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February 11, 2019

**THIS IS AN URGENT LEGAL MATTER REQUIRING YOUR
IMMEDIATE ATTENTION**

Via Registered Mail, Return Receipt Requested:

Site Manager

Lynne Geddis

Mike Benjamin

DBD Washington, LLC (d/b/a DeRuyter Brothers Dairy, per MPPP signed 9/5/17)

5111 VanBelle Road

Outlook, WA 98938

Wayne Cummings, Governor (and “Manager,” per MPPP signed 9/5/17)

DBD Washington, LLC

and

Washington Dairy Holdings, LLC

7 Cobblestone Drive

Turner, ME 04282-3290

DBD Washington, LLC

Registered Agent

Washington Registered Agent, LLC

170 S Lincoln St., Suite 100

Spokane, WA 99201-4443

Washington Dairy Holdings, LLC

Registered Agent

Washington Registered Agent, LLC

170 S Lincoln St., Suite 100

Spokane, WA 99201-4443

Other recipients identified on last page

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**NOTICE OF INTENT TO SUE PURSUANT TO THE RESOURCE
CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(a)(1)(B).**

Dear Site Manager, Ms. Geddis, and Messrs. Benjamin and Cummings:

Pursuant to the citizen suit provision of the 1976 Amendments to the Solid Waste Disposal Act (hereinafter referred to as the “Resource Conservation and Recovery Act” or “RCRA”), 42 U.S.C. § 6972(a)(1)(B), the Community Association for Restoration of the Environment, Inc. (“CARE”), a Washington non-profit corporation, and Friends of Toppenish Creek, also a Washington non-profit corporation, and Center for Food Safety, a Washington, D.C. non-profit corporation (collectively referred to hereinafter as the “Notifying Parties”), hereby notify¹ you that on or after the 90th day from the date of your receipt of this notice, Notifying Parties intend to initiate a citizen suit in Washington Federal District Court against DBD Washington LLC, d/b/a DeRuyter Brothers Dairy, and Washington Dairy Holdings, LLC, concerning the operations of the dairy concentrated animal feeding operation located at or near 5111 VanBelle Rd., Outlook, WA 98938 (hereinafter referred to as “DBD” or the “Dairy”).

The lawsuit will allege that DBD has violated and remains in violation of RCRA by causing or contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid waste in such a manner that may, and indeed does, present an imminent and substantial endangerment to human health and the environment, and that DBD is operating an “open dump” in violation of the prohibitions of RCRA.

The lawsuit will seek mandatory injunctive relief requiring DBD to comply with RCRA and to abate and/or remediate the source(s) of the endangerment to human health and the environment. As authorized by RCRA, the lawsuit will also seek an order from the Court requiring DBD to pay Notifying Parties’ attorneys’ and expert witnesses’ fees and costs incurred in bringing this enforcement action.

**VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT:
IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HUMAN HEALTH
AND THE ENVIRONMENT**

Notifying Parties will allege that DBD has violated, and continues to violate, the statutory prohibitions of the Resource Conservation and Recovery Act, and will file a lawsuit against DBD on or after the 90th day of your receipt of this notice unless DBD abates the endangerment.

Specifically, Notifying Parties will allege in the lawsuit that DBD has caused or contributed to (and continues to cause or contribute to) the past and present handling, storage, treatment, transportation, and/or disposal of solid 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)(1)(B). The lawsuit will also allege that DBD is

¹ The notice provisions of RCRA can be located at 42 U.S.C. § 6972(b).

operating an “open dump” in violation of the prohibitions of RCRA. 42 U.S.C. § 6945(a). Notifying Parties will seek mandatory injunctive relief requiring DBD to abate and/or remediate the source(s) of the endangerment to health and the environment and an order from the Court requiring DBD to pay Notifying Parties’ attorneys’ and expert witnesses’ fees and costs incurred in bringing this enforcement action.

