

MINUTES  
**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Tuesday, January 23, 2018

**TIME:** 8:00 A.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Rice, Vice Chairman Den Hartog, Senators Patrick, Bayer, Guthrie, Thayn, Harris, Foreman, and Jordan

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Rice** called the meeting of the Agricultural Affairs Committee (Committee) to order at 8:01 a.m.

**PRESENTATION: Nutrient Management Plan 101, Dr. Scott Leiblsle DVM**, Deputy State Veterinarian, Division of Animal Industries, Idaho State Department of Agriculture (ISDA), began his presentation explaining what are nutrients and why are they important. Phosphorus and potassium are examples of nutrients that are present in soil, minerals, sediments, plants, water, and animals. Plants absorb only the nutrients they need to grow, whereas, when feeding an animal they will pass the excess nutrients in their manure. It is important to the industry that they manage animal nutrients and apply them responsibly, because excess nutrients can run-off fields and end up in the ground and surface water. In some cases, too much nutrients can create a health or environmental concern.

Phosphorus is present in the feed ration and bedding for a dairy cow then deposited in the manure and applied to crops. The average Idaho dairy produces more nutrients than what they can utilize on their fields and the excess is exported in the form of nutrients to a "third-party receiver/or exporter." All Grade A dairies in Idaho must have an up-to-date Nutrient Management Plan (NMP) on file with ISDA. An NMP has three components: 1) What is the volume of nutrients generated/handled on the facility; 2) what is the storage capacity of lagoons/containment structures on the facility; and 3) how/where will the nutrients be applied. **Dr. Leiblsle** detailed the calculations that are required by the dairies for their NMP. Volume of nutrients generated on the facility has two components: 1) amount of phosphorus produced by the number of cattle, and 2) the volume of water.

The nutrients produced and stored by the facility must be applied in a responsible manner. The number of acres farmed by a producer, and the crops they grow, can only support a certain amount of phosphorus. Any phosphorus applied to fields that is not absorbed by growing crops will remain in the soil and may adversely impact the environment, if not managed appropriately. If a facility does not have enough acreage to manage their total volume of nutrients, the remaining nutrients must be exported to a third-party receiver. NMP requires farms that use third-party receivers to list them in the plan along with the number of acres being farmed.

**Dr. Leiblsle** provided an example of a simplified, basic NMP proposal for the Committee. Advising that soil testing is another key component in the yearly NMP cycle. ISDA conducts an annual assessment to determine how much phosphorus remains in the soil after crop production.

All NMPs must be approved by ISDA. ISDA reviews the plan and asks the following questions: 1) how much nutrients will the dairy handle and how many cows do you have; 2) is there enough acreage to support the nutrients; 3) if there is not enough acreage, where will the excess be sent; and 4) the third-party's total acreage. Each year, the ISDA staff will tour the dairies to review their NMP's.

**Senator Jordan** asked for clarification on the third-party capacity calculation. **Dr. Leibsle** recounted that the dairy will have a NMP which will calculate the total volume of phosphorus that needs to be managed on a facility. If the facility does not have enough acreage to manage their phosphorus, the NMP must spell out the third-party exporters and their acreage. **Senator Jordan** asked if there are dairies that run into trouble finding enough capacity and third party exporters. **Dr. Leibsle** answered usually not, because there are many farms in Idaho and they trade these nutrients back and forth; fertilizer is a valuable commodity.

**Senator Patrick** disclosed that his farm is a user of phosphorus and other nutrients. With the advent of composting, the product can be hauled much further than in the past. This has helped reduce concentrations and has made farms more fertile. Most farmers are happy to be third-party recipients, because it is a cheap form of fertilizer.

**PRESENTATION:** **Bob Naerebout**, Executive Director, Idaho Dairyman's Association (IDA), introduced Dr. Stephanie Kulesza, Environmental Programs Director, IDA, stated that she will be presenting this rule for the Committee. **Dr. Kulesza** stated these rules were enacted in 2001 and require dairies to have a NMP in place. The rule before you today is the first change, since those rules were adopted.

Current law defines 40 parts per million (ppm) as the threshold for the first foot of soil. The phosphorus indexing formula is based on the soil and environment that exists in Idaho, along with individual assessments of each field focusing on the risk of phosphorus loss (see Attachment 1). Instead of an arbitrary number set for each field, the rule treats each field individually and assesses the risk of phosphorus loss from that field. **Dr. Kulesza** stated that phosphorus indexing is scientifically defensible. To protect the dairy industry, the IDA wanted a rule and a standard that is legally defensible in the courts. Each factor that will be discussed is based on scientific information found in literature.

A phosphorus index uses a matrix of factors: 1) source; 2) soil test; 3) how much phosphorus to apply; 4) when to apply phosphorus; 5) transport (run-off); and 6) irrigation types. These items give a score and focus on risk factors for changing strategies on field management and transport risk factors (see Attachment 2). Best management practices that impacted phosphorus loss to the environment evolves into a percentage transport score.

