

Conflict brewing between oyster farm, Tillamook dairies

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Jesse Hayes

Bags of oysters are pulled from Tillamook Bay before they're graded and packaged by a worker with the Hayes Oyster Co. The company contends that state regulators have allowed bacteria discharged from dairies to greatly diminish its oyster harvest.

A federal judge has dismissed a lawsuit accusing Oregon regulators of allowing dairies to contaminate Tillamook Bay to the detriment of an oyster company.

However, the underlying conflict isn't going away and the case is expected to be revived in the near future.

Last year, the Hayes Oyster Co. filed a complaint arguing the state Department of Environmental Quality insufficiently regulated fecal coliform bacteria from dairies in the Tillamook area.

Due to the low threshold of allowable bacteria levels in shellfish waters, the state's regulatory shortfall has greatly reduced harvests on Hayes' 600 acres of oyster plats in the bay, the lawsuit said.

Oyster harvesting is entirely prohibited on about 250 of those acres and closed for extended periods on the remaining 350 acres, according to the complaint.

U.S. Magistrate Judge John Jelderks has now dismissed the case, ruling that it should have been filed in state court rather than federal court.

Thomas Benke, attorney for the Hayes Oyster Co., said he's preparing to refile in an Oregon court soon.

Benke said the Department of Environmental Quality wrongly assumes that permits issued to confined animal feeding operations by the state Department of Agriculture actually prevent the discharge of bacteria into surface water.

But since bacteria are nonetheless released into rivers, the Department of Environmental Quality has "sanctioned a pollution easement across the entire bay by the dairy farms," he said.

The Hayes Oyster Co. has been unable to harvest oysters during eight of the past 10 holiday seasons due to high river flows that are associated with elevated bacteria levels, said Jesse Hayes, the company's president.

After heavy rains, the company must routinely wait until 10 high tides wash out the estuary to resume harvesting, he said. "You can't imagine how frustrating that is."

Hayes argues the manure generated by dairies in the region exceeds what can safely be applied to fields.

"If you take the amount of dairy waste, there is not enough room for it," he said.

The goal of Hayes' lawsuit is for the Department of Environmental Quality to recognize that animal feeding permits aren't adequately controlling bacteria and to tighten manure management practices to stop

water contamination, said Benke.

Another possibility would be for wastewater plants in the region to pay dairies to reduce pollution, rather than be subjected to stricter discharge controls by the state, he said.

"It's intended to create a situation where the citizens of Tillamook encourage farmers to abate their fecal coliform contribution to the estuary," Benke said.

Chad Allen, president of the Oregon Dairy Farmers Association, bristled at the notion that dairies are under-regulated.

Manure can only be applied to fields at agronomic rates needed to grow crops, which is

subject to oversight by regulators, said Allen, who farms in the Tillamook area.

To compare, crop farmers aren't subject to restrictions on synthetic nitrogen, he said.

Dairy farmers have also voluntarily fenced miles of streams to keep cattle out and planted vegetation in riparian areas to keep streams cool, Allen said.

"Dairymen here in Tillamook take it extremely seriously," he said. "We're not going to survive in this estuary if we can't show we can co-exist."

Reducing the amount of manure on fields would basically mean decreasing the number of dairy cows in the region, said Troy Downing, an Oregon State University dairy specialist.

If dairy operations ceased operating, pastures could still be stocked with other livestock that also produce manure, he said.

Septic systems, horses and wildlife also contribute to fecal coliform bacteria, Downing said. "That's part of people living here in the valley."

Though manure levels are applied at rates aimed at precluding discharge, it is possible for some bacteria to get into water, said Wym Matthews, manager of the Department of Agriculture's animal feeding program.

"The field is a treatment system and it's not as highly con-

trolled as a factory would be," he said.

Even so, farmers are required to change their waste management plans if permit conditions are found to be insufficient, Matthews said.

"The plan is very specific for each individual farm," but none are allowed to discharge, he said.

Genetic tests have shown the source of fecal coliform bacteria in the Tillamook region is most commonly human in populated areas while ruminants are the more common source in rural areas, said York Johnson, North Coast basin coordinator for the Department of Environmental Quality.

Over time, though, statistically significant decreases in bacteria levels have been documented in the Wilson, Kilchis and Tillamook rivers, which feed into the bay, he said.

"In general, we're seeing improvement," Johnson said. "We're making progress toward our goal."

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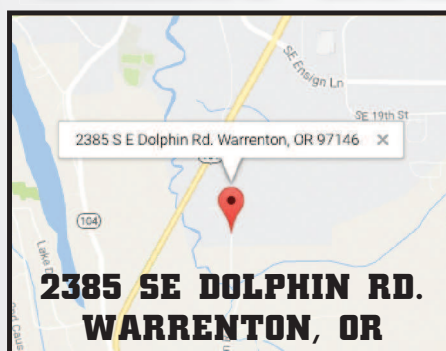
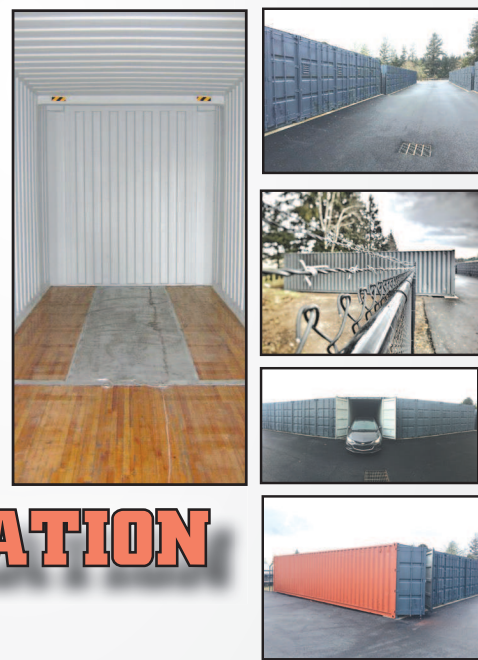
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