

Lower Valley dairies settle final issues in federal case

Ross Courtney, Yakima Herald Republic, May 12, 2015

YAKIMA, Wash. — Three Yakima Valley dairies found to be posing an imminent threat to public health because of their manure-management practices have finalized settlement of a federal lawsuit described as a major turning point in the industry.

Chief among the conditions: The dairies have agreed to double line their manure-storage lagoons and distribute bottled water or reverse-osmosis filters to a wider swath of neighboring residents than they already had been doing under previous binding agreements.

Attorneys for both sides said the changes could set a national precedent for the operation of dairies and other concentrated animal feeding operations.

“We hope this ushers in a whole new era,” said Charlie Tebbutt, the Eugene, Ore., attorney representing the Granger-based Community Association for the Restoration of the Environment, or CARE.

Brendan Monahan, the Yakima attorney for the dairies, expects others to follow suit and predicts the new practices will become the standard.

“I think we are in a transitional stage of the dairy industry,” he said.

Monday’s 34-page settlement, also called a consent decree, closes a lawsuit filed in February 2013 in U.S. District Court by CARE and the Washington, D.C.-based Center for Food Safety against five dairies north of Sunnyside and Granger in the Lower Yakima Valley, a diverse agricultural region known for tree fruit, wine grapes and hops, as well as milk.

As the case progressed, one dairy family closed and sold off its holdings while two others combined for purposes of the trial, leaving three — the Dolsens, the DeRuyters and the Bosmas.

Nearby residents say it’s about time. After years of buying water, Martin Yanez, 73, of Zillah, and his family purchasd their own kitchen filter about six years ago when a test showed he had nitrates above the 10 parts per million level set by the federal government. His mother is 94 and his sister is 63 with some immune system deficiencies, he said.

“I feel better that we were at least attentive to protect ourselves,” Yanez said.

Though they admit no wrongdoing, the dairies agreed to double line their lagoons with both a geosynthetic clay liner and synthetic liner at least 40 mils thick, fund a clean water delivery program to residents with contaminated wells, build concrete aprons around water troughs and other measures.

“It’s going to take an extensive financial investment,” Monahan said, though he did not estimate an amount.

But the dairies agreed to “go over and above federal and state standards,” they said in a joint news release Monday.

“Groundwater quality has been a concern for decades in the Valley, long before our dairies even began operating,” said Adam Dolsen of Cow Palace Dairy, the first of the three dairies to reach a court hearing.

“Our historic management practices prevented any significant contribution of nitrates to groundwater, and with the new practices announced in this settlement we eliminate any doubt whatsoever.”

The terms call for no monetary penalties. Defendants agreed to pay \$300,000 in attorneys’ fees and related court costs to Tebbutt’s firm.

Many of the conditions are a combination of requirements already established by court-sanctioned agreements in March 2013 with the EPA. In fact, the EPA has some oversight of the implementation of the new elements.

“We all deserve to have safe, clean drinking water, so we are quite pleased to hear that there has been a settlement reached in the lawsuit between CARE and several Yakima Valley dairies,” said Dennis McLerran, EPA regional administrator for the Pacific Northwest and Alaska, in a prepared statement Monday.

“EPA’s role will be to ensure that the Safe Drinking Water Act and Resource Conservation and Recovery Act measures the dairies have agreed to are implemented effectively and in a timely manner.”

For decades, numerous tests have shown that private wells in the Lower Valley have concentrations of nitrates higher than federal thresholds for drinking water but authorities took no action. Excess nitrates can harm infants and people with compromised immune systems, while they also may indicate the presence of bacteria, pesticides and other contaminants.

The environmental groups sued the dairies for open dumping of manure under federal solid waste laws, or the Resource Conservation and Recovery Act. Dairies argued that manure is not waste but a useful and valuable byproduct used for bedding, fertilizer and compost.

In January this year, U.S. District Judge Thomas Rice ruled that Cow Palace had polluted groundwater through its application, storage and management of manure, posing possible “imminent and substantial endangerment” to the public consuming the water and the environment through unlined storage lagoons and by excessive application on fields of alfalfa and feed corn.

Last month, all three dairies agreed to binding, court-sanctioned stipulations to line their lagoons and distribute bottled water to 25 homes not originally covered in the earlier EPA agreements.

Monday's settlement will bump that to hundreds more homes using a third party to find them, Tebbutt said.

Lower Valley rural residents knew little about Monday's legal milestone but some have been using bottled water or a reverse osmosis filter regardless of their nitrate levels.

Norma and Leonardo Solano of Outlook spend \$12 per month for bottled cooking water and purchase four 24-bottle cases of drinking water from nearby stores each week, even though technicians repeatedly say their water is below the threshold.

"Well I'm not going to drink it," Normal Solano said. "I'm still afraid."

Tim Haley, 50, of Outlook has been receiving free bottled water for several months after his well tested too high for nitrates.

"I drank the water for 10 years until they started telling me it was bad," said Haley, who lives on the property with his wife, son and father.

Haley, who works for a dairy-equipment company, finds the water problems a nuisance, but doesn't solely blame the dairies.

"As far as what the cause is, I have no idea," he said. "I feel like it's a little unfair that they jump all over the dairies on it."

He finds dairy truck traffic on his tiny, gravel country more frustrating than water pollution.

"That's what I get for living in the country," he said.