

Idaho State Department of Agriculture
02.04.14 Rules Governing Dairy Byproduct
June 27, 2019, 10:00 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; Dave Bjerneberg, USDA – Agricultural Research Service; Austin Walkins, Idaho Conservation League; Roland Wood, NPK Planning; Katy DeVries, Office of Attorney General – ISDA; Pradip Adhikari, ISDA; Mitch Vermeer, ISDA; Scott Leibsle, ISDA; Dr. Bill Barton, ISDA; and Janis Perry, ISDA.

AGENDA ITEMS

WELCOME

Dr. Scott Leibsle convened the meeting at 10:00 a.m. Dr. Leibsle explained that this is a continuation of a public negotiated rulemaking meeting for IDAPA 02.04.14 Rules Governing Dairy Byproduct. Following introductions he indicated that the agenda for today's meeting includes several issues from the previous meeting:

1. Letter from Idaho Conservation League requesting that testing for Nitrogen be put back into the Idaho Dairy Nutrient Management Standard;
2. Several peer review studies were submitted;
3. Statutory requirement for analysis using best available science which he distributed;
4. Red Tape Reduction was already done.

Dr. Leibsle stated that Idaho Conservation League sent a comment letter asking that the group reverse its decision from last meeting to leave in only phosphorus and remove the phrase "samples collected from the second foot should be analyzed for inorganic N" from the Idaho Dairy Nutrient Management Standard. Austin Walkins explained that from ICL's perspective testing of nitrogen and potassium should also be required for producers. Rick Naerebout commented that it was at April Leytem's suggestion to include only phosphorus testing if that is all that is regulated. April responded that it is a great idea to test all three. Dr. Leibsle asked if anyone had a problem with leaving all three in. Rick asked for clarification if we were talking about only the first foot of testing since it is significantly more costly to test the second foot. Austin stated that if there is a ground water concern, the second foot of testing was important. Marv Patten remarked that to leave out nitrogen and potassium would be a cost saving measure. Russ Hendricks agreed with Marv, saying that if nitrogen is not regulated why include it since additional regulation are hurting family farms. Dave Bjerneberg observed that if the document title is nutrient management all three are needed. Dr. Leibsle mentioned that is phosphorus is the limiting factor and there is not regulation in Idaho for nitrogen, then phosphorus will be more limiting before nitrogen. Austin noted that he did not understand the cost argument since producers still test for all three. He continued that even if nitrogen is not the limiting factor, this is a nutrient management standard, not a phosphorus standard.

Dr. Leibsle stated that without regulating nitrogen, it is record keeping only. Marv Patten questioned what would happen if a producer did not test for anything but phosphorus. Mitch Vermeer responded that it would be a record keeping violation. Dr. Leibsle indicated that currently there is no hammer for that and the standard panel offered is \$10 to test for phosphorus and \$16 for all three (NPK). Austin Walkins commented that he would see value in the documentation of all three. Rick Naerebout remarked that it would be a private business record. Austin asked if DEQ would have access to those records and Rick responded that an agency could do its own testing. Dr. Leibsle indicated that he was inclined for now without any regulations to just leave the testing of phosphorus. He did say that ultimately a petition could add nitrogen testing. Austin commented that he appreciated the discussion.

Dr. Leibsle explained that every source that was sent in, the science supports indexing as the better measure. Threshold identifies uptake, does not account for transport. He stated that if we offer two options with 20 ppm being the agronomic level and 40 ppm allowing for a buffer, then the science suggests that above 40 ppm we should require producers to switch to indexing to evaluate the risk. Rick Naerebout argued that dairy producers need more leeway and that there should be more grace. He commented that this would be so stringent with dairy producers compared to other industries. Dr. Leibsle stated that would be for potential future rulemaking.

April Leytum clarified that the old thinking was that you should build up phosphorus in the soil. However, soil tests show what is soluble and you cannot tell what will be removed with crop uptake. She indicated that it might take three or four decades to change. Dave Bjorneberg added that there is no agronomic reason to apply phosphorus above 20 ppm. Dr. Leibsle stated that the phosphorus threshold of 40 ppm is still in place. Rick Naerebout responded that this is not an exact science and wondered if we are trying to dial down to close. Russ Hendricks remarked that he is not a soil scientist, but this is a big change from the last meeting. Marv Patten suggested that this is a huge industry and it may be best to hold off. Austin Walkins remarked that the science is settled, what will more time do. April indicated that producers have way more flexibility with indexing.

Dr. Leibsle suggested a grace time period. Rick Naerebout responded that there already is a 2023 deadline and he would rather not conduct rulemaking for three more years on this. Dr. Leibsle commented that if the sunset of 2023 were left in place, then the side boards could be added later. Rick stated that the perception is that we are going from 100ppm to 40ppm and we may not have producers behind us. Dr. Leibsle asked what other options are there for transition. Rick suggested that they have time to go back to producers to see if they have suggestions. Dave Bjorneberg asked if producers were willing to switch to indexing if at 100 ppm. Rick responded that his board was at a palatable level at 100. Dr. Leibsle said the number needs to be defensible with science. Rick stated that crop consultants are still giving bad information to producers regarding this and that there is so much variability.

Dr. Leibsle indicated that it is important to speak with industry. Threshold comes off the books as an option in 2023 as it stands now. Science supports 20 ppm with a buffer to 40 ppm. If we keep the sunset date in place this gives time for transition to a lower level. Russ Hendricks stated that the petition perhaps was misinterpreted since it asked to maintain threshold as it is. Dr. Leibsle stated that the scientific analysis of the impact of the rulemaking is mandated by statute and it is not an option to maintain threshold as it is without considering the public health and environmental impact, required by I.C. 22-101A and make decision with the program based upon the best available science.

Austin Walkins asked if we would miss the 2020 legislature by not deciding now. Dr. Leibsle responded that a proposed rule could still be published in the October bulletin if we met in early August. Rick Naerebout stated the soonest in August he could meet would be the week of August 12. Dr. Leibsle asked if there was any point in meeting again. Marv Patten remarked that this is not easy with a divided industry and times are tough right now. Dr. Leibsle stated he did not disagree. He will send out an email about meeting the week of August 12.

Dr. Leibsle adjourned the meeting at 11:10 am.

Respectfully submitted by Janis Perry