



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippetts, Director

August 18, 2016

Brian Oakey
Idaho State Department of Agriculture
PO Box 790
Boise, ID 83701
Submitted via email: Brian.Oakey@ISDA.idaho.gov

RE: 02.04.14 Rules Governing Dairy Waste

Dear Mr. Oakey:

DEQ appreciates the opportunity to work with ISDA and provide comments on the draft text for 02.04.14 – Rules Governing Dairy Waste. As you are aware, DEQ is pursuing delegated authority for the NPDES program in Idaho and as such is dedicated to coordinating efforts between our two agencies for the smooth implementation of both ISDA and DEQ rules regarding concentrated animal feeding operations.

DEQ respectfully submits the following comments for your consideration.

DEQ believes the addition of language from Idaho Code 37-603 is necessary to ensure clarity regarding the facilities that these rules apply to.

001.TITLE AND SCOPE.

01. Title. The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (3-29-10)

02. Scope. This chapter has the following scope: These rules shall govern the Department's review, approval and enforcement of dairy environmental management plans to ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state. This section's citation is Idaho Code 37-602(2). (3-20-97) "Nothing in this rule affects the authority of the department of environmental quality to administer and enforce an IPDES permit for dairy farms that discharge pollutants to waters of the U.S., including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program."

010 DEFINITIONS

23. Nutrient Management Standards (NMS) – Recommend deleting commas following USDA, NRCS, and conservation practice standard as these are all part of the same descriptors for nutrient management code 590. The commas suggest that this is part of a list of criteria for managing the land application.

“Criteria for managing the land application of nutrients and soil amendments published in the USDA, NRCS, conservation practice standard, nutrient management code 590, or other equally protective criteria approved by the Director.”

29. Unauthorized Discharge. DEQ understands that this definition comes from Idaho Code section 37-604. This definition, however, may cause the regulated community to believe that an upset condition excuses the obligation to obtain an IPDES permit. An upset condition is an affirmative defense to a violation of a technology-based effluent limit contained in a permit, but is not an excuse or exemption from the obligation to obtain a permit. 40 CFR 122.41(n). Moreover, while an agricultural storm water discharge as defined in the Clean Water Act and federal regulations is exempt from permitting requirements, DEQ must make the decision regarding whether a discharge constitutes an agricultural storm water discharge. The definition alone and in conjunction with other provisions in the rules may lead the regulated community to believe that ISDA’s determination will create an exemption from the Clean Water Act requirements. The confusion is mitigated in the Dairy Environmental Control Act by Idaho Code section 37-608(2) which clarifies DEQ’s role in implementing the IPDES program. To remove confusion in the rules, DEQ requests that ISDA include a new section 061 that addresses compliance with IPDES rules. DEQ proposes that ISDA include the same language found in the Code. Proposed language is set out in Section 061 below.

030 DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

02. Dairy Nutrient Management Plan (DNMP). DEQ requests that language be added clarifying that if a dairy farm has a discharge of pollutants to waters of the U.S. that requires an IPDES permit, the dairy farm must meet the nutrient management plan requirements required under the IPDES rules. A DNMP approved by ISDA may or may not meet these requirements, and to the extent there is a conflict, the IPDES and CWA requirements would control. In addition, the rule should clarify that a new dairy farm that opts for or is required to gain coverage under an IPDES permit should not be required to submit a DNMP to ISDA because it makes little sense to require duplicate permitting and plan submittal from a dairy farm.

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DEQ suggests the following language changes:

“Except as provided below, each dairy farm shall have a dairy nutrient management plan that is approved by the department and included in the dairy farm's environmental management plan. The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator to which dairy byproducts may be applied. A new dairy farm governed by the IPDES program requirements is not required to submit a DNMP to the department. An existing dairy farm with an approved DNMP that has a discharge to Waters of the U.S. that requires an IPDES permit must comply with the nutrient management plan requirements under the IPDES rules and the IPDES permit, notwithstanding the department approved DNMP. Requirements to comply with the provisions of a Dairy Nutrient Management Plan include the following:”

060 UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES – PENALTIES

Quick note regarding numbering on the published draft: there are two 02s. The numbering should be 01. Unauthorized Discharge, 02. Unauthorized Release, 03. Non-compliance, 04. Penalties, and 05. Suspend Planners or Soil Samplers Certification.

DEQ proposes that a new section be added to the dairy byproduct rules. This new section addresses compliance with IPDES rules will greatly help to reduce confusion regarding the overlap between the ISDA programs and the IPDES program. The language is taken from the dairy environmental control act.

061 COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

01. Discharges to Waters of the U.S. The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a dairy farm to waters of the US is required to be authorized by an IPDES permit. The provisions of this rule do not define when a dairy farm is required to obtain a permit for a discharge, do not exempt a dairy farm from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges.

02. Upset Conditions. An upset condition does not excuse a person from the obligation to obtain an IPDES permit for the discharge of pollutants from a dairy farm to waters of the United States.

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Thank you for the opportunity to provide comments on this important matter. Please feel free to contact Mary Anne Nelson at 208-373-0291 or Mary.Anne.Nelson@deq.idaho.gov if you have any questions regarding these comments.

Sincerely,



Barry N. Burnell
Water Division Administrator

BNB:MN:dls