

IN THE SENATE

SENATE BILL NO. 1376

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO DAIRY PRODUCTS; AMENDING TITLE 37, IDAHO CODE, BY THE ADDITION  
2 OF A NEW CHAPTER 6, TITLE 37, IDAHO CODE, TO PROVIDE FOR THE DAIRY ENVI-  
3 RONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO DECLARE POLICY AND  
4 TO PROVIDE FOR LEGISLATIVE INTENT AND RECOGNITION OF SPECIFIED FACTORS,  
5 TO PROVIDE THAT SUCCESSFUL IMPLEMENTATION OF SPECIFIED PROVISIONS OF  
6 LAW IS DEPENDENT ON CERTAIN FACTORS, TO PROVIDE THAT IF CERTAIN CONDI-  
7 TIONS ARE MET THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
8 AND THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE SHALL AS APPROPRIATE  
9 ESTABLISH A SPECIFIED AGREEMENT, TO PROVIDE THAT THE DIRECTOR OF THE  
10 DEPARTMENT OF AGRICULTURE SHALL BE SOLELY RESPONSIBLE FOR PROTECTING  
11 CERTAIN GROUND WATER AND SURFACE WATER, TO PROVIDE FOR RULEMAKING, TO  
12 PROVIDE THAT SPECIFIED LAW SHALL NOT AFFECT CERTAIN AUTHORITY OF THE  
13 DEPARTMENT OF ENVIRONMENTAL QUALITY, TO AUTHORIZE THE DIRECTOR OF THE  
14 DEPARTMENT OF AGRICULTURE TO EXERCISE CERTAIN DELEGATED AUTHORITY, TO  
15 AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO  
16 DELEGATE CERTAIN AUTHORITY, TO PROVIDE THAT THE DIRECTOR OF THE DEPART-  
17 MENT OF ENVIRONMENTAL QUALITY WILL CONSULT WITH THE DIRECTOR OF THE DE-  
18 PARTMENT OF AGRICULTURE BEFORE CERTIFYING DISCHARGES FROM DAIRY FARMS,  
19 TO DEFINE TERMS, TO PROVIDE FOR THE DESIGN AND CONSTRUCTION OF NEW AND  
20 MODIFIED WASTE SYSTEMS, TO PROVIDE FOR NUTRIENT MANAGEMENT PLANS, TO  
21 AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OR HIS DESIGNEE  
22 TO ENTER AND INSPECT DAIRY FARMS, TO AUTHORIZE ACCESS TO AND COPYING OF  
23 FACILITY RECORDS, TO PROVIDE FOR COMPLIANCE WITH CERTAIN BIOSECURITY  
24 PROTOCOL, TO PROVIDE FOR CONSTITUTIONAL CONFORMANCE AND TO PROHIBIT  
25 CERTAIN WARRANTLESS SEARCHES, TO PROHIBIT UNAUTHORIZED DISCHARGES, TO  
26 PROVIDE THAT CERTAIN NONCOMPLIANCE SHALL BE ADDRESSED THROUGH CORREC-  
27 TIVE ACTIONS AND COMPLIANCE SCHEDULES, TO PROVIDE FOR FINES FOR CERTAIN  
28 VIOLATIONS AND TO PROVIDE THAT CIVIL PENALTIES SHALL BE REMITTED TO  
29 THE COUNTY WHERE THE VIOLATION OCCURRED, TO PROVIDE THAT DAIRY FARMS  
30 OPERATING IN COMPLIANCE WITH SPECIFIED LAW SHALL NOT BE SUBJECT TO CER-  
31 TAIN STATE ENFORCEMENT ACTIONS EXCEPT UNDER CERTAIN CIRCUMSTANCES, TO  
32 PROVIDE THAT UNDER CERTAIN CONDITIONS PENDING ADMINISTRATIVE OR CIVIL  
33 ENFORCEMENT ACTIONS SHALL BE DEEMED VOID AND TO PROVIDE THAT CERTAIN OR-  
34 DERS SHALL REMAIN IN EFFECT; REPEALING CHAPTER 7, TITLE 37, IDAHO CODE,  
35 RELATING TO PASTEURIZATION; REPEALING CHAPTER 8, TITLE 37, IDAHO CODE,  
36 RELATING TO GRADES OF QUALITY FOR MILK AND MILK PRODUCTS; AND REPEALING  
37 CHAPTER 10, TITLE 37, IDAHO CODE, RELATING TO DISCRIMINATION AND UNFAIR  
38 COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS.  
39

