

IN THE SENATE

SENATE BILL NO. 1260

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ANIMALS AND THE ENVIRONMENT; AMENDING SECTION 22-4902, IDAHO
2 CODE, TO REVISE A DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE
3 INTENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4903,
4 IDAHO CODE, TO REVISE THE AUTHORITIES AND DUTIES OF THE DIRECTOR OF
5 THE DEPARTMENT OF AGRICULTURE REGARDING BEEF CATTLE ANIMAL FEEDING OP-
6 ERATIONS, TO PROVIDE THAT CERTAIN SPECIFIED LAW SHALL NOT AFFECT THE
7 AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADMINISTER
8 AND ENFORCE AN IDAHO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYS-
9 TEM (NPDES) PROGRAM, TO PROVIDE FOR THE ESTABLISHMENT OF AN AGREEMENT
10 BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF ENVIRON-
11 MENTAL QUALITY REGARDING THE ADMINISTRATION OF AN IDAHO NPDES PROGRAM
12 AND TO PROVIDE FOR THE DELEGATION OF CERTAIN AUTHORITY; AMENDING SEC-
13 TION 22-4904, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL
14 CORRECTION; AMENDING SECTION 22-4907, IDAHO CODE, TO REVISE INSPEC-
15 TION PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
16 22-4909A, IDAHO CODE, TO REVISE PROVISIONS REGARDING AUTHORIZATION TO
17 ADMINISTER LAWS RELATING TO WATER QUALITY WITHIN CERTAIN OPERATIONS;
18 REPEALING SECTION 37-602, IDAHO CODE, RELATING TO LEGISLATIVE INTENT;
19 AMENDING CHAPTER 6, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
20 TION 37-602, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES;
21 AMENDING SECTION 37-603, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE
22 AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO PROVIDE
23 FOR AGENCY COORDINATION, TO PROVIDE THAT CERTAIN SPECIFIED LAW SHALL
24 NOT AFFECT THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO
25 ADMINISTER AND ENFORCE AN IDAHO NPDES PROGRAM AND TO PROVIDE FOR THE
26 ESTABLISHMENT OF AN AGREEMENT BETWEEN THE DEPARTMENT OF AGRICULTURE AND
27 THE DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING THE ADMINISTRATION
28 OF AN IDAHO NPDES PROGRAM; AMENDING SECTION 37-604, IDAHO CODE, TO RE-
29 VISE DEFINITIONS, TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS;
30 REPEALING SECTION 37-605, IDAHO CODE, RELATING TO DESIGN AND CONSTRUC-
31 TION; AMENDING CHAPTER 6, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW
32 SECTION 37-605, IDAHO CODE, TO PROVIDE FOR DAIRY STORAGE AND CONTAIN-
33 MENT FACILITY DESIGN AND CONSTRUCTION, TO PROVIDE THAT DESIGN, CON-
34 STRUCTION, OPERATION AND MAINTENANCE IN ACCORDANCE WITH CERTAIN CRITE-
35 RIA SHALL BE CONSIDERED A BEST MANAGEMENT PRACTICE, TO REQUIRE APPROVAL
36 OF FACILITIES BY THE DEPARTMENT OF AGRICULTURE, TO PROVIDE THAT STORAGE
37 AND CONTAINMENT FACILITIES CRITERIA SHALL BE IMPLEMENTED BY THE DAIRY
38 FARM AND ENFORCED BY THE DEPARTMENT AND TO PROVIDE THAT THE DEPARTMENT'S
39 REVIEW AND APPROVAL OF PLANS SHALL SUPERSEDE OTHER SPECIFIED ACTION;
40 AMENDING SECTION 37-606, IDAHO CODE, TO REVISE PROVISIONS REGARDING
41 DAIRY NUTRIENT MANAGEMENT PLANS; AMENDING CHAPTER 6, TITLE 37, IDAHO
42 CODE, BY THE ADDITION OF A NEW SECTION 37-606A, IDAHO CODE, TO PROVIDE
43 FOR DAIRY ENVIRONMENTAL MANAGEMENT PLANS; AMENDING SECTION 37-607,
44 IDAHO CODE, TO REVISE INSPECTION PROVISIONS AND TO MAKE A TECHNICAL
45

