

Litigation flares up over Washington dairy farms

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Dairy cows at a farm in Sunnyside, Wash. Litigation over alleged dairy pollution in the Lower Yakima Valley has flared up recently.

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Environmental litigation against Washington dairy farms is flared up while a state dairy organization has launched its own legal battle against the federal government.

The Community Association for the Restoration of the Environment and other nonprofits recently filed a lawsuit accusing Majestic Farm, a dairy in Outlook, Wash., of violating federal law by storing manure in leaky lagoons and applying it to fields at excessive rates, contaminating groundwater.

The lawsuit is seeking a court order prohibiting the dairy from keeping manure in unlined lagoons and requiring it to monitor groundwater, develop a nutrient management plan and provide drinking water to local residents.

Capital Press was unable to reach the dairy's owners or their attorney for comment.

The environmental group has also sent letters notifying two dairies in Sunnyside, Wash., of its intent to file similar lawsuits alleging illegal "open dumping" under the Resource Conservation and Recovery Act.

Meanwhile, CARE has persuaded a federal judge that two dairies in the Lower Yakima Valley have violated a 2015 settlement deal by failing to timely turn over nutrient data, meet composting requirements and double-line their lagoons to prevent leakage, among other provisions.

Over the next month and a half, the plaintiffs and defendants will submit legal arguments as to appropriate sanctions for a breach.

“As soon as the dairies stop polluting, my clients will stop suing them,” said Charles Tebbutt, attorney for the plaintiffs.

Washington’s Lower Yakima Valley region has among the largest concentrations of “industrial” dairies in the country and a history of groundwater pollution that adversely impacts the public, Tebbutt said.

“It violates federal law and it violates human rights to clean water,” he said.

Dan Wood, executive director of the Washington State Dairy Federation, said the lawsuits are part of a “pattern” of litigation aimed at winning money while trying to shut down the area’s dairy farms.

“It’s a money and a control thing,” he said.

Environmental groups made the same allegations against dairies before the Washington Pollution Control Hearings Board, which determined in 2018 that the state’s regulation of Concentrated Animal Feeding Operations, including dairies, complies with the federal Clean Water Act, he said.

Environmental lawsuits are still disconcerting to dairy farmers, who worry about their ability to stay in business, Wood said.

“It’s created a lot of uncertainty,” he said. “People are following their CAFO permits and getting sued anyway.”

The Washington State Dairy Federation has meanwhile embarked on its own legal challenge against a 2013 consent order with the U.S. Environmental Protection Agency, which imposed conditions on dairy farms that have cost them millions of dollars, Wood said.

The organization’s petition for review before the 9th U.S. Circuit Court of Appeals also challenges the validity of the EPA’s study of nitrates in groundwater wells in the Lower Yakima Valley, which blamed dairies for the pollution, he said.

The agency didn’t follow the peer review requirements, changed documentation and otherwise disregarded proper scientific protocols, which didn’t become clear to the dairy industry until later, Wood said.

“They committed fraud,” he alleged. “They designed their study with a particular conclusion in mind.”

Tebbutt, the attorney for the environmental plaintiffs, called the group’s 9th Circuit challenge “specious.”

“The dairy industry has said it’s always in compliance with everything,” Tebbutt said. “The facts say otherwise.”

Tebbutt also said Washington’s CAFO regulations are “useless” because they don’t “protect human health or the environment,” which has made litigation necessary.

“My clients use the last resort — citizen suits — to protect themselves from the rampant pollution,” he said.

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I've been working at Capital Press since 2006 and I primarily cover legislative, regulatory and legal issues.