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

11 Plaintiffs,

12 v.

13 MAJESTIC FARM, LLC, a Washington
limited liability company; NICHOLAS
14 STRUIKMANS, an individual; and JANIE
STRUIKMANS, an individual,

15 Defendants.

Case No. _____

COMPLAINT

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

10 **JURISDICTION**

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

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

16 **8.** On January 2, 2020, Plaintiffs gave notice of the violations and of their
17 intent to file suit to Majestic Farm, LLC, Nicholas Struikmans, Janie Struikmans,
18 their registered agents, the United States Attorney General, United States
19 Environmental Protection Agency ("EPA"), EPA Region X, Washington State
20 Office of Governor, Washington State Office of the Attorney General, and

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

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

9 **VENUE**

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

13 **PARTIES**

14 **11.** Upon information and belief, Majestic Farm, LLC is a Washington limited
15 liability company that owns and operates Majestic Dairy. The dairy is located at or
16 near 2270 Gurley Road, Outlook, WA 98938.

17 **12.** Upon information and belief, Nicholas and Janie Struikmans are residents of
18 the State of Washington who own and operate Majestic Dairy.

19 **13.** Each of the named Defendants are a “person” within the meaning of Section
20 1004(15) of RCRA. 42 U.S.C. § 6903(15).

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

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

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

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

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

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

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 drinking water. CARE's members are concerned that consuming
14 this water is harming or could harm them and their families' and
15 neighbors' health.

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

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

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

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

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

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

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

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

13 a. Friends of Toppenish Creek’s members’ aesthetic interests have been,
14 and will continue to be, adversely affected by Majestic’s improper
15 manure storage and disposal. Friends of Toppenish Creek’s members
16 have aesthetic interests in not seeing cow manure where it shouldn’t
17 be. Majestic’s improper storage and disposal of manure harms Friends
18 of Toppenish Creek’s members’ aesthetic and environmental interests.

19 b. Friends of Toppenish Creek’s members have suffered actual and
20 threatened injuries to their health and safety caused by Majestic’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.** Plaintiff 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 Majestic's violations of RCRA. These
11 violations have caused significant environmental contamination of the soil and
12 groundwater. Furthermore, but for Majestic's unlawful actions, CFS would not
13 have to spend as much of its resources on the problems created by unlawful and
14 dangerous 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 Majestic's violations of RCRA. CFS's 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
20

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).

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

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

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

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

17 **FACTS**

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

19 **37.** Nicholas and Janie Struikmans have owned and/or operated Majestic Dairy
20 since at least May 15, 2009.

1 **38.** Majestic Farm, LLC formed and commenced operations on May 20, 2013.
2 Upon information and belief, Nicholas and Janie Struikmans are owners and
3 members Majestic Farm, LLC.

4 **39.** Upon information and believe, Majestic Farm, LLC, as well as Majestic
5 Dairy, are managed by Nicholas Struikmans and Janie Struikmans.

6 **40.** Nicholas and Janie Struikmans are owners of record of real property upon
7 which Majestic's dairy facility is located, as well as owners of record of real
8 property upon which Majestic applies and disposes of its manure and wastewater.

9 **41.** Nicholas and Janie Struikmans are operators of the Majestic Dairy facility.
10 Nicholas and Janie Struikmans exercise control over manure management and
11 storage decisions, including when, where, and how much manure is stored and
12 applied.

13 **42.** Majestic is a large dairy CAFO under federal and state law. 40 C.F.R. §
14 412.2; WAC 173-224-030.

15 **43.** As of November 13, 2017, Majestic had a herd size of approximately 1000
16 milking cows. These animals are confined 365 days per year.

17 **44.** Majestic owns approximately 100 acres of land. Majestic uses this land for
18 its dairy facility as well as for manure applications.

19 **45.** Upon information and belief, there are two main aquifers underlying
20 Majestic and the surrounding area. These aquifers include a surficial unconfined to

1 semi-confined alluvial aquifer and an extensive basalt aquifer of great thickness
2 underlying sedimentary deposits. Groundwater flows through the surficial aquifer
3 in a manner that generally follows surface topography. Groundwater flows through
4 the upper portion of the underlying basalt aquifer in a manner that also generally
5 follows surface topography.

