

Idaho case could impact dairies nationwide

By CAROL RYAN DUMAS
Capital Press

A ruling by a federal judge in a lawsuit alleging a Yakima, Wash., dairy violated the Resource Conservation and Recover Act could have significant implications for dairy operations nationwide.

U.S. District Judge Thomas Rice, on Jan. 14, applied the federal law governing the disposal of solid waste and hazardous waste to manure handling, an application that has never been assigned in RCRA's near 40-year history.

The ruling could change the way dairies and other livestock operations handle, store and apply animal waste, requiring practices that could prove economically unviable.

In denying Cow Palace Dairy's motion for summary judgment in its favor, Rice ruled its storage, handling and application of manure, which allowed nitrate to leak into soils and contributed to groundwater contamination, constitutes "open dumping" of "solid waste" that may present an "imminent and substantial" danger to the public, in violation of RCRA regulations.

The lawsuit brought by Community Association for Restoration of the Environment and the Center for Food Safety in February 2013 is not the first to allege livestock operations violated RCRA, but it is the first ruling to apply RCRA to manure, said lead attorney for Cow Palace, Deb

Kristensen of Givens Pursley, a Boise law firm.

She said manure was never intended to be covered under RCRA, which has been around since the '70s. EPA has never gone after a farm or dairy under RCRA, and the application of RCRA to manure has never before prevailed in court, she said.

"This is the first case that says that can happen," she said.

"It's a precedent-setting case," said Bob Naerebout, executive director of Idaho Dairymen's Association.

The application of RCRA to manure could impact livestock operations nationwide, regardless of size.

Kristensen agrees, saying attorneys for environmental

groups are likely looking at the judge's ruling and determining "who they can go after."

Rice ruled that RCRA does not apply to agricultural wastes to the extent the wastes are "returned to the soil as fertilizer or soil conditioners." Manure applied as fertilizer is not considered "discarded materials" under the act.

But, he noted that in earlier rulings "this court found that manure could plausibly be considered 'solid waste' — as a legal matter — when it is over-applied to fields and managed and stored in ways that allow it to leak into the soil because at that point, the manure is no longer 'useful' or 'beneficial' as a 'fertilizer.'"

Rice ruled that Cow Palace's over-application of manure to fields, untethered to the dairy's nutrient management plan and without regard to the fertilization needs of the crops, transforms the manure to a "solid waste" without a beneficial use and constitutes a discard of the manure.

Rice also ruled the dairy's leaking lagoons — even assuming they were constructed pursuant to Natural Resources Conservation Service standards, which allow for permeability — convert what otherwise would be a beneficial product into a solid waste under RCRA because the manure is knowingly abandoned to the underlying soil.

Likewise, Rice ruled manure in the dairy's unlined

compost area is a discarded solid waste under RCRA, leaching nutrients into the soil and not being used for its beneficial purpose as a fertilizer.

"Accordingly, a reasonable trier-of-fact, given the evidence presented, could come to no other conclusion than that the dairy's operations are contributing to the high nitrate levels that are currently contaminating — and will continue to contaminate as nitrate present below the root zone continues to migrate — the underlying groundwater," Rice ruled.

Trial is set for March 23 and will primarily address remedies, impacts to surface water and the degree of liability of various defendants.

Governor seeks to expand Oregon's GMO authority

Farm regulators could establish 'control areas' for biotech crops

By MATEUSZ PERKOWSKI
Capital Press

A bill proposed by Oregon Gov. John Kitzhaber seeks to expand the authority of state farm regulators over genetically engineered crops.



Until now, the Oregon Department of Agriculture's power to regulate genetically modified organisms ended when the USDA lifted federal restrictions on them.

Legislation introduced at Kitzhaber's request — Senate Bill 207 — would allow the department to establish "control areas" to separate biotech crops from organic and conventional crops if the agency determines it's "necessary to avoid conflicts" from cross-pollination.

Under state law, control areas are intended to protect crops from pests, diseases and noxious weeds.

The ODA can create control areas for biotech crops if the USDA regulates them as potential plant pests, but the state agency loses the authority once they're determined not to pose that risk.

However, lawmakers have specifically allowed ODA to extend that control area authority to canola. Seed farmers in Oregon's Willamette Valley fear that canola could cross-pollinate with related crops and ruin their market.

SB 207 would amend that statutory language to include control area authority for genetically engineered crops.

The proposed bill requires the agency to specify the types of crops that are regulated within the boundaries of control areas or excluded from them.

ODA must be "reasonable and just" in how it uses the authority and conduct a "careful investigation" before creating control areas, according to the bill.

Oregonians for Food and Shelter plans to oppose the legislation in its current form, said Paulette Pyle,

grass roots director for the agribusiness industry group.