40 Be It Enacted by the Legislature of the State of Idaho:

41 SECTION 1. That Title 37, Idaho Code, be, and the same is hereby amended  
42 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
43 ter 6, Title 37, Idaho Code, and to read as follows:

1 CHAPTER 6  
2 DAIRY ENVIRONMENTAL CONTROL ACT

3 37-601. SHORT TITLE. This chapter shall be known and cited as the  
4 "Dairy Environmental Control Act."

5 37-602. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-  
6 TENT. (1) The legislature recognizes the importance of protecting state  
7 natural resources including surface water and ground water. It is the intent  
8 of the legislature to protect the quality of these natural resources while  
9 maintaining an ecologically sound, economically viable and socially respon-  
10 sible dairy industry in the state. This chapter is intended to ensure that  
11 dairy waste systems are constructed, operated and maintained in a manner  
12 which protects the natural resources of the state.

13 (2) Further, the legislature recognizes that the dairy industry is  
14 potentially subject to various state and federal laws designed to protect  
15 state natural resources and that the Idaho department of agriculture is in  
16 the best position to administer and implement these various laws. It is  
17 therefore the intent of the legislature that the administration of this  
18 chapter by the department of agriculture fully meets the goals and require-  
19 ments of the federal clean water act and state laws designed to further  
20 protect state waters.

21 (3) Successful implementation of this chapter is dependent upon the de-  
22 partment receiving adequate funding from the legislature and upon effective  
23 coordination between the department of agriculture, the department of en-  
24 vironmental quality and the Idaho dairymen's association to ensure compli-  
25 ance with this chapter and applicable state and federal laws, including the  
26 federal clean water act. Moreover, the legislature recognizes that it is  
27 important for the state to obtain an approved national pollutant discharge  
28 elimination system (NPDES) permit program from the environmental protection  
29 agency (EPA) under the clean water act. If such approval is obtained, the  
30 director of the department of environmental quality and the director of the  
31 department of agriculture shall, as appropriate, establish an agreement re-  
32 lating to the administration of any NPDES permit program that recognizes the  
33 expertise of the department of agriculture.

34 37-603. AUTHORITY AND DUTIES OF DIRECTOR. (1) Notwithstanding the  
35 provisions of chapters 1 and 36, title 39, Idaho Code, the director of the  
36 department of agriculture shall be solely responsible for protecting ground  
37 water within the boundaries of dairy farms regulated under this chapter and  
38 solely responsible for protecting surface water within the boundaries of  
39 dairy farms regulated under this chapter that are not under, or required to  
40 be under, an NPDES permit issued by the federal EPA or the department of envi-  
41 ronmental quality. The department is authorized to adopt rules to implement  
42 the provisions in this chapter.

43 (2) Except as provided in section 37-609, Idaho Code, nothing in this  
44 chapter shall affect the authority of the department of environmental qual-  
45 ity regarding surface or ground water quality or violation of surface or  
46 ground water quality standards beyond the boundaries of dairy farms regu-  
47 lated under this chapter. In addition, nothing in this chapter shall affect

1 the authority of the department of environmental quality to implement an  
2 NPDES permit program for dairy farms.

