

Brad J. Moore, WSBA #21802  
Stritmatter Kessler Whelan Coluccio  
200 Second Ave. W.  
Seattle, WA 98119  
(206) 448-1777  
Brad@stritmatter.com

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

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

Plaintiffs,

v.

COW PALACE, LLC, a Washington  
Limited Liability Company,

Defendant.

Case No. CV-13-3016-TOR  
**COMPLAINT**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND  
FOR CIVIL PENALTIES**

**INTRODUCTION**

1. This is a citizen suit for declaratory and injunctive relief and for civil penalties against Defendant Cow Palace, LLC for violations of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42

1 U.S.C. § 6901 *et seq.* (“RCRA”), the Emergency Planning and Community Right-  
2 to-Know Act, 42 U.S.C. § 11001 *et seq.* (“EPCRA”), and the Comprehensive  
3 Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et*  
4 *seq.* (“CERCLA”) at Defendant’s two dairy facilities, respectively called Cow  
5 Palace I and Cow Palace II (hereinafter collectively referred to as “Cow Palace  
6 Dairy” or “Defendant”).

7 2. This civil action is brought pursuant to the citizen suit provisions of  
8 RCRA, 42 U.S.C. § 6972(a)(1) (A) and (B), EPCRA, 42 U.S.C. §  
9 11046(a)(1)(A)(i), and CERCLA, 42 U.S.C. § 9659(a)(1).

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

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

18 5. Plaintiffs also allege that Cow Palace Dairy’s failure to adequately report the  
19 release of reportable quantities of hazardous chemicals into the environment to the  
20 relevant emergency response commissions violates Section 103(a) of CERCLA

1 and Section 304 of EPCRA. 42 U.S.C. § 9603(a); 42 U.S.C. §11004.

2 6. Plaintiffs seek declaratory relief establishing that Cow Palace Dairy has  
3 violated RCRA, EPCRA, and CERCLA. Plaintiffs also seek injunctive relief  
4 directing Cow Palace Dairy to modify its handling, storage, treatment,  
5 transportation, and disposal of solid and hazardous waste such that these practices  
6 no longer present an imminent and substantial endangerment to health and the  
7 environment. Additionally, Plaintiffs seek injunctive relief obligating Cow Palace  
8 Dairy to remediate the environmental contamination it has caused and/or  
9 contributed to, including widespread soil and groundwater contamination, and to  
10 file the requisite reports under EPCRA and CERCLA with the relevant emergency  
11 response commissions. Finally, Plaintiffs request that the Court impose the  
12 appropriate civil penalties allowable under EPCRA and CERCLA against Cow  
13 Palace Dairy and to award Plaintiffs reasonable attorneys and expert witness fees  
14 and costs incurred in bringing this action.

### 15 **JURISDICTION**

16 7. This Court has subject matter jurisdiction over this lawsuit pursuant to  
17 Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), Section 326(c) of EPCRA, 42  
18 U.S.C. § 11046(c), and Section 310(c) of CERCLA, 42 U.S.C. § 9659(c).

19 8. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §  
20 1331 because this action arises under RCRA, EPCRA, CERCLA, and the

1 Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

2 9. On October 17, 2012, Plaintiffs gave notice of the violations and their intent  
3 to file suit to the Defendant, Defendant's registered agent, United States Attorney  
4 General, United States Environmental Protection Agency (EPA), EPA Region X,  
5 Washington State Office of the Governor, Washington State Office of the Attorney  
6 General, and Washington State Department of Ecology as required by Section  
7 7002(a) of RCRA, 42 U.S.C. § 6972(a), Section 310(d) of CERCLA, 42 U.S.C. §  
8 9659(d), and Section 326(d) of EPCRA, 42 U.S.C. § 11046(d).

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

#### 14 VENUE

15 11. Venue properly vests in this Court pursuant to Section 7002(a) of RCRA, 42  
16 U.S.C. 6972(a), Section 326(b)(1) of EPCRA, 42 U.S.C. § 11046(b)(1), and  
17 Section 310(b)(1) of CERCLA, 42 U.S.C. § 9659(b)(1), because the alleged  
18 violations of the aforementioned statutes occurred and continue to occur within the  
19 Eastern District of Washington.