1 CORRECTION; REPEALING SECTION 37-608, IDAHO CODE, RELATING TO UNAU-
2 THORIZED DISCHARGES; AMENDING CHAPTER 6, TITLE 37, IDAHO CODE, BY THE
3 ADDITION OF A NEW SECTION 37-608, IDAHO CODE, TO PROVIDE FOR UNAUTHO-
4 RIZED DISCHARGES AND UNAUTHORIZED RELEASES; REPEALING SECTION 37-609,
5 IDAHO CODE, RELATING TO SAFE HARBOR; AND AMENDING CHAPTER 6, TITLE 37,
6 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-609, IDAHO CODE, TO PRO-
7 VIDE THAT CERTAIN DAIRY FARMS SHALL NOT BE SUBJECT TO ENFORCEMENT, TO
8 CLARIFY THE RESPECTIVE AUTHORITIES OF THE DEPARTMENT OF AGRICULTURE AND
9 THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO PROVIDE THE MANNER IN WHICH
10 THE DEPARTMENT OF AGRICULTURE SHALL ADDRESS NONCOMPLIANCE, TO PROVIDE
11 FOR CIVIL PENALTIES, TO PROVIDE CONDITIONS UNDER WHICH CERTAIN PENDING
12 ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTIONS SHALL BE DEEMED VOID AND TO
13 PROVIDE THAT CERTAIN ORDERS SHALL REMAIN IN FULL FORCE AND EFFECT.

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

15 SECTION 1. That Section 22-4902, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 22-4902. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-
18 TENT. (1) The legislature recognizes the importance of protecting state
19 natural resources including, surface water and ground water. It is the in-
20 tent of the legislature to protect the quality of these natural resources
21 while maintaining an ecologically sound, economically viable, and socially
22 responsible beef cattle industry in the state. The beef cattle industry
23 produces manure and process wastewater which, when properly used, supplies
24 valuable nutrients and organic matter to soils and is protective of the
25 environment, but may, when improperly stored and managed, create adverse
26 impacts on natural resources, including waters of the state. This chapter
27 is intended to ensure that manure and process wastewater associated with
28 beef cattle operations are handled in a manner which protects the natural
29 resources of the state.

30 (2) Further, the legislature recognizes that the beef cattle industry
31 is potentially subject to various state and federal laws designed to pro-
32 tect state natural resources and that the Idaho department of agriculture is
33 in the best position to administer and implement these various laws. It is
34 therefore the intent of the legislature that the administration of this law
35 by the department of agriculture fully meets the goals and requirements of
36 the federal clean water act and state laws designed to further protect state
37 waters and that administration of this chapter by the department of agricul-
38 ture shall not be more stringent than or broader in scope than the require-
39 ments of the clean water act and applicable state and federal laws. The de-
40 partment shall have authority to administer all laws to protect the quality
41 of water within the confines of a beef cattle animal feeding operation that
42 is not under permit issued by the federal environmental protection agency.
43 In carrying out this chapter the department shall prioritize its resources
44 on operations which have the greatest potential to significantly impact the
45 environment and ensure that any requirements imposed under this chapter upon
46 operators of beef cattle animal feeding operations are cost-effective and
47 economically, environmentally and technologically feasible.

1 ~~(3) Successful implementation of this chapter is dependent upon the~~
 2 ~~department receiving adequate funding from the legislature and is dependent~~
 3 ~~upon the department executing a memorandum of agreement with the United~~
 4 ~~States environmental protection agency, the department of environmental~~
 5 ~~quality and the Idaho cattle association which sets forth a working ar-~~
 6 ~~rangment between the agencies to ensure compliance with this chapter and~~
 7 ~~applicable state and federal laws, including the federal clean water act.~~
 8 Moreover, the legislature recognizes that it is important for the state to
 9 obtain a delegated national pollutant discharge elimination system (NPDES)
 10 permit program from the EPA United States environmental protection agency
 11 under the clean water act. The department's authority to enforce this
 12 chapter should be consistent and coordinated with the department of environ-
 13 mental quality's authorities pursuant to title 39, Idaho Code, to protect
 14 state ground and surface waters, and to obtain approval from the United
 15 States environmental protection agency to implement and administer an Idaho
 16 NPDES program governing the discharge of pollutants to the waters of the
 17 United States as defined in the federal clean water act.

18 SECTION 2. That Section 22-4903, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 22-4903. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING BEEF CATTLE
 21 ANIMAL FEEDING OPERATIONS. (1) The director of the department of agricul-
 22 ture through the division of animal industries is authorized to regulate
 23 beef cattle animal feeding operations to protect state natural resources,
 24 including surface water and ground water. The department is authorized to
 25 adopt rules to implement the provisions of this chapter.