Under 42 U.S.C. § 6972(a)(1)(B), citizens are authorized to bring suit against any “person” who is the “past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” In this case, DBD is a generator, transporter, and owner and/or operator of a treatment, storage, and disposal facility that is contributing to the past and present storage, treatment, transportation and/or disposal of solid wastes, namely liquid and solid manure. DBD’s liquid and solid manure constitute “solid wastes” under RCRA because they are “any...discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations....” 42 U.S.C. § 6903(27). DBD’s practices in storing, treating, transporting, applying, and disposing of liquid and solid manure may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

In particular, DBD and/or its agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes to agricultural fields in amounts that exceed agronomic rates and in violation of DBD’s Nutrient Management Plan (“NMP”), Manure Pollution Prevention Plan (“MPPP”), and the recommendations of DBD’s agronomist. Applications of manure beyond which the current crop can effectively utilize as fertilizer cause nitrates, phosphorus, and other manure pollutants such as coliform bacteria to leach through soil and into groundwater. Once these nitrates, phosphorus, and other manure pollutants enter the local water table, they migrate away from DBD’s dairy facility and into groundwater and, consequently, the wells of nearby residents.

Soil tests submitted to the Washington State Department of Ecology and Washington Department of Agriculture have documented elevated nitrate and phosphorus levels in soils receiving manure generated at DBD, strong evidence that DBD has applied manure in excess of agronomic rates or crop needs, in violation of the requirements of its NMP and MPPP. In fact, during the 2017 crop year DBD applied at least 600,400 gallons of manure to agricultural fields that did not require *any* fertilization, according to DBD’s own nutrient budget and agronomist’s recommendations (Fields 4, 6, 8-11C, and 25). Additionally, DBD’s records show that manure was applied in excess of agronomic rates on all of DBD’s application fields, with excessively high residual nitrate and phosphorus results based on Fall 2017 field sampling. Indeed, 11 of the fields to which DBD applies manure had greater than 400 lbs./ac nitrate in the first three feet of the soil column, based on the Fall 2017 sampling, with four fields registering more than 600 lbs./ac residual nitrate. All but four of DBD’s fields in Fall 2017 recorded greater than 100 PPM

phosphorus as well. This is due to the fact that DBD's nutrient management records indicate the dairy has applied manure to its fields without regard for phosphorus uptake or agronomic use.

DBD's 2018 Annual Report demonstrates further how the Dairy has discarded its manure. DBD's Agronomist, Mr. Scott Stephen of Agrimanagement, Inc., informed DBD that it needed no additional fertilization for Field 01B for the 2017-2018 crop year (triticale / corn silage double cropping). Nonetheless, DBD made two applications to this field totaling over 700,000 gallons of manure.

Field 01C required no additional nutrients for the Fall 2017 triticale crop and only 59 lbs./ac N for the silage corn planted in Spring 2018. Nonetheless, the Dairy applied just short of 375,000 gallons of manure to this field, and the Fall 2018 soil sampling shows much higher residual nitrate and phosphorus figures than the prior year, with over 876 lbs./ac residual nitrate throughout the top three feet of the soil column.

Field 02EB required no fertilization per Mr. Stephen, for both the triticale and silage corn crops. Nonetheless, the dairy discarded almost 900,000 gallons of manure onto this field in 2018, resulting in excessively high residual nitrate and phosphorus figures in the Fall 2018 sampling. Consequently, there is nearly 600 lbs./ac residual nitrate in the top three feet of the soil column.

Field 02 NWB required no fertilization, per DBD's agronomist Mr. Stephen. And yet, the Dairy applied approximately 200,000 gallons of manure to the field during the 2018 crop year. Consequently, there is approximately 727 lbs./ac residual nitrate in the field, per the Fall 2018 sampling.

Field 02SWB required no fertilization for the triticale crop and only 32 lbs./ac nitrogen for the corn silage crop, per Agrimanagement and Mr. Stephen. DBD applied 580,000 gallons to this field, providing more nutrients than Mr. Stephen stated the crop could use as fertilizer. Consequently, the field levels showed a similar rise in excess nitrate, with the top three feet of the soil column containing nearly 600 lbs./ac residual nitrate.

Field 02WC required no fertilization, again per Mr. Stephen, but the Dairy discarded over 260,000 gallons of manure onto the field during the 2018 crop year. The residual nitrates in the Fall 2018 sampling were excessively high: 908 lbs./ac for the top three feet of the soil column.

Mr. Stephen stated that Field 03B required no fertilization for both the triticale and the corn silage crop. DBD ignored these recommendations and discarded nearly 350,000 gallons of manure by applying to this field when the crop required no fertilization. Per the Fall 2018 sampling, the field had nearly 1800 lbs./ac residual nitrate in the top three feet of the soil column.