6 **46.** Plaintiffs' members obtain groundwater from one or both of these aquifers.

7 ***Manure Storage Practices***

8 **47.** Majestic flushes its alleys, free stall barns, and milking parlors of liquid
9 manure and wastewater into collection pits.

10 **48.** Solid manure, litter (i.e., bedding from pens), and other waste is ultimately
11 stored and/or composted at Majestic on permeable surfaces.

12 **49.** Majestic stores the liquid manure wastes generated by its herd in one of its
13 three manure storage lagoons. Wastes are placed in these lagoons until such time
14 they are applied to fields through various land-application techniques, including
15 dry spreaders, spreaders, and sprinklers/irrigation.

16 **50.** Upon information and belief, Majestic's three manure storage lagoons are
17 unlined or inadequately lined, and are without an appropriate leak detection
18 system, to prevent and detect the downward migration and seepage of wastewater
19 into groundwater.

1 **51.** Majestic's three lagoons and settling basin have an estimated holding
2 capacity of approximately 3,283,241 gallons.

3 **52.** Upon information and belief, Majestic has constructed at least two new
4 unlined lagoons since operations began. These lagoons collect manure wastewater
5 and runoff from the cow pens as wells as the compost and silage areas.

6 **53.** Upon information and belief, Majestic has failed to properly operate and
7 maintain its manure storage lagoons, which consequently increases the seepage
8 from the lagoons to groundwater.

9 **54.** Majestic's manure lagoons are constructed above an aquifer that serves as a
10 domestic water supply.

11 **55.** Upon information and belief, the Majestic manure storage lagoons do not
12 meet NRCS standards. Under any circumstances, the Majestic manure storage
13 lagoons leak to groundwater.

14 **56.** The NRCS standards for manure storage lagoons are not designed to protect,
15 nor are capable of protecting, human health or the environment. These standards
16 are not scientifically established to protect groundwater and specifically allow for
17 lagoons to seep and/or leak manure wastes into the environment.

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

20

1 **58.** Majestic knows, or reasonably should know, that its manure storage lagoons
2 leak, seep, or otherwise cause manure to migrate downward into the aquifer, where
3 manure nutrients cannot be put to beneficial use as crop fertilizers.

4 **59.** Public records indicate that the groundwater underlying Majestic exceeds the
5 Federal and State Ground Water Quality Standards for nitrate (10 mg/L), and show
6 that wells tested in the area have tested in excess of 10 mg/L nitrate.

7 **60.** The seepage of manure waste from the lagoons has contributed and is
8 contributing to the excessive contamination of groundwater, which is posing, or
9 may pose, an imminent and substantial endangerment to human health or the
10 environment.

11 **61.** Majestic does not, and cannot, use manure nutrients that seep and/or leak
12 from their manure storage lagoons into the environment for beneficial purposes,
13 such as crop fertilizers.

14 **62.** Majestic's storage and/or composting of solid manure on permeable surfaces
15 causes leachate from the solid manure to enter groundwater, further contributing to
16 the contamination of groundwater.

17 **63.** Majestic does not, and cannot, use manure nutrients that seep and/or leach
18 through storage and/or composting areas into the environment for beneficial
19 purposes, such as crop fertilizers.

20

1 **64.** Majestic does not remove animal wastes, including manure and urine, from
2 their animal confinement pens. These wastes are allowed to accumulate within the
3 pens, where they seep and/or leach through the soil and into the underlying aquifer.

4 **65.** Majestic does not, and cannot, use manure nutrients that seep and/or leach
5 through animal confinement pens and into the environment for beneficial purposes,
6 such as crop fertilizers.

7 **66.** Upon information and belief, Majestic stores silage on permeable surfaces,
8 where the nutrients contained therein also migrate through the soil and into the
9 underlying aquifer, further exacerbating the contamination of the soil and aquifer.

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

15 **68.** Majestic’s improper manure storage practices have caused serious injury to
16 the environment, contaminating soils and groundwater with excessively high levels
17 of nitrates, phosphorus, and other pollutants, including but not limited to
18 pharmaceutical products, including hormones and antibiotics.