3 (3) The director shall have the authority to exercise any other author-  
4 ities delegated by the director of the department of environmental quality  
5 regarding the protection of ground water, surface water and other natural  
6 resources associated with dairy farms, and this shall be the authority for  
7 the director of the department of environmental quality to so delegate.

8 (4) The director of the department of environmental quality shall con-  
9 sult with the director of the department of agriculture before certifying  
10 discharges from dairy farms as provided under 33 U.S.C. section 1341.

11 37-604. DEFINITIONS. When used in this chapter:

12 (1) "Best management practice" means a practice, technique or measure  
13 that is determined to be a reasonable precaution, a cost-effective and prac-  
14 ticable means of preventing or reducing the discharge of pollutants from a  
15 point source or a nonpoint source to a level compatible with environmental  
16 goals, including water quality goals and standards.

17 (2) "Dairy farm" means land owned or operated by a dairy farm and is a  
18 place or premises where one (1) or more milking cows, sheep or goats are kept,  
19 and from which all or a portion of the milk produced thereon is delivered,  
20 sold or offered for sale for human consumption.

21 (3) "Dairy waste" means manure and process wastewater that may also  
22 contain bedding, spilled feed, compost, water or soil. It also includes  
23 wastes not particularly associated with manure, such as milking center  
24 or washing wastes, milk, feed leachate, or livestock carcasses or parts  
25 thereof.

26 (4) "Dairy waste system" or "waste system" means the portion of a dairy  
27 farm where dairy waste is stored, collected or treated. This may include  
28 corrals, feeding areas, waste collection systems, waste conveyance systems,  
29 waste storage ponds, waste treatment lagoons and evaporative ponds.

30 (5) "Department" means the Idaho department of agriculture.

31 (6) "Director" means the director of the Idaho department of agricul-  
32 ture or his designee.

33 (7) "Modification" or "modified" means structural changes and alter-  
34 ations to the dairy waste system that would require increased storage or con-  
35 tainment capacity or such changes that would alter the function of the waste  
36 system.

37 (8) "Noncompliance" means a practice or condition that: causes an  
38 unauthorized discharge; or, if left uncorrected, will cause an unauthorized  
39 discharge, or does not meet nutrient management standards and comply with a  
40 nutrient management plan.

41 (9) "National pollutant discharge elimination system" (NPDES) means  
42 the point source permitting program established pursuant to section 402 of  
43 the federal clean water act.

44 (10) "Nutrient management plan" means a plan prepared in conformance  
45 with the nutrient management standard or other equally protective standard  
46 for managing the amount, placement, form and timing of the land application  
47 of nutrients and soil amendments.

48 (11) "Person" means any individual, association, partnership, firm,  
49 joint stock company, joint venture, trust, estate, political subdivision,

1 public or private corporation, state or federal governmental department,  
2 agency or instrumentality, or any legal entity that is recognized by law as  
3 the subject of rights and duties.

4 (12) "Process wastewater" means liquid containing dairy manure.

5 (13) "Unauthorized discharge" means a discharge of dairy waste to state  
6 surface waters or ground waters, or beyond a dairy farm's property bound-  
7 aries that does not meet the requirements of this chapter or ground water or  
8 surface water quality standards.

9 37-605. DESIGN AND CONSTRUCTION. Each new dairy farm and each modified  
10 dairy farm shall design and construct all new and modified waste systems in  
11 accordance with rules adopted by the director pursuant to this chapter. Such  
12 design and construction shall be considered a best management practice.

13 37-606. NUTRIENT MANAGEMENT PLAN. (1) All dairy farms shall have a nu-  
14 trient management plan approved by the department. The nutrient management  
15 plan shall cover the dairy farm site and other land owned and operated by the  
16 dairy farm owner or operator. Nutrient management plans submitted to the de-  
17 partment by the dairy farm shall include the names and addresses of each re-  
18 cipient of that dairy farm's livestock waste, the number of acres to which  
19 the livestock waste is applied and the amount of such livestock waste re-  
20 ceived by each recipient. The information provided in this subsection shall  
21 be available to the county in which the dairy farm, or the land upon which the  
22 livestock waste is applied, is located. If livestock waste is converted to  
23 compost before it leaves the dairy farm, only the first recipient of the com-  
24 post must be listed in the nutrient management plan as a recipient of live-  
25 stock waste from the dairy farm. Existing dairy farms shall submit a nutri-  
26 ent management plan to the department.

