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5
6 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

7
8 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
9 ENVIRONMENT, INC., a Washington
non-profit corporation; FRIENDS OF
10 TOPPENISH CREEK, a Washington non-
profit corporation; and CENTER FOR
FOOD SAFETY, a Washington, D.C. non-
profit corporation,

11 Plaintiffs,

12 v.

13 VIEW POINT DAIRY, a sole
proprietorship,

14 Defendant.

Case No. _____

COMPLAINT

1 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

2 **INTRODUCTION**

3 **1.** This is a civil action for declaratory and injunctive relief against View Point
4 Dairy (“Defendant”) for violations of the Solid Waste Disposal Act, also known as
5 the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”)
6 at its dairy facility located at or near 1400 Lewandowski Rd., Sunnyside, WA
7 98944.

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

10 **3.** As detailed below, Defendants have violated and continue to violate Section
11 7002(a) of RCRA by causing and contributing to the past and present handling,
12 storage, treatment, transportation, and/or disposal of solid waste in such a manner
13 that may, and indeed does, present an imminent and substantial endangerment to
14 health and the environment. 42 U.S.C. § 6972(a).

15 **4.** Plaintiffs further allege that Defendant 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 seek declaratory relief establishing that Defendant has violated
19 RCRA. Plaintiffs also seek injunctive relief directing Defendant to modify its
20 handling, storage, treatment, transportation, and disposal of solid waste such that

1 these practices no longer present an imminent and substantial endangerment to
2 health and the environment. Additionally, Plaintiffs seek injunctive relief
3 obligating Defendant to remediate the environmental contamination it has caused
4 and/or contributed to, including widespread soil and groundwater contamination.
5 Finally, Plaintiffs request the Court award Plaintiffs' reasonable attorneys' and
6 expert witnesses' fees, and costs, incurred in bringing this action.

7 **JURISDICTION**

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

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

13 **8.** On March 3, 2020, Plaintiffs gave notice of the violations and of their intent
14 to file suit to View Point Dairy, William DeRuyter, Mary Lisa DeRuyter, their
15 registered agents, the United States Attorney General, United States Environmental
16 Protection Agency ("EPA"), EPA Region X, Washington State Office of
17 Governor, Washington State Office of the Attorney General, and Washington State
18 Department of Ecology, as required by Section 7002 (a) of RCRA, 42 U.S.C. §
19 6972(b). A copy of the notice letter is attached hereto as Exhibit A and is
20 incorporated by reference.

1 **9.** On March 16, 2020, Plaintiffs gave supplemental notice of the violations and
2 of their intent to file suit to View Point Dairy, William DeRuyter, Mary Lisa
3 DeRuyter, their registered agents, the United States Attorney General, United
4 States Environmental Protection Agency (“EPA”), EPA Region X, Washington
5 State Office of Governor, Washington State Office of the Attorney General, and
6 Washington State Department of Ecology, as required by Section 7002 (a) of
7 RCRA, 42 U.S.C. § 6972(b). A copy of the notice letter is attached hereto as
8 Exhibit B and is incorporated by reference.

9 **10.** More than ninety days have passed since the first 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 to remain in violation of RCRA. Neither the EPA nor
12 the State of Washington has commenced or is diligently prosecuting a civil or
13 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), because the alleged violations of the aforementioned statute
17 occurred and continue to occur within the Eastern District of Washington.

18 **PARTIES**

19 **12.** Upon information and belief, View Point Dairy owns and operate the
20 Washington dairy concentrated animal feeding operation doing business as View

1 Point Dairy. The dairy is located at or near 1400 Lewandowski Road, Sunnyside,
2 Washington 98944.

3 **13.** Each of the named Defendant is a “person” within the meaning of Section
4 1004(15) of RCRA. 42 U.S.C. § 6903(15).

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

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

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

17 **17.** CARE’s organizational purposes are adversely affected by View Point’s
18 violations of RCRA. These violations have caused significant environmental
19 contamination of the soil and groundwater. Furthermore, but for View Point’s
20 unlawful actions, CARE would not have to spend as much of its resources on the

1 environmental problems created by illegal contamination from individual, large-
2 scale industrial farming operations and could direct these resources to other
3 priorities.