Field 03C required no fertilization, with nearly 692 lbs./ac N available for winter cropping and 520 lbs./ac N available for corn silage, per Mr. Stephen's recommendations. The Dairy ignored its agronomist and discarded over 600,000 gallons of manure to this field in 2018. The Fall 2018 sampling showed there to be over 1,600 lbs./ac residual nitrate in the top three feet of the soil column.

Field 4 required no fertilization, according to Mr. Stephen. The Dairy again ignored its own agronomist and discarded over 200,000 gallons of manure to this field, resulting, again, in excessively high nitrate levels – over 673 lbs./ac.

Field 5 required no fertilization for the triticale crop and only 12 lbs./ac N for the silage corn crop in 2018, according to Agrimanagement's records. Despite these recommendations, DBD applied over 400,000 gallons of manure to Field 5 in 2018, discarding its manure and resulting in excessively high residual nitrate levels in the top three feet of the soil column (over 750 lbs./ac).

Field 6 required no fertilization for the 2017 triticale or 2018 corn silage crops. The Dairy ignored Mr. Stephen again, and discarded 50,000 gallons of manure onto this field, resulting in excessively high residual nitrate numbers in the top three feet of the soil column (nearly 600 lbs./ac nitrate).

Field 7 required very minimal fertilization per Agrimanagement's recommendations – 9 lbs./ac nitrogen for the triticale crop and 31 lbs./ac nitrogen for the corn silage crop. DBD allegedly applied 160,000 gallons of manure to this field, but the Fall 2018 post-harvest sampling revealed excessively high residual nitrate and phosphorus numbers – over 500 lbs./ac residual nitrate and 338 ppm phosphorus.

Field 8-11B required only 16 lbs./ac N for fertilization requirements in the 2018 crop year, per Scott Stephen. The Dairy applied substantially more manure than was required, putting down over 2,000,000 gallons of manure onto the field. Consequently, the residual nitrates in the field were excessively high, as were the phosphorus results, in the Fall 2018 soil sampling.

Field 8-11C required no fertilization according to DBD's hired agronomist. The Dairy instead discarded nearly 500,000 gallons of manure onto this field, resulting in nearly 477 lbs./ac excess nitrate in the top three feet of the soil column.

Field 21 required no fertilization for the triticale crop and a modest 64 lbs./ac N for the corn silage crop, per Mr. Stephen's recommendations. DBD applied significantly more nitrogen than recommended to this field, discarding its manure. In total, over 750,000 gallons were applied to this 33.8-acre field, causing excessive residual nitrate – approximately 600 lbs./ac – to be present in the top two feet of the soil column (DBD did not obtain a third-foot sample).

Field 22 SS required no fertilization for the triticale crop and only 89 lbs./ac N for the corn silage crop, again according to Agrimanagement's recommendations. While

DBD's records state that only 130,701 gallons of manure was applied to this field, the post-harvest soil sampling suggests this figure is incorrect, as the residual nitrate numbers were significantly higher than they were in spring: nearly 800 lbs./ac in the top three feet of the soil column. Residual nitrate levels of this magnitude are strong evidence of over-applications of manure.

DBD's records indicate that similar over-applications occurred on Fields 23 and 25, which had high residual nitrate figures in the top three feet of the soil column. Curiously, no phosphorus samples were obtained for Field 23. In any event, the records further demonstrate that DBD discarded its manure by applying it at rates and in amounts greater than the crop could effectively utilize as fertilizer.

Notifying Parties will also allege that DBD has failed to consistently take and use sufficient soil samples (including spring and fall post-harvest samples where double-cropping, and second-foot samples), failed to take and use sufficient manure samples, applied manure at times when the crop is unlikely to use the manure nutrients as fertilizer, applied manure to fields which needed no additional fertilizer, and failed to create and maintain adequate manure application and exportation records, all in violation of DBD's NMP and MPPP.

Based on publicly-available records, additional evidence of the discarding of manure includes: the "stockpiling" of manure on an agricultural field for "drying," which causes manure nutrients to leach into soil where no crop is growing; applications of manure in quantities so large that ponding occurred; and the spreading of manure solids on a field to a depth of nearly 12 inches or more.