There is a five-year implementation window written within this rule to allow the dairy industry to comply and ensure there are no additional costs to the dairyman. The initial cost of writing an NMP for less than 25 fields is \$3,000 and each additional field over the 25 will cost an extra \$20. There is a three-year contract option, which is \$1,500 to \$2,500 per year depending on the number of fields. This includes an annual NMP check up, record keeping assistance, and manure and fertilizer application recommendations.

**Senator Guthrie** pointed out that on the Idaho-specific phosphorus index slide there were no producers listed. His second question concerned the consultants to be hired by the dairy industry to write their NMP's. He wondered if the NMP plan does not work how would that be resolved. **Dr. Kulesza** answered question two concerning a NMP plan that does not work. The NMP planner can lose their certification if ISDA deems that they have written a false plan. These plans are a collaborative effort between the NMP planner and the producer. The producer

provides the planner information about the operation and the planner writes up the plan for the facility.

**Dr. Kulesza** answered the first question concerning the slide content disclosing that there were no producers directly involved with the technical group writing the phosphorus index because it is a very technical document. Producers were involved in many discussions concerning this phosphorus index. IDA would not have brought the rule before the Committee today, if they did not have the full support of the dairy industry.

**Senator Patrick** observed that currently the phosphorus level is set at 40 ppm threshold in the first foot of soil. He inquired as to how high phosphorus level be in a field could be. He indicated that he had bought a farm thirty years ago that had 60 ppm and did not apply any fertilizer for fifteen years. **Dr. Kulesza** answered within the rule, separate to the phosphorus index, a zero-out level of 300 ppm is the threshold. The rule allows some flexibility within the system, especially in multiple best management practices. Some fields could register higher and have less risk than some fields that are lower that have a higher risk.

**Senator Harris** asked how the dairy industry is responding to this rule change. **Mr. Naerebout** by explaining that the make up of the board that governs IDA is comprised of dairy producers. IDA relies heavily on these officers to make decisions on legislation for their industry. There were two concerns initially: 1) cost factor and 2) animal agriculture being treated differently than those farmers who use commercial fertilizers.

**PASSED THE  
GAVEL:**

Chairman Rice passed the gavel to Vice Chairman Den Hartog.

**DOCKET NO.  
02-0414-1702**

**Rules Governing Dairy By-product, Dr. Leibsle** said the rule before you is the result of a petition ISDA received from the IDA to adopt a more accurate and reliable standard for measuring soil phosphorus. The complexity of determining the score of each phosphorus index will require different sources of information. The Agriculture Research Service (ARS) document provides information and calculations to score a field, where a field; it also outlines where a field falls in a risk category, and what the NMP restrictions will be for a risk category. To complete the phosphorus index scoring there are two additional sources of information needed: 1) the web soil survey data base, and 2) the hydrology portion of the National Engineering Handbook.

The bulk of the change to the rule begins on page 26, Section 031 which describes the dairy farm shall utilize either phosphorus indexing or phosphorus threshold until June 30, 2023. This gives dairy producers a five-year phase-in period to comply with the rule. The rule stipulates that it shall be the responsibility of the certified nutrient management planner to conduct the phosphorus indexing scoring. Lastly, the phosphorus threshold language is being preserved in Sub section 02.

**Senator Patrick** asked if there was any opposition to this rule change by the dairy industry. **Dr. Leibsle** said outreach was conducted by IDA before the negotiated rulemaking process began. The negotiated rulemaking session was very collaborative and the stakeholders arrived at a consensus on the language to place in the rule that would satisfy all parties involved.

**Ted Vander Schaaf**, Vander Schaaf Farms in Kuna, Idaho, spoke in support of the rule change and believes the update to the rule incentivizes producers to implement best management practices on their farms which will protect the environment of Idaho.

**Pete Doornenbal**, P & L Doornenbal Dairy, spoke in support of the proposed rule change declaring that it will help their industry be better stewards of the cows and the environment through the improved farming practices. He believes it is a win for all parties.

**Jonathan Oppenheimer**, Government Relations Director, Idaho Conservation League, spoke in support of the phosphorus site index rule. Their organization views it as a step in the right direction for improving IDA farming practices. One of the gaps that the Idaho Conservation League perceives in this rule is the third-party application process.

**Senator Patrick** indicated that he is a third-party user of dairy by-product. There is a cost to applying the manure to farm fields. Users are careful to not over apply the product to their fields because of cost margins. He does test the fields for phosphorus index and assured Mr. Oppenheimer that most farmers use good management practices and are good stewards of the land.

**MOTION:** **Senator Bayer** moved to approve **Docket No. 02-0414-1702**. Seconded by **Senator Guthrie**. The motion carried by **voice vote**.

**Senator Bayer** expressed his appreciation for how deliberative the negotiated rulemaking process was for this docket.

**Senator Guthrie** acknowledged that this docket presentation was very well prepared but the key aspect of the presentation for him were the producers that showed up and spoke in support of this rule change for their industry.

**ADJOURNED:** There being no further business, **Vice Chairman Den Hartog** adjourned the meeting at 9:08 a.m.

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Senator Rice  
Chair

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Carol Deis  
Secretary