

**IDAPA 02
TITLE 04
CHAPTER 14**

02.04.14 - RULES GOVERNING DAIRY WASTEENVIRONMENTAL CONTROL

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 6, Idaho Code. (4-11-15)

001. TITLE AND SCOPE.

01. Title. The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, "Rules Governing DairyDairy-WasteEnvironmental Control." (3-29-10)

02. Scope. This chapter has the following scope: These rules shall govern the design, function and management-operational practices of dairy waste-environmental management systems. The official citation of this chapter is IDAPA 02.04.14.000 et seq. For example, this section's citation is IDAPA 02.04.14.001. (3-20-97)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-20-97)

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. (3-20-97)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. (3-29-10)

01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (~~1997-2010~~ Edition) (USDA, NRCS). This document is available online at http://www.agri.idaho.gov/Categories/Animals/Documents/nrcs_10d_1997.pdf. (3-29-10)

Comment [DSL1]: Update to 2010?

02. Nutrient Management Standard (NMS). The ~~1999~~ 2008 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient_Management_code_590.PDF. (3-29-10)

Comment [DSL2]: Update to 2008?

03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document is available online at http://www.agri.idaho.gov/Categories/Environment/Documents/nrcs_313_Dec_2004.pdf. (3-29-10)

04. American Society of Agricultural and Biological Engineers Specification ASABE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-29-10)

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 Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-15)

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)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (3-29-10)

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 dairy waste. These rules also provide penalty provisions.

Comment [DSL3]: Update?
(4-11-15)

008. -- 009. (RESERVED)

010. DEFINITIONS.

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

01. Agricultural Stormwater Discharge. A precipitation-related discharge of dairy byproducts from land areas under the control of a dairy farm where dairy animals are pastured and/or where the dairy byproducts have been land applied in accordance with an approved nutrient management plan. ()

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021. 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. (4-11-15)

032. 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)

043. 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)

05. Dairy Animal. Milking cows, sheep or goats.

Comment [DSL4]: Lactating, dry, replacement?

05. Dairy Byproduct. Solids and liquids associated with dairy animal rearing and milk production including, but not limited to: manure, manure compost, process water, bedding, spilled feed and feed leachate, and livestock carcasses or parts thereof.

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06. Dairy Environmental Management Plan. A plan for managing a dairy environmental management system. The dairy environmental management plan shall consist of dairy storage and containment facilities criteria and a dairy nutrient management plan that are approved by the director.

07. Dairy Environmental Management System. The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated or applied to land. These areas and structures may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules.

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064. Dairy Farm. Land owned or operated by a person on a dairy farm and is a place or premises Department-permitted grade A or manufacture grade facility, 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. (4-11-15)

07. Dairy Nutrient Management Plan. A plan prepared in conformance with the NMS for managing the land application of dairy byproducts that is prepared by a certified planner and approved by the Department.

08. Dairy Storage and Containment Facilities. The areas and structures within a dairy farm where dairy byproducts are collected, stored or treated in conformance with engineering standards and specifications published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective criteria approved by the director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds and compost areas, but do not include pastures as defined in these rules.

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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. (4-11-15)

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. (4-11-15)

097. Department. The Idaho State Department of Agriculture. (3-29-10)

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

11. Export. The delivery of dairy byproducts from a dairy farm to a third party for the third party's use. ()

1209. Farm Certification. A permit issued by the Department allowing the sale of manufacture grade milk. (3-20-97)

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

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

15. Land Application. Spreading on, or incorporating into the soli mantle, dairy byproducts as a soil amendment for agricultural use of nutrients and for other beneficial purposes. Land application does not include pasturing dairy animals in pastures as defined in these rules. ()

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162. 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.

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

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

Comment [DSL5]: This "waste" is in the new statute

195. National Pollutant Discharge Elimination System (NPDES). The point source permitting program established pursuant to section 402 of the federal clean water act. (4-11-15)

12016. Non-Compliance. A practice or condition that causes an unauthorized discharge; or, if left uncorrected, will cause an unauthorized discharge; or does not meet nutrient management standards and comply with a NMP the requirements of a dairy environmental management system plan. Noncompliance does not include an upset condition. (4-11-15)

~~17. **Nutrient Management Plan (NMP).** A plan prepared in conformance with the Nutrient Management Standard (NMS) or other equally protective standard for managing the amount, placement, form, and timing of the land application of nutrients and soil amendments. (4-11-15)~~

~~21. **Nutrient Management Standard.** Criteria for managing the land application of nutrients and soil amendments published in the USDA, NRCS, conservation practice standard, nutrient management code 590, or other equally protective criteria approved by the Director.~~

~~**Pasture, Pasturing and Pastured.** For purposes of these rules, a pasture is an irrigated or dryland field that contains a minimum of 50% of forage plant growth. Pasturing and pastured is allowing dairy animals to graze in a pasture.~~