**PARTIES**

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

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

14. Cow Palace Dairy is a “person” within the meaning of Section 1004(15) of RCRA, Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and under Section 326(7) of EPCRA, 42 U.S.C. § 11049(7).

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

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

1 17. CARE's organizational purposes are adversely affected by Cow Palace  
2 Dairy's violations of RCRA, EPCRA, and CERCLA. These violations have  
3 caused significant environmental contamination of the soil and groundwater and  
4 have prevented CARE and its members from obtaining information about the  
5 specific air pollutants emitted by Cow Palace Dairy on a daily basis. Furthermore,  
6 but for Cow Palace Dairy's unlawful actions, CARE would not have to spend as  
7 much of its resources on the environmental problems created by illegal discharges  
8 from individual large-scale industrial farming operations, and could direct these  
9 resources to other priorities.

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

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

1 Consequently, CARE's members have been forced to obtain, or  
2 should be obtaining but may not be able to afford, alternative sources  
3 of drinking water. CARE's members are concerned that consuming  
4 this water is harming or could harm them and their families' 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 breathe the air into which Cow Palace Dairy emits  
18 hazardous pollutants, including but not limited to ammonia. Such  
19 pollutants are known to have negative impacts on human health and  
20 cause noxious odors, adversely affecting CARE's members' interests.

1 d. Members of CARE have attempted to ascertain their potential  
2 exposure to hazardous air pollutants emitted from Cow Palace Dairy,  
3 but have been unable to do so because of Cow Palace Dairy's failure  
4 to report its releases under EPCRA and CERCLA. This lack of  
5 knowledge adversely affects CARE's individual members' abilities to  
6 make informed decisions on how to protect themselves and their  
7 families from exposure to hazardous levels of air pollutants, including  
8 but not limited to reportable quantities of ammonia.

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

20. CFS represents nearly 245,000 members throughout the country that support safe, sustainable and organic agriculture and regularly purchase organic products. CFS has approximately 10,000 members in the state of Washington. CFS members live, work, recreate, and grow food in, and consume food and water from, the Yakima Valley. The environmental, health, aesthetic, economic, and recreational interests of CFS's members have been and will continue to be adversely affected by Cow Palace Dairy's violations of RCRA, EPCRA, and CERCLA. CFS members support the public's right to choose food and crops not sourced from or by industrial farming practices, such as CAFOs. CFS's members are impacted by CAFOs through destructive discharges of CAFO pollution into groundwater, air and public waterways, which affects the suitability of drinking water and fish in these waterways for consumption.

21. CFS has attempted to ascertain the levels of hazardous air pollutants emitted from Cow Palace Dairy, but has been unable to do so because of the Dairy's failure to report its releases under EPCRA and CERCLA. This lack of knowledge affects CFS's ability to perform one of its essential functions and inform its members about the potential dangers from exposure to hazardous levels of air pollutants, including but not limited to reportable quantities of ammonia in the Yakima Valley.

22. At all relevant times, Plaintiffs were and are "persons" within the meaning

of Section 1004(15) of RCRA, Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and under Section 326(7) of EPCRA, 42 U.S.C. § 11049(7).

### **STATUTORY AND REGULATORY FRAMEWORK**

#### **A. RCRA**

23. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that citizens may commence a citizen suit against “any person,” “including any 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.”

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

25. 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 outline certain solid waste disposal practices which, if violated, pose a

1 reasonable probability of adverse effects on health or the environment. 40 C.F.R. §  
2 257.3.

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

8 27. Section 4005(a) of RCRA prohibits “any solid waste management practice  
9 or disposal of solid waste... which constitutes the open dumping of solid waste....”  
10 42 U.S.C. § 6945(a).

11 28. Under section 1004(3), “The term ‘disposal’ means the discharge, deposit,  
12 injection, dumping, spilling, leaking, or placing of any solid waste... into or on any  
13 land or water so that such solid waste or hazardous waste or any constituent thereof  
14 may enter the environment or be emitted into the air or discharged into any waters,  
15 including ground-waters.” 42 U.S.C. § 6903(3).