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

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

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

18 b. Members of CARE also make domestic and agricultural use of
19 groundwater that has been contaminated with nitrates, phosphorus,
20 and other pollutants as a result of View Point's improper handling,

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

10 c. Members of CARE also live, work, and recreate in the environment
11 that has been negatively impacted by View Point's improper handling,
12 storage, treatment, transportation, and disposal of solid waste. This
13 has lessened CARE's members' enjoyment of their environment.
14 CARE's members are concerned that their environment has been
15 irreparably injured by View Point's improper practices. CARE's
16 members are also concerned about how View Point's improper
17 practices have impacted their community's health and safety.

18 **19.** Plaintiff Friends of Toppenish Creek is a non-profit corporation organized
19 under the laws of the State of Washington.
20

1 **20.** Friends of Toppenish Creek is an organization composed of concerned
2 community members and is dedicated to protecting the rights of rural communities
3 and improving oversight of industrial agriculture. Friends of Toppenish Creek
4 works through public education, citizen investigations, research, legislation,
5 special events, and direct action. Friends of Toppenish Creek devotes itself to
6 enhancing, preserving, protecting, and monitoring the groundwater in the Yakima
7 area.

8 **21.** Friends of Toppenish Creek's organizational goals are adversely affected by
9 View Point's RCRA violations. Friends of Toppenish Creek works tirelessly to
10 protect the rights of communities against groundwater contamination caused by
11 industrial agriculture.

12 **22.** Friends of Toppenish Creek's members live in Yakima County and in
13 proximity to View Point. Friends of Toppenish Creek's members have been and
14 continue to be injured, and their interests adversely affected, by View Point's
15 RCRA violations. For instance:

- 16 a. Friends of Toppenish Creek's members' aesthetic interests have been,
17 and will continue to be, adversely affected by View Point's improper
18 manure storage and disposal. Friends of Toppenish Creek's members
19 have aesthetic interests in not seeing cow manure where it shouldn't
20 be. View Point's improper storage and disposal of manure harms

1 Friends of Toppenish Creek’s members’ aesthetic and environmental
2 interests.

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

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

1 **24.** CFS represents nearly 245,000 members throughout the country that support
2 safe, sustainable, and organic agriculture and regularly purchase organic products.
3 CFS has approximately 10,000 members in the state of Washington. CFS members
4 live, work, recreate, and grow food in, and consume food and water from, the
5 Yakima Valley. The environmental, health, aesthetic, economic, and recreational
6 interests of CFS’s members have been and will continue to be adversely affected
7 by View Point’s violations of RCRA. CFS’s members support the public’s right to
8 choose food and crops not sourced from or by industrial farming practices, such as
9 CAFOs. CFS’s members are impacted by CAFOs through destructive leakage and
10 leaching of CAFO pollution into groundwater, which affects the suitability of
11 drinking water for consumption.

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

14 **STATUTORY AND REGULATORY FRAMEWORK**

15 **26.** Section 7002(a)(1)(B) of RCRA provides that citizens may commence a
16 citizen suit against “any person,” “including any past or present generator, past or
17 present transporter, or past or present owner or operator of a treatment, storage, or
18 disposal facility who has contributed or who is contributing to the past or present
19 handling, storage, treatment, or transportation, or disposal of any solid or
20

1 hazardous waste which may present and imminent and substantial endangerment to
2 health or the environment.” 42 U.S.C. § 6972(a)(1)(B).

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

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

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

18 **30.** Section 4005(a) of RCRA prohibits “any solid waste management practice
19 or disposal of solid waste... which constitutes the open dumping of solid waste...”
20 42 U.S.C. § 6945(a).

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

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

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

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

17 **35.** “Contaminate” an underground drinking water source means to cause the
18 groundwater concentration of a listed substance to exceed its corresponding
19 maximum contaminant level specified in Appendix I to 40 C.F.R. Part 257, or
20

1 cause an increase in the concentration of that substance where the existing
2 concentration already exceeds the maximum contaminant level in Appendix I.

3 **FACTS**

4 **36.** All preceding paragraphs are incorporated herein.

5 **37.** Upon information and believe, View Point Dairy is managed by William and
6 Mary Lisa DeRuyter.

7 **38.** William and Mary Lisa DeRuyter are owners of record of real property upon
8 which View Point's dairy facility is located, as well as owners of record of real
9 property upon which View Point applies and disposes of its manure and
10 wastewater.

