

**Idaho State Department of Agriculture**  
**02.04.14 Rules Governing Dairy Byproduct**  
**July 11, 2018, 1:00 p.m.**  
**Dr. Scott Leibsle, Facilitator**

Present: Austin Hopkins, Idaho Conservation League; Marv Patten, Milk Producers of Idaho; Russ Hendricks, Idaho Farm Bureau Federation; W. Dallas Burkhalter, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Pradip Adhikari, ISDA; Bill Barton, ISDA; Scott Leibsle, ISDA; Janis Perry, ISDA.

**AGENDA ITEMS**

**WELCOME**

Dr. Scott Leibsle convened the meeting at 1:02 pm. He explained that this is a continuation of a public negotiated rulemaking meeting for IDAPA 02.04.14 Rules Governing Dairy Byproduct.

After each participant introduced themselves, Dr. Leibsle stated that anything said at today’s meeting would be recorded in the minutes and published in the rulemaking record on the website. He also indicated that he had not received any written comments since the last meeting, but that written comments on the rule changes would be accepted until August 3, 2018. He showed participants how to find the rulemaking record on the ISDA website.

Dr. Leibsle stated that with the request to remove the sunset clause the department did not want producers to pick and choose which method they used. Therefore, he proposed the following sentences in section 031 if the sunset clause sentence is removed: “A dairy farm’s DNMP shall identify which phosphorus management standard (threshold or indexing) is being implemented by the facility. A dairy farm is not permitted to use a combination of both phosphorus management standards. A DNMP that proposes to use threshold and indexing on the same facility shall be rejected by the Department.” He asked if anyone had any comments on this clarification.

Austin Hopkins reiterated his concern that in lieu of the sunset clause the Idaho Conservation League would like to see something that would trigger producers to move to indexing. He stated that his research showed that ISDA has not collected data for the last ten years and that Idaho Department of Water Resources last gathered data in 2011. Dr. Leibsle asked Mr. Hopkins for clarification if one of a producer’s fields were to hit a trigger point, would that move all fields to indexing. Mr. Hopkins said yes, since ground water and surface water are impacted by phosphorus. Dr. Leibsle responded that if a producer reaches 40 ppm, there is a trigger already in the regulation, since land application is curtailed. Mr. Hopkins indicated that the ICL questions that approach since phosphorus indexing was billed last year as more protective. Russ Hendricks stated that we are trying to simplify the rule and that if a producers gets to 40 ppm, the producer is done land applying except for crop intake. He asked for flexibility for the producers he represents. Mr. Hopkins agreed with simplicity, but he stated that it must come with efficacy. He continued that something must trigger the switch to indexing, since the data hasn’t shown effectiveness so something isn’t working out. Marv Patten commented that there are

numerous inputs to Idaho agriculture land and other sources (including golf courses and lawns added Mr. Hendricks) and it is a small portion of the state. Mr. Hopkins said that the ICL goal is to make a difference in the water quality. It had been their hope from last summer's rulemaking that the best management practices from indexing would start to make that difference. Dr. Leibsle explained that the margin of error is based on the threshold and a hard line soil test. He stated that if the rule were to force a trigger point, there would be costs associated.

In trying to address the margin of error issue, Dr. Leibsle proposed changing section 031.02 from two (2) out of three (3) to: "If tests reveal the soil phosphorus continues to trend upward more than ten (10) parts per million (ppm) in consecutive years or fifteen (15) ppm over a three (3) year period, the producer will be penalized as provided in these rules." Mr. Patten stated that he appreciated what Dr. Leibsle is attempting, but it is a complex issue. Mr. Patten suggested mandating manure testing or alternatively using book value. He further stated that most farms have two to four manures to be tested and to get a representative sample is difficult. Dr. Leibsle commented that he heard him and that he was addressing Idaho Dairyman's petition, but they had another commitment today. Dr. Leibsle asked how many approved labs test dairy byproduct. Pradip Adhikari responded that there are three in the state. Mr. Patten commented that over time data points can prove themselves, as shown with the milk components lab test. Dr. Leibsle explained that the milk components rulemaking involved averaging various lab's accuracy and evaluated it over a six month timeframe. Mr. Patten stated that after one thousand tests, we could get data in order to know what is fair and accurate. Mr. Patten favored reasonable, defensible results to take action. He suggested that the rulemaking come back to this issue after the data is collected.

