

# Federal judge finds Lower Valley dairy in violation of environmental mandates

Phil Ferolito, Yakima Herald Republic, April 15, 2020

A federal judge has found that a Lower Valley dairy has failed to comply with a consent decree requiring the operation to employ specific environmental safeguards.

On Tuesday, U.S. District Court Judge Thomas Rice found George DeRuyter & Sons Dairy had failed to meet requirements under the federal decree outlining animal waste management.

Rice found the dairy had not installed double synthetic liners in most of its animal manure storage lagoons, removed compost piles, inspected its underground conveyance system for waste and had overapplied manure as fertilizer to fields.

Rice said the court next would determine any necessary sanctions and corrective measures.

DeRuyter & Sons was among a handful in the Lower Valley that entered the 2015 consent decree after being sued by area environmental groups. Those dairies were accused mismanaging animal waste to the point that it was contaminating groundwater.

A study by the Environmental Protection Agency linked those dairies to high nitrates in area groundwater. Dairies have questioned the EPA's findings.

Nitrates naturally occur in soil but heavy use of fertilizers, including animal waste, and leaky septic tanks can lead to concentrated levels seeping into groundwater. High nitrates are harmful to the elderly and infants, according to the Centers for Disease Control.

The present matter came before Rice after local environmental groups CARE and Friends of Toppenish Creek and the Center for Food Safety filed a 36-page complaint in U.S. District Court accusing DeRuyter & Sons of violating the federal order.

Named in the complaint are DeRuyter & Sons Dairy, its affiliate D&A Dairy and George and Margaret DeRuyter.

The dairy's attorney, Brendan Monahan of Yakima, said Rice's recent decision isn't as harsh as some may perceive.

He said alternative technology the dairy is employing to meet environmental concerns is still being evaluated and that's why Rice has yet to employ sanctions.

The dairy has installed a nitrification-denitrification system that filters waste before it is stored in the ponds. EPA has allowed that technology in place of lagoon liners while CARE insists the liners be installed.

Monahan questions “whether any mitigation or cure is warranted” given this new technology.

“We’re looking forward to engaging that question directly in the next phase of briefing and argument,” he said.

Monahan also said the dairy was transparent in overapplications of manure to fields, warranted because of a lack of storage space. He also said a firm completion schedule had yet to be determined for inspection of the underground conveyance system.

“We’re happy to work with CARE and or the court to arrive at a reasonable method and time frame for compliance,” he said.

Those responses do not justify failing the meet stipulations in the decree, said environmental attorney Charlie Tebbutt.

He argues that the dairy wasn’t transparent about overapplications and said the DeRuyters had agreed to a timeline for inspections four years ago.

“And they didn’t do it,” Tebbutt said. “They’re playing games.”

Tebbutt said liners have to be installed no matter what other system the dairy uses because liners are required in the decree.

“We gave them every opportunity to do what consent decree said and they chose to ignore it all along,” Tebbutt said. “Now they have to pay the consequences.”