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January 2, 2020

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

*Via Registered Mail, Return Receipt Requested:*

Site Manager  
Nicholas Struikmans (also identified as Registered Agent for Majestic Farm, LLC)  
Janie Struikmans  
Majestic Farm, LLC  
2320 Gurley Road  
Outlook, WA 98938

Nicholas Struikmans  
Janie Struikmans  
Owners of Yakima County Parcel Numbers 21101222405, 21101222003, 21101111002,  
21101112001, & 21101121004

*Other recipients identified on last page*

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

Dear Site Manager, Nicholas Struikmans, and Janie Struikmans:

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), Community Association for Restoration of the Environment, Inc. (“CARE”), a Washington non-profit corporation, Friends of Toppenish Creek, 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 notify<sup>1</sup> 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 Majestic Farm, LLC (a/k/a Majestic Dairy) and Nicholas and Janie Struikmans, concerning the operations of the dairy concentrated animal feeding operation located at or near 2270 Gurley Road, Outlook, WA 98938 (hereinafter collectively referred to as “Majestic Dairy” or the “Dairy”).

<sup>1</sup> The notice provisions of RCRA are located at 42 U.S.C. § 6972(b).

The lawsuit will allege that Majestic Dairy 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 Majestic Dairy is operating an “open dump” in violation of the prohibitions of RCRA.

The lawsuit will seek mandatory injunctive relief requiring Majestic Dairy 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 Majestic Dairy 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 Majestic Dairy has violated, and continues to violate, the statutory prohibitions of the Resource Conservation and Recovery Act, and will file a lawsuit against Majestic Dairy on or after the 90th day of your receipt of this notice unless Majestic Dairy abates the endangerment.

Specifically, Notifying Parties will allege in the lawsuit that Majestic Dairy 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 Majestic Dairy is 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 Majestic Dairy to abate and/or remediate the source(s) of the endangerment to health and the environment and an order from the Court requiring Majestic Dairy 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, Majestic Dairy 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. Majestic Dairy’s liquid and solid manure constitute “solid wastes” under RCRA because they are “any . . . discarded material, including solid, liquid, semisolid, or contained

gaseous material resulting from industrial, commercial, mining, and agricultural operations . . . .” 42 U.S.C. § 6903(27). Majestic Dairy’s practices in storing, treating, transporting, applying, and disposing of liquid and solid manure may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

Additionally, Notifying Parties will allege that Nicholas and Janie Struikmans are past and present owners and/or operators of treatment, storage, and/or disposal facilities, and have contributed and are contributing to the handling, storage, treatment, transportation, and disposal of liquid and solid manure. In particular, the Struikmans are owners of record of real property upon which the dairy facility is located, as well as owners of record of real property upon which manure is applied. Upon information and belief, this real property is identified as Yakima County Parcel Numbers 21101222405, 21101222003, 21101111002, 21101112001, & 21101121004. The Struikmans are also the operators of the Majestic Dairy facility, exercising control over manure management and storage decisions, including when, where, and how much manure is stored and applied. As explained in detail below, the Struikmans’ manure management and storage practices may, and do, cause an imminent and substantial endangerment to health and the environment.

In particular, Majestic Dairy, including the Struikmans individually, as well as their collective 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 violate Majestic Dairy’s Nutrient Management Plan (“NMP”). 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 Majestic Dairy and into groundwater and, consequently, the wells of nearby residents. Upon information and belief, the Struikmans, as owners and operators of Majestic Dairy, and as owners of record of the real property parcels identified *supra*, exercise control over when, where, and how much manure is applied to Majestic Dairy’s application fields.

