

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-103(15) and 22-110, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2019.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the permitting and management of commercial livestock truck washing facilities in Idaho. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule in its entirety regulates an activity not regulated by the federal government.

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0423-1901.

IDAHO CODE SECTION 22-101A (4)STATEMENT: Idaho Code § 22-101A(4) requires that in proposing any rule necessary to protect human health and the environment, the Director shall include a summary of information in the rulemaking record by Idaho Code § 22-101A(3). This summary of Idaho Code § 22-101A(3) information is as follows:

IDAPA 02.04.23 regulates commercial livestock truck washing facilities in order to protect human health and the environment. The upper bound risks associated with phosphorus storage and application by Idaho commercial livestock truck washing facilities are elevated phosphorus concentrations in phosphorus sensitive water bodies which can lead to blue-green algae blooms and the presence of cyanotoxins in waterbodies. Algal blooms can impair water use for industry, recreation, drinking and fisheries. Further, cyanotoxins create the upper bound risk of physical illness to approximately 400,000 private domestic well users, wildlife and domestic animals. Because the long term health and environmental effects of harmful algal blooms remain unclear, the absolute central and lower bound risks are not quantifiable.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.04.23, including studies done by U.S. Environmental Protection Agency, USDA Agricultural Resource Service, and other professional and scientific journals. However, even with such data, uncertainties remain, including variability in phosphorus sampling and testing.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.23 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-laws/rules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this existing chapter of IDAPA is being re-published and re-authorized as previously promulgated and approved by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules would have inhibited the agency from executing its responsibilities to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

DATED this 2nd day of August, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED RULE TEXT OF DOCKET NO. 02-0423-1901

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.

**The original text of the temporary rule was published in the Idaho Administrative Bulletin,
[Volume 19-7, July 3, 2019, pages 93 through 99.](#)**

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title Sections 22, ~~Chapter~~ 103(175) and 22-110, Idaho Code. (5-3-03)()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.23, “Rules Governing Commercial Livestock Truck Washing Facilities.” (5-3-03)

02. Scope. These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (5-3-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (5-3-03)

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (5-3-03)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. (5-3-03)

01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (5-3-03)

02. The 2000 American Society of Agricultural Engineers Standard EP393.3. (5-3-03)

03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. (5-3-03)

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (5-3-03)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the central office of ISDA and the State Law Library. (5-3-03)

007. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (5-3-03)

01. Commercial Livestock Truck Washing Facilities. Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 “Rules Governing Dairy Waste,” or 02.04.15 “Rules of the Department of Agriculture Governing Beef Cattle Animal Feeding Operations.” (5-3-03)

- 02.** **Compost.** A biologically stable material derived from the biological decomposition of organic matter. (5-3-03)
- ~~**03.** **Director.** *The Director of the Idaho State Department of Agriculture or his designee.* (5-3-03)~~
- 043.** **Discharge.** Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (5-3-03)
- ~~**054.** **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (5-3-03)~~
- ~~**065.** **Livestock.** Bovidae, ovidae, suidae, and equidae. (5-3-03)~~
- ~~**076.** **Livestock Truck Washing Facilities.** Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. (5-3-03)~~
- ~~**08.** **Manure.** *Livestock excrement that may also contain bedding, spilled feed, water, or soil.* (5-3-03)~~
- 097.** **Modified.** Structural or management changes, or alterations to the livestock truck washing facility which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (5-3-03)
- ~~**108.** **Non-Compliance.** A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (5-3-03)~~
- ~~**109.** **Non-Land Application Season.** The portion of the year during which land application is not allowed pursuant to an approved NMP. (5-3-03)~~
- ~~**1210.** **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (5-3-03)~~
- ~~**13.** **Nutrient Management Standard.** *The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director.* (5-3-03)~~
- ~~**1411.** **Operate.** Washing or cleaning livestock trucks. (5-3-03)~~
- ~~**1512.** **Operator.** The person who has power or authority to manage, or direct, or has financial control of a commercial livestock truck washing facility. (5-3-03)~~
- ~~**16.** **Person.** *Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.* (5-3-03)~~
- ~~**1713.** **Process Wastewater.** Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. (5-3-03)~~
- ~~**1814.** **Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. (5-3-03)~~
- ~~**1915.** **Unauthorized Discharge.** A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized by a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (5-3-03)~~
- ~~**2016.** **Wastewater Storage and Containment Facility.** That portion of a CLTWF where manure or process wastewater is stored or collected. This includes, but is not limited to, waste collection systems, waste~~

conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (5-3-03)

~~417~~. **Waters of the State.** All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. (5-3-03)