26 ~~(2) In order to carry out its duties under this chapter, the department~~
 27 ~~shall be the responsible state department to prevent any ground water con-~~
 28 ~~tamination from beef cattle animal feeding operations as provided under sec-~~
 29 ~~tion 39-120, Idaho Code Nothing in this chapter shall affect the authority of~~
 30 ~~the department of environmental quality to administer and enforce an Idaho~~
 31 ~~NPDES program for beef cattle feeding operations, including without limita-~~
 32 ~~tion, the authority to issue permits, access records, conduct inspections~~
 33 ~~and take enforcement action, as set forth in chapter 1, title 39, Idaho Code,~~
 34 ~~and the rules adopted pursuant thereto. The provisions of this chapter do~~
 35 ~~not alter the requirements, liabilities and authorities with respect to or~~
 36 ~~established by an Idaho NPDES program.~~

37 ~~(3) The director shall have the authority to exercise any other au-~~
 38 ~~thorities delegated by the director of the department of environmental~~
 39 ~~quality regarding the protection of ground water, surface water and other~~
 40 ~~natural resources associated with confined animal The director of the de-~~
 41 ~~partment of environmental quality and the director of the department of~~
 42 ~~agriculture shall, as appropriate, establish an agreement relating to the~~
 43 ~~administration of an Idaho NPDES program that recognizes the expertise of~~
 44 ~~the department of agriculture. The director shall have the authority to~~
 45 ~~exercise any other authorities delegated by the director of the department~~
 46 ~~of environmental quality regarding the protection of ground water, surface~~
 47 ~~water and other natural resources associated with beef cattle feeding opera-~~
 48 ~~tions, and this shall be the authority for the director of the department of~~
 49 ~~environmental quality to so delegate.~~

1 (4) The director of the department of environmental quality shall con-
2 sult with the director of the department of agriculture before certifying
3 discharges from beef cattle animal feeding operations as provided under 33
4 U.S.C. section 1341.

5 SECTION 3. That Section 22-4904, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 22-4904. DEFINITIONS. When used in this chapter:

8 (1) "Administrator" means the administrator, or his designee, for the
9 animal industries division of the Idaho department of agriculture.

10 (2) "Beef cattle" means slaughter and feeder cattle or dairy heifers
11 that are kept on or contiguous to the animal feeding operation and are owned
12 or controlled by the animal feeding operation.

13 (3) "Beef cattle animal feeding operation" means an animal feeding op-
14 eration which confines the number of slaughter and feeder cattle or dairy
15 heifers as defined set forth in 40 CFR 122.23(b) (1), (b) (2), (b) (4), (b) (6)
16 or (b) (9).

17 (4) "Best management practices" means practices, techniques or mea-
18 sures which are determined to be reasonable precautions, are a cost-effec-
19 tive and practicable means of preventing or reducing pollutants from point
20 sources or nonpoint sources to a level compatible with environmental goals,
21 including water quality goals and standards for waters of the state. Best
22 management practices for water quality shall be adopted pursuant to the
23 state water quality management plan, the Idaho ground water quality plan or
24 this chapter.

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

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

28 (7) "Manure" means animal excrement that may also contain bedding,
29 spilled feed, water or soil.

30 (8) "Modification" or "modified" means structural changes and alter-
31 ations to the wastewater storage containment facility which would require
32 increased storage or containment capacity or such changes which would alter
33 the function of the wastewater storage containment facility.

34 (9) "Noncompliance" means a practice or condition that causes an unau-
35 thorized discharge, or a practice or condition, that if left uncorrected,
36 will cause an unauthorized discharge.

37 (10) "National pollutant discharge elimination system (NPDES)" means
38 the point source permitting program established pursuant to section 402 of
39 the federal clean water act.

40 (11) "Nutrient management plan" means a plan prepared in conformance
41 with the nutrient management standard, provisions required by 40 CFR
42 122.42(e) (1), or other equally protective standard for managing the amount,
43 placement, form and timing of the land application of nutrients and soil
44 amendments.

45 (12) "Nutrient management standard" means the 1999 publication by the
46 United States department of agriculture, natural resources conservation
47 service, conservation practice standard, nutrient management code 590 or
48 other equally protective standard approved by the director.

1 (13) "Person" means any individual, association, partnership, firm,
 2 joint stock company, joint venture, trust, estate, political subdivision,
 3 public or private corporation, state or federal governmental department,
 4 agency or instrumentality, or any legal entity, which is recognized by law as
 5 the subject of rights and duties.

