

Judge rules: Dairy polluted groundwater

Ross Courtney, Yakima Herald Republic, January 15, 2015

YAKIMA, Wash. — In a wide-ranging ruling Wednesday, a federal judge found that one of the Yakima Valley's largest dairies, the Cow Palace near Granger, has polluted groundwater through its application, storage and management of manure, posing possible "imminent and substantial endangerment" to the public consuming the water and the environment.

In a ruling that could set a national precedent for manure management, U.S. District Judge Thomas O. Rice of Spokane wrote: "Any attempt to diminish the Dairy's contribution to the nitrate contamination is disingenuous, at best."

A March 23 trial in Yakima will determine how much pollution Cow Palace is causing, the extent of any threat and what steps should be taken as a remedy, which could range from ordering the dairy to line all its lagoons to determining damages on behalf of the plaintiffs, led by Granger-based Community Association for Restoration of the Environment (CARE), founded by Helen Reddout, a longtime resident, orchardist and environmentalist.

Attorneys for the Cow Palace said they are already considering an appeal, regardless of what happens at trial.

"It may very well be that the appeal will happen sooner than expected," said Yakima attorney Brendan Monahan, who called the ruling a "disappointing conclusion."

The civil case relies only on the likelihood of unlawful pollution, not absolute proof as in criminal cases. The lawsuit alleges violations of the Resource Conservation and Recovery Act, which governs the disposal of solid and hazardous waste.

Rice wrote that whether contamination poses a substantial and imminent endangerment to health or the environment "does not require proof of actual harm but rather 'a threatened or potential harm,' " quoting an appellate court decision.

He also concluded that "a reasonable trier-of-fact, given the evidence presented, could come to no other conclusion than that the Dairy's operations are contributing to the high levels of nitrate that are currently contaminating — and will continue to contaminate as nitrate present below the root zone continues to migrate — the underlying groundwater."

According to the ruling, Cow Palace has 11,000 cows that create more than 100 million gallons of manure annually.

Rice left a few issues of fact still to be determined at trial, such as whether the dairies are contributing to surface water pollution.

Environmentalists, who sued on behalf of thousands of families in unincorporated areas of the Lower Yakima Valley that rely on groundwater through wells, claimed the ruling as a major

victory.

“This narrows the scope of the trial tremendously,” said Charlie Tebbutt, the Eugene, Ore., attorney representing CARE, which filed the suit. The Center for Food Safety, a Washington, D.C., nonprofit, is a co-plaintiff that also assisted in the case.

The judge’s 111-page ruling at times criticizes the company and its owners and officers, Bill and Adam Dolsen, writing that their defense appeared to minimize the potentially harmful human effects of consuming unsafe levels of nitrates, including “Blue Baby Syndrome,” a condition that can result when babies consume formula mixed with nitrate-contaminated water.

“Alarming, Defendant Cow Palace’s briefing seems to suggest that this Court wait to act until a young infant in the area is first diagnosed with methemoglobinemia, a health effect that occurs at the lowest dose of nitrate consumption,” Rice wrote.

Affected infants develop a peculiar blue-gray skin color and may become irritable or lethargic, depending on the severity of their condition. According to the National Institutes of Health, the condition can progress rapidly to coma and death if not recognized and treated.

Cow Palace owners said they are deciding what to do next.

“We are reviewing the ruling and will be charting a course forward with our attorneys,” said Adam Dolsen, the president of the dairy company, in an emailed statement released through Monahan.

“We understand that this case has wide-reaching implications that extend far beyond the Yakima Valley and throughout agriculture,” the statement said. “Our family is proud to be part of the Yakima Valley community. We wake up every morning with the goal of producing wholesome milk, being responsible stewards of the land and good neighbors.”

Both sides agree on the possibility of a precedent.

The ruling is the first in the nation to consider manure, when improperly managed, a solid waste under federal law, Tebbutt said.

In addition to calling manure a solid waste, Rice rejected Cow Palace’s defense that septic tanks contribute significantly to contaminated groundwater, noting the Environmental Protection Agency found that 224 residential septic systems near the dairies produced less than one-tenth of 1 percent of the waste generated by the other dairy defendants.

The environmentalists filed lawsuits against Cow Palace, Liberty Dairy, H&S Bosma Dairy and George DeRuyter and Son Dairy in 2013.

Cow Palace was scheduled for trial first. The others will follow later.

CARE has long accused the dairies of spraying the manure on farm fields far beyond the rate that alfalfa, silage and other crops can use. Experts for the plaintiffs found that the dairy applied 7.6 million gallons of manure onto a field of alfalfa that already showed nitrate levels in excess of what the crop could use.

Rice noted that except for one lagoon, the Cow Palace did not have complete documentation for each lagoon, "However Defendants admit that none of the Dairy's lagoons have a synthetic liner," which is the recommended standard when lagoons sit over aquifers.

Attorneys for Cow Palace and the other dairies have argued the manure is a useful product, which they use for fertilizer, bedding and compost.