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

30. EPA criteria for solid waste disposal practices 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).

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

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

## **B. CERCLA**

33. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing regulations, 40 C.F.R. § 302.6(a), requires that any person in charge of a “facility” shall, as soon as he has knowledge of any release of a hazardous substance from such facility in a quantity equal to or exceeding the reportable quantity determined by EPA in any 24-hour period, immediately notify the National Response Center of such release.

34. Citizens may commence a citizen suit against facilities that fail to report



1 these releases, and may seek applicable civil penalties and injunctive relief. 42  
2 U.S.C. § 9659(a)(1) and (c). The applicable civil penalty for a violation of section  
3 103(a) is up to \$37,500 per day for each day during which the violation continues.  
4 42 U.S.C. § 9609(c)(1); 40 C.F.R. § 19.4.

5 35. The EPA establishes reportable quantities of hazardous substances pursuant  
6 to Section 102 of CERCLA. *Id.* § 9602. Ammonia is a hazardous substance under  
7 the CERCLA regulations. 40 CFR 302.4. The reportable quantity of ammonia is  
8 100 pounds per day. *Id.* Reportable releases include emissions into the ambient  
9 air, surface water and ground-water. 42 U.S.C. §§ 9601(8), (22).

10 36. Ammonia is a designated hazardous substance under CERCLA with a  
11 threshold reporting amount of 100 pounds per day. 40 C.F.R. § 302.4.

## 12 **C. EPCRA**

13 37. Section 304(a)(3) of EPCRA requires emergency notification of any release  
14 of a reportable quantity of a hazardous substance subject to the notification  
15 requirement of CERCLA. 42 U.S.C. § 11004.

16 38. The owner or operator of the facility where the release occurs must  
17 immediately notify the local emergency planning committee, if one is established  
18 pursuant to section 301(c) of EPCRA, and the State emergency planning  
19 commission. *Id.* at §§ 11001(c), 11004(b)(1); 40 C.F.R. § 355.40. The notice  
20 must include, *inter alia*, the chemical name of the released substance, an estimate

1 of the quantity of the substance released, and the time and duration of the release.

2 *Id.* at § 11004(b)(2). As soon as practicable thereafter, the owner or operator of the  
3 facility must provide a follow-up emergency notice to the same entities. *Id.* at §  
4 11004(c).

5 39. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), provides that, if a release  
6 requires notice under section 304(a) of EPCRA, 42 U.S.C. 11004(a), then the  
7 owner or operator shall as soon as practicable provide a written follow-up  
8 emergency notice as described in section 304(c).

9 40. Citizens may file a citizen suit against the owner or operator of a facility for  
10 failure to submit a follow-up emergency notice under section 304(c), and may seek  
11 applicable civil penalties and injunctive relief. 42 U.S.C. § 11046(a)(1)(A)(i) and  
12 (c). The applicable civil penalty for a violation of section 304(c) is up to \$37,500  
13 per day for each day during which the violation continues. 42 U.S.C. §  
14 11045(b)(3); 40 C.F.R. § 19.4.

15 41. Ammonia is a designated extremely hazardous substance under EPCRA with  
16 a threshold reporting quantity of 100 pounds per day. 40 C.F.R. Part 355, App. A.

17 **FACTS**

18 42. Cow Palace Dairy was founded by Bob and Bill Dolsen and commenced  
19 operations in 1972. The Dolsens are the owners of The Dolsen Companies, a  
20 Washington Limited Liability Company. The Dolsen Companies is the only

1 member of Cow Palace, LLC. Cow Palace Dairy is presently managed by Jeff  
2 Boivon.

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

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

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

14 ***Manure Storage Practices***

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

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

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

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

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

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

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

10 53. These lagoons have an estimated holding capacity of approximately 40.8  
11 million gallons.

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

20 55. Cow Palace Dairy's manure lagoons are constructed above an aquifer that

1 serves as a domestic water supply. Upon information and belief, Cow Palace  
2 Dairy's manure storage lagoons do not meet NRCS standards. Under any  
3 circumstances, Cow Palace Dairy's manure storage lagoons leak to groundwater.

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

7 57. Upon information and belief, seepage from the manure waste storage areas  
8 has been ongoing since the date these storage areas were brought into operation,  
9 some more than 20 years ago, and has been continuous for at least the past five  
10 years.