As described above, when manure is applied in quantities greater than the crop can effectively utilize as fertilizer (and hence discarded), excess nitrate and other manure pollutants leach downward deeper into the soil with subsequent applications, precipitation, and irrigation. These nitrates and other manure pollutants move past the root zone of the crop, where they are lost to the environment and unable to be used as fertilizer. Excess nitrates continue to migrate through the soil until they reach groundwater – which in some instances is as shallow as 48 inches below the soil in DBD's fields.

In addition, over-applications of manure can cause phosphorus to contaminate soils, surface waters, and groundwater. Washington State Department of Agriculture records document "excessive" phosphorus levels in soils receiving DBD's manure. These excessive levels continue to worsen over time, demonstrating that solid and liquid manure is being discarded by DBD. Phosphorus leads to nutrient blooms in surface waters that starve fish and aquatic organisms of oxygen. Phosphorus reaches surface waters both through overland runoff as well as loadings from contaminated groundwater.

Beyond excessive manure applications that were done in violation or disregard of DBD's MPPP and/or NMP, DBD's storage of solid and/or liquid manure in unlined and inadequately maintained lagoons has also caused, and is continuing to cause, the

discharge, leaking, and discarding of manure and its constituents into groundwater. Upon information and belief, and based upon public records, Notifying Parties will allege in the lawsuit that the lagoons at DBD were designed and built such that they have a seepage rate that allows manure to leak out of the lagoons and into groundwater. Upon information and belief, the lagoons at DBD were not designed or built in accordance with NRCS 313 guidelines, and even if they were, those guidelines are designed such that seepage of manure into groundwater occurs at rates and in quantities that are dangerous to human health and the environment. Furthermore, Notifying Parties will allege that DBD's lagoons are not properly operated or maintained in such a manner that would reduce the amount of seepage through the lagoons and into groundwater. Upon information and belief, the discarding of manure through seepage from the lagoons has been ongoing since the date the lagoons were brought into operation, and continues to this day under DBD's ownership.

In addition to leaky lagoons and excessive manure applications, DBD also discards manure and manure nutrients by storing and composting manure on unlined surfaces, which allows nutrients to leach into the ground and groundwater, where they cannot be used as fertilizer. Liquid and solid manure that is left in unlined cow confinement pens is discarded as well, for DBD makes no attempt to use that manure as fertilizer (no crops grow in the pens), and even if they could, the manure is allowed to accumulate in the pens, where manure nutrients leach into the ground and groundwater, where they, too, cannot be used as fertilizer. This includes the confinement pens located at or near 1270 Outlook Road, Outlook, WA 98938 (directly south of SMD, LLC's dairy). Public records indicate that Washington Dairy Holdings, LLC purchased the parcels comprising the pens on or about June 16, 2017. Recent visual inspections revealed ponded water, urine, and substantial amounts of manure left in the pens, which is discarded because it cannot be used for fertilization. No crops are grown in the pens, and there is no evidence that the Dairy, or Washington Dairy Holdings, LLC, removes accumulated manure for land application.

Finally, DBD's storage of silage on unlined surfaces allows silage contaminants, including nutrients, to be discarded into the soil and groundwater.

Notifying Parties will allege in the lawsuit that practices identified above, and possibly others, are responsible for causing or contributing to groundwater contamination at levels beyond the Maximum Contaminant Level ("MCL") for specific chemicals. The MCLs are health-based standards that specify contaminants known to have an adverse effect on human health at levels beyond the parameters set forth by regulations. Upon information and belief, local drinking water wells in the vicinity of DBD have tested above the MCL for nitrate (10 mg/L). This includes the well at the Outlook School, which is located hydrologically down-gradient from DBD and its ancillary livestock confinement operations. Other nearby residents report that their wells have also tested in excess of 10 mg/L nitrate. Besides nitrate, other "tracer" chemicals associated with cow manure are also present in the groundwater, such as potassium, magnesium, calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine pharmaceuticals. Minor trace and inorganic elements may include arsenic, barium, bromide, cadmium,

chromium, copper, lead, manganese, mercury, selenium, and silver. The presence of these chemicals, which are associated with industrialized dairy practices, further demonstrates that DBD is discarding solid and liquid manure in violation of their NMP and/or MPPP, and RCRA, and that such discarding is causing or contributing to a violation of the nitrate MCL in groundwater. Various bacteria, protozoa and other pathogens are present and more likely to cause harm to humans as a result of the significant presence of these pathogens, all of which are associated with manure waste.

