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

7 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
8 ENVIRONMENT, INC., a Washington
non-profit corporation; FRIENDS OF
9 TOPPENISH CREEK, a Washington non-
profit corporation; *and*
10 CENTER FOR FOOD SAFETY, a
Washington, D.C. non-profit corporation,
11 Plaintiffs,
12 v.
13 SUNNYSIDE DAIRY, LLC, a Washington
limited liability company,
14 Defendant.

Case No. _____

COMPLAINT

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COMPLAINT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief against Defendant Sunnyside Dairy, LLC (hereinafter “Sunnyside” or “Defendant”) for violations of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”) at Sunnyside’s dairy facilities located at or near 4581 Maple Grove Road, Sunnyside, WA 98944.

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

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

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

5. Plaintiffs seek declaratory relief establishing that Sunnyside has violated RCRA. Plaintiffs also seek injunctive relief directing Sunnyside to modify its

1 handling, storage, treatment, transportation, and disposal of solid and hazardous
2 waste such that these practices no longer present an imminent and substantial
3 endangerment to health and the environment. Additionally, Plaintiffs seek
4 injunctive relief obligating Sunnyside to remediate the environmental
5 contamination it has caused and/or contributed to, including widespread soil and
6 groundwater contamination. Finally, Plaintiffs request the Court award Plaintiffs
7 reasonable attorneys' and expert witnesses' fees and costs incurred in bringing this
8 action.

9 JURISDICTION

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

12 7. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §
13 1331 because this action arises under RCRA and the Declaratory Judgment Act, 28
14 U.S.C. § 2201, *et seq.*

15 8. On February 28, 2019, Plaintiffs gave notice of the violations and of their
16 intent to file suit to Sunnyside, Sunnyside's registered agent, United States
17 Attorney General, United States Environmental Protection Agency ("EPA"), EPA
18 Region X, Washington State Office of Governor, Washington State Office of the
19 Attorney General, and Washington State Department of Ecology as required by
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1 Section 7002 (a) of RCRA, 42 U.S.C. § 6972(a). A copy of the notice letter is
2 attached hereto as Exhibit A and incorporated by reference.

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

8 10. Any administrative action undertaken by EPA or the State of Washington
9 does not address the relief requested by Plaintiffs that is necessary to abate the
10 imminent and substantial endangerment caused by Defendant's practices.

11 **VENUE**

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

15 **PARTIES**

16 12. Upon information and belief, Sunnyside Dairy, LLC is a Washington limited
17 liability company that owns and operates Sunnyside Dairy #1 and Sunnyside Dairy
18 #2. The dairy is located at or near 4581 Maple Grove Road, Sunnyside, WA
19 98944.

1 13. Sunnyside is a “person” within the meaning of Section 1004(15) of RCRA.
2 42 U.S.C. § 6903(15).

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

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

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

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

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

7 a. Members of CARE obtain their drinking water from aquifers that have
8 been contaminated with nitrates, phosphorus, and other pollutants,
9 including hormones and antibiotics, by Sunnyside's improper
10 handling, storage, treatment, transportation, and disposal of solid and
11 hazardous waste. As a result, drinking water that CARE's members
12 rely upon has been rendered unsafe for human consumption.

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

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

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

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

15 19. Plaintiff Friends of Toppenish Creek is a non-profit corporation organized
16 under the laws of the State of Washington.

17 20. Friends of Toppenish Creek is an organization composed of concerned
18 community members and is dedicated to protecting the rights of rural communities
19 and improving oversight of industrial agriculture. Friends of Toppenish Creek
20 works through public education, citizen investigations, research, legislation,

1 special events, and direct action. Friends of Toppenish Creek particularly devotes
2 itself to enhancing, preserving, protecting, and monitoring the groundwater in the
3 Yakima area.

4 21. Friends of Toppenish Creek's organizational goals are adversely affected by
5 Sunnyside's RCRA violations. Friends of Toppenish Creek works tirelessly to
6 protect the rights of communities against groundwater contamination caused by
7 industrial agriculture.

8 22. Friends of Toppenish Creek's members live in Yakima County and in close
9 proximity to Sunnyside. Friends of Toppenish Creek's members have been and
10 continue to be injured, and their interests adversely affected, by Sunnyside's
11 RCRA violations. For instance:

12 a. Friends of Toppenish Creek's members' aesthetic interests have been,
13 and will continue to be, adversely affected by Sunnyside's improper
14 manure storage and disposal. Friends of Toppenish Creek's members
15 have aesthetic interests in not seeing cow manure where it shouldn't
16 be. Sunnyside's compost piles, over-topping lagoons, and application
17 to frozen fields harm Friends of Toppenish Creek's members'
18 aesthetic interests.

