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8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 Don't Waste Arizona, Inc., a 501(c)(3) not-
12 for-profit company organized under the laws
13 of the State of Arizona

14 **Case No.:**

15 **Plaintiffs,**

16 **COMPLAINT**

17 v.

18 Hickman's Egg Ranch, Inc.,

19 **(Violations of the Emergency
20 Planning and Community Right to
21 Know Act)**

22 **Defendants.**

23 Plaintiff, by its undersigned attorneys, alleges upon personal knowledge, and upon
24 information and belief, as for its Complaint as follows:

25 **NATURE OF THE ACTION**

26 1. Plaintiff is seeking civil penalties and reasonable attorney's fees based on
Defendant's ongoing failure to report ammonia emissions from its facilities in Tonopah,
Arizona and Arlington, Arizona in violation of the Emergency Planning and Community
Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050. Such emissions are ongoing
and likely to continue into the future;

1 information about the nature and extent of Defendant's emissions that would inform their
2 decisions on, for example, whether to go outside, to entertain, and/or where to live or work;

3
4 7. Members of DWA: (a) would otherwise have standing to sue in their own
5 right; (b) the interests DWA seeks to protect are germane to the organization's purpose; and
6 (c) neither the claim asserted nor the relief requested requires the participation of individual
7 members in the lawsuit. *See*, attached Declarations (Ex. 2).

8
9 8. Defendant Hickman's Egg Ranch, Inc. is an Arizona corporation with its
10 headquarters at 6515 South Jackrabbit Trail, in Buckeye, Arizona ("Hickman"). Hickman
11 owns and operates both the Arlington and the Tonopah facilities, respectively;

12 **ALLEGATIONS COMMON TO ALL COUNTS**

13
14 9. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set
15 forth herein.

16 10. The U.S. EPA defines a large concentrated animal feed operation ("CAFO") as
17 82,000 laying hens if a dry manure handling system is used and 30,000 laying hens if a wet
18 system is used. 40 C.F.R. § 122.23(b)(4)(ix) and (xi);

19
20 11. Hickman owns and operates Desert Pride Farms, which is located at or about
21 41625 W. Indian School Road in Tonopah, Arizona (hereinafter the "Tonopah Facility").

22 12. According to the Tonopah Nutrient Management Plan, submitted by Hickman
23 to the State on October 31, 2014, the Tonopah Facility houses over 3,072,000 laying hens
24 and is in the process of expanding its operations to significantly increase the number of birds
25 on site;
26

1 13. Hickman also owns and operates the Arlington Facility that is located at or
2 about 32425 West Salome Highway, Arlington, Arizona;

3
4 14. According to the Arlington Nutrient Management Plan, submitted by Hickman
5 to the State on December 9, 2015, the Arlington Facility houses over 5,876,261 chickens
6 (approximately 3,718,244 and 2,157,917 pullets). The Arlington Facility is also in the
7 process of expanding its operations to significantly increase the number of birds on site;

8
9 15. Section 304 of EPCRA, 42 U.S.C. §11004, requires, *inter alia*, that ammonia
10 (NH₃) emissions that exceed the reportable quantity threshold of 100 lbs/day be reported.
11 *See*, 40 C.F.R. 302.4 and 40 C.F.R. Part 355, Appendix A;

12 16. The EPA released a report on emissions data from two manure belt layer
13 houses in Indiana on July 31, 2010 as part of the National Air Emissions Monitoring Study
14 (“NAEMS”);¹

15
16 17. According to the NAEMS IN2B study, any manure belt layer operation, such
17 as Hickman’s, with over 157,000 birds would likely be exceeding the 100 lbs/day reportable
18 quantity threshold for ammonia emissions and should be reporting ammonia emissions;

19
20 18. Hickman’s Tonopah Facility, which conservatively houses approximately
21 3,072,000 birds, has estimated daily ammonia emissions of over 4,014.08 lbs;

22 19. Hickman’s Arlington Facility, which conservatively houses approximately
23 5,876,261 birds, has estimated daily ammonia emissions of over 7,678.3 lbs;

24
25 ¹ Heber, Albert J., “Emissions Data from Two Manure-Belt Layer Houses in Indiana:
26 Final Report for Site IN2B of the National Air Emissions Monitoring Study,” July 31, 2010,
available at: <http://www.epa.gov/airquality/agmonitoring/pdfs/IN2BSSummary Report.pdf>.

1 33. EPCRA § 304(c), 42 U.S.C. § 11004(c), requires any owner or operator who
2 has had a release that is reportable under EPCRA § 304(a), to provide, as soon as practicable,
3 a follow-up written notice, updating the information required under Section 304(b);
4

5 34. Pursuant to Section 326(a) of EPCRA, 42 U.S.C. § 11046 (a), any person may
6 commence a civil action against, *inter alia*, an owner or operator of a facility for failure to
7 submit a follow up emergency notice under Section 11004(c), EPCRA§ 304(c);
8

9 35. The Arlington Facility is a “facility” as defined at 42 U.S.C. § 11049(4),
10 EPCRA § 329(4);

11 36. Defendant is an owner and/or operation of a facility, who had actual or
12 constructive knowledge of a release of a hazardous substance, in an amount that exceeds the
13 threshold reportable quantity;
14

15 37. Defendant failed to submit the requisite emergency notice under Section 304 of
16 EPCRA, 42 U.S.C. §11004, which, in part, requires that ammonia (NH₃) emissions greater
17 than 100 lbs/day be reported. *See*, 40 C.F.R. 302.4 and 40 C.F.R. Part 355, Appendix A;
18

19 38. Ammonia emissions from the Arlington Facility exceed 100 lbs/day;

20 39. Defendant has failed to comply with the follow up written notice obligations
21 set forth in EPCRA § 304(c) for over five-years;

22 40. EPCRA § 325, 42 U.S.C. § 11045(b), provides for the assessment of a penalty
23 of not more than \$25,000 per day for each day during which the violation continues –
24 pursuant, in part, to the Civil Monetary Penalty Inflation Adjustment Rule, violations of
25 Section 304 that occur after January 12, 2009 are subject to the statutory maximum civil
26

1 penalty of \$37,500 per day for each day a violation continues. *See*, 73 Fed. Reg. at 7345,
2 Table 1 of § 19.4 (Dec. 11, 2008);

3 41. Ammonia emissions from the Arlington Facility greatly exceed 100 lbs/day;

4 42. Defendant has failed to report releases of ammonia in amounts that exceed the
5 reportable quantity threshold from the Arlington Facility for over five-years;

6 43. For this specific violation of EPCRA, the U.S. EPA penalty policy provides for
7 a civil penalty of up to \$37,500 per day, per violation, for a total penalty – with a five (5)
8 year statute of limitations on such emissions/penalties – of \$68,437,500 (365 days x 5 years
9 x \$37,500/per day);
10
11

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for the following relief:

15 1. Find that Defendant has failed, and continues to fail, to report ammonia
16 emissions from both its Arlington and Tonopah Facilities as required, in part, by Section
17 304(c) of EPCRA, 42 U.S.C. §11004(c);

18 2. Find that Defendant is liable for a civil penalty of up to \$90,637,500 for the
19 ongoing violations of EPCRA from its Tonopah and Arlington Facilities. *See*, 42 U.S.C. §
20 11046(c), EPCRA § 326(c) (authorizing the Court to impose civil penalties in a citizen's
21 enforcement action);
22

23 5. Find that Defendant is responsible for Plaintiffs' reasonable attorneys' fees and
24 costs of litigation, *See* 42 U.S.C. § 11046(f), EPCRA § 326(f);
25
26

