

Ag officials dispute conflict of interest concerns over dairy oversight

Yakima Herald, March 28, 2012.

By Ross Courtney

A federal judge's stern rebuke of a Royal City dairy that violated an agreement to clean up its manure-management practices contrasts with the high marks state agriculture inspectors gave the same facility, raising questions about the thoroughness of state inspections, long criticized by environmental activists.

Judge Lonny Suko of U.S. District Court in Yakima late last year ruled that the industrial-scale Nelson Faria dairy polluted groundwater relied upon by nearby residents.

"Faria's manure-management practices have caused or significantly contributed to the excessive nitrate contamination of the local groundwater, as observed and documented by CARE's monitoring wells," Suko wrote in an order late last year.

CARE is Community Association for the Restoration of the Environment, a Granger-based group that sued the dairy in 2004 on behalf of several Royal City residents.

But during all the years of the litigation, which covered an agreement by the dairy and its previous owner to change manure-management practices, state agricultural inspectors mostly found something quite different.

"Excellent containment of nutrients," said a routine Department of Agriculture inspection on Feb. 25, 2008. "A drive through of the facility showed a very clean operation. Lagoon solids are being cleaned out and are well contained," said another inspection on June 15, 2009.

"The dairy and feedlot are being very well maintained," the inspector found on Oct. 16, 2009.

Nutrients is the agricultural term for cow manure.

The widely divergent views of the dairy and its manure-management practices raise an old question: Can the Agriculture Department fulfill its twin statutory goals of promoting agriculture while also protecting the public?

Environmentalists say it's the proverbial fox guarding the henhouse. "It presents an inherent conflict of interest for them," said Dan Snyder, a Eugene, Ore., attorney for CARE.

Agriculture officials say they can do both.

"We do it to the best of our abilities," said Kirk Robinson, assistant director for safety and

consumer services of the state Department of Agriculture. "I think our program does a good job and we're out there making sure dairy farmers are following their nutrient management plans and it appears the system is working."

Dairies are required by law to have nutrient management plans that govern how they handle the tons of manure produced on site every year. Robinson said more than 90 percent of dairies statewide are in compliance with those plans.

Robinson said Faria has improved the dairy's operations since purchasing the facility in 2006 from Smith Brothers of Kent for \$16 million. Faria inherited the terms of a consent decree reached after CARE's original lawsuit.

The Faria family owns dairies in New Mexico, Washington and Texas. Nelson Faria is the principal owner of the Royal City dairy, according to the secretary of state corporation records.

Robinson said some of the discrepancy between Suko and Agriculture's findings on the dairy can be explained by where manure is applied. The Nelson Faria dairy has about 200 acres of its own land, mostly occupied by cows.

As a result, manure is applied to neighboring fields on a contract basis. And, here's the loophole: State inspections don't have jurisdiction over those fields, Robinson said.

What's more, inspectors take a visual snapshot on the day they are present — there's no groundwater testing. They can't see everything.

"We base our inspections on what we see when we're out there," Robinson said.

But environmentalists say they are not looking hard enough.

"They don't do very thorough inspections," Snyder said.

Long-standing complaints

Neighbors of the dairy have complained for years that dust, odor, flies and congestion from the operation has compromised their quality of life.

Dixie Ettles' family has farmed hay in the area since the early 1970s, years before the dairy was even proposed. When Smith Brothers began construction, she and others protested to local public officials.

"When they put that first sign in, we knew we were doomed from then on," she said.

Today, she says dust is so thick she can hardly see across the Valley and wakes up at night with sore throat. Meanwhile, court records show her well, which she relies upon for drinking water, has higher than federally acceptable levels of nitrates.

In the 2006 consent decree, Suko ordered the dairy to provide Ettles' family with up to \$10,000 worth of clean drinking water. But she never pursued the remedy, fearing the dairy would not follow through with requirements to reimburse her for costs if she purchased bottles or set up a filter. CARE attorneys now advise her it's too late and she said she probably will not collect.

"You can only bang your head against the wall for so long," she said.

She declined to discuss the issue any further after CARE attorneys advised her against it.

Ag as enforcer

State inspectors with the Agriculture Department's nutrient management program visit dairies and feedlots — often called Concentrated Animal Feeding Operations, or CAFOs — every 22 months or so, or in response to a complaint.

If they find evidence of problems — such as too much manure on a field or ponding of liquid manure — they alert the state Department of Ecology, which can inspect and enforce Clean Water laws and require the dairy to get a CAFO permit, something most dairies prefer to avoid because it regulates them more closely.

State inspectors were not entirely happy with Faria. They issued a March 25, 2009, letter of warning — in response to a CARE complaint — that manure application records were incomplete, soil and manure samples had not been taken and a pond had been allowed to form in a field.

"Lack of manure application records, soil and manure samples and poor irrigation water management are not acceptable," inspector Eric Bair wrote in the letter. "Further neglect regarding these important items as required in your Nutrient Management Plan will result in more serious enforcement actions."

The agency followed up and on July 10 that year, sent a letter to the dairy stating that it was again in compliance, said Jason Kelly, a spokesman for the department. In October the same year, another routine inspection showed no problems with record keeping and soil sampling, Kelly said.

Meanwhile, CARE representatives did their own inspections called for by the consent decree. In December 2008, CARE went back to the judge to accuse Faria of nine violations of the agreement.

The complaints weren't new — too many cows for the land area, over-application of manure to fields and ponding of manure.

The group also criticized the dairy for removing and not replacing a lagoon liner, keeping poor records and not using aerators in the lagoons. Aerators rush oxygen into the liquid manure, cutting down on the release of ammonia.

Suko's December 2011 order replaces the 2006 decree and mandates many potentially expensive steps the dairy must take. Among them are obtaining a permit from the Ecology Department, installing new monitoring equipment, including two groundwater sampling wells, pumping out and inspecting lagoons and keeping the herd under 10,440 animals.

It also requires Faria to maintain records and certification of application plans from off-site farmers who purchase the dairy's manure for fertilizer.

Attorneys for the Nelson Faria Dairy declined comment but have filed a motion to amend the order.

In the motion, the dairy's lawyers do not dispute any findings of pollution but asked for more time to meet many of conditions of the order. For example, the dairy has applied for a CAFO permit but the approval process with the Grant County Conservation District and Ecology has been slow, they said.

Dairy farmers are unsure about the lasting ramifications of Suko's order.

"It's almost impossible to tell what it means," said Jay Gordon, executive director of the Washington Dairy Federation.

Environmental advocates claim the ruling sets a long-overdue precedent for holding large cattle farms environmentally accountable.

"This is the standard for what people should do when trying to figure out if a (dairy or feedlot) is causing environmental harm," said Snyder.

"CARE would contend that this case requires changes."

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