

Idaho Code Section 22-101A Statement: Section 22-101A, Idaho Code, provides that ISDA must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law regulations. The Rules Governing the Stockpiling of Agricultural Waste are broader in scope and more stringent than federal law in the following manner: 1) This rule establishes setback distances for storing and stockpiling of an accumulation of agricultural waste products. The federal government does not regulate agricultural waste in this manner. The federal National Pollutant Discharge Elimination System (NPDES) rule regulates the discharge of certain waste products into water the U.S., however it does not address the manner in which these products are stored or stockpiled on the facility itself. The NPDES rule and federal Clean Water Act trigger a violation only when a discharge of nutrients and byproduct enters waters of the United States. Therefore, this rule does represent a standard that is broader in scope and more stringent than federal law.

Section 22-101A, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government.” This rule may be used to regulate an activity not regulated by the federal government. The following is a summary of additional information required by Sections 22-101A (3) and (4), Idaho Code. Information relating to Section 22-101A (2) has also been provided. The requirements set forth in this rule were not based upon peer-reviewed science and did not undergo an analysis as to impact the provision would have on public health and the environment.

Section 22-101A(2)(a), Idaho Code. To the degree that a department action is based on science the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.

The common concern among agricultural waste products is the accumulation and subsequent discharge of nutrients from these waste products into surface or groundwater and the ultimate impact it may have on public health and/or the environment. However, the federal government along with several other regulatory programs in the state of Idaho, have only addressed these risks from the standpoint of quantifying the amount of nutrients that can and may accumulate in the soil and be transported off-site. The Rules Governing the Stockpiling of Agricultural Waste were intended to address the less scientifically “tangible” issue of the potential for negative impact the proximity of a waste stockpile may have to a neighboring public facility/entity or non-responsible party’s dwelling. This issue has not been formally addressed in scientific literature. Consequently, there is no peer-reviewed science that may lend its’ conclusions to the support or opposition of the provisions in this rule. However, that is not to say the provisions of this rule are not without merit, but may more appropriately be thought of a set of rules or best management practices for certain agricultural facilities to follow in the interest of being “good neighbors” to those who do not make a living in the agriculture industry.

Section 22-101A(2)(b), Idaho Code. To the degree that a department action is based on science the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

Aside from the measurement of the actual distance of separation between a stockpile of agricultural waste and an adjacent non-responsible party’s dwelling (or other public building/entity), there are no additional data collection methods used or available to scientifically verify the provisions of this rule are appropriate and necessary. The University of Nebraska-Lincoln has proposed setback distances of livestock facilities to reduce neighbor nuisance (Lunn and Koelsch, 2017; Stowell, et al) Recommended setback distances of livestock facilities were determined for the state of Nebraska based on the history

of wind speed and direction. The setback distances vary depending on the wind zones, which are identified based on the downward wind direction and speed.

Section 22-101A(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

There are multiple different agricultural facilities that generate any number of variations of waste products. While many of these facilities are located in rural and often remote areas of the state of Idaho, in some cases they may be located in suburban or urban settings adjacent to public buildings and other private property not used for commercial agriculture. As the rule states, these facilities include, but are not limited to, hospitals, churches, schools, public highways as well as non-responsible party's dwellings, domestic or irrigations wells and waters of the State. The purpose of this rule was to encourage agriculture operations to implement best management practices by maintaining a minimum setback distance to any of the afore-mentioned entities and ultimately minimize the physical, visual, odorous and human health impact these stockpiles may have upon nearby properties. The storage, breakdown and potential contamination of harmful nutrients/waste products onto these properties is acknowledged in this rule, however the regulations are limited to only a minimum physical separation from the source and does not contemplate other factors such as permeability of soil, slope of the storage site, prevailing winds or the amount of odor generated from the site. The severity of an odor produced by stockpiles of waste is difficult to quantify with such a broad definition of "Agricultural Waste" and often varies with the individual who is detecting the smell. The same can be said for "unsightly appearance", as beauty is often in the eye of the beholder. As a result, the extent to which the population could be affected by a waste stockpile is unknown.

Section 22-101A(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk.

The estimate of risk neighboring properties to an agricultural operation that stockpiles waste may expect to incur is difficult to quantify given the multitude of different combinations that occur with types of waste products and the various manners in which they are stored. In general, however, the risks may be simplified down to the common reasons for complaints the Department receives from these neighboring properties/entities. Specifically, excessive odor, unsightly appearance and potential for waste runoff into a domestic well or onto an adjoining property, are the most common reasons for complaint that are received. The potential for waste runoff into a water source or domestic well is thoroughly addressed in other rules administered by ISDA pertaining to animal manure and/or byproduct. However, these other rules also include multiple additional regulatory standards and tools are also utilized to quantify that risk and mitigate the effects. The Rules Governing the Stockpiling of Agricultural Waste do not implement these tools or standards, such as requiring waste stockpiles to be kept on "approved soils" or implementing safety measures to minimize off-site transport of waste by "berming" around the stockpile. This rule mitigates the risk of runoff contamination strictly through physical separation. The less "quantifiable" reasons for complaint, such as odor and unsightly appearance, have no scientific data to support how much or how far a stockpile should be physically separated from a neighboring entity to minimize the impact. The intent of the rule is to simply address these common reasons for complaint by requiring producers to avoid building stockpiles along property lines and thereby exposing adjacent dwellings, public buildings or water sources to an odor or visual entity that is unpleasant.

Section 22-101A(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.

The potential for introduction of pathogens, nutrients that may induce eutrophication of water bodies and harmful bacteria into drinking or irrigation water are the only risks that have scientifically verified results for the provisions of this rule. Technically, the potential for impact on human health or the environment is tangible given that the rule addresses the storage of agricultural waste. However, without a consistent, repeatable and defensible method for collecting data and quantifying the impact odor or unsightly appearance may have on adjacent properties or entities, there is no way to scientifically justify what is the appropriate setback distance to mitigate these risks.

Section 22-101A(3)(e), Idaho Code. Identification of studies known to the director that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

These referenced studies or analyses that were utilized in the formulation of this rule or the setbacks distances established to minimize the impact of stockpiled agricultural waste.

Lunn, C., and Koelsch, R. 2017. Siting animal facilities to reduce neighbor nuisance. Available at: <https://water.unl.edu/article/animal-manure-management/downwind-direction-frequency-minimizing-odor-and-dust-nuisance> (accessed September 6, 2019).

Stowell, R., Powers, D., Schulte, D. and Koelsch, R. n.d. Nebraska order footprint tool. Graphical resource for Lincoln Nebraska. University of Nebraska Lincoln. Available at: <https://water.unl.edu/article/animal-manure-management/odor-footprint-tool> (accessed September 9, 2019).