19 b. Friends of Toppenish Creek's members have suffered actual and
20 threatened injuries to their health and safety caused by Sunnyside's

1 violations of RCRA, including provisions prohibiting manure stored
2 in lagoons from contaminating the underlying aquifer. Manure-
3 contaminated water has impacted and threatens to impact the safety of
4 members' drinking water wells and may cause detrimental health
5 effects if consumed

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

16 24. CFS represents nearly 245,000 members throughout the country that support
17 safe, sustainable, and organic agriculture and regularly purchase organic products.
18 CFS has approximately 10,000 members in the state of Washington. CFS members
19 live, work, recreate, and grow food in, and consume food and water from, the
20 Yakima Valley. The environmental, health, aesthetic, economic, and recreational

1 interests of CFS's members have been and will continue to be adversely affected
2 by Sunnyside's violations of RCRA. CFS members support the public's right to
3 choose food and crops not sourced from or by industrial farming practices, such as
4 CAFOs. CFS's members are impacted by CAFOs through destructive leakage and
5 leaching of CAFO pollution into groundwater, which affects the suitability of
6 drinking water for consumption.

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

9 **STATUTORY AND REGULATORY FRAMEWORK**

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

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

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

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

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

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

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

33. 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).

34. 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).

35. “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.

FACTS

36. All preceding paragraphs are incorporated herein.

37. Sunnyside Dairy, LLC is a Washington limited liability corporation formed on March 7, 2012 and dairy operations commenced on or around June 1, 2012.

1 Upon information and belief, Roberto Aquilini is an owner and member of
2 Sunnyside Dairy, LLC. Upon Information and belief, Sunnyside Dairy is currently
3 managed by Rosalio Brambila.

4 38. Sunnyside is a large dairy CAFO under federal and state law. 40 C.F.R. §
5 412.2; WAC 173-224-030.

6 39. As of August 30, 2018, Sunnyside has up to or more than a herd size of at
7 least 6550 animals, including at least 5700 milking cows, 700 dry cows, and 150
8 heifers. These animals are confined 365 days per year.

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

16 41. Plaintiffs' members obtain groundwater from one or both of these aquifers.

17 ***Manure Storage Practices***

18 42. It is estimated that Sunnyside produces approximately 40,000,000 gallons of
19 liquid waste and 20,000 tons of solid waste annually.

1 43. Sunnyside composts the solid manure wastes generated by its herd on-site.
2 Composted manure is then used as bedding at the facility or sold off-site.

3 44. Sunnyside flushes its alleys of manure, litter, and waste water into pits with
4 a solids separator.

5 45. Sunnyside may also move its manure through the solids separator into
6 settling basins. Ultimately, the manure is finally stored in unlined lagoons.

7 46. Solid manure, litter (i.e., bedding from pens), and other wastes are also
8 stored and/or composted at Sunnyside on permeable surfaces.

9 47. Sunnyside stores the liquid manure wastes generated by its herd in one of its
10 eight manure storage lagoons. Wastes are held in these lagoons until such time
11 they are applied to fields through various land-application techniques, including
12 dry spreaders, pivot application, spreaders, and sprinklers/irrigation.

13 48. Upon information and belief, Sunnyside's eight storage lagoons are unlined
14 or inadequately lined, and are without an appropriate leak detection system to
15 prevent the downward migration and seepage of wastewater into groundwater.

16 49. These lagoons have an estimated holding capacity of approximately 45.2
17 million gallons.

18 50. Sunnyside's manure lagoons are constructed above an aquifer that serves as
19 a domestic water supply.

1 51. Upon information and belief, Sunnyside's manure storage lagoons do not
2 meet NRCS standards.

3 52. Under any circumstances, Sunnyside's unlined or inadequately lined manure
4 storage lagoons leak manure and manure pollution to groundwater.

5 53. Upon information and belief, seepage from the manure waste storage areas
6 has been ongoing since the date these storage areas were brought into operation,
7 some more than 14 years ago, and has been continuous since put into operation.

8 54. Public records indicate that the groundwater underlying Sunnyside exceeds
9 the Federal and State Ground Water Quality Standards for nitrate (10 mg/l), and
10 show that the wells sampled in the area have tested in excess of 10 mg/l.

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

14 56. Sunnyside does not, and cannot, use manure nutrients that seep and/or leak
15 from their storage lagoons into the environment as crop fertilizers.

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

19 58. Sunnyside does not, and cannot, use manure nutrients that seep and/or leach
20 through storage and/or composting areas into the environment as crop fertilizers.

