

More of the Story: Environmental groups, dairy industry continue to clash over nitrates

Phil Ferolito, Yakima Herald Republic, January 30, 2020

Controversy is still simmering between environmental groups and Lower Valley dairies.

Three dairies have entered settlement talks while a fourth has recently been threatened with a lawsuit.

Environmental groups are now appealing state permitting regulations for such operations and have accused another dairy of not complying with a federal consent decree.

At issue is high nitrates in Lower Valley groundwater. Environmental groups blame dairies and large animal feeding operations known as CAFOs for the problem, saying their manure storage lagoons leak and that they over apply animal manure to fields as fertilizer.

Dairymen and industry leaders disagree, saying high nitrates were a problem long before most of the dairies began operating in the Lower Valley. They say scientific data being used to blame the industry on groundwater contamination is flawed and unfair.

High concentrations of nitrates in drinking water can be harmful to infants, pregnant women and the elderly, according to the Centers for Disease Control and Prevention.

Nitrates naturally occur in soil, but they can become concentrated by the heavy use of fertilizers — including animal waste — and leaky septic tanks.

The matter is far from being settled, as much litigation lingers.

The three environmental groups — CARE, Friends of Toppenish Creek and the Center for Food Safety — have been aggressively seeking change to the way dairies operate. They want manure storage lagoons lined with synthetic material to prevent seepage into the ground. They also want increased soil and groundwater monitoring.

Those regulation requests were denied in November 2018 by the state Pollution Control Hearings Board.

Now the environmental groups have taken the matter to the state Court of Appeals, where a hearing date has yet to be set.

Environmental attorney Charlie Tebbutt, based in Oregon, blames the state for being too soft on regulations.

“Because of Ecology’s failure to regulate, my clients are bringing action against the dairies

because they are polluting,” he said.

He points to an EPA study that linked a handful of Lower Valley dairies to groundwater contamination. Those dairies, known as the dairy cluster, agreed to sweeping changes in the way they operate under a federal consent decree after being sued by CARE in federal court.

They agreed to install synthetic liners in manure storage lagoons and to limit manure application to fields as fertilizer as well as other operational changes.

Dan Wood, executive director of the state dairy federation, said the study didn’t receive a full peer review but was presented as if it did.

“They basically concocted this study and coerced farmers into signing the decree,” he said.

The industry is now trying to persuade the EPA to give it a full peer review or conduct another study, he said.

“We’re not afraid of the science,” Wood said. “The dairy industry is probably the most regulated industry in the state with the nutrient (manure) management plan. We just want real science.”

U.S. Rep. Dan Newhouse, R-Sunnyside, has raised the same issue with the EPA and has requested a full peer review.

Meanwhile the environmental groups want the rest of the dairies to become subject to the same requirements of those in the cluster.

In recent years, they’ve sued two Outlook dairies - SMD LLC and DBD Washington LLC - and threatened to sue Sunnyside Dairy.

Those dairies have since engaged in settlement negotiations, Tebbutt said.

Earlier this month, the environmental groups sent a letter of intent to sue the Majestic Dairy in Outlook in federal court. The groups allege the dairy is mismanaging animal manure. The Jan. 2 letter triggers a 90-day waiting period before the groups can file a lawsuit.

The environmental groups also seek a contempt of court order against DeRuyter & Son Dairy for not installing synthetic liners in its manure lagoons, as required under the consent decree.

The dairy says it’s using a system that filters the waste before being stored in the lagoons, and that the EPA has allowed the new system in place of liners.

Federal Judge Thomas Rice has granted a request to hear the matter. A hearing date has yet to be decided.