

Newhouse bill would exempt dairy manure from waste regulations, ban some citizen lawsuits

Phil Ferolito, Yakima Herald Republic, April 4, 2017

A congressional bill that would prevent animal manure from being regulated under federal solid waste regulations has farmers hopeful and environmentalists concerned.

Introduced by U.S. Rep. Dan Newhouse, the bill, H.R. 848, would clearly exempt animal and crop waste and fertilizer from the Resource Conservation and Recovery Act, RCRA.

In his bill, Newhouse contends a federal judge's 2015 ruling that Yakima Valley dairies violated solid waste regulations for managing manure misinterpreted the act.

Congress never intended the act to govern animal or crop waste, manure or fertilizer, according to Newhouse.

The bill also would prevent environmental groups from suing farmers who are working with state and federal agencies to address manure issues or engaged in legal action with those agencies.

Disagreeing with Newhouse's view on Congress' intent of the RCRA, environmental attorney Charlie Tebbutt, who represented local groups in a lawsuit against Lower Valley dairies, said the bill strips a needed defense tool from residents affected by concentrated animal feeding operations.

"It is reprehensible that a U.S. congressman would seek to protect the interest of a few dairies over the interest and public health of thousands of people," he said.

A matter of interpretation

RCRA regulates landfills and open dumping of waste, while manure and crop residue returned to the soil as fertilizers are exempt.

But in the case of the Lower Valley dairies, U.S. District Court Judge Thomas O. Rice of Spokane found that manure applied to fields in excess of what crops needed polluted groundwater and contributed to solid waste dumping, therefore was not exempt.

Arguing the ruling was a misinterpretation of RCRA and that farmers are already subject to numerous water statutes, Newhouse said his bill — named the Farm Regulatory Certainty Act — merely clarifies that animal and crop waste and fertilizer aren't solid waste.

"This decision places our entire agricultural community in a gray area of legal uncertainty," according to a statement issued by Newhouse's office. "Farmers are now uncertain which statutes govern their nutrient management activities, and are open to increased liability from RCRA citizen suits based on undefined standards. Moreover, in the Washington state case, the farmers

being sued under RCRA were working with EPA to address nutrient management issues prior to the citizen suit being filed.”

Dan Wood, executive director of the Washington State Dairy Federation, said the bill “intends to correct that ruling.”

“The ruling is out of step with 40 years of federal law,” he said. “The law never intended to consider a natural fertilizer as a solid waste like a fuel or other chemical waste.”

Disagreeing, Tebbutt refers to the history of the Clean Water Act and RCRA and subcommittee discussions involving them.

He points to comments then-Senator Bob Dole made in the record of the Senate Public Works Committee in the early 1970s.

“Animal and poultry waste, until recent years, has not been considered a major pollutant. ... The picture has changed dramatically, however, as development of intensive livestock and poultry production on feedlots and in modern buildings has created massive concentrations of manure in small areas. The recycling capacity of the soil and plant cover has been surpassed,” Dole had said in the record.

Uncertainty and fear

The ruling has caused uncertainty among farmers across the country, and had led to some being threatened with possibly unfair lawsuits, said Paul Bleiberg, director of government relations for the National Milk Producers Federation.

“The way we’ve viewed this issue for a long time is that manure and stuff returned to soil would not be subject to solid waste requirements,” he said.

“The problem with a court ruling like this is it causes some uncertainties — we’re hoping to get this legislation passed to reinforce that certainty.”

Bleiberg contends that there are plenty of federal and state regulations in place such as the Clean Water Act and manure nutrient management programs governing operators.

The bill merely declassifies animal and crop waste and fertilizer as solid waste and wouldn’t impact any other federal laws governing safe drinking water, he said.

Otherwise, farmers could be subject to unfair lawsuits over manure application even when no harm is being done, Bleiberg said. “We’re trying to reinstate congressional intent. The bill does not affect any other reach of any other federal law.”

While farmers worry about the federal court ruling’s precedence, environmentalists worry about the effect of the bill.

Bob Martin, director of food system policy at John Hopkins Bloomberg School of Public Health, said he's concerned about impacts on those living in the rural Lower Valley, where a majority of Valley's 52 dairies are located and high concentrations of nitrates have been found in groundwater.

Excessive nitrates in drinking water can inhibit oxygen in the blood, a condition that can be harmful to infants, pregnant women, nursing mothers and the elderly.

"With so many people on well water in rural areas, it's a huge concern," he said. "From a public health standpoint, we'd be opposed to (the bill)."

Jessica Culpepper, food safety and health attorney with Public Justice, said RCRA is the only real defense for people whose drinking water is impacted by dairy and feedlot operations.

Culpepper, whose group was party to the case against the dairies, said the Clean Water Act largely focuses on pollution of navigable waterways while the RCRA covers groundwater.

She said the RCRA requires polluters to clean up their mess.

In a settlement in the lawsuit against the dairies, three operators agreed to install synthetic liners in their manure storage lagoons, undertake a soil and water monitoring program and provide an alternative drinking water source for neighbors within a 3-mile radius of the dairies.

"Without this, people have no way of protecting themselves," she said. "It strips agricultural waste from the Solid Waste Act. It also takes away citizen supervision, which allows the public the right to sue."

She disagrees that the court ruling has set an unfair precedent for farmers.

"The only things that are looked at are those literally dumping so much that it's contaminating drinking water," she exclaimed. "That's how bad it's got to be to use the statute."

"You have to show that whoever is doing the damage is mismanaging manure waste. You'd have to be actually abandoning it and dumping it in large quantities."