

Environmental group wants to intervene in dairies' suit against EPA

Kate Prengaman, Yakima Herald Republic, December 2, 2014

An environmental group suing several Lower Valley dairies over alleged pollution now wants to intervene in a related lawsuit that the dairies filed to prevent the federal government from releasing details of their operations.

The information at stake — facility maps, numbers of cows, types of crops, waste lagoon information and soil tests — is considered by the dairies to be confidential business information.

But Granger-based Community Association for the Restoration of the Environment, or CARE, believes the information should be publicly available so that neighbors can be aware of potential pollution risks. When the federal Environmental Protection Agency moved to make the data public, four dairies sued to prevent the release.

CARE is suing four dairies, accusing them of allowing cow manure to contaminate groundwater after a 2012 EPA report found the dairies were a likely source of the nitrate pollution that makes well water unsafe for infants and pregnant women to drink in some parts of the Lower Valley.

Although CARE gained access to most of the documents in the course of its lawsuits against the dairies, the group's attorney, Charlie Tebbutt of Oregon, said that he hopes this case can set a precedent that such information should be a matter of public record.

"There's a larger issue here that dairies, these dairies and all dairies in the state, are allowed to keep the very information that people need to protect themselves from public view," Tebbutt said. "Right now, under state law, neighbors can't get the critical information on whether or not these facilities are likely causes of pollution."

In July, the EPA determined the documents, submitted by the dairies to the agency as part of legal agreements to cut their contribution to the groundwater nitrate pollution, should not be confidential.

The agency planned to release the documents to CARE, which had requested them through the Freedom of Information Act, but the dairies involved challenged the EPA's decision in U.S. District Court in Spokane.

In November, CARE submitted a motion asking to join the case as a defendant and support the EPA's "determination that the documents are not deserving of confidentiality status," Tebbutt said.

Tebbutt said that because the entire case is based on CARE's original information request, the environmental group has a clear right to intervene in the case.

“The question is whether the EPA is going to make all the legal arguments possible,” Tebbutt said. Having CARE as a party to the suit would guard against a settlement between the EPA and the dairies that negatively impacts the public interest, he said.

But the attorney representing the dairies — Cow Palace LLC, George DeRuyter and Son Dairy LLC, Liberty Dairy LLC, and H&S Bosma Dairy — disagrees.

In his response to CARE’s motion, David Linehan wrote that because the environmental group and the EPA both want to see the documents released, there is no reason for CARE to join the lawsuit. Moreover, CARE already obtained copies of the documents in question through its other ongoing lawsuit against the dairies, Linehan wrote, so the group is seeking public disclosure of information it already has access to.

Reached by phone, Linehan declined to comment beyond what he filed in court.

The EPA did not file a response to CARE’s intervention request and all parties are now waiting on a decision on CARE’s request from Judge Thomas O. Rice.

Meanwhile, CARE’s groundwater contamination lawsuits against the dairies are on track to go to trial in February, starting with the Cow Palace, Tebbutt said.