

Dairy Farms Face Potential \$10K-A-Month Fines For Pollution

By Clark Mindock, Law360, July 15, 2020

Two Washington dairy farms that haven't complied with a court-approved settlement requiring them to curb manure pollution have been ordered to make significant progress on cleanup by the end of the year or face \$10,000 monthly fines.

U.S. District Judge Thomas O. Rice on Tuesday ordered the farms to step up, pointing out that George DeRuyter & Sons Dairy and D&A Dairy have been out of compliance for "several years" with a five-year-old consent decree they entered with the Center for Food Safety and the Community Association for Restoration of the Environment.

Forcing immediate and short-term compliance is necessary to ensure that the dairy farms meet obligations to complete maintenance on manure lagoons by the end of the year and finish installing liners in the lagoons by the end of next year, or to safely abandon them, the judge said.

The dairy farms were also instructed not to use liquid or solid manure on its fields until it complies with nutrient limits in the settlement.

"The judge recognizes the big picture, and that's the ongoing pollution of the lower Yakima Valley by not only this dairy but all the dairies in the valley," Charlie Tebbutt of the Law Offices of Charles M. Tebbutt PC, who represents the plaintiffs, told Law360. "That's the key message: They've got to do something about it."

The groups, frustrated by what they say is continued noncompliance with the terms of the consent decree and continued pollution, had sought a \$250,000 sanction to be paid to the Clean Water Project. The judge denied that, saying the requested damages aren't tied to a quantifiable, specific injury suffered by the groups and that it wouldn't serve the purpose of a civil sanction to award damages to a non-party like Clean Water Project.

The court did award the plaintiffs attorney fees and costs tied to the contempt and sanctions proceeding. The length of time the dairy farms have failed to comply with the consent decree and their "conscious choices to prioritize other projects over its consent decree obligations" are reasonable grounds to award the plaintiffs fees, the court said.

The consent decree was initially agreed to in 2015, and the dairy farms had until 2018 to comply with many of its requirements to modify the lagoons so that they posed a limited environmental threat. The consent decree also laid out gradual reductions in the amount of phosphorus and nitrates that are acceptable in the fields where the dairies use manure.

The environmental groups filed a motion for order to show cause in December, alleging repeated and ongoing violations of the consent decree, including the failure to meet those deadlines.

Judge Rice found in favor of the nonprofits in April, saying then that the farms "ignored their

own agreement to fix the massive pollution problems at their facilities, which continue to pollute groundwater and harm human health."

As part of the consent decree, the nonprofits were considered the prevailing parties in the suit. In 2016, the court granted the groups over \$3 million in attorney fees and costs.

Counsel for the dairy farms didn't respond to a request for comment.

The nonprofits are represented by Charles M. Tebbutt of the Law Offices of Charles M. Tebbutt PC, Brad J. Moore of Stritmatter Kessler Whelan Coluccio, Jessica L. Culpepper of Public Justice, George A. Kimbrell of the Center for Food Safety and Toby J. Marshall And Blythe E. Terrell of Terrell Marshall Law Group PLLC.

The dairy farms are represented by Brendan V. Monahan, Sean A. Russel, Mathew L. Harrington and John-Philip Schroeder of Stokes Lawrence Velikanje Moore & Shore.

The suit is Community Association for Restoration of the Environment Inc. et al. v. George & Margaret LLC et al., case number 2:13-cv-03017, in the U.S. District Court for the Eastern District of Washington.

--Additional reporting by Morgan Conley. Editing by Steven Edelstone.