59. Sunnyside does not remove animal waste, including manure and urine, from their animal confinement pens. These wastes are allowed to accumulate within the pens, where they seep and/or leach through the soil and into the underlying aquifer.

60. Sunnyside does not, and cannot, use manure nutrients that seep and/or leach through animal confinement pens and into the environment as crop fertilizers.

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

62. Sunnyside’s improper manure storage practices have caused irreparable injury to the environment, contaminating soils and groundwater with excessively high levels of nitrates, phosphorous, and other pollutants, including, but not limited to, pharmaceutical products.

Manure Application Practices

63. Upon information and belief, Sunnyside 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.

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

65. Soil tests submitted to the Washington Department of Agriculture show elevated nitrate levels of both nitrate and phosphorus. For Fall 2017 sampling results, 18 of the fields to which Sunnyside applies nutrients showed nitrate levels greater than 45 ppm. Further, at least 551, but up to 900 acres, were at or above 45 ppm nitrate in three out of the last five years. Multiple fields, including, but not limited to, “Wades 01,” “60 acre,” “Orchard East,” and “Toms01 South” have shown excessive increases in nitrate levels since 2013.

66. Soil tests submitted to Washington Department of Agriculture show elevated nitrate and phosphorus again in 2018. For Fall 2018, 13 of the fields to which Sunnyside applies nutrients show nitrate levels above 45 ppm, with one field, “Tom02 West,” exhibiting a nitrate level as high as 214.7 ppm. 17 of Sunnyside’s application fields showed fall phosphorus levels at or above 100 ppm, with the “Orchard West” field containing 467 ppm phosphorus.

67. Upon information and belief, the elevated nutrients found in Sunnyside’s fields are the result of applying manure in excess of agronomic rates and crop fertilization needs.

1 68. Applications of manure waste above agronomic rates causes manure
2 nutrients, including, but not limited to, nitrates and phosphorus to leach through the
3 soil and into groundwater.

4 69. Upon information and belief, the over-application of liquid manure above
5 agronomic rates and crop needs has been ongoing since the date Sunnyside was
6 brought into operation.

7 70. The surface soils to which Sunnyside applies are well-drained and have a
8 high saturated hydraulic conductivity.

9 71. The well drained nature of these soils along with the high hydraulic
10 conductivity make for highly susceptible soil conditions for groundwater
11 contamination and very low potential for denitrification to decrease nitrate
12 contamination of groundwater.

13 72. Dairy effluent concentrations of ammonia and nitrate can be considerable, as
14 ammonia is produced by hydrolysis of waste fluids. Ammonia is rapidly converted
15 to nitrate when the manure encounters aerobic soils or groundwater. Due to their
16 high solubility, ammonia and nitrate can readily leach into groundwater.

17 73. Plants can only uptake nitrate, nitrite, and phosphorus in limited quantities.
18 Quantities of nitrate, nitrite, and phosphorus in the soil in excess of concentrations
19 which can be used by the currently active crop as fertilizer migrate into the vadose
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1 zone and the water table, where they adversely impact and pollute groundwater
2 quality and its use as a drinking water source.

3 74. Once nitrates enter the vadose zone, the area below the soil surface from the
4 end of the vegetative root zone to the beginning of the groundwater table, they
5 migrate down to the nearest groundwater.

6 75. Migration to the vadose zone and water table may also occur where well-
7 drained soils cannot hold the nitrate, nitrite, and phosphorus in the root zone for a
8 sufficient amount of time to allow for the crops' natural uptake process.

9 76. Migration to the vadose zone and water table may also occur when
10 Sunnyside irrigates their application fields, or when Sunnyside makes additional
11 manure applications, causing excess nitrate, nitrite, and phosphorus to be pushed
12 further down into the vadose zone and groundwater. Once nitrates enter the water
13 table, they migrate away from Sunnyside property and into the wells of nearby
14 residents depending on the depth and flow directing of the initial receiving
15 groundwater.

16 77. Sunnyside knows or should know that application of manure above
17 agronomic rates – that is, application above which the current or planned crop can
18 effectively utilize as fertilizer – will cause manure nutrients, including, but not
19 limited to, nitrate and phosphorous, to pass through soils before they can be
20

1 utilized by the planned or active crops into groundwater. This renders the manure
2 incapable of serving its intended purpose as a fertilizer.

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

7 79. Sunnyside’s improper manure application practices have caused irreparable
8 injury to the environment, contaminating soils and groundwater with excessively
9 high levels of nitrates and other pollutants.

