

***Idaho State Department of Agriculture  
02.04.14 Rules Governing Dairy Byproduct***

***May 24, 2023, 8:30 a.m.***

***Lloyd Knight, Dr. Scott Leibsle, Hosts/Facilitators***

Present: Dallas Burkhalter, Office of Attorney General – ISDA; Mitch Vermeer, ISDA; Bob Naerebout, Idaho Dairymen’s Association; Marv Patten, Milk Producers of Idaho; Will Tiedemann, Idaho Conservation League; Katie Van Vliet, Idaho Dairymen’s Association; Roland Wood, NPK Planning; April Leytem, ARS; Emily Courter, ISDA.

**AGENDA ITEMS**

**WELCOME:**

Mr. Knight started the second meeting at 8:34 am via teleconference and audio recorded the meeting. He opened the meeting by going over housekeeping rules and introducing participants. Mr. Knight recapped the first meeting and started going over definitions, which were displayed via teleconference. Mr. Knight shared that a comment was submitted to ISDA from Mr. Naerebout to review. Mr. Knight also asked the attendees if there was anything else that needed to be reviewed in the meeting.

No one in the group commented.

Mr. Knight turned the meeting over to Dr. Leibsle.

Dr. Leibsle started by referencing the definition discussions that were had with DFM and the duplications between statute and rule. Dr. Leibsle indicated that statute will take precedence and went over what has been struck from the rule. He continued to list the definitions that would be retained. He discussed the interpretation that was given to ISDA by DFM. Dr. Leibsle asked the group if anyone had any questions.

No comments were made.

Dr. Leibsle discussed the proposal Mr. Wood made last meeting about dammer diking. Dr. Leibsle stated he approached ARS about the topic of best management practices and requested an analysis. Dr. Leibsle read and displayed an email that was received from Dave Bjorneberg from ARS. Dr. Leibsle added that a study had been sent along with the email and displayed it for everyone to review via teleconference. Dr. Leibsle also suggested to the group that if a third meeting is necessary to continue to review the given information, that is something they can do. Dr. Leibsle introduced April Leytem from ARS and stated she could help with any questions the group might have.

Mr. Naerebout had a question for Ms. Leytem regarding how it would impact the others.

Ms. Leytem responded and went over the original Index and how it was created. Ms. Leytem went over where they thought they could incorporate the information and went over dammer diking and its potential as a best management practice for run offs.

Dr. Leibsle referenced the formula and the risk rating for phosphorus loss or transport and the best management practices based on the table results. Dr. Leibsle asked the group if anyone had any questions.

Mr. Patten spoke to wanting table 8 to read, dammer dike or berm. Instead of it saying dike or berm.

Dr. Leibsle referenced research based out of Alabama that spoke to dammer diking as not a best management practice, however indicated where it might be able to go.

Mr. Naerebout spoke to the study and ARS findings and why dammer diking was not originally added.

Mr. Patten indicated that he would like the language there to give people the option.

Ms. Leytem spoke to each situation being different, causing different outcomes based on the slope and field conditions. She mentioned how the language of the rule could be referenced and found.

Dr. Leibsle asked the group if there were any other questions on Mr. Wood's proposal.

Mr. Knight mentioned that it was a good time to go over Mr. Naerebout proposal that was submitted.

Dr. Leibsle agreed and mentioned that a third meeting could be scheduled if the group thought it was needed.

Mr. Wood indicated he would like to see some studies on phosphate levels when it comes to dammer diking and or runoff.

Dr. Leibsle mentioned the submission from Mr. Naerebout and asked him to clarify how this document has been amended.

Mr. Naerebout spoke to how there is nothing in rule or statue on how to adjust the index and spoke to the verbiage he submitted as a rough draft that possibly could be used.

Dr. Leibsle read the proposed amendment submitted by Mr. Naerebout and asked Mr. Naerebout to speak to it.

Mr. Naerebout mentioned that this is another avenue.

Mr. Patten asked Mr. Naerebout to clarify the number of years in question on the proposed amendment.

Mr. Naerebout indicated the years were correct.

Mr. Knight asked Mr. Naerebout where he would like this verbiage to go.

Mr. Naerebout stated that he was open to wherever everyone thought best.

Mr. Knight mentioned where he thought it might go.

Dr. Leibsle indicated he thought the verbiage could go under the phosphorous indexing and by adding the letter "c".

Ms. Leytem mentioned she would recommend removing the verbiage regarding current or less than ten years. She spoke to research being done in the 1970's and 1980's and how that research is still relevant today. She added how research funding works and how she thought it should read.

Mr. Knight asked Mr. Naerebout if he had any thoughts.

Mr. Naerebout indicated he understood and mentioned that the amendment was just a rough draft and wanted to have something as a starting point.

Ms. Leytem mentioned to remove the verbiage that states, "by three scientists from accredited Idaho research institutions". Ms. Leytem didn't think its worth limiting.

Mr. Naerebout asked Ms. Leytem about researchers from out of state and if they would be as knowledgeable in Idaho's climate, soil, and crops and if that makes a difference.

Ms. Leytem indicated it did not and added there are several regions that are similar enough to the conditions we have, that we would not want to discredit those findings.

Mr. Naerebout asked Ms. Leytem how she would word the amendment to reflect "those that are relevant to Idaho".

Ms. Leytem mentioned adding "relevant to our climate, soil, cropping systems and irrigation."

Mr. Naerebout agreed.

Dr. Leibsle added the verbiage to the document Mr. Naerebout submitted and the changes were displayed for the group via teleconference.

Dr. Leibsle asked the group for any other comments.

No comments were made.

Dr. Leibsle stated a 3rd negotiated rule meeting may be possible, if necessary, and wanted to make sure everyone had the opportunity to go over the submitted documents.

Mr. Knight mentioned another meeting and that he will set it up if need be.

Dr. Leibsle concluded by summarizing the proposed changes and what was discussed. Dr. Leibsle asked the group to please submit comments.

Mr. Knight mentioned June 30<sup>th</sup> as the comment deadline and mentioned he would send out an email to schedule another meeting to finalize.

Dr. Leibsle asked Mr. Vermeer to bring a phosphorus index report on where we could implement changes and where we could acknowledge the change on inspections.

Mr. Naerebout asked Ms. Leytem to mention what they had been communicating about regarding the verbiage of the amendment.

Ms. Leytem mentioned removing other verbiage in the amendment that was shown via teleconference.

Dr. Leibsle changed how it was worded.

Mr. Naerebout asked Mr. Burkhalter if they could amend an ARS document.

Mr. Burkhalter indicated he did not believe we had the authority to change an ARS document unless ISDA took over the document.

Ms. Leytem indicated she was not sure how that would happen.

Mr. Naerebout mentioned that we would not want to infringe on the authors.

Ms. Leytem mentioned using possible modifications and by whom modified it.

Mr. Naerebout mentioned adding notes to the rule.

Mr. Burkhalter stated that ISDA would want to investigate it.

Mr. Knight added that it is important to consider the options and to get it correct, legally and wants to mull it over and discuss more. Mr. Knight mentioned he would set up a third meeting to discuss and wanted to give everyone another opportunity to submit comments until June 30<sup>th</sup>, 2023.

Mr. Knight asked Mr. Tiedemann if he had anything to discuss.

Mr. Tiedemann indicated he did not.

Mr. Knight ended the meeting at 9:31 am.