

Judge: Dairy pollution threatens Washington valley's water

January 15 2015, by Nicholas K. Geranios

A federal judge has ruled that a large industrial dairy in eastern Washington has polluted drinking water through its application, storage and management of manure, in a case that could set precedents across the nation.

U.S. District Judge Thomas O. Rice of Spokane ruled Wednesday that the pollution posed an "imminent and substantial endangerment" to the environment and to people who drink the water.

Rice wrote that he "could come to no other conclusion than that the Dairy's operations are contributing to the high levels of nitrate that are currently contaminating—and will continue to contaminate ... the underlying groundwater."

"Any attempt to diminish the Dairy's contribution to the nitrate contamination is disingenuous, at best," Rice wrote in the 111-page opinion, in which he granted partial summary judgment in favor of environmental groups that sued the dairy.

A trial has been scheduled for March 23 in Yakima to decide how much pollution the Cow Palace dairy of Granger was causing and what steps should be taken as a remedy.

Jessica Culpepper—an attorney for Public Justice, who helped represent the environmental groups—said this was the first time a federal court has ruled that improperly managed manure is a solid waste, rather than a

beneficial farm product. This is also the first time that the federal Resource Conservation and Recovery Act, which governs the disposal of solid and hazardous waste, was applied to farm animals, Culpepper said.

Those standards can now be applied across the nation, Culpepper, of Washington, D.C., said.

Attorneys for Cow Palace said they were already considering an appeal, regardless of the trial outcome.

"It may very well be that the appeal will happen sooner than expected," said attorney Brendan Monahan of Yakima.

The civil lawsuit was filed by environmental groups—including the Community Association for Restoration of the Environment and the Center for Food Safety—and relied only on the likelihood of unlawful pollution, not absolute proof as in criminal cases.

According to the ruling, Cow Palace has 11,000 cows that create more than 100 million gallons of manure each year.

The decision "connects these industrial dairies to contamination of the drinking water of thousands of lower Yakima Valley residents," the environmental groups said in a press release.

The manure is spread on fields, turned into compost and stored in large impoundments.

"They were storing it in lagoons that are leaking like crazy," Culpepper said. "It will take a lot of work to clean it up."

The environmental groups sued on behalf of thousands of families in the lower Yakima Valley who rely on groundwater through wells. The valley

is a heavily agricultural area located about 150 miles east of Seattle.

"It is long past due that these dairy factories be held accountable for their toxic waste and compromising of human health," said George Kimbrell, attorney for the Center for Food Safety.

Rice's ruling criticized the Cow Palace and its owners, Bill and Adam Dolsen, saying they appeared to minimize the dangers posed by nitrates, including "Blue Baby Syndrome," a condition that can result when babies consume formula mixed with nitrate-contaminated water.

"Alarmingly, Defendant Cow Palace's briefing seems to suggest that this Court wait to act until a young infant in the area is first diagnosed with methemoglobinemia, a health effect that occurs at the lowest dose of nitrate consumption," Rice wrote.

Cow Palace owners said they are deciding what to do next.

"We are reviewing the ruling and will be charting a course forward with our attorneys," president Adam Dolsen said in a statement.

"We understand that this case has wide-reaching implications that extend far beyond the Yakima Valley and throughout agriculture," Dolsen's statement said.

Rice also rejected Cow Palace's defense that septic tanks contribute significantly to contaminated groundwater, noting the U.S. Environmental Protection Agency found that 224 residential septic systems near the dairies produced less than one-tenth of 1 percent of the waste generated by the other dairy defendants.

The environmental groups in 2013 filed lawsuits against Cow Palace, Liberty Dairy, H&S Bosma Dairy and George DeRuyter and Son Dairy.

The case against Cow Palace was scheduled for trial first. The dairies are located close to each other, and the facts and arguments are the same in all four lawsuits, Culpepper said.

The dairies contended that manure was a beneficial farm product.

"We argued there was so much manure it can't be used as a beneficial product," Culpepper said.

A 2012 EPA study showed that 20 percent of the 331 wells tested in the lower Yakima Valley had nitrate levels above federal [drinking water](#) standards, posing a serious danger to the more than 24,000 residents who rely on private wells.

Nitrates can cause other severe health problems such as several forms of cancer, autoimmune system dysfunction, and reproductive problems.

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