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

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

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

20 ***Manure Application Practices***

61. Upon information and belief, 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.

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

63. Approximately 82% of the surface soils to which Cow Palace Dairy applies manure are classified as “well drained” under NRCS standards.

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

65. Washington Department of Agriculture inspection reports from November 22, 2005 documented elevated phosphorus levels in soils receiving Cow Palace Dairy manure, indicating that the Dairy had applied manure in excess of agronomic rates. The report also cautioned the Dairy to “watch crop uptake rates” for nitrate, indicating that there were also elevated nitrate levels in fields receiving the Dairy’s manure.

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

1 67. Washington Department of Agriculture inspection reports from January 19,  
2 2011 have documented elevated phosphorus levels in soils receiving Cow Palace  
3 Dairy's manure, indicating that the Dairy has applied manure in excess of  
4 agronomic rates.

5 68. Upon information and belief, Washington Department of Agriculture  
6 inspection reports from 2012 have documented elevated nitrate levels in soils  
7 receiving Cow Palace Dairy's manure, indicating that the Dairy has applied  
8 manure in excess of agronomic rates.

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

11 70. According to Washington Department of Ecology records, Cow Palace  
12 Dairy was applying manure to a field on the NW corner of N Arms Road and  
13 Knowles Road on or about January 2, 2013. At the time, the field to which Cow  
14 Palace Dairy was applying manure was frozen and/or snow covered. According to  
15 an unidentified eyewitness of the application, manure had been applied in such  
16 quantities so as to create a "lake" of ponded manure.

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

1 72. According to records obtained from the Washington Department of  
2 Agriculture, on or about April 9, 2009, Greg Schuler, a former dairy inspector,  
3 filed a complaint alleging that Cow Palace Dairy was applying manure through a  
4 “big gun” to “Field #4A” in such quantities that the ponding of manure occurred.  
5 Field #4A is between 26-65 acres in size. The ponded area was approximately 10-  
6 20 feet wide and at least 12 inches deep.

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

12 74. Upon information and belief, Cow Palace Dairy’s DNMP prohibits  
13 applications on frozen and/or snow covered fields.

14 75. Applications of manure to frozen and/or snow covered fields creates  
15 pathways for manure to be discharged to surface and/or groundwater.

16 76. Applications of manure to frozen and/or snow covered fields are not  
17 agronomic.

18 77. Upon information and belief, Cow Palace Dairy’s DNMP prohibits  
19 applications when there is a potential for ponding to occur.  
20



1 78. Applications of manure which cause ponding to occur create pathways for  
2 manure to be discharged to surface and/or groundwater.

3 79. Applications of manure which cause ponding to occur are not agronomic.

4 80. Applications of manure waste above agronomic rates cause manure  
5 nutrients, including but not limited to nitrates, to leach through soil and into  
6 groundwater.

7 81. Once nitrates enter the vadose zone, the area below the soil surface from the  
8 end of the vegetative root zone to the beginning of a groundwater table, they  
9 migrate down to the nearest groundwater.

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

13 83. The contaminated shallow groundwater that likely discharges to surface  
14 waters include discharges into the Roza-Sunnyside Board of Joint Control Drains  
15 26.6, 27.2 and 28.0 and the Sunnyside Canal. The Joint Drains converge and  
16 discharge into the Granger Drain, which in turn then discharges to the Yakima  
17 River. The Sunnyside Canal discharges into the Yakima River. These waters are  
18 used by members of CARE and CFS and the general public for multiple purposes,  
19 including but not limited to recreation, human consumption, irrigation, and  
20 sustenance.

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

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

5 85. The practices mentioned in paragraphs 46-84 are causing or contributing to  
6 groundwater contamination beyond the federal Maximum Contaminant Level  
7 (“MCL”) for nitrates.

8 86. 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 87. The MCL for nitrate in groundwater is 10 milligrams per liter (mg/l) or 10  
12 parts per million (ppm).

13 88. Ingestion of nitrates above 10 mg/l is known to cause methemoglobinemia,  
14 or “blue baby syndrome,” in infants. Infants who ingest nitrates above the MCL  
15 may quickly become seriously ill and, if untreated, may die.

