IDAHO CONSERVATION LEAGUE

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8/4/17

Brian J. Oakey, Deputy Director
Idaho Department of Agriculture
PO Box 790
Boise, Idaho 83701

Submitted via email: rulesinfo@isda.idaho.gov

RE: Proposed Rule Changes to Adopt Phosphorus Site Index as Regulatory Standard in Nutrient Management

Dear Mr. Oakey:

Thank you for the opportunity to comment on the proposed rule changes to IDAPA 02.04.14 – Rules Governing Dairy Byproduct to adopt the Phosphorus Site Index (PSI) method as a regulatory standard in nutrient management.

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 live near dairies and have a deep, personal interest in protecting Idaho's soil and water quality.

Our detailed comments follow this letter. Please do not hesitate to contact me at 208-345-6933 ext. 23 or ahopkins@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Austin Hopkins
Conservation Associate

Scope of Applicability

Changes to IDAPA 02.04.14 should include the addition of language clearly defining who must comply with requirements to calculate a PSI value for fields that receive dairy byproduct. While dairies will undoubtedly fall under the jurisdiction of these rules, it remains ambiguous whether third-party applicators that receive dairy byproduct must also comply with these requirements.

The stated intention of the IDAPA 58.02.14 is to "ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state." IDAPA 58.02.04.14.001.02. If exporting dairy byproduct to third-party applicators is part of a dairy's operation then those third-party applicators must also fall under the jurisdiction of these rules. As such, language should be added to IDAPA 58.02.14 clearly stating that third-party applicators of dairy byproduct must also adhere to the requirements of calculating a PSI value for any fields that receive dairy byproduct via land application.

Multiple Standards

During the July 31st negotiated rulemaking there was discussion over having multiple regulatory standards for phosphorus, such as maintaining the existing threshold value as well as adoption of the proposed PSI. Producers would be allowed to choose which method they prefer to demonstrate compliance with regulations. We believe this approach is inappropriate as multiple standards would lead to confusion and uncertainty. Our recommendation is to rely solely upon the proposed PSI as the regulatory standard for phosphorus.

Zero Out Language Included in Rules

The updated rules should include language that prescribes a maximum soil phosphorus concentration (i.e. – zero out threshold) above which land application is prohibited. Examples of such thresholds can be found in numerous states and neighboring countries, where the Province of Alberta in Canada and states including Arkansas, Delaware, Ohio, Oklahoma, Michigan, Texas and Wisconsin have identified maximum soil-test phosphorus levels of between 150 to 200 ppm[1]. This range was selected in light of the potential for loss of P and environmental risks associated with surface or groundwater contamination.

Idaho should follow these examples and prescribe a maximum soil-test phosphorus limit within this range, preferably set at 150 ppm to be conservative. This value is nearly 4 times the current threshold limit of 40 ppm that would trigger corrective action, thus it

[1] *See* http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/sag11864

provides an ample buffer between current regulatory thresholds and a maximum limit. Further, during the July 31st negotiated rulemaking there was discussion surrounding the variability in soil types that may necessitate different limits. If the presented range of 150-200 ppm is appropriate for the soil types found in neighboring countries as well as seven different states dispersed across the U.S. then we see no reason why it would not also be appropriate for the soils found within Idaho.

Potential ISDA Disapproval of BMPs

To encourage the use of BMPs, the PSI offers transport reduction factors that decrease a field's index value based on the effectiveness of various BMPs (Table 8). Prior to receiving an offset from a BMP coefficient, ISDA must review and approve the selected BMP(s). As mentioned during the negotiated rulemaking, a scenario could arise in which a dairy could install a BMP, yet the construction or installation of said BMP is rejected by ISDA due to a failing to meet necessary criteria. If this issue were to arise, some argue that the producer should still be partially compensated (e.g. – allotted a value that is half of the BMP coefficient for the chosen BMP).

We disagree with this approach, and recommend ISDA issue no BMP coefficients for BMPs that fail to meet the required criteria. The rules or PSI guidelines should include clear explanations of what is required for each BMP, thus there should be no reason that a BMP is not installed according to required specifications. In addition, providing partial compensation for inadequate BMPs assumes the BMPs operate in a linear fashion. In other words, one cannot assume that a BMP constructed or installed at 50% of the required specification is 50% as effective in reducing or preventing P loss. It may be that an inadequate BMP is not effective at all in reducing or preventing P loss, thus assuming a 50% effectiveness would vastly overestimate the reduction or prevention of P loss.

For these reasons we recommend an all-or-nothing approach on approval of BMPs used to lower an index score. If, for whatever reason, ISDA rejects a producers BMP(s) then the producer should receive no coefficient factors to decrease their PSI index value.

Phase In Period for Adoption of New Standard

If these rule changes are approved then it is important that language is included in the rules providing a clear, definitive timeline for when the PSI must be fully adopted. We suggest ISDA include language in the updated rules stating that the PSI must be adopted pursuant to the following guidelines:

(1) Whenever a DNMP is required to be renewed, or
(2) Whenever a dairy undergoes a physical or material change requiring updates to their existing DNMP, and
(3) At a time no later then two (2) years past the approval of the final rule changes.

These guidelines would provide flexibility to producers and planners, yet also expedite the adoption of PSI by all dairies in Idaho. Protection of water quality is of upmost importance to all Idahoans, thus the sooner these rules are fully adopted the better.

Inclusion of Nitrogen Management Plan Worksheet

We are supportive of including the Nitrogen Management Plan Worksheet as an appendix to the PSI guideline document. The appropriate management of nutrients is critical to protecting our state's water bodies, and this worksheet appears to provide a reasonable approach to help producers understand the current nitrogen levels in their soil and assess any supplemental applications that may be needed.

Annual Review with ISDA and Planners and/or Producers

The rules should codify that an annual review should take place involving ISDA inspectors, planners and producers in order to assess the current situation at a given dairy. This review will ensure that producers and planners are kept up to date on any revised requirements as well as provide immediate awareness and corrective action for fields with upward trending phosphorus levels.