

***Idaho State Department of Agriculture***  
***Rules Governing Dairy Byproduct***  
***August 17, 2017***  
***Scott Leibsle, Facilitator***

Present: Bob Naerebout, Idaho Dairymen's Association; Rick Naerebout, Idaho Dairymen's Association; Dave Bjorneberg, USDA-ARS; Stephanie Kulesza, IDA Consulting Services; Russ Hendricks, Idaho Farm Bureau; Marv Patten, Milk Producers of Idaho; Mitch Vermeer, ISDA; Bill Barton, ISDA; Brian Oakey, ISDA; Dallas Burkhalter, OAG-ISDA; Owen Moroney, OAG-ISDA; Janis Perry, ISDA.

**AGENDA ITEMS**

**WELCOME**

Scott Leibsle convened the meeting at 10:05 am. He started the discussion with Section .31.02.a. regarding phase-in language. He asked what time frame the group suggested that dairy farms should be given to implement phosphorus indexing. Rick Naerebout suggested that five years is the most logical and prudent since all dairies must renew their NMPs every five years. Scott Leibsle asked Stephanie Kulesza what added time she thought the phosphorus indexing would add to the preparation of NMPs. She responded that with the proper software she thought that it would add ten minutes per field plus a site visit. Without the software she thought the amount of time would double. She also indicated that it would require a check up with every dairy every year.

Brian Oakey stated that we need to make clear that if producers have a change in their NMP, they would need to change to phosphorus indexing if this rule is implemented.

Russ Hendricks commented that some of the Farm Bureau's members are comfortable with thresholding, so why not have a dual standard. If the phosphorus indexing will take double the time, why would they want to do that. Marv Patten stated that he thought that the department had the authority now to look at the "whole ball of wax." Brian Oakey responded that the notice to stakeholders did not state that. Russ Hendricks stated that there would be nothing new, but just allowing both. Brian said the agency's position was that the petition asked that the standard be changed from phosphorus thresholds to phosphorus indexing. Rick Naerebout explained that part of the reason was that the threshold standard was a 1999 standard and there was no logical reason to use the old regulatory standard. Marv Patten commented that he was very supportive, but that there were a significant amount of small producers for whom the initial cost would be prohibitive. He said he was somewhat concerned about smaller producers pointing fingers and becoming ugly, since this potentially could put them out of business, whereas both standards would give them options.

Rick Naerebout shared that the IDA board supported this unanimously and that 40% of the board are small producers (500 head or less). Bob Naerebout indicated that the board is concerned the effect on small producers. Brian Oakey commented that the department does not have an answer for phosphorus indexing and the standard is something that must be looked into. The first step he said is for everyone here to all get on the same page.

Bob Naerebout noted that there are no extension people at this table. He feels that we could work through the U of I extension to get help for small producers.

Rick Naerebout asked why we aren't using the 2013 590 standards. Marv Patten stated that they all have some exposure. Rick Naerebout said he felt indexing was the best route forward. Marv again said there are significant numbers out there with problems. Russ Hendricks asked if there was room for a double standard.

Dallas Burkhalter responded that if Brian asked me, I would say no, we need to restart rulemaking because the APA requires notification. Russ Hendricks and Marv Patten were asking about changing the rule to a dual standard. The timelines that are applicable are that a proposed rule must be ready by September 1 and a pending rule by November 1. Dallas Burkhalter said there is not time to start over and be ready for the 2018 legislature. Marv Patten asked about a temporary rule, but that is not possible.

Brian Oakey stated that if the five-year phase-in was added to the current rule, the rule could be brought back to the table next year. Marv Patten commented that he thought the lag time would be good. Brian said the rule could be continually looked at. Russ Hendricks said that next year the rule could be broadened to include both options. Brian said yes. Bob Naerebout stated that we are not changing our costs and could involve extension. Brian stated that it sounds like for 2018 we would have a five year phase in. Marv responded that we may be able to have a better feel next March for how producers feel about the rule. Brian stated that ICL had asked for a two-year phase-in, which Rick Naerebout felt was not reasonable because there are not enough NMP planners.