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

1 90. High nitrate levels may also affect pregnant women and adults with  
2 hereditary cytochrome b5 reductase deficiency. In addition, nitrate and nitrite  
3 ingestion in humans has been linked to goitrogenic (anti-thyroid) actions on the  
4 thyroid gland (similar to perchlorate), fatigue and reduced cognitive functioning  
5 due to chronic hypoxia, and maternal reproductive complications including  
6 spontaneous abortion.

7 91. 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 92. Samples taken by the EPA as part of its study entitled "Relation Between  
13 Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley,  
14 Washington," EPA-910-R-12-003 (September 27, 2012), indicate elevated levels  
15 of nitrate, potassium, magnesium, calcium, sodium, chloride, sulfate, barium, zinc,  
16 and industry-standard bovine pharmaceuticals in nearby residential wells  
17 downgradient from the "Dairy Cluster," which includes Cow Palace Dairy.  
18 Plaintiffs hereby incorporate by reference the content of the EPA study into this  
19 Complaint. The EPA study may be accessed at  
20

1 <[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)  
2 9-27-2012.pdf>.

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

8 94. Observed levels of nitrate in seven wells located downgradient of the Dairy  
9 Cluster, which includes Cow Palace Dairy (identified as WW-10 through WW-17),  
10 are all in excess of the 10 mg/l MCL and are as follows: Wells WW-11 through  
11 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  
12 mg/l, and 22.7 mg/l, respectively. *See* T. 20 in "Relation Between Nitrate in Water  
13 Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-  
14 R-12-003 (September 27, 2012).

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

1 96. EPA took additional groundwater samples on property adjacent to Cow  
2 Palace Dairy, both upgradient and downgradient in December 2012.

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

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

11 ***EPCRA & CERCLA Reporting Violations***

12 99. Upon information and belief, Plaintiffs assert that Cow Palace Dairy has  
13 released and continues to release more than one hundred (100) pounds per day of  
14 ammonia into the environment and has failed to provide adequate legal notice of  
15 reportable releases to the National Response Center in violation of CERCLA, 42  
16 U.S.C. § 9603(a). Any reports submitted by Defendant fail to meet the notice  
17 requirements established by law.

18 100. Defendant's operations release reportable quantities of ammonia under  
19 CERCLA. Consequently, under EPCRA and its implementing regulations,  
20

1 Defendant is required to provide notice of reportable releases to the appropriate  
2 federal, state and local emergency response officials.

3 101. Plaintiff is informed and believes that Defendant has released and continues  
4 to release more than one hundred (100) pounds per day of ammonia, the threshold  
5 release reporting requirement for this substance, into the environment and has  
6 failed to provide adequate and proper notice, including follow up written notice, to  
7 the appropriate entities including but not limited to the emergency coordinator for  
8 the local and State emergency planning committees.

9 102. The Washington State Dairy Federation, an industry trade group, has  
10 provided a Calculation Worksheet to all Washington dairies to be used in  
11 evaluating whether dairies need to report their emissions of ammonia to emergency  
12 responders under EPCRA and/or CERCLA.

13 103. According to a January 19, 2011 inspection report of Cow Palace Dairy,  
14 created and subsequently redacted by the Washington Department of Agriculture,  
15 the Dairy has over 6840 milking cows and between 700-1699 dry cows, 300-999  
16 heifers, and 2000-2999 calves housed at the facility. In total, Cow Palace Dairy  
17 had a herd size of at least 9,840 animals since January, 2011. Based on the  
18 Calculation Worksheet provided by the Washington State Dairy Federation, using  
19 9,840 animals as a "lower bound," Cow Palace Dairy is releasing at least 1574.4  
20 pounds of ammonia per day, well in excess of the 100lb/day reporting limit. Using

1 the “upper bound,” the Dairy is releasing at least 4732.2 pounds of ammonia per  
2 day, or 47 times more the minimum reporting threshold.

### 3 **CLAIMS FOR RELIEF**

#### 4 **COUNT I**

#### 5 **RCRA Imminent and Substantial Endangerment**

6 104. Plaintiffs incorporate by reference the allegations of the preceding  
7 paragraphs of this Complaint.