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~~2218. **Permit.** A permit issued by the Department allowing the sale of Grade A milk. (3-20-97)~~

~~2319. **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 legal entity that is recognized by law as the subject of rights and duties. (4-11-15)~~

~~24. **Plant.** Any place, premises or establishment where milk is collected, handled, stored bottled, or processed into milk or milk products for sale or offered for sale for human consumption.~~

~~240. **Process Wastewater.** Liquid containing dairy manure. Water directly or indirectly used or produced in dairy animal rearing, milk production and environmental management processes including, but not limited to: excess milk; spillage or overflow from watering, washing, spraying or cooling dairy animals; water containing dairy manure; water used in washing, cleaning, or flushing barns, manure pits and other areas involved in the milk production and environmental management processes; water used for dust control; and water that comes into contact with any raw materials, products, or byproducts of the dairy production and environmental management processes. (4-11-15)~~

~~251. **Producer.** The person who exercises control over the permitted production of milk delivered to a plant, or other entity, and who receives payment for this product. (3-20-97)~~

~~262. **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; pollutants from a dairy farm to waters of the United States as defined in the federal clean water act that is required to be but is not authorized by an NPDES permit. Unauthorized discharge does not include an upset condition or agricultural stormwater discharge. (4-11-15)~~

~~27. **Unauthorized Release.** A release of dairy byproducts to ground water or surface waters of the state that are not waters of the United States or beyond land owned or operated by the dairy farm that results from a dairy farm's failure to comply with its environmental management plan. Unauthorized release shall not include an upset condition, an agricultural stormwater discharge or infiltration from storage and containment facilities that is within engineering standards and specifications published by the USDA, NRCS or by the ASABE, or other equally protective criteria approved by the Director.~~

~~28. **Upset Condition.** Precipitation, earthquake, vandalism or other occurrence beyond the control of the dairy farm owner or operator that exceeds criteria for storage and containments facilities and nutrient management in an approved environmental management plan. ()~~

011. ABBREVIATIONS.

There are no abbreviations in this chapter. (3-29-10)

~~01. **ASABE.** American Society of Agricultural and Biological Engineers.~~

~~02. **NMS.** Nutrient Management Standard.~~

~~03. **NRCS.** Natural Resources Conservation Service.~~

~~04. **USDA.** United States Department of Agriculture~~

012. -- 019. (RESERVED)

020. PERMITS AND CERTIFICATION.

No Producer shall offer for sale or sell milk unless the producing dairy farm has been issued a Grade A permit or a farm certification from the Department. (3-20-97)

01. Grade A Permit. A permit issued by the Department if the dairy farm complies with the requirements of the "Grade 'A' Pasteurized Milk Ordinance", as incorporated by reference in IDAPA 02.04.08, "Rules Governing Grade A Milk and Milk Products", and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)

02. Farm Certification. A certification issued by the Department if the dairy farm complies with the requirements of IDAPA 02.04.05, "Rules Governing Manufacture Grade Milk," and has in place and operates a dairy waste system consistent with the NMP, NMS, and Appendix 10D. (3-29-10)

021. -- 029. (RESERVED)

030. WASTE SYSTEM DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

The Department is authorized to approve environmental management plans. 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 Dairy Storage and Containment Facilities. (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 $1 \times 10^{-6} \text{ cm}^3/\text{cm}^2/\text{sec}$ 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 dairy waste including compost and solid manure storage areas shall be located on approved soils and appropriately protected to prevent run on and run off. (4-11-15)

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. Dairy Nutrient Management Plans. All dairy farms shall implement a 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. (4-11-15)

- 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 dairy waste and commercial fertilizer applied to individual dairy owned or operated fields; (4-11-15)
 - iv. Date(s) of exported dairy waste, number of acres applied, amount of dairy waste exported and to whom dairy waste was exported; and (4-11-15)
 - v. Actual crop yields on dairy owned or operated fields. (3-29-10)

03. Pasturing of Dairy Animals. Pasturing dairy animals in pastures in excess of seven hundred and fifty (750) pounds per acre shall require Department review and approval to determine the protective measures, if any, that must be taken to prevent an unauthorized release of dairy byproducts.

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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 dairy waste 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.

(4-11-15)

041. INSPECTION REPORT FORMS.

An inspection report form shall be established by the Department based on parameters established in the NMP, NMS, and Appendix 10D. Each inspection item on the form shall indicate compliance and non-compliance. (3-29-10)

042. -- 049. (RESERVED)

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: (4-11-15)

- 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. (4-11-15)

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES -- PENALTIES.

01. Unauthorized Discharge. No dairy farm shall cause an unauthorized discharge. (4-11-15)

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. (4-11-15)

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. (4-11-15)

04. 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. -- 999. (RESERVED)