

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0414-1401
(Only those Sections being amended are shown.)

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 46, Idaho Code.

~~(3-20-97)~~()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (3-29-10)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain ~~Standard~~ Time, Monday through Friday, except holidays designated by the state of Idaho. ~~(3-29-10)~~()

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (3-29-10)

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (3-29-10)

05. Fax Number. The fax number of the central office is (208) 334-2170. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

007. FINDINGS.

The Department finds that pursuant to Section 67-5226(1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, enhance Idaho water quality and preserve the integrity of the Idaho dairy industry. These rules establish design, construction, operation, location, and inspection criteria for dairy farms and dairy waste systems on Idaho dairy farms and enable the Department to implement the 1999 NRCS Nutrient Management Standard (NMS) on dairy farms to appropriately manage ~~livestock~~ dairy waste. These rules also provide penalty provisions. ~~(4-5-00)~~()

008. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (3-20-97)

01. Best Management Practice. A practice, technique, or measure that is determined to be a reasonable precaution, a cost-effective and practicable means of preventing or reducing the discharge of pollutants from a point source or a nonpoint source to a level compatible with environmental goals, including water quality goals and standards. ()

02. Certified Planner. A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-29-10)

03. Certified Soil Sampler. An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (3-29-10)

~~034.~~ **Dairy Farm.** ~~A Land owned or operated by a dairy farm and is a place or premises where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption.~~ (3-29-10)()

~~05.~~ **Dairy Waste.** ~~Manure and process wastewater that may also contain bedding, spilled feed, compost, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~ ()

~~06.~~ **Dairy Waste System or Waste System.** ~~The portion of a dairy farm where dairy waste is stored, collected, or treated. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons, and evaporative ponds.~~ ()

~~047.~~ **Department.** The Idaho State Department of Agriculture. (3-29-10)

~~058.~~ **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)

~~06.~~ **Discharge Violation.** ~~A practice or facility condition which has caused an unauthorized release of Livestock Waste into surface, ground water, or beyond the Dairy Farm's property boundaries or beyond the property boundary of any facility operated by the Producer. Contract manure haulers, producers and other persons who haul Livestock Waste beyond the Producer's property boundaries are responsible for releases of Livestock Waste between the property boundaries of the Producer and the property boundaries at the point of application.~~ (3-29-10)

~~072.~~ **Farm Certification.** A permit issued by the Department allowing the sale of manufacture grade milk. (3-20-97)

~~0810.~~ **Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)

~~0911.~~ **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)

~~102.~~ **Livestock.** For the purposes of these rules the term livestock shall include bovidae, suidae, equidae and other animals that are kept on or contiguous to a dairy farm and are owned or controlled by a dairy farm. (3-19-99)

~~11.~~ **Livestock Waste.** ~~Manure that may also contain bedding, spilled feed, compost, water or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.~~ (3-29-10)

~~123.~~ **Manufacture Grade Milk.** Milk produced for processing into dairy products for human consumption but not subject to Grade A requirements. (3-20-97)

~~14.~~ **Modification or Modified.** ~~Structural changes and alterations to the dairy waste system that would require increased storage or containment capacity or such changes that would alter the function of the waste system.~~ ()

~~15.~~ **National Pollutant Discharge Elimination System (NPDES).** ~~The point source permitting program established pursuant to section 402 of the federal clean water act.~~ ()

~~136.~~ **Non-Compliance.** ~~A practice or facility condition which will that causes an Discharge Violation unauthorized discharge; or, if left uncorrected, or a condition on a Dairy Farm that does not meet the requirements of the Nutrient Management Plan; will cause an unauthorized discharge, or does not meet Nutrient Management Standards; and Appendix 10D comply with a NMP.~~ (3-29-10)()

~~147.~~ **Nutrient Management Plan (NMP).** A plan prepared in conformance with the Nutrient Management Standard (NMS) or other equally protective standard ~~approved by the Department~~ for managing the

amount, ~~source~~, placement, form, and timing of the land application of nutrients and soil amendments ~~for plant production, and for minimizing the potential for environmental degradation, particularly impairment of water quality.~~ (3-29-10)()

15. **Permit.** A permit issued by the Department allowing the sale of Grade A milk. (3-20-97)

16. **Person.** Any individual, partnership, association, ~~firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency, or instrumentality, or any organized group of persons whether incorporated or not~~ legal entity that is recognized by law as the subject of rights and duties. (3-20-97)()

20. **Process Wastewater.** Liquid containing dairy manure. ()

21. **Producer.** The person who exercises control over the production of milk delivered to a plant, and who receives payment for this product. (3-20-97)

22. **Unauthorized Discharge.** A discharge of dairy waste to state surface waters or ground waters, or beyond a dairy farm's property boundaries, that does not meet the requirements of these rules or ground water or surface water quality standards. ()

(BREAK IN CONTINUITY OF SECTIONS)

