



IDAHO
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LEAGUE

208.345.6933 • PO Box 844, Boise, ID 83702 • www.idahoconservation.org

8/10/16

Brian Oakey
Idaho State Department of Agriculture
PO 790
Boise ID. 83701

Submitted via email: Brian.Oakey@ISDA.IDAHO.GOV

RE: Idaho Conservation League comments on rulemaking for 02.04.14 – Rules Governing Dairy Environmental Systems

Dear Mr. Oakey:

Thank you for the opportunity to comment on the text for the draft rulemaking for 02.04.14 – Rules Governing Dairy Environmental Systems. Since 1973, the Idaho Conservation League has been Idaho’s leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho’s extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom are interested in ensuring that dairies in Idaho are adequately regulated so as to ensure the protection of Idaho’s groundwater, surface water and air resources.

As a general comment regarding this draft rule, we would like to express concern that the rule does not seem to ensure protection against unauthorized discharges or releases from lands that are not ‘owned or operated’ by the dairy. There are many instances where third parties dispose of dairy byproducts on to lands that are not owned or operated by the dairy itself. In such instances, it needs to be clear that unauthorized discharges or released from third party fields will be considered as unauthorized discharges or releases pursuant to these rules and the third party applicator (not the Dairy owner/operator) will be held accountable.

010.01. Agricultural Stormwater Discharge. It is not clear to us why such a discharge would only be recognized if it occurs from “land areas under the control of the dairy

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farm.” Pursuant to our prior comment regarding third party applicators, discharges need to be recognized as such when they emanate from third party fields.

Also regarding 010.10, we do not believe that the term ‘mechanically’ should be included in this definition. The word mechanically seems to artificially limit the means why which dairy byproducts would be applied to the land.

010.08 We note that the definition of "Dairy Environmental Management System" utilized in the draft rule text is not the same as the definition that was passed by the Idaho legislature in Senate Bill 1260. The draft rule text includes a statement regarding pastures. It is our understanding that statute language trumps rule language and that rule language should always be revised to mirror legislative language. To this end we ask that you true these up and that the S 1260 definition be used in these rules.

010.11 We note that the definition of "Dairy Storage and Containment Facilities" utilized in the draft rule text is not the same as the definition that was passed by the Idaho legislature in Senate Bill 1260. The draft rule text includes a statement regarding pastures. It is our understanding that statute language trumps rule language and that rule language should always be revised to mirror legislative language. To this end we ask that you true these up and that the S 1260 definition be used in these rules.

010.18 Land Application. We do not believe that the term ‘mechanical’ should be included in this definition. The word mechanical seems to artificially limit the means why which dairy byproducts would be applied to the land.

010.22 Non-Compliance. We recognize that this draft definition conforms to language recently passed by the Idaho State Legislature, however, we feel compelled to note that language stating that upset conditions are not considered non-compliance likely violates certain aspects of the Clean Water Act. As such, this definition may negatively impact Idaho’s efforts to achieve Clean Water Act discharge permitting primacy.

010.29 Unauthorized Discharge. We note that language stating that upset conditions and agricultural discharges are not considered unauthorized discharges likely violates certain aspects of the Clean Water Act.

010.30 Unauthorized Release. We note that language stating that upset conditions, agricultural discharges and groundwater contamination from infiltration from storage and containment facilities (i.e. lagoons) are not considered unauthorized releases likely violates certain aspects of the Safe Drinking Water Act.

010.31 Upset Conditions. We note that this likely violates certain aspects of the Safe Drinking Water Act and the Clean Water Act.

030.01.d. This subsection needs to include a provision that requires the person storing these byproducts to deploy measures to protect groundwater from contamination by infiltrating pollutants.

030.01.e Pasturing of Dairy Animals. This subsection needs to have language added that protects against unauthorized discharges.

030.02 Dairy Nutrient Management Plans. It is not clear to us why such a plan would only cover “land owned and operated” by the dairy. Pursuant to our prior comment regarding third party applicators, DNMPs need to ensure that third parties and their fields are appropriately managing dairy byproducts.

030.02.c.ii It is not clear to us why such a plan would only require record keeping related to the amount of waste applied to fields on “land owned and operated” by the dairy. Pursuant to our prior comment regarding third party applicators, DNMPs need to ensure that third parties and their fields are appropriately managing dairy byproducts. A key aspect of this is tracking the amount of waste applied to third party fields.

030.02.d Pasturing of Dairy Animals. See comments related to 030.01.e

040. Inspections. Language should be added to ensure that Fieldmen are independent from the dairy operation that they are inspecting. Also, in this section, we believe that the Department should clarify that the timing of the inspections should be at least annually. The inclusion of the language that reads “or at intervals sufficient...” leaves one with the impression that inspections may occur less frequently than annually.

050. This section needs to include language related to Unauthorized Discharges, not only Unauthorized Releases. Also, this section makes use of the terms “informal” and “formal.” These terms are not defined in these rules. Please do so.

060.03 Penalties. Note that state efforts to limit penalties for unauthorized discharges and releases may violate the Clean Water Act and the Safe Drinking Water Act.

Please do not hesitate to contact me at 208-345-6933 ext. 24 or jhayes@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,



Justin Hayes
Program Director