

Idaho State Department of Agriculture
02.04.14 Rules Governing Dairy Byproduct
December 18, 2018, 10:00 a.m.
Dr. Scott Leibsle, Facilitator

Present: Marv Patten, Milk Producers of Idaho; Russ Hendricks, Idaho Farm Bureau Federation; DeLon Lee, Idaho Farm Bureau; Rick Naerebout, Idaho Dairymen's Association; Tanya Oldham, Idaho Dairymen's Association; Megan Satterwhite, Idaho Dairymen's Association; April Leytem, USDA – Agricultural Research Service; Rob Dungan, USDA – Agricultural Research Service; Dave Bjorneberg USDA – Agricultural Research Service, Katy DeVries, Office of Attorney General – ISDA; Pradip Adhikari, ISDA; Mitch Vermeer, ISDA; Scott Leibsle, ISDA; Janis Perry, ISDA, and Josh Johnson, Idaho Conservation League participated by phone.

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 3 version of the Idaho Dairy Nutrient Management Standard (NMS). He stated that stakeholders had been sent a draft copy.

In this draft “Grade A dairies” has been changed to “Grade A dairy farms” throughout the document. On page two the web address after paragraph one should be removed. Dr. Leibsle agreed. Then he pointed out he inserted “Dairy farms operating on ‘Phosphorus Threshold’ (PT) may use nutrient book values to calculate land application on any fields that soil test less than forty (40) ppm phosphorus. Dairy farms operating on ‘Phosphorus Indexing (PSI) may default to nutrient book values to calculate land application on any fields assess as “low risk.” Nutrient applied to any fields testing above 40 ppm P (PT) or assessed as anything except “low risk” (PSI) must be tested prior to application.” This was to even out the PT and PSI requirements. For enforcement if the soil testing is above 40 ppm and trends upward for two out of four years the facility would be required to switch to indexing. Marv Patten asked about the penalty if indexing. Dr. Leibsle indicated that then the penalty phase comes into play and would require closer examination by the inspector. He stated that if the Phosphorus ceiling of 100 ppm is reached, the producer would be required to index. Rick Naerebout commented that he has a problem with using indexing as a penalty. He suggested giving the producer options to either go to indexing or develop a plan for bringing the phosphorus level down with the department's approval. Dr. Leibsle agreed that that would be fair.

April Leytem stated that once a producer is above 40 ppm, he must test in order to develop a plan. Dr. Leibsle responded that if any field is over 40 ppm testing would be required to land apply. He also stated that if two out of four soil tests trend up, you may transition to indexing. Josh Johnson asked for clarification on the two out of four tests. Dr. Leibsle stated that two out of four is a common testing standard for milk producers. Marv Patten commented that the testing can be imprecise. Dr. Leibsle indicated that two out of four may provide a buffer from the variability of testing and that the group will

quantify the acceptable margin of error at a later meeting. Ms. Leytem asked if the first two tests trended up, if a producer would be allowed to continue testing to four. Dr. Leibsle responded that it would go into effect if the first two tests trended up. If the tests show less than 40 ppm, the producer can use book value. Marv Patten asked if the tests are trending upward a civil penalty could be imposed. Russ Hendricks responded why a jump to a civil penalty; he likes the plan modification. Rick Naerebout commented that we need to fix the problem through modification. Dr. Leibsle explained that through an informal settlement, the producer and the department come to agreement on how to revise the Nutrient Management Plan and often have a probationary period. Then with a second offense the penalty would escalate. Mr. Patten asked if the matrices should be in the rule. Katy DeVries explained that having them in the rule would reduce the department's negotiating power. Dr. Leibsle stated that he favors working with producers and best management practices and often the producer suggests solutions. Mr. Patten stressed the need for flexibility. Russ Hendricks asked for time to think about the two out of four tests trending up.

Dr. Leibsle stated that enforcement action could be initiated if the tests showed above 40 ppm. Rick Naerebout asked how the letter reads. Dr. Leibsle explained that the department uses three tools: a regulatory letter simply gives a producer a notification of a violation; an administrative letter requires a producer to schedule a meeting with ISDA to discuss the violation and potentially implement modifications to the operation to avoid further violations; a Notice of Violation (NOV) proposes a civil penalty to be paid by the producer and asks the producer to schedule a settlement meeting with ISDA. Mr. Naerebout commented that he thinks the administrative letter seems to be the most effective.