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

13 106. Cow Palace Dairy is the past and present owners or operators of a storage or  
14 disposal facility. As indicated above, manure is stored and disposed of in massive  
15 earthen pits and other holding structures. As a result, Defendant contributes to the  
16 past or present handling, storage, and disposal of a solid waste. RCRA, 42 U.S.C.  
17 § 6972(a)(1)(B).

18 107. Cow Palace Dairy is past and present generators of manure and other by-  
19 product wastes. Manure is “handled” and “transported” by the Defendant, as well  
20 as disposed of on land owned or leased by the Defendant. *Id.*

1 108. Defendant's handling, transportation, storage, and disposal of manure may  
2 present an imminent and substantial endangerment to public health and/or the  
3 environment.

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

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

15 111. The Washington Water Quality standards were promulgated to protect  
16 ground-water and human health pursuant to the Washington Water Pollution  
17 Control Act, RCW 90.48.

18 112. Promulgated pursuant to this statute, WAC 173-200-040(2)(a)  
19 provides: Groundwater concentrations shall not exceed the criteria listed in Table  
20



1, except as described in WAC 173-200-050 (3)(b). The ground-water protection standard for nitrate is the same as the federal MCL of 10 mg/l.

113. 40 C.F.R. § 257.3-4(a) prohibits a facility or practice from contaminating an underground drinking water source. “Contamination” occurs when a facility or practice introduces a toxic substance that causes the concentration of that substance in ground-water to exceed certain parameters listed in Appendix I to 40 C.F.R. § 257.3-4(a).

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

115. Pursuant to Section 7003, Cow Palace Dairy may be subject to an injunction under RCRA ordering it to cease and abate any past or present handling, storage, treatment, and/or transportation of any solid waste or hazardous waste that may

1 present an imminent and substantial endangerment to public health and/or the  
2 environment.

3 116. Plaintiffs' interests are harmed and will continue to be harmed by this  
4 imminent and substantial endangerment and by Defendant's failure to abate the  
5 endangerment unless the Court grants the relief sought herein.

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

8 117. Plaintiffs incorporate by reference the allegations of the preceding  
9 paragraphs of this Complaint.

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

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

17 120. Defendant stores and disposes of manure at the facilities. The manure  
18 constitutes an agricultural waste and a "solid waste" under section 1004 of RCRA  
19 because it is over applied and/or improperly stored. 42 U.S.C. § 6903(27).  
20

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

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

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

14 124. Plaintiffs' interests are harmed and will continue to be harmed by  
15 Defendant's open dumping unless the Court grants the relief sought herein.

16 **COUNT III**  
17 **Violations of CERCLA**

18 125. Plaintiffs incorporate by reference the allegations of the preceding  
19 paragraphs of this Complaint.  
20

1 126. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing  
2 regulations, 40 C.F.R. § 302.6(a), provide that any person in charge of an onshore  
3 facility shall, as soon as he has knowledge of any release of a hazardous substance  
4 from such facility in a quantity equal to or exceeding the reportable quantity  
5 determined by EPA in any 24-hour period, immediately notify the National  
6 Response Center of such release.

7 127. Defendant is the “person[s] in charge” of the facility under section 103 of  
8 CERCLA, 42 U.S.C. § 9603.

9 128. Cow Palace Dairy is an onshore facility within the meaning of section  
10 101(18) of CERCLA, 42 U.S.C. § 9601(18).

11 129. Defendant knew or should have known about their ammonia releases above  
12 reportable quantities from its facility for at least the past five years. 40 C.F.R. §  
13 302.4.

14 130. Under CERCLA and its implementing regulations, Cow Palace Dairy is  
15 required to provide notice of reportable releases to the National Response Center.

16 131. For at least the past five years, Cow Palace Dairy has released reportable  
17 quantities of ammonia, but has not submitted daily release reports to the National  
18 Response Center, in violation of CERCLA.

19 132. By releasing hazardous substances, including at least ammonia, and failing  
20 to file proper and timely reports of such releases to the National Response Center

1 as detailed herein, Cow Palace Dairy committed ongoing violations of CERCLA,  
2 42 U.S.C. § 9603(a).

3 133. Defendant's violations of section 103 of CERCLA are continuing.