6 (14) "Process wastewater" means liquid containing beef cattle manure,
 7 process-generated wastewater and any precipitation which comes into direct
 8 contact with livestock manure and facility products or byproducts.

9 (15) "Unauthorized discharge" means a discharge of process wastewater
 10 or livestock manure to state surface waters that ~~is not authorized by an~~
 11 ~~NPDES permit or the release of process wastewater or livestock manure to wa-~~
 12 ~~ters of the state that~~ does not meet the requirements of this chapter or water
 13 quality standards.

14 (16) "Wastewater storage and containment facilities" means the portion
 15 of an animal feeding operation where manure or process wastewater is stored
 16 or collected. This may include corrals, feeding areas, waste collection
 17 systems, waste conveyance systems, waste storage ponds, waste treatment
 18 lagoons and evaporative ponds.

19 (17) "Waters of the state" means all accumulations of water, surface and
 20 underground, natural and artificial, public and private, or parts thereof
 21 which are wholly or partially within, which flow through or border upon the
 22 state.

23 SECTION 4. That Section 22-4907, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 22-4907. INSPECTIONS. (1) The director or his designee in the division
 26 of animal industries is authorized to enter and inspect any beef cattle ani-
 27 mal feeding operation and have access to or copy any facility records deemed
 28 necessary to ensure compliance with this chapter ~~and the federal clean water~~
 29 ~~act~~. The director shall comply with the biosecurity protocol of the opera-
 30 tion so long as the protocol does not inhibit reasonable access to:

31 (a) Enter and inspect at reasonable times the premises or land applica-
 32 tion site(s) of a beef cattle animal feeding operation;

33 (b) Review and/or copy, at reasonable times, any records that must be
 34 kept under conditions of this chapter;

35 (c) Sample or monitor, at reasonable times, substances or parameters
 36 directly related to compliance with ~~an NPDES permit or~~ this chapter.

37 (2) All inspections and investigations conducted under the authority
 38 of this chapter shall be performed in conformity with section 17, article I,
 39 of the constitution of the state of Idaho. The state shall not, under the
 40 authority granted by this chapter, conduct warrantless searches of private
 41 property in the absence of either consent from the property owner or other
 42 authorized person.

43 SECTION 5. That Section 22-4909A, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 22-4909A. EFFECT OF FEDERAL ENVIRONMENTAL PROTECTION AGENCY ENFORCE-
 46 MENT ACTION. ~~The Idaho department of agriculture shall have authority to~~
 47 ~~administer all laws to protect the quality of water within the confines of~~

1 ~~a beef cattle animal feeding operation that is not under permit issued by~~
2 ~~the federal environmental protection agency. In addition, the nutrient~~
3 ~~management plan, and all information generated by the beef cattle feeding~~
4 ~~operation as a result of such plan, shall be deemed to be trade secrets,~~
5 ~~production records or other proprietary information, shall be kept con-~~
6 ~~fidential and shall be exempt from disclosure pursuant to section 74-107,~~
7 ~~Idaho Code. In any case in which the United States environmental protection~~
8 ~~agency initiates an enforcement action regarding an alleged noncompliance~~
9 ~~at a beef cattle animal feeding operation, any pending administrative or~~
10 ~~civil enforcement action initiated by the director regarding the same al-~~
11 ~~leged noncompliance shall be deemed void. If a compliance order addressing~~
12 ~~the alleged noncompliance has already been issued by the director, that or-~~
13 ~~der shall remain in full force and effect.~~

14 SECTION 6. That Section [37-602](#), Idaho Code, be, and the same is hereby
15 repealed.

16 SECTION 7. That Chapter 6, Title 37, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 37-602, Idaho Code, and to read as follows:

19 37-602. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds
20 that:

21 (a) The water resources of the state are among the state's most valuable
22 natural resources;

23 (b) Maintaining an ecologically sound and economically viable dairy
24 industry in this state is vital to the Idaho economy;

25 (c) Dairy environmental management systems that are constructed, op-
26 erated and maintained in accordance with plans that are approved by
27 the department of agriculture are an effective means of protecting the
28 state's water resources and providing valuable resources for crop pro-
29 duction and other uses;

30 (d) The department's authority to review, approve and enforce dairy en-
31 vironmental management plans should be consistent and coordinated with
32 the department of environmental quality's authorities pursuant to ti-
33 tle 39, Idaho Code, to protect state ground and surface waters and to ob-
34 tain approval from the United States environmental protection agency to
35 implement and administer an Idaho NPDES program governing the discharge
36 of pollutants to the waters of the United States as defined in the fed-
37 eral clean water act;

38 (e) The state should encourage and promote performance and innovation
39 in the design, construction, operation and maintenance of dairy envi-
40 ronmental management systems; and

41 (f) Adequate funding from the legislature for the department of agri-
42 culture is necessary to meet the requirements and accomplish the pur-
43 poses of this chapter.