In the section on Manure Testing and Analysis Optional section Ms. Leytem suggested adding "dry matter or moisture" at the end of the paragraph. Dr. Leibsle agreed. Ms. Leytem also questioned how the 100 ppm ceiling for phosphorus was decided. She indicated that a producer would have to over apply by a lot. She would rather use 80 ppm which is twice the 40 ppm value. Josh Johnson stated that the lower the number, the sooner the producer would be required to deal with a problem. Mr. Naerebout stated that he hoped that dairymen will start dealing with the issue before 100 ppm, but he is comfortable with the 100 ppm ceiling.

Russ Hendricks asked if the department has a list of certified manure testing labs. Megan Satterwhite stated that the Minnesota State Department of Agriculture keeps a list of certified labs, but the labs have to pay the accreditation agency to be on the list. Dr. Leibsle indicated that perhaps the dairy bureau could keep the list on their website.

On page three under Application of Liquid Byproduct #3, Dr. Leibsle stated that "Recent" should be replaced by "Annual." Mr. Naerebout suggested that a disclaimer be added if the department grants a non-growing season application exemption. Mr. Patten wondered what if a producer gets permission for land application in the non-growing season and a violation happens. Dr. Leibsle responded that #7 "necessary and appropriate" might apply. He also stated that a producers needs to meet the listed criteria so that he can meet with the department to apply the byproduct. Mr. Naerebout feels that this gives guidance to dairymen.

Dr. Leibsle pointed out that no start or end to the growing season is included. Mitch Vermeer stated that it would depend on the year and what is growing on the field where the application is to occur. Mr.

Naerebout asked if the department will, come spring, give the green light for application. Dr. Leiblsle suggested that the department could publish a notice that is distributed by industry. Mr. Vermeer suggested that it might be on the website.

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) by listing the items in two separate columns.. He also questioned whether “all available test results” are all regulatory if they are included. Dr. Leiblsle 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 second paragraph, Dr. Leiblsle indicated that if the changes are not enough to make a difference a revised E/NMP would not be triggered.

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

Mr. Hendricks suggested that in the Purpose to this draft that “potential” or “adverse” be inserted in regard to environmental impacts. Dr. Leiblsle thought “adverse” would work. Mr. Hendricks also suggested adding “from improper management” be added to the end of the purpose statement. There was not agreement on this addition.

Ms. Leytem suggested that NRCS be included in the following sentence “Modify animal feed diets to reduce the nutrient content of manure following guidance contained in NRCS Conservation Practice Standards (CPS) code 592, Feed Management” under Additional Considerations. Pradip Adhikari suggested including legume planting to the Nitrogen Management Plan Worksheet. Ms. Leytem offered to add a box for plant residue and nitrogen from legumes between numbers 13 and 14 on that Worksheet. She recommended that “legume nitrogen fixation” be struck from the second paragraph of General Criteria Applicable to All Plans on page one since this is not related to the annual budget for phosphorus.

Dr. Leiblsle asked if there were further comments. Ms. Leytem asked about the 50°F for nitrogen testing. She thought that “as close to pre-planting as possible” might be better. Dave Bjorneberg agreed that we don’t want samples taken in January for planting in May.

Dr. Leiblsle explained that the margin of error issue was the other portion of this draft that needs to be discussed. He plans to conduct a structured experiment by sending soil samples to various labs in order to get data related to a margin of error. Mr. Patten commented that there would be error margins in the soil sampling technique as well as in the testing. Mr. Bjorneberg stated that the variability does not really matter if the results are high. However, he is available to help with the experiment.

Megan Satterwhite asked if how often the plans must be updated should be included and what was involved with revising a plan.

Dr. Leibsle stated he would send another draft with these changes before the end of the year.
Stakeholders are welcome to submit comments to this next draft

No further meetings are planned until later in the spring.

Respectfully submitted by Janis Perry