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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a  
Washington Non-Profit Corporation,  
and CENTER FOR FOOD SAFETY,  
a Washington, D.C. Non-Profit  
Corporation,

Plaintiffs,

v.

GEORGE & MARGARET, LLC, a  
Washington Limited Liability  
Company, GEORGE DERUYTER &  
SON DAIRY, LLC, a Washington  
Limited Liability Company, and  
D&A DAIRY and D&A DAIRY  
LLC, a Washington Limited Liability  
Company,

Defendants.

NO. 1:13-CV-3017-TOR

ORDER FINDING NON-  
COMPLIANCE, SETTING  
BRIEFING ON SANCTIONS AND  
FULL COMPLIANCE

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BEFORE THE COURT is Plaintiffs' allegations of Defendants' non-compliance with the Consent Decree and request for sanctions. This matter was

1 submitted for consideration without oral argument. The Court has reviewed the  
2 record and files herein, and is fully informed. For the reasons discussed below, the  
3 Court finds Defendants have not complied with the Consent Decree in part.  
4 Accordingly, the Court sets this matter for further briefing to address the  
5 appropriate sanctions to be imposed and dates certain for full compliance.

## 6 **BACKGROUND**

7 This case arises out of the dairy operation practices of Defendants George &  
8 Margaret LLC, George DeRuyter & Son Dairy LLC, D&A Dairy, and D&A Dairy  
9 LLC (collectively, “the Dairies”) and their impact on the environmental health of  
10 the surrounding community. Plaintiffs Community Association for Restoration of  
11 the Environment, Inc. (“CARE”) and Center for Food Safety (“CFS”) brought this  
12 suit under the citizen suit provision of the Solid Waste Disposal Act, also known as  
13 the Resource Conservation and Recovery Act (“RCRA”), alleging improper  
14 manure management practices constituting “open dumping” of solid waste. *See*  
15 *generally* ECF No. 80.

### 16 **A. May 2015 Consent Decree**

17 On May 19, 2015, the parties entered into a Consent Decree approved by the  
18 Court. ECF No. 169. The parties stipulated that to the extent agreed to by the  
19 United States Environmental Protection Agency (“EPA”), the EPA would oversee  
20 implementation and enforcement of the terms of the Consent Decree. ECF No.

1 169 at 8, ¶ 14. The Consent Decree outlined a number of environmental  
2 improvement initiatives Defendants were obligated to undertake on their dairy  
3 properties and timelines for doing so, including lining manure storage lagoons and  
4 a catch basin on the properties, monitoring of groundwater for contaminants,  
5 maintaining a Dissolved Air Filtration System (“DAF”), inspection of underground  
6 conveyance systems, installation of concrete aprons along water troughs within  
7 cow pens, ensuring silage areas are located along impervious surfaces, removing  
8 all compost from the facility, regrading and compacting existing compost areas,  
9 applying liquid and solid manure to agricultural fields at agronomic rates and in  
10 conjunction with a nutrient management budget, and providing clean drinking  
11 water to nearby residences. ECF No. 169 at 9-25. The Court expressly retained  
12 jurisdiction to interpret and enforce the Consent Decree. *Id.* at 3.

### 13 **B. Motion to Show Cause**

14 On December 2, 2019, Plaintiffs filed a Motion for an Order to Show Cause,  
15 alleging Defendants repeatedly violated the Consent Decree over a more than four-  
16 year period. ECF No. 231. On January 7, 2020, Defendants filed their response  
17 and supporting declarations. ECF Nos. 242-248. On January 15, 2020, the Court  
18 held a telephonic hearing to discuss the status of the case. The Court granted the  
19 Plaintiffs’ Motion for an Order to Show Cause and indicated that it would  
20 “consider the parties briefing in formulating a procedure and decision to resolve

1 the issues, including, if necessary an evidentiary hearing to be scheduled.” ECF  
2 No. 252.

## 3 DISCUSSION

### 4 A. Civil Contempt Standard

5 “A consent decree is a judgment, has the force of res judicata, and it may be  
6 enforced by judicial sanctions, including ... citations for contempt.” *S.E.C. v.*  
7 *Randolph*, 736 F.2d 525, 528 (9th Cir. 1984). “Consent decrees are entered into by  
8 parties to a case after careful negotiation has produced agreement on their precise  
9 terms...[T]he scope of a consent decree must be discerned within its four corners,  
10 and not by reference to what might satisfy the purposes of one of the parties to it.”  
11 *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971). “[A] federal court is  
12 not necessarily barred from entering a consent decree merely because the decree  
13 provides broader relief than the court could have awarded after a trial.” *Local No.*  
14 *93, Int’l Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501,  
15 525 (1986). “[T]he parties have themselves created obligations and surrendered  
16 claims in order to achieve a mutually satisfactory compromise.” *Id.* at 524. “To be  
17 sure, consent decrees bear some of the earmarks of judgments entered after  
18 litigation. At the same time, because their terms are arrived at through mutual  
19 agreement of the parties, consent decrees also closely resemble contracts.” *Id.* at  
20 519.

1 “Civil contempt occurs when a party fails to comply with a court order.”  
2 *General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). “It is  
3 well established that the district court has the inherent authority to enforce  
4 compliance with a consent decree that it has entered in an order, to hold parties in  
5 contempt for violating the terms therein, and to modify a decree.” *Nehmer v. U.S.*  
6 *Dep’t of Veterans Affairs*, 494 F.3d 846, 860 (9th Cir. 2007). “The district court  
7 has ‘wide latitude in determining whether there has been a contemptuous defense  
8 of its order.’” *Stone v. City & Cty. of San Francisco*, 968 F.2d 850, 856 (9th Cir.  
9 1992), *as amended on denial of reh’g* (Aug. 25, 1992) (citing *Gifford v. Heckler*,  
10 741 F.2d 263, 266 (9th Cir. 1984)). “If an injunction does not clearly describe  
11 prohibited or required conduct, it is not enforceable by contempt.” *Gates v. Shinn*,  
12 98 F.3d 463, 468 (9th Cir. 1996).

13 In seeking a finding of civil contempt, “[t]he moving party has the burden of  
14 showing by clear and convincing evidence that the contemnors violated a specific  
15 and definite order of the court.” *Stone*, 968 F.2d at 856 n.9 (citing *Balla v. Idaho*  
16 *St. Bd. of Corrections*, 869 F.2d 461, 466 (9th Cir. 1989)). “The burden then shifts  
17 to the contemnors to demonstrate why there were unable to comply.” *Id.* (citing  
18 *Donovan v. Mazzola (Donovan II)*, 716 F.2d 1226, 1240 (9th Cir. 1983), *cert.*  
19 *denied*, 464 U.S. 1040 (1984)). “Intent is irrelevant to a finding of civil contempt  
20 and, therefore, good faith is not a defense.” *Id.* However, “[i]f a violating party

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