ODA's control area authority was intended for managing diseases and pests, not biotech crops, she said.

"For now, it's a no go for us," Pyle said. "Right now, we don't see any need for it."

Kitzhaber likely proposed the bill to assuage GMO critics who opposed legislation he introduced in 2013 that pre-empted most local government from regulating genetically engineered crops, she said.

"He's trying to make the organic folks feel protected because they feel like they're not right now," Pyle said, noting that any bill will be subject to amendments. "We're all going to be involved."

Richard Whitman, Kitzhaber's natural resources policy director, said he's still consulting with members of the governor's task force on genetic engineering and other industry stakeholders about GMO legislation.

The final language of the bill hasn't yet been nailed down, but the basic concept is to create a voluntary process to resolve conflicts between farmers who grow organic, conventional and biotech crops, Whitman said.

The system would not be foisted upon growers without their agreement, he said.

"It's not really trying to dictate a particular result," Whitman said. "That should be dictated by the people on the ground."

Friends of Family Farmers, which supports stronger biotech regulation, believes it would be a good idea to make clear that ODA retains the ability to create control areas for genetically engineered crops after they're deregulated by USDA.

"That seems like an important clarification of the agency's authority," said Ivan Maluski, its policy director.

Maluski said he can't comment on a possible voluntary coexistence process for growers of biotech, organic and conventional crops because he has not seen the actual legislative language.

Any coexistence measures between farmers are already voluntary, he said. "I'm not sure how it would be different from the current system."

High-tech cherry lines to keep growing

By DAN WHEAT
Capital Press

WENATCHEE, Wash. — The West Coast cherry industry has been revolutionized by electronic sizers and sorters in the past two years and packers will install many more in the next two years, a leading manufacturer says.

"I'm more than 25 years in this business and I've never seen such a revolution in any other commodity in which we work. This is very fast," said Luca Montanari, vice president of Unitec, Lugo, Italy.

Montanari spoke to several hundred tree fruit growers at the North Central Washington Stone Fruit Day at the Wenatchee Convention Center, Jan. 20.

The rush to high-tech packing lines for cherries is because they pay for themselves in about three seasons and in the long run make packers a lot more money than conventional sizers, Montanari said.

It takes half the workforce to operate an electronic system at 18 tons per hour than a traditional system, saving \$847,000 in a season, he said.

Another \$756,000 is saved by more accurate sizing of fruit since there's a wider difference in price between sizes in cherries than other fruit, he said.

But even greater savings is realized by improved quality of reduced bruising and better appearance with longer shelf life, he said. Those savings are harder to quantify and not readily shared by packers, he said.

The computerized electronic system takes multiple images of each piece of fruit within fractions of seconds and sorts for size, color and internal and external defects. It detects softness and sugar content inside a cherry that the human eye cannot see. The result is a more consistent pack, adjustable for size and quality.

Unitec's system has patented rotation of each cherry for better imaging in sizing and sorting. Unitec has installed 1,025 red and Rainier cherry lines throughout the world.

The first electronic cherry sizer was installed in Spain in 2002, Montanari said. The first in Chile was in 2006 and the first in the United States was in 2012, he said.

The systems have been steadily improving and expanding. OG Packing in Stockton, Calif., added 32



Dan Wheat/Capital Press

Cherries ride conveyors into Unitec electronic sizer and defect sorters "the big blue units" at Washington Fruit & Produce's new cherry packing plant in Yakima, Wash., June 13.

lanes to a 40-lane Unitec electronic system a year ago, making it the largest in the world.

Northern Fruit in East Wenatchee installed the first in Washington state in 2012. Stemilt installed one in 2013 and added a second in

Wenatchee and one at its plant in Stockton in 2014.

"This year, we deliver a 40-lane system to Starr Ranch Growers in Wenatchee and they already have a 20-lane system," Montanari said.

Beside Unitec there are at least three other manufactur-

ers who have installed about two dozen electronic systems for numerous West Coast cherry packers. Unitec has installed half or more of them, said B.J. Thurlby, president of Northwest Cherry Growers, an industry trade association in Yakima.

A traditional bin dumper is much rougher on cherries than bin dumpers in the new systems, Montanari said. Gentler drops of water flumes carrying the cherries through the first part of the packing line also reduces bruising, he said.

The best mechanical sizer can have up to a 25-percent error rate while electronic sizing has 1 to 4 percent errors, he said.

Human sorters get tired and miss defects while the electronic eye does not, he said.

In 2014, Chile exported 85,000 tons of cherries with 95 percent of them electronically sized and sorted, Montanari said. Total U.S. production was 326,000 tons in 2014 with 60 percent electronically handled, he said, predicting 330,000 tons and 70 percent for 2015.

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