44 (2) Therefore, the purpose of this chapter is to authorize the depart-
45 ment of agriculture to review, approve and enforce dairy environmental man-
46 agement plans to ensure that dairy waste systems are constructed, operated
47 and maintained in a manner that protects the natural resources of the state.

1 SECTION 8. That Section 37-603, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 37-603. AUTHORITY AND DUTIES OF DIRECTOR AND AGENCY COORDINATION. (1)
4 ~~Notwithstanding the provisions of chapters 1 and 36, title 39, Idaho Code,~~
5 ~~the director of the department of agriculture shall be solely responsible~~
6 ~~for protecting ground water within the boundaries of dairy farms regulated~~
7 ~~under this chapter and solely responsible for protecting surface water~~
8 ~~within the boundaries of dairy farms regulated under this chapter that are~~
9 ~~not under, or required to be under, an NPDES permit issued by the federal EPA~~
10 ~~or the department of environmental quality approving and enforcing dairy~~
11 ~~environmental management plans.~~ The department is authorized to adopt rules
12 to implement the provisions in this chapter.

13 (2) The department shall implement programs to recognize, support and
14 promote performance and innovation in the design, construction, operation
15 and maintenance of dairy environmental management systems. The department
16 shall consult and coordinate with the Idaho dairymen's association in the
17 implementation of such programs.

18 (3) Except as provided in section 37-609, Idaho Code, nothing in this
19 chapter shall affect the authority of the department of environmental qual-
20 ity regarding surface or ground water quality or violation of surface or
21 ground water quality standards beyond the boundaries of dairy farms regu-
22 lated under this chapter. In addition, nothing in this chapter shall affect
23 the authority of the department of environmental quality to implement an
24 NPDES permit program for dairy farms to administer and enforce an Idaho NPDES
25 program for dairy farms that discharge pollutants to waters of the United
26 States, including without limitation, the authority to issue permits, ac-
27 cess records, conduct inspections and take enforcement action, as set forth
28 in chapter 1, title 39, Idaho Code, and the rules adopted pursuant thereto.
29 The provisions of this chapter do not alter the requirements, liabilities
30 and authorities with respect to or established by an Idaho NPDES program.

31 (34) The director of the department of environmental quality and the
32 director of the department of agriculture shall, as appropriate, establish
33 an agreement relating to the administration of an Idaho NPDES program that
34 recognizes the expertise of the department of agriculture. The director
35 shall have the authority to exercise any other authorities delegated by the
36 director of the department of environmental quality regarding the protec-
37 tion of ground water, surface water and other natural resources associated
38 with dairy farms, and this shall be the authority for the director of the
39 department of environmental quality to so delegate.

40 (45) The director of the department of environmental quality shall con-
41 sult with the director of the department of agriculture before certifying
42 discharges from dairy farms as provided under 33 U.S.C. section 1341.

43 SECTION 9. That Section 37-604, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 37-604. DEFINITIONS. When used in this chapter:

46 (1) "Agricultural stormwater discharge" means a precipitation-related
47 discharge of dairy byproducts from land areas under the control of a dairy

1 farm where the dairy byproducts have been land applied in accordance with an
2 approved nutrient management plan.

3 (2) "Best management practice" means a practice, technique or measure
4 that is determined to be a reasonable precaution, a cost-effective and prac-
5 ticable means of preventing or reducing the discharge of pollutants from a
6 point source or a nonpoint source to a level compatible with environmental
7 goals, including water quality goals and standards.

8 (3) "Certified planner" means a person who has completed nutrient man-
9 agement certification in accordance with the nutrient management standard
10 and is approved by the department.

11 (4) "Dairy byproduct" means solids and liquids associated with dairy
12 animal rearing and milk production including, but not limited to: manure,
13 manure compost, process water, bedding, spilled feed and feed leachate, and
14 livestock carcasses or parts thereof.

15 (25) "Dairy farm" means land owned or operated by a dairy farm and is
16 a place or premises department-permitted grade A or manufacture grade fa-
17 ility where one (1) or more milking cows, sheep or goats are kept, and from
18 which all or a portion of the milk produced thereon is delivered, sold or of-
19 fered for sale for human consumption.