11 **39.** William and Mary Lisa DeRuyter are operators of the View Point Dairy
12 facility. William and Mary Lisa DeRuyter exercise control over manure
13 management and storage decisions, including when, where, and how much manure
14 is stored and applied.

15 **40.** View Point is a large dairy CAFO under federal and state law. 40 C.F.R. §
16 412.2; WAC 173-224-030.

17 **41.** As of May 23, 2019, View Point had a herd size of approximately 1850
18 milking cows. These animals are confined 365 days per year.

19 **42.** View Point owns approximately 285 acres of land. View Point uses this land
20 for its dairy facility as well as for manure applications.

1 **43.** Upon information and belief, there are two main aquifers underlying View
2 Point and the surrounding area. These aquifers include a surficial unconfined to
3 semi-confined alluvial aquifer and an extensive basalt aquifer of great thickness
4 underlying sedimentary deposits. Groundwater flows through the surficial aquifer
5 in a manner that generally follows surface topography. Groundwater flows through
6 the upper portion of the underlying basalt aquifer in a manner that also generally
7 follows surface topography.

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

9 *Manure Storage Practices*

10 **45.** View Point flushes its alleys, free stall barns, and milking parlors of liquid
11 manure and wastewater into collection pits.

12 **46.** Solid manure, litter (i.e., bedding from pens), and other waste is ultimately
13 stored and/or composted at View Point on permeable surfaces.

14 **47.** View Point stores the liquid manure wastes generated by its herd in one of
15 its four manure storage lagoons. Wastes are placed in these lagoons until such time
16 they are applied to fields through various land-application techniques, including
17 dry spreaders, spreaders, and sprinklers/irrigation.

18 **48.** Upon information and belief, View Point's manure storage lagoons are
19 unlined or inadequately lined, and are without an appropriate leak detection
20

1 system, to prevent and detect the downward migration and seepage of wastewater
2 into groundwater.

3 **49.** Upon information and belief, View Point has failed to properly operate and
4 maintain its manure storage lagoons, which consequently increases the seepage
5 from the lagoons to groundwater.

6 **50.** View Point's manure lagoons are constructed above an aquifer that serves as
7 a domestic water supply. Upon information and belief, the View Point manure
8 storage lagoons do not meet NRCS standards. Under any circumstances, the View
9 Point manure storage lagoons leak to groundwater.

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

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

16 **53.** Public records and show that wells tested in the area and downgradient of
17 View Point exceed the Federal and State Ground Water Quality Standards for
18 nitrate (10 mg/L).

19 **54.** The seepage of manure waste from the lagoons has contributed and is
20 contributing to the excessive contamination of groundwater, which is posing, or

1 may pose, an imminent and substantial endangerment to human health or the
2 environment.

3 **55.** View Point does not, and cannot, use manure nutrients that seep and/or leak
4 from their manure storage lagoons into the environment for beneficial purposes,
5 such as crop fertilizers.

6 **56.** View Point's storage and/or composting of solid manure on permeable
7 surfaces causes leachate from the solid manure to enter groundwater, further
8 contributing to the contamination of groundwater.

9 **57.** View Point does not, and cannot, use manure nutrients that seep and/or leach
10 through storage and/or composting areas into the environment for beneficial
11 purposes, such as crop fertilizers.

12 **58.** View Point does not remove animal wastes, including manure and urine,
13 from their animal confinement pens. These wastes are allowed to accumulate
14 within the pens, where they seep and/or leach through the soil and into the
15 underlying aquifer.

16 **59.** View Point does not, and cannot, use manure nutrients that seep and/or leach
17 through animal confinement pens and into the environment for beneficial purposes,
18 such as crop fertilizers.

19 **60.** Manure that has been permitted to leach, leak, or otherwise contaminate the
20 groundwater, such as from a leaking lagoon, solid manure storage area, animal

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

4 **61.** View Point’s improper manure storage practices have caused serious injury
5 to the environment, contaminating soils and groundwater with excessively high
6 levels of nitrates, phosphorus, and other pollutants, including but not limited to
7 pharmaceutical products, including hormones and antibiotics.