030. WASTE SYSTEM APPROVAL.

The Department is authorized to approve the design, construction, operation, and location of dairy waste systems. These systems must conform to the NMP, NMS, and Appendix 10D. (3-29-10)

01. Waste Containment and Storage. (3-29-10)

a. Waste containment structures shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Wastewater containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. (3-29-10)

b. Earthen waste containment structures less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall be required to have a top embankment width of at least eight (8) feet and a minimum of one (1) vertical foot of freeboard shall be maintained. The combined inside and outside embankment slopes must be at least five (5) horizontal to one (1) vertical, and neither slope shall be steeper than two (2) horizontal to one (1) vertical. Earthen waste containment structures with outside embankments higher than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements as incorporated by reference in Subsection 004.03 of these rules. (3-29-10)

c. The inside bottom of the waste containment structure shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen waste containment structure, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less as described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. (3-29-10)

d. Storage areas for ~~Livestock dairy W~~aste including compost and solid manure storage areas shall be located on approved soils and appropriately protected to prevent run on and run off. (3-29-10)()

e. Waste storage systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. (3-29-10)

02. Nutrient Management. All dairy farms shall implement ~~an approved~~ Nutrient Management Plan (NMP) ~~approved by the Department~~ that accurately reflects the operation of the facility. The NMP shall include an accurate description of the one hundred eighty (180) days of holding capacity of the waste containment system. It shall be the dairy farm's responsibility to update the NMP. ~~(3-29-10)(_____)~~

- a. Producer annual soil tests shall be conducted as set forth in the NMS. (3-29-10)
- b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with the NMS. (3-29-10)
 - i. If the regulatory or Producer soil tests reveal that phosphorus thresholds have exceeded the levels established in the NMS, the Producer shall only apply nutrients at the appropriate phosphorus crop uptake rate. (3-29-10)
 - ii. Subsequent regulatory soil test(s) on fields that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (3-29-10)
- c. Accurate NMP records shall be maintained. These records shall include at a minimum: (3-29-10)
 - i. Regulatory soil samples shall be taken by a Certified Soil Sampler and tested by a laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America outlined in the NMS, as incorporated by reference in Subsection 004.02, as part of NMS 590 or other methods as approved by the Department; (3-29-10)
 - ii. Annual soil analysis; (3-29-10)
 - iii. Date and amount of ~~Livestock dairy Wwaste~~ and commercial fertilizer applied to individual dairy owned or operated fields; ~~(3-29-10)(_____)~~
 - iv. Date(s) of exported ~~Livestock dairy Wwaste~~, number of acres applied, amount of ~~Livestock dairy Wwaste~~ exported and to whom ~~Livestock dairy Wwaste~~ was exported; and ~~(3-29-10)(_____)~~
 - v. Actual crop yields on dairy owned or operated fields. (3-29-10)

031. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected by an Inspector or Fieldman at least annually or at intervals sufficient to determine that ~~Livestock dairy Wwaste~~ has been managed to prevent an unauthorized discharge or contamination of surface and ground water. An official inspection report form as described in Section 041 will be completed at the time of inspection. ~~(3-29-10)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized Discharge Violations Identified. When the Director identifies items of non-compliance or ~~unauthorized~~ discharge violations, the deficiencies will be noted and discussed with the Producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: ~~(3-29-10)(_____)~~

- a. When corrective actions cannot be completed within thirty (30) days; (4-5-00)

b. When corrective actions require significant capital investment; (4-5-00)

c. When informal schedules have not been complied with. (4-5-00)

02. **Re-Inspection.** Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An ~~unauthorized~~ discharge violation shall be corrected immediately, when at all possible. ~~(4-5-00)~~ ()

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES -- PENALTIES.

~~01. **Suspend Producer's Permit.** The Director may suspend the Producer's Permit or Farm Certification authorizing the Producer to sell milk until such time that the Dairy Farm is in compliance. Repeat non-compliance violations on significant items, Discharge Violations, or violation of formal compliance schedule also may cause a Dairy Farm to lose authorization to sell milk. (3-29-10)~~

~~01. Unauthorized Discharge. No dairy farm shall cause an unauthorized discharge. ()~~

~~02. Non-compliance. Non-compliance with requirements for dairy waste systems, the NMS, and NMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ()~~

~~03. Penalties. For unauthorized discharges and non-compliance conditions, the Director shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund. ()~~

~~02. **Suspend Planners or Soil Samplers Certification.** The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop NMPs or collect soil samples as required by these rules. (3-29-10)~~

~~061. **REINSTATEMENT.**~~

~~Whenever a Producer has lost authorization to sell milk for human consumption under the provisions of Section 060, the Producer may request for reinspection. Subsequent to the request, a Departmental reinspection may be conducted. If corrections have been made, the producer will be reinstated. (3-29-10)~~

062. -- 999. (RESERVED)