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

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

29 (6) "Dairy environmental management plan" means a plan for managing a
30 dairy environmental management system. The dairy environmental management
31 plan shall consist of dairy storage and containment facilities criteria and
32 a dairy nutrient management plan that are approved by the director.

33 (7) "Dairy environmental management system" means the areas and struc-
34 tures within a dairy farm where dairy byproducts are collected, stored,
35 treated or applied to land. These areas and structures may include cor-
36 rals, feeding areas, collection systems, conveyance systems, storage ponds,
37 treatment lagoons, evaporative ponds and land application areas.

38 (8) "Dairy nutrient management plan" means a plan prepared in confor-
39 mance with the nutrient management standard for managing the land applica-
40 tion of dairy byproducts that is prepared by a certified planner and approved
41 by the department.

42 (9) "Dairy storage and containment facilities" means the areas and
43 structures within a dairy farm where dairy byproducts are collected, stored
44 or treated in conformance with engineering standards and specifications
45 published by the United States department of agriculture natural resources
46 conservation service or by the American society of agricultural and biolog-
47 ical engineers (ASABE), or other equally protective criteria approved by
48 the director. These areas may include corrals, feeding areas, collection
49 systems, conveyance systems, storage ponds, treatment lagoons, evaporative
50 ponds and compost areas.

- 1 (510) "Department" means the Idaho department of agriculture.
2 (611) "Director" means the director of the Idaho department of agricul-
3 ture or his designee.
4 (12) "Export" means the delivery of dairy byproducts from a dairy farm
5 to a third party for the third party's use.
6 (13) "Land application" means spreading on, or incorporating into the
7 soil mantle, dairy byproducts as a soil amendment for agricultural use of nu-
8 trients and for other beneficial purposes.
9 (714) "Modification" or "modified" means structural changes and al-
10 terations to ~~the a dairy waste system storage and containment facility~~ that
11 would require increased storage or containment capacity or ~~such changes that~~
12 would alter the function of the waste system.
13 (15) "National pollutant discharge elimination system" (NPDES) means
14 the point source permitting program established pursuant to section 402 of
15 the federal clean water act.
16 (816) ~~"Noncompliance" means a practice or condition that: causes an~~
17 ~~unauthorized discharge; or, if left uncorrected, will cause an unauthorized~~
18 ~~discharge, or does not meet nutrient management standards and comply with a~~
19 ~~nutrient management plan the requirements of a dairy environmental manage-~~
20 ~~ment plan. Noncompliance does not include an upset condition.~~
21 (9) ~~"National pollutant discharge elimination system" (NPDES) means~~
22 ~~the point source permitting program established pursuant to section 402 of~~
23 ~~the federal clean water act.~~
24 (10) ~~"Nutrient management plan" means a plan prepared in conformance~~
25 ~~with the nutrient management standard or other equally protective standard~~
26 ~~for managing the amount, placement, form and timing of the land application~~
27 ~~of nutrients and soil amendments.~~
28 (17) "Nutrient management standard" means criteria for managing the
29 land application of nutrients and soil amendments published in the United
30 States department of agriculture, natural resources conservation service,
31 conservation practice standard, nutrient management code 590, or other
32 equally protective criteria approved by the director.
33 (148) "Person" means any individual, association, partnership, firm,
34 joint stock company, joint venture, trust, estate, political subdivision,
35 public or private corporation, state or federal governmental department,
36 agency or instrumentality, or any legal entity that is recognized by law as
37 the subject of rights and duties.
38 (19) "Process water" means water directly or indirectly used or pro-
39 duced in dairy animal rearing, milk production and environmental management
40 processes including, but not limited to: excess milk; spillage or overflow
41 from watering, washing, spraying or cooling dairy animals; water containing
42 dairy manure; water used in washing, cleaning, or flushing barns, manure
43 pits and other areas involved in the milk production and environmental man-
44 agement processes; water used for dust control; and water that comes into
45 contact with any raw materials, products, or byproducts of the dairy produc-
46 tion and environmental management processes.
47 (12) ~~"Process wastewater" means liquid containing dairy manure.~~
48 (1320) ~~"Unauthorized discharge" means a discharge of dairy waste to~~
49 ~~state surface waters or ground waters, or beyond a dairy farm's property~~
50 ~~boundaries that does not meet the requirements of this chapter or ground~~

1 ~~water or surface water quality standards~~ pollutants from a dairy farm to
2 waters of the United States as defined in the federal clean water act that is
3 ~~required to be but is not authorized by an NPDES permit. For purposes of the~~
4 ~~department's authorities under this chapter, unauthorized discharge shall~~
5 ~~not include an upset condition or agricultural stormwater discharge.~~