8 ***Manure Application Practices***

9 **62.** Upon information and belief, View Point and/or its agents have applied,
10 continue to apply, and are reasonably likely to continue to apply liquid and solid
11 manure wastes to nearby agricultural fields in amounts that exceed agronomic
12 rates.

13 **63.** Elevated nutrient levels found in soils receiving manure are evidence of
14 manure applications in excess of agronomic rates.

15 **64.** Soil tests submitted to the Washington State Department of Ecology and
16 Washington Department of Agriculture show elevated nutrient levels of both
17 nitrate and phosphorus at View Point.

18 **65.** Upon information and belief, the elevated nutrients found in View Point’s
19 fields are the result of application of manure in excess of agronomic rates.

1 **66.** Upon information and belief, View Point has not taken, and does not take,
2 the requisite manure nutrient samples or soil nutrient samples necessary to plan
3 whether its manure applications will be agronomic, in violation of RCRA and
4 View Point's Nutrient Management Plan.

5 **67.** Applications of manure nutrients above and beyond what a specific crop can
6 uptake as fertilizer causes excess nutrients to move past the crop's root zones,
7 where they will migrate into the groundwater. Such nutrients, including but not
8 limited to nitrate and phosphorus, are lost to the environment and, consequently,
9 cannot be used by View Point for fertilization purposes.

10 **68.** Upon information and belief, the over-application of liquid manure above
11 agronomic rates has been ongoing since the date View Point commenced
12 operations.

13 **69.** Applications of manure waste above agronomic rates cause manure
14 nutrients, including, but not limited to, nitrates, and sometimes phosphorus, to
15 leach through the soil and into groundwater. Other pollutants such as
16 pharmaceutical products may also be present in soil and groundwater as a result of
17 over-applications.

18 **70.** The surface soils to which View Point applies have a saturated hydraulic
19 conductivity.

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

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

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

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

16 **74.** Once nitrates enter the vadose zone, the area below the soil surface from the
17 end of the vegetative root zone to the beginning of the groundwater table, they
18 migrate down to the nearest groundwater.

19 **75.** Once nitrates enter the water table, they migrate away from View Point's
20 property and into the wells of nearby residents depending on the depth and flow

1 direction of the initial receiving groundwater. Contaminated groundwater also
2 flows to the Yakima River from the nearer surface water tables and to the
3 Columbia River from the deeper water tables.

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

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

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

20 ///

1 *Contamination of Groundwater in Excess of MCL*

2 **79.** The practices mentioned in the preceding paragraphs, which are hereby
3 incorporated herein, are causing or contributing to groundwater contamination
4 beyond the federal Maximum Contaminant Level (MCL) for nitrate. 40 C.F.R. §
5 141.62(b)(7).

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

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

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

19 **83.** High nitrate levels may also affect pregnant women and adults with
20 hereditary cytochrome b5 reductase deficiency.

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

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

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

13 **87.** Water samples taken from residential wells surrounding View Point show
14 elevated levels of nitrate in the groundwater.

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

18 **89.** View Point's storage and application of manure has caused nitrate
19 contamination of these residential wells, forcing Plaintiffs' members and other
20

1 residents to either consume unsafe drinking water or to obtain alternative sources
2 of drinking water.

3 **CAUSES OF ACTION**

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

5 **90.** Plaintiffs incorporate by reference the allegations of the preceding
6 paragraphs of this Complaint.

7 **91.** Since at least 2011, View Point has been discarding manure, including
8 manure nutrients and dairy pharmaceutical byproducts in the manure, all of which
9 are “solid wastes” under Section 1004 of RCRA, 42 U.S.C. § 6903(27), because
10 the manure is, either when over-applied or leaked through holding areas, a
11 discarded solid, liquid, and/or semi-solid material resulting from an agricultural
12 operation.

13 **92.** View Point is the past and present owner and/or operator of a solid waste
14 storage or disposal facility. As indicated above, manure is stored and disposed of in
15 massive earthen pits and other holding structures. As a result, View Point
16 contributes to the past or present handling, storage, and disposal of a solid waste.
17 RCRA, 42 U.S.C. § 6972(a)(1)(B).