19 *Manure Application Practices*

1 **69.** Upon information and belief, Majestic and/or its agents have applied,
2 continue to apply, and are reasonably likely to continue to apply liquid and solid
3 manure wastes to nearby agricultural fields in amounts that exceed agronomic
4 rates.

5 **70.** Upon information and belief, Majestic and/or its agents have applied,
6 continue to apply, and are reasonably likely to continue to apply liquid and solid
7 manure wastes to nearby agricultural fields at times and in amounts that violate the
8 terms of Majestic's Nutrient Management Plan.

9 **71.** Upon information and belief, Majestic has not complied with the
10 requirements of its Nutrient Management Plan for manure sampling, soil sampling,
11 application planning and timing, application amounts, crop yield analysis, and
12 documenting manure applications.

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

15 **73.** 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 Majestic. Soil records indicate that Majestic's "Nick 2
18 Pivot" field has exhibited soil nutrient levels as high as 101 ppm nitrate and 229
19 ppm phosphorus.

20

1 **74.** Upon information and belief, the elevated nutrients found in Majestic's
2 fields are the result of application of manure in excess of agronomic rates.

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

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

12 **77.** Upon information and belief, the over-application of liquid manure above
13 agronomic rates has been ongoing since the date Majestic commenced operations.

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

19 **79.** The surface soils to which Majestic applies have a saturated hydraulic
20 conductivity.

1 **80.** 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 **81.** 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 **82.** 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 **83.** 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 **84.** Once nitrates enter the water table, they migrate away from Majestic'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 **85.** Majestic knows or should know that application of manure above agronomic
5 rates – that is, application above which the current or planned crop can effectively
6 utilize – will cause manure nutrients, including, but not limited to, nitrate and
7 phosphorus, to pass through soils before they can be utilized by the planned or
8 active crops into groundwater. This renders the manure incapable of serving its
9 intended purpose as a fertilizer. Phosphorus also runs off the surface during storm
10 events and into surface waters, causing eutrophication and other adverse effects to
11 surface waters, plants, and wildlife.

12 **86.** 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 **87.** Majestic’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 *Contamination of Groundwater in Excess of MCL*

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

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

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

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

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

1 **93.** 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 **94.** 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 **95.** 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 **96.** Water samples taken from residential wells surrounding Majestic show
14 elevated levels of nitrate in the groundwater, including samples that exceed the
15 MCL for nitrate.

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

19 **98.** Majestic's storage and application of manure has caused nitrate
20 contamination of these residential wells, forcing Plaintiffs' members and other

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

7 **100.** Since at least May 15, 2009 Majestic 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 **101.** Majestic 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 earthen pits and other holding structures. As a result, Majestic 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 **102.** Majestic 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 **103.** Majestic’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 **104.** Specifically, as alleged above, groundwater contamination levels under
5 Majestic’s land, and down-gradient from Majestic’s land and facilities, have
6 contamination levels that exceed the maximum safe consumption limits established
7 under state and federal law, thereby creating an imminent and substantial
8 endangerment to public health and/or the environment.

9 **105.** 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 **106.** 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 **107.** 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 **108.** 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 **109.** The past and continuing practices of Majestic 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, Majestic is polluting groundwater to the extent that it is hazardous to
11 human health and the environment.

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

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

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

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

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

5 **114.** Majestic’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 **115.** Majestic 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 **116.** The disposal of solid waste at Majestic, including the fields Majestic uses to
15 apply manure, are causing the contamination of groundwater beyond the solid
16 waste boundary of the disposal sites to exceed the limits set forth in Appendix I to
17 40 C.F.R. Part 257. Concentrations of nitrate as measured in the aquifer have
18 repeatedly exceeded the maximum contaminant level. This practice constitutes an
19 illegal open dumping.

1 **117.** Pursuant to Section 3008, Majestic is subject to an injunction under RCRA
2 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 **118.** Plaintiffs' interests are harmed and will continue to be harmed by Majestic's
6 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 Majestic'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 Majestic'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 Majestic to cease and desist
18 from storing manure in any lagoon or storage impoundment that
19 Majestic has not first lined with at least two synthetic liners with leak
20 detection to prevent seepage of pollutants into groundwater that may,

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

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

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

5 h. Issuing temporary and/or permanent injunctive relief against Majestic,
6 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: April 9, 2020.

12 Respectfully Submitted,

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