6 (21) "Unauthorized release" means a release of dairy byproducts to
7 ground water and surface waters of the state that are not waters of the United
8 States or beyond land owned or operated by the dairy farm that results from
9 a dairy farm's failure to comply with its environmental management plan.
10 Unauthorized release shall not include an upset condition, an agricultural
11 stormwater discharge or infiltration from storage and containment facili-
12 ties that is within engineering standards and specifications published by
13 the United States department of agriculture natural resources conservation
14 service or by the ASABE, or other equally protective criteria approved by the
15 director.

16 (22) "Upset condition" means precipitation, earthquake, vandalism or
17 other occurrence beyond the control of the dairy farm owner or operator that
18 exceeds criteria for storage and containment facilities and nutrient man-
19 agement in an approved environmental management plan.

20 SECTION 10. That Section [37-605](#), Idaho Code, be, and the same is hereby
21 repealed.

22 SECTION 11. That Chapter 6, Title 37, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 37-605, Idaho Code, and to read as follows:

25 37-605. DAIRY STORAGE AND CONTAINMENT FACILITY DESIGN AND CONSTRUC-
26 TION. (1) All dairy storage and containment facilities shall be designed and
27 constructed in accordance with engineering standards and specifications
28 published by the United States department of agriculture natural resources
29 conservation service or by the American society of agricultural and bio-
30 logical engineers, or other equally protective criteria approved by the
31 director. Design, construction, operation and maintenance of storage and
32 containment facilities in accordance with such criteria shall be consid-
33 ered a best management practice that is intended to prevent unauthorized
34 discharges, unauthorized releases, violations of state water quality stan-
35 dards, contamination of ground water and surface water and endangerment to
36 human health and the environment.

37 (2) Each dairy farm shall have storage and containment facilities cri-
38 teria that are approved by the department and included in the dairy's envi-
39 ronmental management plan. Dairy storage and containment facilities cri-
40 teria shall be implemented by the dairy farm and enforced by the department
41 to ensure that there is no unauthorized discharge or unauthorized release
42 from the dairy farm. The department's review and approval of plans under
43 this section shall supersede the department of environmental quality's im-
44 plementation of plan and specification review and approval pursuant to sec-
45 tion 39-118, Idaho Code.

46 SECTION 12. That Section 37-606, Idaho Code, be, and the same is hereby
47 amended to read as follows:

1 37-606. DAIRY NUTRIENT MANAGEMENT PLAN. (1) ~~All~~ Each dairy farms shall
 2 have a dairy nutrient management plan that is approved by the department and
 3 included in the dairy farm's environmental management plan. The dairy nu-
 4 trient management plan shall be implemented by the dairy farm and enforced by
 5 the department to prevent unauthorized discharges, unauthorized releases,
 6 violations of state water quality standards, contamination of ground water
 7 and surface water and endangerment to human health and the environment.

8 (2) The nutrient management plan shall cover the dairy farm site and
 9 other land owned and operated by the dairy farm owner or operator to which
 10 dairy byproducts may be applied. Nutrient management plans submitted to the
 11 department by the dairy farm shall ~~include the names and addresses of each~~
 12 ~~recipient of that dairy farm's livestock waste,~~ identify each recipient to
 13 whom dairy byproducts are exported, the amount exported to each recipient
 14 and the number of acres to which the livestock waste is applied and the amount
 15 of such livestock waste received they are applied by each recipient. The in-
 16 formation provided ~~in~~ pursuant to this subsection shall be available to the
 17 county in which the dairy farm, ~~or the land upon which the livestock waste is~~
 18 ~~applied,~~ is located. ~~If livestock waste is converted to compost before it~~
 19 ~~leaves the dairy farm,~~ Only the first recipient of the manure compost must
 20 be listed in the nutrient management plan as a recipient of livestock waste
 21 from the dairy farm. Existing dairy farms shall submit a nutrient management
 22 plan to the department.