Soil tests submitted to the Washington State Department of Agriculture have documented elevated nitrate and phosphorus levels in soils receiving manure generated at Majestic Dairy, strong evidence that Majestic Dairy has applied manure in excess of agronomic rates or crop needs, in violation of the requirements of its NMP. For instance, application field Nick 2 Pivot showed elevated nitrate levels in 2014 and 2015. That same application field had grossly elevated phosphorus levels in 2013, 2014, 2015, and 2016. Additionally, application field “Tate Pivot” had elevated nitrate and phosphorus levels in 2013. Furthermore, the Struikmans are owners of record of real property upon which manure is applied and, as owners and operators of the dairy facility itself, know or should know that excessive levels of nitrate and phosphorus are being applied and have been allowed to accumulate in the soils on their property.

Notifying Parties will also allege that Majestic Dairy 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, irrigation, and exportation records, all in violation of Majestic Dairy's NMP.

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.

In addition, over-applications of manure can cause phosphorus to contaminate soil and groundwater. Washington State Department of Agriculture records document "excessive" phosphorus levels in soils receiving Majestic Dairy's manure. These excessive levels worsen over time, demonstrating that solid and liquid manure has been and continues to be discarded by Majestic Dairy.

Beyond excessive manure applications in violation or disregard of Majestic Dairy's NMP, Majestic Dairy's storage of solid and/or liquid manure in unlined and inadequately maintained lagoons and pits 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 Majestic Dairy 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 Majestic Dairy 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 Majestic Dairy'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. The lawsuit will also allege that the Struikmans, as owners of record of real property upon which the dairy and its manure storage facilities are located, and as operators of the dairy itself, know or should know that the lagoons at Majestic Dairy are improperly maintained and are operated in a manner that allows for the discharge, leaking, and discarding of manure and its constituents into groundwater. The lawsuit will also allege that the Struikmans exercise control over when, where, and how manure is stored at Majestic Dairy. 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 Majestic Dairy's ownership and the Struikmans' control.

In addition to leaky lagoons and excessive manure applications, Majestic Dairy also discards manure and manure nutrients by storing and composting manure on unlined surfaces, which allows nutrients to leach into the soil 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 Majestic Dairy 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 soil and groundwater, where they, too, cannot be used as fertilizer. The Struikmans, as operators of Majestic Dairy and as owners of record of real property upon which the dairy facility is located, exercise control over when, where, and how manure is composted at Majestic Dairy. 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 Majestic Dairy removes accumulated manure for land application.

Finally, Majestic Dairy'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 the 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 Majestic Dairy have tested above the MCL for nitrate (10 mg/L). Specifically, Notifying Parties are aware of 11 wells located hydrologically downgradient from Majestic Dairy, with nitrate results ranging from a low of 10.1 mg/L to a high of over 100 mg/L. 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 and hormones. 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 Majestic Dairy is discarding solid and liquid manure in violation of its NMP, 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 Majestic Dairy's improper practices of storing, treating, transporting, and disposing (through

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

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

Appendix I to 40 C.F.R. Part 257 lists the MCL for nitrate as 10 mg/l. Upon information and belief, the groundwater underlying and downgradient of Majestic Dairy is contaminated at levels exceeding 10 mg/L nitrate. The lawsuit will allege that Majestic Dairy’s past and present waste disposal practices (inclusive of the Struikmans’ ownership and control) 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 Majestic Dairy'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 Majestic Dairy's storage of liquid and solid manure in unlined earthen lagoons or inadequately lined lagoons, as well as Majestic Dairy'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 Majestic Dairy's practice of open dumping. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, removal, and/or clean-up costs, a requirement that the extent of the contamination be fully investigated and remediated, other necessary temporary and/or permanent injunctive relief, 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, Inc.  
3142 Signal Peak Road  
White Swan, WA 98952  
Tel: (509) 874-2798

Center for Food Safety  
2009 NE Alberta St., Suite 207  
Portland, OR 97211

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 Majestic Dairy'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  
B. Parker Jones  
Law Offices of Charles M. Tebbutt, P.C.



*Via U.S. Mail to the following:*

Jay Inslee, Governor  
Washington State Office of the Governor  
416 Sid Snyder Ave. SW, Ste. 200  
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Olympia, WA 98504

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United States Department of Justice  
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