18 **93.** View Point is a past and present generator of manure and other by-product
19 wastes. Manure is “handled” and “transported” by the Defendants, as well as
20 disposed of on land owned or leased by Defendants. *Id.*

1 **94.** View Point’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 **95.** Specifically, as alleged above, groundwater contamination levels down-
5 gradient from View Point’s land and facilities, have contamination levels that
6 exceed the maximum safe consumption limits established under state and federal
7 law, thereby creating an imminent and substantial endangerment to public health
8 and/or the environment.

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

14 **97.** The Washington Water Quality Standards were promulgated to protect
15 groundwater and human health pursuant to Washington Water Pollution Control
16 Act. RCW 90.48.

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

1 **99.** Federal regulations prohibit a facility or practice from contaminating an
2 underground drinking water source. 40 C.F.R. § 257.3-4(a). “Contamination”
3 occurs when a facility or practice introduces a toxic substance that causes the
4 concentration of that substance in groundwater to exceed certain parameters listed
5 in Appendix I to 40 C.F.R. § 257.3-4(a).

6 **100.** The past and continuing practices of View Point have caused contamination
7 and continue to contaminate groundwater to levels that exceed the maximum limits
8 for safety established under state and federal law. These practices present an
9 imminent and substantial endangerment to public health and/or the environment.
10 Specifically, View Point is polluting groundwater to the extent that it is hazardous
11 to human health and the environment.

12 **101.** Pursuant to RCRA Section 7002, View Point is subject to an injunction
13 under RCRA ordering them to cease and abate any past or present handling,
14 storage, treatment, and/or transportation of any solid waste or hazardous waste that
15 may present an imminent and substantial endangerment to public health and/or the
16 environment.

17 **102.** Plaintiffs’ interests are harmed and will continue to be harmed by this
18 imminent and substantial endangerment and by View Point’s failure to abate the
19 endangerment unless the Court grants the relief herein sought.

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

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

3 **104.** View Point constitutes an “open dump” under RCRA Section 1004(14). 42
4 U.S.C. § 6903(14).

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

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

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

1 **108.** Pursuant to Section 3008, View Point is subject to an injunction under
2 RCRA ordering them to cease open dumping and remediate the environmental
3 contamination they have caused and/or contributed to, including widespread soil
4 and groundwater contamination. 42 U.S.C. § 6928.

5 **109.** Plaintiffs' interests are harmed and will continue to be harmed by View
6 Point's open dumping unless the Court grants the relief herein sought.

7 **RELIEF REQUESTED**

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

10 a. Declaring that View Point's past and/or present generation, handling,
11 storage, treatment, transportation, and/or disposal of solid waste
12 presents, or may present, an imminent and substantial endangerment
13 to public health or to the environment.

14 b. Declaring View Point's storage and disposal of manure and its
15 incorporated nutrients, by-products, and pollutants constitutes illegal
16 open dumping.

17 c. Issuing a compliance order that requires View Point to cease and
18 desist from storing manure in any lagoon or storage impoundment that
19 View Point has not first lined with at least two synthetic liners with
20 leak detection to prevent seepage of pollutants into groundwater that

1 may, whether by flow or diffusion, transmit such pollutants outside
2 View Point's property boundaries.

3 d. Issuing a compliance order that requires Defendant to cease and desist
4 from storing manure on any portion of Defendant's land that the
5 Defendant has not first adequately lined to prevent seepage of
6 pollutants into groundwater that may, whether by flow or diffusion,
7 transmit such pollutants outside Defendant's property boundaries.

8 e. Issuing temporary and/or permanent injunctive relief against
9 Defendant, ordering Defendant to design and implement a program
10 which evaluates the actual amount of manure necessary to provide a
11 specific crop with its anticipated nutrient needs, to take and utilize
12 sufficient soil samples, including but not limited to soil sampling each
13 foot of the soil column down to four feet, and to have sufficient land
14 available, as documented in an approved Nutrient Management Plan,
15 to handle the amount of manure produced by Defendants.

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

1 g. Issuing temporary and/or permanent injunctive relief against
2 Defendant, ordering Defendant to supply clean, safe drinking water to
3 residents located within at least three (3) miles of View Point Dairy
4 who rely upon well water for domestic consumption.

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

9 i. Awarding Plaintiffs their reasonable attorneys' and expert witnesses'
10 fees, and costs, incurred in bringing this litigation.

11 Dated: October 14, 2022.

12 Respectfully Submitted,

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