, and/or transportation of any solid waste or hazardous waste that
12 may present an imminent and substantial endangerment to public health and/or the
13 environment.

14 **141.** Plaintiffs' interests are harmed and will continue to be harmed by this
15 imminent and substantial endangerment and by Defendants' failure to abate the
16 endangerment unless the Court grants the relief herein sought.

17 **Count II: RCRA Illegal Open Dumping**

18 **142.** Plaintiffs incorporate by reference the allegations of the preceding
19 paragraphs of this Complaint.

1 **143.** DBD constitutes an “open dump” under RCRA Section 1004(14). 42 U.S.C.
2 § 6903(14). SMD constitutes an “open dump” under RCRA Section 1004(14). 42
3 U.S.C. § 6903(14).

4 **144.** Defendants’ solid waste disposal practices cause groundwater concentration
5 levels of nitrates and other pollutants to exceed the limits set forth in Appendix I of
6 40 C.F.R. Part 257, which constitutes illegal open dumping, and is considered to
7 pose a reasonable probability of causing adverse effects to health and the
8 environment.

9 **145.** Defendants store and dispose of manure at their facilities. The manure
10 constitutes an agricultural waste and a “solid waste” under Section 1004 of RCRA
11 because it is over-applied and/or improperly stored, and therefore constitutes a
12 discarded material under the statute. 42 U.S.C. § 6903(27).

13 **146.** The disposal of solid waste at DBD and SMD, including the fields DBD and
14 SMD use to apply manure, are causing the contamination of groundwater beyond
15 the solid waste boundary of the disposal sites to exceed the limits set forth in
16 Appendix I to 40 C.F.R. Part 257. Concentrations of nitrate as measured in the
17 aquifer have repeatedly exceeded the maximum contaminant level. This practice
18 constitutes an illegal open dumping.

19 **147.** Pursuant to Section 3008, Defendants are subject to an injunction under
20 RCRA ordering them to cease open dumping and remediate the environmental

1 contamination they have caused and/or contributed to, including widespread soil
2 and groundwater contamination. 42 U.S.C. § 6928.

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

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiffs CARE, Friends of Toppenish Creek, and CFS
7 respectfully request the Court enter a judgment:

- 8 a. Declaring that Defendants' past and/or present generation, handling,
9 storage, treatment, transportation, and/or disposal of solid waste
10 presents, or may present, an imminent and substantial endangerment
11 to public health or to the environment.
- 12 b. Declaring Defendants' storage and disposal of manure and its
13 incorporated nutrients, by-products, and pollutants constitutes illegal
14 open dumping.
- 15 c. Declaring Defendants to be jointly and severally liable for violating
16 RCRA.
- 17 d. Issuing a compliance order that requires Defendants to cease and
18 desist from storing manure on any portion of DBD and/or SMD's land
19 that Defendants have not first lined with synthetic liners and adequate
20 leak detection systems to prevent seepage of pollutants into

1 groundwater that may, whether by flow or diffusion, transmit such
2 pollutants outside Defendants’ property boundaries.

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

8 f. Issuing temporary and/or permanent injunctive relief against
9 Defendants, ordering them to identify and remediate the causes of the
10 imminent and substantial endangerment to the public health and
11 environment, and to cease all activities constituting illegal open
12 dumping.

13 g. Awarding Plaintiffs their reasonable attorneys’ and expert witnesses’
14 fees, and costs, incurred in bringing this litigation.

15 Dated: November 8, 2021.

16 Respectfully Submitted,

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