4 134. Defendant's violations of the reporting requirements of CERCLA have been  
5 numerous and repeated. Because of this extensive history of reporting violations,  
6 Plaintiff believes and alleges that, without the imposition of appropriate civil  
7 penalties and issuance of an injunction, Defendant will continue to violate  
8 CERCLA's reporting requirements in section 103.

9 135. Pursuant to Sections 109 and 310 of CERCLA, 42 U.S.C. §§ 9609(c) and  
10 9659, Cow Palace Dairy is liable for civil penalties of up to \$37,500 per day of  
11 violation for their reporting violations.

12 136. Cow Palace Dairy may be subject to an injunction ordering it to cease its  
13 violations of CERCLA's reporting requirements in section 103.

14 137. Plaintiffs' members have been unable to determine the quantities of  
15 ammonia to which they may have been exposed. Plaintiffs' interests are harmed  
16 and will continue to be harmed by Cow Palace Dairy's refusal to submit timely and  
17 required CERCLA reports unless the Court grants the relief sought herein.

18 ///

19 ///

20 ///

**COUNT IV**  
**Violations of EPCRA**

138. Plaintiffs incorporate by reference the allegations of the preceding paragraphs of this Complaint.

139. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), provides that if a release of an extremely hazardous substance listed under section 302(a) of EPCRA, 42 U.S.C. § 11002(a), occurs from a facility at which a hazardous substance is produced, used or stored, and such release requires a notification under section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately provide notice as described in section 304(b) of EPCRA, 42 U.S.C. § 11004(b).

140. For at least the past five years, Cow Palace Dairy released reportable quantities of ammonia under CERCLA and the applicable regulations, 40 C.F.R. Part 355, App. A, but has not submitted required release reports or written emergency follow-up reports to the Local Emergency Planning Committee or Washington State Emergency Response Commission, in violation of EPCRA.

141. Cow Palace Dairy is a facility within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

142. Cow Palace Dairy knew or should have known of ammonia releases above reportable quantities from its facility for at least the past five years.

1 143. Consequently, under EPCRA and its implementing regulations, Cow Palace  
2 Dairy is required to provide timely notice of reportable releases to the appropriate  
3 State and local emergency response officials.

4 144. By releasing hazardous substances, including at least ammonia, and failing  
5 to timely report such releases to local and State emergency planning committees as  
6 detailed herein, Cow Palace Dairy has committed ongoing violations of EPCRA,  
7 42 U.S.C. § 11004.

8 145. Defendant's violations of section 304 of EPCRA are continuing.

9 146. Defendant's violations of the reporting requirements of EPCRA have been  
10 numerous and repeated. Because of this extensive history of reporting violations,  
11 plaintiff believes and alleges that, without the imposition of appropriate civil  
12 penalties and issuance of an injunction, Defendant will continue to violate  
13 EPCRA's reporting requirements in section 304.

14 147. Cow Palace Dairy may be subject to an injunction ordering it to cease its  
15 violations of EPCRA's reporting requirements in section 304.

16 148. Pursuant to Sections 325 and 326 of EPCRA 42 U.S.C. §§ 11045(b) and  
17 11046(a), Cow Palace Dairy is liable for civil penalties of up to \$37,500 per day of  
18 violation for its reporting violations of EPCRA.

19 149. Plaintiffs' members have been unable to determine the quantities of  
20 ammonia to which they may have been exposed. Plaintiffs' interests are harmed

1 and will continue to be harmed by Cow Palace Dairy's refusal to submit timely and  
2 required EPCRA reports unless the Court grants the relief sought herein.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiffs CARE and CFS respectfully request that the Court enter  
5 a judgment:

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

9 B. Declaring that Defendant's storage and disposal of manure and its  
10 incorporated by-products constitutes illegal open dumping.

11 C. Declaring that Defendant has violated and is in violation of the reporting and  
12 notification requirements as alleged under CERCLA in Count Three and as alleged  
13 under EPCRA in Count Four.

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

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



1 land, except surface water that flows as the direct result of snowmelt or a  
2 precipitation event, so that discharge 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 F. Issuing temporary and/or permanent injunctive relief against Defendant,  
6 ordering Defendant to cease all activities constituting the imminent and substantial  
7 endangerment to the public health and environment, and to cease all activities  
8 constituting illegal open dumping.