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

27 ~~(3) The nutrient management plan, and all information generated by the~~
 28 ~~dairy as a result of such plan, shall be deemed to be trade secrets, produc-~~
 29 ~~tion records or other proprietary information, shall be kept confidential~~
 30 ~~and shall be exempt from disclosure pursuant to section 74-107, Idaho Code.~~

31 SECTION 13. That Chapter 6, Title 37, Idaho Code, be, and the same is
 32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 33 ignated as Section 37-606A, Idaho Code, and to read as follows:

34 37-606A. DAIRY ENVIRONMENTAL MANAGEMENT PLAN. (1) Each dairy farm
 35 shall comply with the dairy environmental management plan that is approved
 36 and on file with the department to prevent unauthorized discharges, unautho-
 37 rized releases, violations of state water quality standards, contamination
 38 of ground water and surface water and endangerment to human health and the
 39 environment.

40 (2) The environmental management plan and all information generated by
 41 the dairy as a result of such plan shall be deemed to be trade secrets, pro-
 42 duction records or other proprietary information; shall be kept confiden-
 43 tial; and shall be exempt from disclosure pursuant to section 74-107, Idaho
 44 Code, unless such plan is a required component of an NPDES permit.

45 SECTION 14. That Section 37-607, Idaho Code, be, and the same is hereby
 46 amended to read as follows:

1 37-607. INSPECTIONS. (1) The director or his designee is authorized to
2 enter and inspect any dairy farm to determine ~~that dairy waste has been man-~~
3 ~~aged to prevent an unauthorized discharge or contamination of surface and~~
4 ~~ground water, and to determine compliance with a nutrient~~ the dairy farm's
5 environmental management plan. The director shall have access to or copy
6 any facility records deemed necessary pertaining to the dairy environmen-
7 tal management system to ensure compliance with ~~this chapter and the federal~~
8 ~~clean water act~~ the dairy environmental management plan.

9 (2) The director shall comply with the biosecurity protocol of the op-
10 eration so long as the protocol does not inhibit reasonable access to:

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

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

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

17 (23) All inspections and investigations conducted under the authority
18 of this chapter shall be performed in conformity with section 17, article I,
19 of the constitution of the state of Idaho. The state shall not, under the
20 authority granted by this chapter, conduct warrantless searches of private
21 property in the absence of either consent from the property owner or other
22 authorized person.

23 SECTION 15. That Section [37-608](#), Idaho Code, be, and the same is hereby
24 repealed.

25 SECTION 16. That Chapter 6, Title 37, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 37-608, Idaho Code, and to read as follows:

28 37-608. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES. (1) No
29 dairy farm shall cause an unauthorized discharge or an unauthorized release.

30 (2) The department of environmental quality shall be solely responsi-
31 ble and authorized to determine whether the discharge of pollutants from a
32 dairy farm to waters of the United States is required to be authorized by an
33 NPDES permit under chapter 1, title 39, Idaho Code. The provisions of this
34 chapter do not define when a dairy farm is required to obtain an NPDES per-
35 mit for a discharge, do not exempt a dairy farm from NPDES permitting re-
36 quirements for such discharges or alter the authority of the department of
37 environmental quality with respect to such discharges. The department shall
38 consult with the department of environmental quality regarding its discov-
39 ery of unauthorized discharges and any compliance, corrective or other en-
40 forcement actions the department has undertaken pursuant to the provisions
41 of this chapter to enable the department of environmental quality to deter-
42 mine whether additional action by the department of environmental quality is
43 warranted.

44 (3) The department shall determine the appropriate corrective, compli-
45 ance or other enforcement action to be taken with respect to unauthorized re-
46 leases.

1 SECTION 17. That Section [37-609](#), Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 18. That Chapter 6, Title 37, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 37-609, Idaho Code, and to read as follows:

6 37-609. NONCOMPLIANCE -- ENFORCEMENT -- PENALTIES. (1) A dairy farm
7 operating in compliance with its environmental management plan shall not be
8 subject to enforcement action pursuant to this chapter.

9 (2) The department shall address noncompliance with an environmental
10 management plan through corrective actions, compliance schedules or other
11 actions authorized by rules adopted pursuant to this chapter. Dairy farms
12 shall not be subject to fines, corrective actions or compliance sched-
13 ules under this chapter for upset conditions or agricultural stormwater
14 discharges. The department's authority to address noncompliance with envi-
15 ronmental management plans does not alter the authority of the department of
16 environmental quality with respect to the discharge of pollutants to waters
17 of the United States.

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

23 (4) In any case in which the United States environmental protection
24 agency initiates an enforcement action regarding an alleged violation of
25 the clean water act related to a discharge of pollutants from a dairy farm to
26 waters of the United States, any pending administrative or civil enforcement
27 action initiated by the director relating to the same discharge shall be
28 deemed void. If a compliance order addressing the alleged noncompliance has
29 already been issued by the director, that order shall remain in full force
30 and effect.