Dallas Burkholder commented that it appears the group has no agreement on this part. Dr. Leibsle stated that we do want IDA's input. Mr. Patten indicated that he wanted to include manure testing. Dr. Leibsle responded that testing what you are applying before you apply is definitely helpful. He wasn't sure how many producers currently do this, so it may be seen as additional regulation with added cost. Dr. Adhikari commented that he has used labs for testing municipal waste water ponds. Dr. Leibsle asked Dr. Adhikari if in his opinion, is it as problematic to get a homogenous manure test as it is a soil test. Dr. Adhikari responded that it depends, but it would not be as variable. Mr. Patten commented that first you had to get a representative sample and then an accurate lab test. Mr. Patten felt that if an acceptable book value can be used, without having to test, it might be better. He suggested playing with both. Mr. Hopkins asked if any other state has dealt with the uncertainty of testing. Dr. Leibsle suggested that Dr. Adhikari could look at surrounding states, especially Oregon and Washington, to see what they have found on this issue. Mr. Patten also suggested looking at Utah.

Dr. Leibsle asked what the group had found out when it review the 1999 and 2013 Natural Resources Conservation Service (NRCS) 590 standards. He indicated that the 1999 is twenty years old and out of date, but neither is exactly applicable. Mr. Patten asked what the department recommended. Dr. Leibsle stated that ISDA does not want to forge a lead on this, but is looking for buy in from stakeholders. Russ Hendricks stated that he made a valiant effort to compare the two but found it extremely difficult. He commented that it would be helpful to know where in the current rules the 590 is referenced. Mr. Patten asserted that a significant portion of the 1999 590 is still relevant, but we need to determine what are appropriate levels. Dr. Leibsle agreed that getting data is important and asked Mr. Patten if he was suggesting that this issue be rolled over too. Mr. Patten responded that we need to collect more data.

Dr. Leibsle reminded the group that August 5<sup>th</sup> is the deadline to submit a proposed rule if we intend to proceed with this rulemaking for the 2019 legislature. Mr. Patten stated that we would not have enough data by then. Dr. Leibsle indicated that the agency wants to have the best defensible mechanism to present to the legislature. He feels that removing the sunset clause without addressing the other issues would be problematic because they are all tied together. He suggested that meetings could be held while these issues are addressed. Russ Hendricks suggested that the sunset clause could be removed without the other issues resolved. Dr. Leibsle reiterated that he has a problem with going through with removing the sunset clause without addressing the 590 issues because they are directly tied together.

Dallas Burkhalter commented that if only the sunset clause is addressed, we have opposition from ICL, so we do not have consensus to move forward. Dr. Leibsle indicated that the clearest path forward is allow enough time to figure everything out, to roll everything together and continue the rulemaking. He stated that Mr. Hendricks' constituents still have five years until the sunset clause goes into effect. Mr. Hopkins indicated that ICL would be supportive of postponing the whole thing. Dr. Leibsle assured the group that the agency wants to get this right. Mr. Burkhalter stated that even if the rulemaking were continued the negotiation can be conducted. Mr. Patten asked Mr. Hendricks if it was his perception that completing a third of the rule would be a positive incentive for producers and result in greater buy in later. Mr. Hendricks stated that some producers were disappointed by last year's rulemaking decision and why he suggests that we move forward with removing the sunset clause. He indicated that his members are not going to have the inclination to look at the two 590's, but would look at a strawman. Dr. Leibsle commented that the agency does not want to be perceived as "steering the ship," and that by continuing the rulemaking there would be more time for back and forth discussion. He stated that his ultimate concern, assuming the sunset clause is removed and the 1999 590 stays in place, this is not an acceptable path forward since we need a nutrient management standard that procedurally we can all agree on. He reiterated that producers would still have five years available to them. He also indicated that meetings for discussion could be set every other month. Mr. Patten stated that IDA did say they had no problem with allowing the threshold standard, to which Dr. Leibsle agreed. Mr. Hopkins expressed his preferred alternative would be to address all the issues as a group. Mr. Hendricks and Mr. Patten would prefer going ahead with removal of the sunset clause. Dr. Barton suggested that we get together with the IDA folks who were not present.

Dr. Leibsle adjourned the meeting at 2:15 pm.

Next meeting: July 25, 2018 at 1:00 pm.

Respectfully submitted by Janis Perry