10 *Contamination of Groundwater in Excess of MCLs*

11 80. The practices mentioned in the preceding paragraphs, which are hereby
12 incorporated, are causing or contributing to groundwater contamination beyond the
13 federal MCL for nitrates.

14 81. The EPA has determined that nitrates pose an acute health concern at certain
15 levels of exposure. Nitrate contained in drinking water are colorless and odorless.
16 Ingestion of nitrates, converted to nitrite in the body, interferes with the oxygen
17 carrying capacity of blood, potentially resulting cyanosis and, at higher levels,
18 asphyxia.

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

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

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

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

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

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

4 88. Water samples taken from groundwater monitoring wells on Sunnyside's
5 property and from residential wells surrounding Sunnyside's property show
6 elevated levels of nitrate in the groundwater.

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

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

14 **CAUSES OF ACTION**

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

16 91. Plaintiffs incorporate by reference the allegations of the preceding
17 paragraphs of this Complaint.

18 92. Since at least March 7, 2012, Sunnyside has been discarding manure, and
19 pharmaceutical products in the manure, which are "solid wastes" under Section
20 1004 of RCRA, 42 U.S.C. § 6903(27), because the manure is, either when over-

1 applied or leaked through holding areas, a discarded solid, liquid, and/or semi-solid
2 material resulting from an agricultural operation.

3 93. Sunnyside is the past and present owner or operator of a storage or disposal
4 facility. As indicated above, manure is stored and disposed of in massive earthen
5 pits and other holding structures. As a result, Sunnyside contributes to the past or
6 present handling, storage, and disposal of a solid waste. RCRA, 42 U.S.C.
7 § 6972(a)(1)(B).

8 94. Sunnyside is a past and present generator of manure and other by-product
9 wastes. Manure is “handled” and “transported” by the Defendant, as well as
10 disposed of on land owned or leased by Defendant. *Id.*

11 95. Sunnyside’s handling, transportation, storage, and disposal of manure may
12 present an imminent and substantial endangerment to public health and/or the
13 environment.

14 96. Specifically, as alleged above, groundwater contamination levels on
15 Sunnyside’s land, and down-gradient from Sunnyside’s land and facilities, have
16 contamination levels that exceed the maximum safe consumption limits established
17 under state and federal law, creating an imminent and substantial endangerment to
18 public health and/or the environment.

19 97. The National Primary Drinking Water Standards (“NPDWS”) are
20 established under the Safe Drinking Water Act (“SDWA”). 42 U.S.C. § 300f, *et*

1 *seq.* The NPDWS are health-based standards that specify contaminants known to
2 have an adverse effect on the health of person at levels beyond the parameters set
3 forth in the regulations. 42 U.S.C. § 300f(1)(B).

4 98. The Washington Water Quality Standards were promulgated to protect
5 groundwater and human health pursuant to Washington Water Pollution Control
6 Act. RCW 90.48.

7 99. Promulgated pursuant to this state, WAC 173-200-040(2)(a) provides
8 “Groundwater concentrations shall not exceed the criteria listed in Table 1, except
9 as described in WAC 173-200-050(3)(b). The groundwater protection standard for
10 nitrate is the same as the federal MCL of 10 mg/l.

11 100. Federal regulations prohibit a facility or practice from contaminating an
12 underground drinking water source. 40 C.F.R. § 257.3-4(a). “Contamination”
13 occurs when a facility or practice introduces a toxic substance that causes the
14 concentration of that substance in groundwater to exceed certain parameters listed
15 in Appendix I to 40 C.F.R. § 257.3-4(a).

16 101. The past and continuing practices of Sunnyside have caused and continue to
17 contaminate groundwater to levels that exceed the maximum limits for safety
18 established under state and federal law. These practices may, and do, present an
19 imminent and substantial endangerment to public health and/or the environment.
20

1 Specifically, Sunnyside is polluting groundwater to the extent that it is hazardous
2 to health and the environment.

3 102. Pursuant to RCRA Section 7002, Sunnyside may be subject to an injunction
4 under RCRA ordering it to cease and abate any past or present handling, storage,
5 treatment, and/or transportation of any solid waste or hazardous waste that may
6 present an imminent and substantial endangerment to public health and/or the
7 environment.

8 103. Plaintiffs' interests are harmed and will continue to be harmed by this
9 imminent and substantial endangerment and by Sunnyside's failure to abate the
10 endangerment unless the Court grants the relief herein sought.

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

12 104. Plaintiffs incorporate by reference the allegations of the preceding
13 paragraphs of this Complaint.

14 105. Sunnyside constitutes an "open dump" under RCRA Section 1004(14). 42
15 U.S.C. § 6903(14).