Human consumption of water containing more than the 10 mg/L MCL for nitrate causes a variety of severe health problems, including but not limited to methemoglobinemia (“blue baby syndrome,” a potentially fatal condition that affects infants), some forms of cancer, and autoimmune system dysfunction. The excessive nitrates and other contaminants documented in the area are attributable to DBD’s improper practices of storing, treating, transporting, and disposing (through application or otherwise) of liquid and solid manure wastes. As such, these practices may, and indeed do, present an imminent and substantial endangerment to both human health and the environment.

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who “has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” that presents an imminent and substantial endangerment to health or the environment to take such action as may be necessary to cease and correct the pollution and to apply any appropriate civil penalties under 42 U.S.C. § 6928(g). Notifying Parties intend to seek legal and equitable relief in their lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against DBD, temporary and/or permanent injunctive relief, as well as attorneys’ and expert witnesses’ fees, and costs, associated with the suit.

VIOLATIONS OF RESOURCE CONSERVATION AND RECOVERY ACT: OPEN DUMPING

In addition to presenting an imminent and substantial endangerment to health and the environment, DBD’s improper manure management practices constitute “open dumping” in violation of RCRA. 42 U.S.C. § 6945(a) prohibits the operation of “any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste.” “Disposal” means “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]” 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA’s citizen suit provision. *Id.* As required by statute, EPA has promulgated criteria under RCRA § 6907(a)(3) defining solid waste management practices that constitute open dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations prohibit the contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

The definition of “underground drinking water source” includes an aquifer supplying drinking water for human consumption or any aquifer in which the groundwater contains less than 10,000 mg/l total dissolved solids. 40 C.F.R. § 257.3-4(c)(4). “Contaminate” means to introduce a substance that would cause: (i) the concentration of that substance in the groundwater to exceed the maximum contaminant level specified in Appendix I, or (ii) an increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the MCLs specified in Appendix I. 40 C.F.R. § 257.3-4(c)(2).

Appendix I to 40 C.F.R. Part 257 lists the MCL for nitrate as 10 mg/l. Upon information and belief, the groundwater underlying and downgradient of DBD is contaminated at levels exceeding 10 mg/L nitrate, including as tested at the Outlook School. The lawsuit will allege that DBD’s past and present waste disposal practices have caused nitrate contamination to travel beyond the facility boundaries, in violation of RCRA’s open dumping prohibitions. Soil samples, as discussed above, have documented elevated nitrate and phosphorus levels in soil receiving DBD’s manure, a strong indication that manure is applied in excess of agronomic rates. Applications beyond that which the current crop can effectively utilize cause nitrates to leach through soil and into groundwater, which in turn cause nitrate levels in the groundwater to exceed the MCLs. The lawsuit will further allege that DBD’s storage of liquid and solid manure in unlined earthen lagoons or inadequately lined lagoons, as well as DBD’s composting and storage of manure on bare ground, has caused manure to seep, discharge, or otherwise leak into the groundwater and leave the boundaries of the dairy site, also causing nitrate contamination of groundwater in excess of the MCL.

Pursuant to 42 U.S.C. § 6972(a), Notifying Parties intend to seek legal and equitable relief to remedy DBD’s practice of open dumping. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, removal, and/or clean-up costs, a requirement that the extent of the contamination be fully investigated and remediated, other necessary temporary and/or permanent injunctive relief, and an award of the attorneys’ and expert witnesses’ fees and costs incurred in bringing the enforcement action.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

Community Association for Restoration of the Environment, Inc.
2241 Hudson Road
Outlook, WA 98938
Tel: (509) 854-1662

Friends of Toppenish Creek
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The names, addresses, and phone numbers of Counsel for the parties giving this Notice of Intent to Sue are:

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CONCLUSION

We will be available to discuss effective remedies and actions that will assure DBD's future compliance with the Resource Conservation and Recovery Act and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity and avoid the need for adversarial litigation, or if you have any questions regarding this letter, please contact the undersigned. If you are or will be represented by an attorney, please have that attorney contact the undersigned instead.

Sincerely,



Charles M. Tebbutt
Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.

Via U.S. Mail to the following:

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