

Environmental groups sue 4 Lower Valley dairies in federal court

February 15, 2013, Ross Courtney, Yakima Herald Republic

As they threatened to do four months ago, two environmental groups have filed federal lawsuits against a cluster of Lower Yakima Valley dairies for allegedly polluting the groundwater many people rely on for drinking.

Outlook-based Community Association for the Restoration of the Environment, or CARE, and the Washington, D.C.-based Center for Food Safety, filed Thursday in U.S. District Court against four dairies for manure-handling practices they say constitutes “open dumping” and violating three federal statutes that require reporting the release of hazardous chemicals.

The dairies have been allowed to engage in practices that contaminate drinking water, the groups said in a joint news release Friday.

In October, the groups sent notices of intent to sue to the dairies, starting a 90-day clock to give the facilities a chance to change their operations, namely by lining manure storage lagoons and limiting the application of fertilizer, including liquid manure.

“The main objective is changing the practices,” said Charlie Tebbutt, the Eugene, Ore., attorney representing the association.

The suits also allege the dairies are in violation of federal law requiring them to report the release of hazardous airborne pollutants, including ammonia, to various state and federal agencies.

Dairy industry representatives were not surprised by the lawsuits.

The plaintiffs are seeking declaratory and injunctive relief for the violation of the federal statutes and for the cleanup, along with unspecified civil penalties and legal expenses.

“We’ve been expecting it,” said Jay Gordon, executive director of the Washington Dairy Federation. “We’re ready.”

Gordon called the accusations “baseless,” the same way he did the notices four months ago.

“This isn’t getting us any closer to any solutions,” Gordon said. “It’s a waste of money and everybody’s time, but it’s the game that’s got to be played.”

The defendants are the Liberty-Bosma Dairy, Cow Palace, D&A Dairy and the George DeRuyter and Sons Dairy, all located in Yakima County north of Granger and Sunnyside.

Dairy owners stressed they are working toward solutions without the threat of lawsuits.

“We are deeply disappointed that a hired-gun lawyer and some Washington, D.C., special interest group have sued our local dairies,” said Adam Dolsen, owner of Cow Palace, in an email

statement on behalf of himself and the owners of the D&A Dairy, the George DeRuyter and Sons Dairy and Liberty Dairy. “We continue to work with the EPA to protect groundwater and our communities. We continue to work with the community and state local and federal officials to address all the groundwater issues in the Yakima Valley collaboratively. This litigation is divisive and hurtful, and shows these groups are more interested in making headlines than making real progress.”

Nitrates, a naturally occurring form of nitrogen, can cause health problem, specifically methemoglobinemia in infants. Small studies also have linked nitrates to birth defects. They also can indicate the presence of other contaminants, such as bacteria and pesticides.

The dairies have 20 days to respond to the lawsuits, after which a judge will be assigned to start scheduling a trial, most likely in the Yakima federal courthouse, Tebbutt said.

The lawsuits also are designed to put pressure on regulatory agencies, which the environmentalists say have been too slow to act.

“It’s been more than a decade of incompetence at the highest level of Washington politics,” Tebbutt said.

“We cannot trust any agency’s actions,” he said.

Authorities with the state Department of Agriculture, charged with enforcing proper dairy nutrient management practices, declined comment on the lawsuit.

“WSDA continues to support the Groundwater Management Area process and the related work plan, which has involved the efforts of government at all levels, as well as tribes, agricultural producers and environmental groups,” said Hector Castro, a department spokesman, in an emailed statement. “These are complex environmental issues and they will continue to require that all the affected parties work together in order to resolve them.”

The lawsuits refer to a September Environmental Protection Agency report that pointed a critical finger at the same dairies for causing most of the Lower Valley’s nitrate pollution. Numerous studies have determined that about 20 percent of private residential wells in the Lower Valley have nitrates in excess of federal drinking water standards.

The EPA report made reference to five dairies, including Haak, though the number of dairies cited sometimes differs because some are owned by the same families.

The authors of the EPA study used chemical analysis of soil and water from dairies and farms to try to trace contamination back to specific sources.

Dairy owners blasted the report as incomplete and the EPA conceded the shortcomings. For example, the agency tested water from municipal sewage plants but not septic systems, though leaky septic systems are among the other suspects for nitrate and bacteria contamination in

private wells.

Since the September report, the EPA has been negotiating with the dairies to draft legally binding agreements that would govern their practices. Talks are still under way, said Mark MacIntyre, a spokesman for the agency's Region 10 office in Seattle.

In December, agency officials drilled several test wells on the borders of the dairy property to analyze water quality. Results are still being tabulated.

Tebbutt represents CARE, the Granger group founded in the 1990s to contest dairies' alleged pollution.

This time they have backing from the Center for Food Safety, which promotes organic farming practices. Public Justice, a Washington, D.C., public interest law firm, signed on as co-counsel, along with Seattle attorney Brad Moore of the firm Stritmatter Kessler Whelan and Coluccio.

Meanwhile, both dairy owners and CARE sit at the same table each month for meetings of Yakima County's Ground Water Management Area advisory board, a volunteer body approved by the state Department of Ecology to find ways to reduce pollution.

Helen Reddout, president of CARE, is a member of the board and some of the dairy representatives asked her to step down after her association sent the notices advising of the potential for litigation. She declined.

- Ross Courtney can be reached at 509-930-8798 or rcourtney@yakimaherald.com.