Rick Naerebout asked if a producer was due for an NMP in September, 2018, which standard would apply. Dallas Burkhalter indicated that we can insert effective dates into the rule. Russ Hendricks suggested June 30, 2019. Bill Barton suggested "no later than..."

The group agreed to eliminate the text following 031.01 and 02. Scott commented that he felt the outreach component was important.

Regarding zero out, Scott Leibsle shared the information he gathered from 4026 fields: 46 fields were over 200 ppm, 3 fields over 300 ppm and 1 field over 400 ppm. Rick Naerebout indicated that our suggested number is 400. ICL's is 150. Bob Naerebout said "I don't like zero out at all. It's a place holder. I have pushed my industry far enough." Stephanie Kulesza commented that some states don't have a zero out. Dave Bjorneberg responded that from agronomics viewpoint, can't justify putting manure with 5 ppm, 50 ppm, or 500 ppm. The transport factor increases the problems. Rick Naerebout stated that this is a safeguard proposed by industry and we will take care of defending it.

Bob Naerebout asked Marv Patten what he had to say. Marv stated he had no magic number; he needed to poll the mob. The 2013 uses 160. BMPs are in place to lower the number. Bob Naerebout said we can't go to 150 or 160. Marv asked how many fields are over 300 ppm. Stephanie Kulesza responded 3. Rick Naerebout stated at some point we have to say that's unacceptable. Stephanie responded that she thought there needs to be something done.

Marv Patten indicated that he would commit to keeping his thought to himself. Russ Hendricks stated

that he was happy with what the group comes up with. Bob Naerebout said the scientists feel the number is too high. Brian asked where the NRCS 160 number comes from. Stephanie Kulesza responded that she thought it was a doubling of the 40 to 80 and then to 160. She said the BMPs were designed to keep the soil in place. Rick Naerebout responded that the number is high. Brian Oakey stated that the rule is designed to protect surface water, not to help the grower. Bob Naerebout commented that science is pushing the effect on ground water. Stephanie Kulesza stated that having zero out protects more. Dave Bjorneberg commented that the more Phosphorus, the more you see reduced field yields, but there is not water quality standard for Phosphorus. Marv Patten stated that he felt ground water quality had more to do with Nitrogen. He said he leans toward 300. Bob Naerebout commented that if we don't learn how to harvest the backside of the cow, the field will be toast. Dave Bjorneberg responded that from an environmental standby, no number can be justified.

Scott Leibsle asked the group how they felt about Section 031.01.c. regarding partial credit for BMPs. He described it as a "regulatory rabbit hole." Russ Hendicks wants to consider partial credit. Scott stated that the definition of berm is most problematic. Dave Bjorneberg said each BMP is a practice. Brian Oakey explained that the "build and design" burden of a berm would be on the producer. It was suggested to change the word "engineered" to "constructed." Scott indicated that the department would need regular interaction with the planner annually. Marv Patten stated that he felt we would regret not giving partial credit, since it is such a judgment thing. Dave Bjorneberg responded that doing it half way is zero from practice standards. Brian Oakey commented that BMPs were put together by the IDA tech team. He is not sure that he want to inset his opinion into this.

Scott Leibsle explained that the department is going to solicit peer review of the rule changes. He felt it is important to get commentary from other technical experts since there is time. Bob Naerebout stated that we are coming off a hellatious year. It is important to have flexibility with the department to have some discretion in special cases. Marv Patten commented that if everything were black and white, it would be easier.

Scott Leibsle summarized the changes:

1. Phase-in for five years with an effective date;
2. 300 ppm zero out
3. Partial credit language

Comments are due on the draft by August 23. The proposed rule will be submitted to OAR on September 1 with publication in the October Bulletin. A comment period will follow publication.

Scott Leibsle adjourned the meeting at 12:10 pm.

Respectfully submitted by Janis Perry