9 G. Issuing temporary and/or permanent injunctive relief against Defendant,  
10 ordering Defendant 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.

13 H. Issuing temporary and/or permanent injunctive relief against Defendant,  
14 ordering Defendant to design and implement a regular soil sampling protocol, such  
15 protocol to require sampling at one-foot intervals down to at least a four-foot  
16 depth.

17 I. Issuing temporary and/or permanent injunctive relief against Defendant,  
18 ordering Defendant to design and implement a groundwater monitoring program  
19 designed to detect the transport of dairy manure nutrients into groundwater.  
20

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

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

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

13 (c) developing and implementing an appropriate and effective remediation  
14 plan, based on the studies described in subparagraphs (a) and (b) above; and

15 (d) developing and implementing manure disposal and storage techniques in  
16 accordance to the scientific studies described in subparagraphs (a) and (b)  
17 above.

18 K. Ordering Defendant to operate its facility in accordance with the reporting  
19 and notification requirements of CERCLA and EPCRA.

20 L. Ordering Defendant to pay any appropriate civil penalties of up to \$37,500

per day that CERCLA and EPCRA violations have continued.

M. Ordering Defendant to pay Plaintiffs' reasonable attorneys' fees, expert witness fees, and costs incurred in prosecuting this action pursuant to 42 U.S.C. § 6972(e), 42 U.S.C. § 9659(f), 42 U.S.C. § 11046(f) and 28 U.S.C. § 2412(d); and

N. Ordering such other relief as the Court may deem just and proper, including pursuant to 42 U.S.C. § 6972(a)(1), 42 USC § 9659(c), and 42 U.S.C. § 11046(c).

Dated: February 14, 2013

Respectfully Submitted,

s/ Brad J. Moore

BRAD J. MOORE, WSBA #21802  
Stritmatter Kessler Whelan Coluccio  
200 Second Ave. W.  
Seattle, WA 98119  
Tel. 206.448.1777  
E-mail: Brad@stritmatter.com

*Counsel for Plaintiffs*

s/ Charles M. Tebbutt

CHARLES M. TEBBUTT  
Oregon State Bar No. 965790  
(pending admission to Washington State Bar)  
DANIEL C. SNYDER  
Oregon State Bar No. 105127  
(pro hac vice application pending)  
Law Offices of Charles M. Tebbutt, P.C.  
941 Lawrence St.  
Eugene, OR 97401  
Tel. 541.344.3505  
E-mails: charlie.tebbuttlaw@gmail.com  
dan.tebbuttlaw@gmail.com

*Counsel for Plaintiffs*

s/ Jessica L. Culpepper  
JESSICA L. CULPEPPER  
New York Bar Member  
*(pro hac vice application pending)*  
Public Justice  
1825 K Street NW, Ste. 200  
Washington, DC 20006  
Tel. 202.797.8600  
E-mail: jculpepper@publicjustice.net

*Counsel for Plaintiffs*

s/ Elisabeth A. Holmes  
ELISABETH A. HOLMES  
Oregon State Bar No. 120254  
*(pro hac vice application pending)*  
PAIGE M. TOMASELLI  
California State Bar No. 237737  
*(pro hac vice application pending)*  
Center for Food Safety, 2nd Floor  
303 Sacramento Street  
San Francisco, CA 94111  
Tel. 415.826.2770  
Emails:  
eholmes@centerforfoodsafety.org  
ptomaselli@centerforfoodsafety.org  
  
*Counsel for Plaintiff Center for Food  
Safety*

**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

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*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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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 calves<sup>4</sup>, 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.

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<sup>3</sup> See [http://nmpf.org/washington\\_watch/environment/cercla-epcra](http://nmpf.org/washington_watch/environment/cercla-epcra) (last visited October 15, 2012). The estimator is the Koelsch & Stowell Ammonia Emissions Estimator.

<sup>4</sup> 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  
Fax: (541) 344-3516  
charlie.tebbuttlaw@gmail.com  
dan.tebbuttlaw@gmail.com

Brad J. Moore  
Stritmatter Kessler Whelan Coluccio  
200 Second Ave W.  
Seattle, WA 98119  
Tel: (206) 448-1777  
Fax: (206) 728-2131

#### **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