Idaho State Department of Agriculture
02.04.14 Rules Governing Dairy Byproduct
November 13, 2018, 11:00 a.m.
Dr. Scott Leibsle, Facilitator

Present: Marv Patten, Milk Producers of Idaho; Russ Hendricks, Idaho Farm Bureau Federation; Rick Naerebout, Idaho Dairymen's Association; April Leytem, USDA – Agricultural Research Service; Madelyn Bishop NOW CFO; Jonathan Oppenheimer, Idaho Conservation League; Katy DeVries, Office of Attorney General – ISDA; Pradip Adhikari, ISDA; Mitch Vermeer, ISDA; Scott Leibsle, ISDA; Janis Perry, ISDA.

AGENDA ITEMS

WELCOME

Dr. Scott Leibsle convened the meeting at 10:05 a.m. He explained that this is a continuation of a public negotiated rulemaking meeting for IDAPA 02.04.14 Rules Governing Dairy Byproduct. He indicated that the goal was to review the draft 2.1 version of the Idaho Dairy Nutrient Management Standard (NMS). He stated that stakeholders had been sent a draft copy that had several objectives including to simplify the standards and to separate the enforcement from the Best Management Practices. He indicated that April Leytem with USDA-ARS assisted in preparing the document. This draft will replace the 1999 NRCS 590 as the governing document in Idaho. The goal is to have an up-to-date relevant document for Idaho dairymen. In addition to the development of the NMS, he explained that with two of April's colleagues at ARS, ISDA planned to set up an experimental project sending multiple soil samples to several soil analysis labs in order to gather data to determine the margin of error that can be expected from the analysis of a soil sample.

Marv Patten suggested changing "Grade A dairies" to "Grade A dairy farms" throughout the document. Dr. Leibsle agreed. Dr. Leibsle pointed out that he had only included ISDA in the certification requirement setting since the department is the only one currently doing certification. Rick Naerebout suggested adding USDA-ARS. April Leytem responded that the U of I has no program and even though ARS used to do it, they are primarily researchers. Mr. Patten asked if the criteria for certification should be spelled out. Dr. Leibsle responded that this document spells out the criteria and the language is open. Dr. Leibsle stated that with the new software for creating NMPs ISDA will have workshops throughout the state to teach how to use the program.

In the Soil Testing and Analysis section, no mention was made of how recent the nitrogen tests should be. Ms. Leytem stated that nitrogen samples that are a year old are worthless, however tests that are a month old are more accurate. She indicated that if producers choose to calculate the nitrogen balance they must follow the requirements on the second page of the Nitrogen Management Plan Worksheet which she felt should be included. If nitrogen is the limiting factor, rather than phosphorus, the tests should be taken during the same season before land application and when the weather warms. Ms. Leytem suggested that the timing could be included in the Best Management Practices section. She

stated that unless ISDA is regulating by nitrogen, more flexibility could be allowed. Dr. Leibsle indicated that since the nitrogen is not regulated, he would include it in the BMPs.

Rick Naerebout asked if phosphorus should be tested in the second foot of soil sampling. Ms. Leytem indicated that in order to simplify the NMS, she had taken that language out. She stated that the phosphorus level does not usually change in the second foot compared with the first 12" of soil. Dr. Leibsle mentioned that he would include the "Soil Sampling" UI Bulletin 704 publication to the appendix of this document. Mr. Naerebout stated that the UI Extension website included has not been kept up to date and suggested that it be removed.

In the section on Manure Testing and Analysis Dr. Leibsle recommended that in order to address risk rating, a producer can use the book value if the phosphorus level is below threshold (under 40 ppm), but the producer should want to understand what is being land applied. Mr. Patten stated that having to soil test, rather than using book values, he saw as a penalty and is expensive. Mr. Naerebout disagreed saying he did not see it as a penalty. Ms. Leytem indicated that if the producer is not soil testing, there is a legal liability. Russ Hendricks clarified that if the tests showed an upward trend in the 40 ppm to 100 ppm range, then a producer must soil test. However, if above 100 ppm the producer could not use the threshold method, but must use indexing. Marv Patten suggested that a producer should be required to do manure testing if the tests showed soil phosphorus trending upward in two out of the last four years prior to application. Dr. Leibsle agreed to consider that provision as part of the phosphorus threshold requirements, with the understanding that it may be dependent upon the accepted soil test "margin of error" that is settled upon as part of this rulemaking.