16 106. Sunnyside's solid waste disposal practices cause groundwater concentration
17 levels of nitrates and other pollutants to exceed the limits set forth in Appendix I of
18 40 C.F.R. Part 257, which constitutes illegal open dumping, and is considered to
19 pose a reasonable probability of causing adverse effects to health and the
20 environment.

1 107. Sunnyside stores and disposes of manure at the facilities. The manure
2 constitutes an agricultural waste and a “solid waste” under Section 1004 of RCRA
3 because it is over-applied and/or improperly stored, and therefore constitutes a
4 “discarded material under the statute. 42 U.S.C. § 6903(27).

5 108. The disposal of solid waste at Sunnyside, including the fields Sunnyside
6 uses to apply manure, are causing the contamination of groundwater beyond the
7 solid waste boundary of the disposal site to exceed the limits set forth in Appendix
8 1 to 40 C.F.R. Part 257. Concentrations of nitrate as measured in the aquifer have
9 repeatedly exceeded the maximum contaminant level. This practice constitutes
10 illegal open dumping.

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

15 110. Plaintiffs’ interests are harmed and will continue to be harmed by
16 Sunnyside’s open dumping unless the Court grants the relief herein sought.

17 **RELIEF REQUESTED**

18 WHEREFORE, Plaintiffs CARE, Friends of Toppenish Creek, and CFS
19 respectfully request the Court enter a judgment:
20

- a. Declaring that Sunnyside's past and/or present generation, handling, storage, treatment, transportation, and/or disposal of solid waste presents, or may present, an imminent and substantial endangerment to public health or to the environment.
- b. Declaring Sunnyside's storage and disposal of manure and its incorporated by-products constitutes illegal open dumping.
- c. Issuing injunctive and remedial relief requiring Sunnyside to undertake a RCRA Corrective Action Study to evaluate, monitor, and abate all sources of contamination.
- d. Issuing injunctive and remedial relief requiring Sunnyside to install, maintain, and routinely sample (at least monthly) a groundwater monitoring network. The network shall be designed and installed such that contributions from Sunnyside's operations to the existing groundwater contamination can be monitored and evaluated.
- e. Issuing injunctive and remedial relief requiring Sunnyside to cease and desist from storing manure in any type of manure storage lagoon, pond, pit, basin, or the like that Sunnyside has not first double-lined with synthetic liners and an appropriate leak detection system to prevent seepage of pollutants into groundwater that may, whether by

1 flow or diffusion, transmit such pollutants outside Sunnyside's
2 property boundaries.

3 f. Issuing injunctive and remedial relief requiring Sunnyside to cease
4 and desist from storing solid manure, composted manure, bedding,
5 and the like on any portion of Sunnyside's land that has not first been
6 modified to prevent seepage of pollutants into groundwater that may,
7 whether by flow or diffusion, transmit such pollutants outside
8 Sunnyside's property boundaries.

9 g. Issuing injunctive and remedial relief requiring Sunnyside to cease
10 and desist from applying manure on any land receiving Sunnyside's
11 manure that has been shown, through scientifically-defensible soil
12 sampling, to exceed 15 ppm nitrate in each of the top foot, second
13 foot, or third foot of the soil column.

14 h. Issuing injunctive and remedial relief requiring Sunnyside to cease
15 and desist from applying manure on any land receiving Sunnyside's
16 manure that has been shown, through scientifically-defensible soil
17 sampling, to exceed 40 ppm phosphorus in the top foot of the soil
18 column.

19 i. Issuing injunctive and remedial relief requiring Sunnyside to retain a
20 certified crop advisor or agronomist to prepare and institute nutrient

1 budget and manure application schedules that adhere to the relief
2 requested herein and ensure that manure nutrients are strictly applied
3 at agronomic rates.

4 j. Issuing injunctive and remedial relief requiring Sunnyside to take all
5 necessary steps to abate the present imminent and substantial
6 endangerment to health and the environment including, but not limited
7 to, providing treatment systems and/or bottled water service to every
8 residence impacted by Defendant's unlawful manure storage and
9 application practices.

10 k. Issuing temporary and/or permanent injunctive relief against
11 Sunnyside, ordering Sunnyside to cease all activities constituting the
12 imminent and substantial endangerment to the public health and
13 environment, and to cease all activities constituting illegal open
14 dumping.

15 l. Awarding Plaintiffs their reasonable attorneys' and expert witnesses'
16 fees and costs incurred in bringing this litigation.

17 Dated: August 18, 2020.

18 Respectfully Submitted,

19
20 s/ Charles M. Tebbutt
CHARLES M. TEBBUTT

s/ Toby J. Marshall
TOBY J. MARSHALL

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