27 (2) Any new dairy farms or dairy farms that change owners or operators  
28 shall have an approved nutrient management plan on file with the department  
29 prior to the issuance of the milk permit for that dairy. The nutrient manage-  
30 ment plan shall be implemented upon approval of the plan by the department.

31 (3) The nutrient management plan, and all information generated by the  
32 dairy as a result of such plan, shall be deemed to be trade secrets, produc-  
33 tion records or other proprietary information, shall be kept confidential  
34 and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

35 37-607. INSPECTIONS. (1) The director or his designee is authorized to  
36 enter and inspect any dairy farm to determine that dairy waste has been man-  
37 aged to prevent an unauthorized discharge or contamination of surface and  
38 ground water, and to determine compliance with a nutrient management plan.  
39 The director shall have access to or copy any facility records deemed neces-  
40 sary to ensure compliance with this chapter and the federal clean water act.  
41 The director shall comply with the biosecurity protocol of the operation so  
42 long as the protocol does not inhibit reasonable access to:

43 (a) Enter and inspect at reasonable times the premises or land applica-  
44 tion site or sites of a dairy farm;

45 (b) Review, copy or review and copy at reasonable times any records that  
46 must be kept under conditions of this chapter;

1 (c) Sample or monitor at reasonable times substances or parameters di-  
2 rectly related to compliance with an NPDES permit or this chapter.

3 (2) All inspections and investigations conducted under the authority  
4 of this chapter shall be performed in conformity with section 17, article I  
5 of the constitution of the state of Idaho. The state shall not, under the  
6 authority granted by this chapter, conduct warrantless searches of private  
7 property in the absence of either consent from the property owner or other  
8 authorized person.

9 37-608. UNAUTHORIZED DISCHARGES -- COMPLIANCE SCHEDULES -- PENAL-  
10 TIES. (1) No dairy farm shall cause an unauthorized discharge.

11 (2) Noncompliance with requirements for dairy waste systems, with nu-  
12 trient management standards, and with nutrient management plans shall be  
13 addressed through corrective actions and compliance schedules pursuant to  
14 rules adopted by the director.

15 (3) For unauthorized discharges and noncompliance conditions, the di-  
16 rector or his designee shall have the authority to assess a fine of up to ten  
17 thousand dollars (\$10,000) per occurrence. Civil penalties collected under  
18 this subsection shall be remitted to the county where the violation occurred  
19 for deposit in the county current expense fund.

20 37-609. SAFE HARBOR. (1) Dairy farms and discharges operating in com-  
21 pliance with this chapter shall not be subject to state enforcement action  
22 due to violations of state water quality standards or state ground water  
23 quality standards except in the event of imminent and substantial danger as  
24 provided in chapter 1, title 39, Idaho Code.

25 (2) In any case in which the United States environmental protection  
26 agency initiates an enforcement action regarding an alleged noncompliance  
27 at a dairy farm, any pending administrative or civil enforcement action  
28 initiated by the director regarding the same alleged noncompliance shall be  
29 deemed void. If a compliance order addressing the alleged noncompliance has  
30 already been issued by the director, that order shall remain in full force  
31 and effect.

32 SECTION 2. That Chapter 7, Title 37, Idaho Code, be, and the same is  
33 hereby repealed.

34 SECTION 3. That Chapter 8, Title 37, Idaho Code, be, and the same is  
35 hereby repealed.

36 SECTION 4. That Chapter 10, Title 37, Idaho Code, be, and the same is  
37 hereby repealed.