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. (5-3-03)

02. FEMA. Federal Emergency Management Agency. (5-3-03)

03. ISDA. Idaho State Department of Agriculture. (5-3-03)

04. NMP. Nutrient Management Plan. (5-3-03)

05. NPDES. National Pollutant Discharge Elimination System. (5-3-03)

06. NRCS. Natural Resources Conservation Service. (5-3-03)

07. USDA. United States Department of Agriculture. (5-3-03)

012. APPLICABILITY.

These rules apply to all CLTWF. (5-3-03)

013. -- 049. (RESERVED)

050. INSPECTIONS.

In order to ascertain compliance with this chapter, the Director shall have reasonable access to: (5-3-03)

01. Inspect Facilities. Inspect any facility or land application site listed in the CLTWF's NMP. (5-3-03)

02. Inspect Records. Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (5-3-03)

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. (5-3-03)

101. APPLICATION FOR PERMIT.

Applications for permits submitted to the Director shall contain the following: (5-3-03)

01. Name, Telephone Number, and Address. The name, telephone number, and address of the owner and operator of the CLTWF. (5-3-03)

02. Physical Address. The physical address of the CLTWF. (5-3-03)

03. Scaled Vicinity Map With Site Location. A detailed sketch of the proposed or existing CLTWF site location, on an aerial photograph if available, which includes the following: (5-3-03)

a. The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and (5-3-03)

b. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by Idaho Department of Water Resources or other sources, which are within a one (1) mile radius of the proposed or existing CLTWF; and (5-3-03)

c. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CLTWF; and (5-3-03)

d. Location of all land application sites; and (5-3-03)

e. FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites. (5-3-03)

04. Scaled Site Plan. A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (5-3-03)

05. Land Application System. A detailed description of the current or proposed management practices and methods used to make land application including: (5-3-03)

a. Timing, frequency, and duration of practices. (5-3-03)

b. Proximity of land application sites to residential and public use areas. (5-3-03)

06. Nutrient Management Plan. A NMP for all land where manure or process wastewater from the CLTWF is land applied. (5-3-03)

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter ~~shall be~~ are valid for a period of two (2) years. (~~5-3-03~~)()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. (5-3-03)

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. (5-3-03)

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. (5-3-03)

201. -- 209. (RESERVED)

210. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge, the operator of a CLTWF shall verbally notify the Director of such a discharge. (5-3-03)

211. WRITTEN NOTIFICATION.

If the ISDA has not begun a discharge investigation within five (5) days of the verbal notification to the director, the operator shall submit a written report to the Director which includes: (5-3-03)

01. A Description of the Discharge. A description of the flow path to the receiving water body; and (5-3-03)

02. Flow Rate. An estimation of the flow rate and volume discharged; and (5-3-03)

03. Dates and Time. The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and (5-3-03)

04. Steps Taken. Steps taken to reduce, eliminate, and prevent recurrence of the discharge. (5-3-03)

212. -- 299. (RESERVED)

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (5-3-03)

01. Process Wastewater. All process wastewater generated on the CLTWF during the non-land application season; and (5-3-03)

02. Rainfall. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (5-3-03)

03. Winter Precipitation. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. (5-3-03)

301. -- 309. (RESERVED)

310. CONSTRUCTION REQUIREMENTS.

All CLTWF shall have wastewater storage and containment facilities designed and constructed in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. (5-3-03)

311. -- 319. (RESERVED)

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. (5-3-03)

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall submit, to the Director for approval, a NMP that conforms to the nutrient management standard. (5-3-03)

01. Odor. Each NMP shall address odors generated on the CLTWF, and land application sites. Odors shall not be generated in excess of odors normally associated with livestock production in Idaho. (5-3-03)

02. Land Application. Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied. (5-3-03)

03. Duty of Operator. It shall be the duty of the operator of a CLTWF to ensure that the NMP, for any land included in the NMP, is implemented. (5-3-03)

04. Implementation of NMP. Failure to implement and abide by an approved NMP is a violation of this chapter. (5-3-03)

~~331. -- 349. (RESERVED)~~

~~350. EXISTING CLTWF.~~

~~CLTWF that are operating on or before July 1, 2002 shall submit a NMP to the director for approval no later than January 1, 2003.~~ (5-3-03)

~~351.~~ 359. (RESERVED)

360. NEW CLTWF.

Any new CLTWF, ~~commencing operations after July 1, 2002,~~ shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director ~~shall~~ respond~~s~~ to or approve~~s~~ such NMP within sixty (60) days of submission. (5-3-03)()

361. -- 999. (RESERVED)