In the Nutrient Loss Risk Assessments section, the issue of documented agronomic need for phosphorus was discussed. Ms. Leytem stated that this need was legally or scientifically defensible and she questioned why a producer could keep applying nutrients if there was not a documented need. She said that if the producer was using indexing, the BMPs must be used. Mr. Naerebout stated that if a field were above 40 ppm, the need must be documented. He also asked if the asterisk at the bottom of page 2 would change when the margin of error issue was addressed. Dr. Leibsle agreed it would. The sentence at the top of page 3 should be moved to the BMP section. Mr. Naerebout stated that the paragraph regarding 300 ppm is not relevant to this section if producers will be required to use phosphorus indexing if/when a field registered above 100 ppm phosphorus.

Mr. Patten asked how the department would respond if a producer tried to gerrymander his fields to avoid registering a soil test of 300ppm and avoiding the zero-out provision. Mitch Vermeer and Pradip Adhikari responded that with different crops, there would be different fields, but it would not be permissible to combine those fields arbitrarily. If fields are combined as part of the management of the facility, the required soil test must still be a representative sample of the entire field. Dr. Leibsle suggested that this could be discovered in the annual review of the plan.

On page three under Application of Liquid Byproduct, Mr. Patten suggested that "recent soil samples' should be "current (within the last year) annual soil samples." Much discussion resulted regarding the weather forecast prediction with Mr. Naerebout suggesting that 24 hours would be better than 5 days. Jonathan Oppenheimer commented that the weather forecast is for the future condition where the soil water holding capacity is the current condition. He felt that 24 hours for measurable precipitation was

too short. Mr. Patten recommended removing "to crops" in the paragraph regarding soil water holding capacity.

Mr. Patten also suggested that in the Application of Solid Byproduct section the issue is reasonably incorporated. Russ Hendricks felt that "historic growing season" would better describe Climate. Mr. Oppenheimer suggested incorporating the statement of "the E/NMP is up-to-date and all fields to receive nutrients are listed within the plan," in the Solid Byproduct section as well as the Liquid one.

Mr. Naerebout asked if the Plans and Specifications section could include which items are index specific and which ones are for threshold (for example soil survey, distance to surface water, location of designated sensitive areas, and the last four which are sub sets of the soil P concentrations). He also questioned whether "all available test results" are all regulatory if they are included. Dr. Leibsle responded that only records/test results required to be maintained in a current/valid NMP, as stated in this NMS and the Rules Governing Nutrient Management Plans, would be considered regulatory. Any other optional testing/records maintained by the producer would not need to be provided with the NMP or during the annual inspection.

In Operation and Maintenance, Mr. Patten suggested that the document indicate who should review plans. "Producer shall review and revise" was suggested. Mr. Naerebout recommended that other changes, including change in acreage or change that impacts phosphorus excretion be included in the discussion of changes. Mr. Patten stated that a bullet list of changes could be found in the 590. Mr. Naerebout recommended that all test records statement should be consistent throughout the document referencing that they are not all regulatory. Ms. Leytem agreed that "nutrient analyses of harvested biomass" could be struck. The BMPs should be included in the discussion of plan review.

Mr. Patten asked about the Irrigation Water Management evaluations. Mr. Vermeer stated that he would strike that.

Mr. Hendricks commented that this draft was a lot easier to ready than the last one.

Dr. Leibsle stated he would send another draft with these changes in the next couple of weeks.

Next meeting: December 18, 2018 at 10:00 am, which is a week later than originally scheduled.

Respectfully submitted by Janis Perry