

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Thursday, February 18, 2016
TIME: 8:00 A.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Rice, Vice Chairman Bayer, Senators Patrick, Lee, Den Hartog, Harris, Ward-Engelking, and Burgoyne
ABSENT/ EXCUSED: Senator Souza

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: **Vice Chairman Bayer** called the meeting to order at 8:03 a.m.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of January 28, 2016. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

S 1260

Relating to Animals and the Environment. **Barry Burnell**, Administrator, Department of Environmental Quality (DEQ), said this bill proposes to amend the Beef Cattle Environmental Control Act (BCECA) and the Dairy Environmental Control Act (DECA). The legislation is necessary for Idaho to submit an application to the Environmental Protection Agency (EPA) requesting authorization to implement a State National Pollutant Discharge Elimination System (NPDES) program. Idaho Code § 39-175C directed DEQ to submit a complete application, consistent with the requirements of the Clean Water Act, by September 1, 2016. The application will request authorization for this Idaho Pollutant Discharge Elimination System (IPDES) program. The proposed legislation clarifies the split of authority between the Idaho Stated Department of Agriculture (ISDA) program and the DEQ to issue IPDES permits to those dairy and beef cattle operations that select coverage under the IPDES program. To the extent any dairy farms or beef cattle animal feeding operations that are regulated by EPA, under the Clean Water Act's discharge program, those facilities would be regulated by DEQ under an approved IPDES program.

The IPDES program will be partially supported by permit fees; no fees will be imposed on dairy farms or beef cattle animal feeding operations. The costs to such facilities should not increase under the proposed legislation. There will be costs to the State of Idaho to implement this aspect of the IPDES program. The anticipated annual cost is \$4,500 per year based on current conditions with zero facilities permitted or \$40,000 per year if 28 facilities are permitted (this represents approximately 10 percent of the listed Confined Animal Feeding Operations [CAFOs] in the State). Costs have been built into the IPDES program cost estimate of \$3 million annually and 29 full-time employees.

The legislation amends the BCECA in five sections of Idaho Code (page 2-6) and the DECA in nine sections of Idaho Code (page 6-13). These proposed amendments are necessary to separate the ISDA program authorities from the Clean Water Act authorities. This is required in order for Idaho to demonstrate that the DEQ would have clear authority over implementing the Clean Water Act NPDES requirements for beef cattle and dairy CAFOs (page 3, lines 29-36, and page 7, lines 18-25).

Both acts have language that authorizes DEQ to enter into a Memorandum of Agreement with ISDA. DEQ favors entering into an agreement where the existing expertise at ISDA can be used in implementing the Idaho NPDES program (page 3, lines 40-45 and page 7, lines 31-34).

The DECA directs the ISDA to implement programs to recognize, support and promote performance and innovation in the design, construction, operation and maintenance of Dairy Environmental Management Systems (page 7, lines 13-15).

DEQ has discovered two errors in the bill that need to be amended. On page 6, line 46, the word "waste" should be struck and replaced with the words "Environmental Management". The second change is on page 10, line 7, the word "and" should be struck and replaced with the word "or."

Bob Naerebout, Executive Director, Idaho Dairywomen's Association (IDA), said the original statute that required dairies to have a nutrient management plan passed in 2000. Since that time, there has been an increase in research and knowledge of the beneficial use of the by-products from the dairy industry. With this research as a basis they worked to align the law with this current knowledge. It was also important to bring clarity to the statute of the differing roles of DEQ and ISDA, defining them in the legislation for the dairy industry. The terminology changes requested reflect the paradigm shift that the industry has experienced and in how the dairies now view all the products they generate. The current law is peppered with the word "waste" (referring manure and lagoon water), which falsely classifies a product that has no value and requires disposal.

IDA has continued to fund research that exhibits and demonstrates the economic value of these dairy by-products that come from the dairy operation. This research includes the increase of soil health and biodegradable plastic. Under the Fiscal Note of the legislation the dairy industry pays for all of their inspections both sanitation and environmental through an assessment.

Dan Steenson, Legal Counsel for Idaho Dairywomen's Association, stated that in 2014, during a comprehensive rewrite of the statutes in Title 37 pertaining to the dairy industry, the Senate separated out provisions relating to nutrient management plans and a new piece of legislation related to the DECA. Also in 2014, the Legislature instructed DEQ to pursue primacy for NPDES permits. In the process of developing the legislation to accomplish this, EPA identified some questions concerning the DECA. Their primary concern was whether or not it conferred authority upon ISDA relating to the discharge of pollutants to Waters of the United States, which should reside with DEQ. The next step was to clarify ISDA's authority over Dairy Environmental Management Systems (DEMS). This was an opportunity to distinguish the authority of ISDA and DEQ over DEMS. They emphasized the complementary objectives of protecting water quality and utilizing dairy by-products for agronomic and other purposes driving the DEMS and plans ISDA regulates and the dairywomen implement.

Mr. Steenson said the language of the bill clarifies the distinction between ISDA and DEQ authority relating to DEMS. Fundamentally, ISDA reviews, approves and enforces DEMS plans. DEQ regulates and enforces water quality laws for the State of Idaho relating to the discharge of pollutants to Waters of the U.S. There are two segments of the bill: 1) BECA (pages 1-6) and 2) DECA (pages 6-13). Section 7 contains statements of legislative purpose in Section 37-602, line 30, distinguishing the authority of DEQ and ISDA. The agreement between DEQ and ISDA pertaining to the program related to DEMS to more clearly distinguish these authorities have incorporated two terms: 1) Unauthorized discharges to the Waters of the U.S.; (DEQ jurisdiction) and 2) unauthorized releases of dairy by-product into waters that are not Waters of the U.S. (non-DEQ jurisdiction). Proposed new Section 609 is related to non-compliance and enforcement. Under proposed new subsection 2.

ISDA's authority to address non-compliance with DEMS plans does not alter the authority of DEQ in respect to the discharge pollutants to the Waters of the U.S. This again is a way of distinguishing the authority of the two agencies to address EPA's concern. As to these two complementary objectives: 1) protecting the water resources of the State and 2) using dairy by-products for agricultural production and other beneficial purposes.

In the statement of purpose, the essential statement of the fundamental purpose of the DECA is to protect the water resources and facilitate the use of dairy by-products for beneficial purposes. **Mr. Steenson** said unauthorized discharges and releases are prohibited under the act. There is no reason to refer to the dry and wet material that is produced in milk production as waste, because it is not discarded and can be reused. Throughout the legislation they have replaced the word "waste" with the term "dairy by-product". Dairy by-product is defined as solid and liquids associated with dairy animal rearing and milk production. The intent of DEMS and DECA is that this dairy by-product is reused rather than disposed of in a manner that would affect ground or surface water in Idaho.

Mr. Steenson stated that DEMS consist of two components: 1) storage and containment facilities where compost or wet material is stored or contained for a period of time and 2) the use of the material or reuse primarily through land application. Land application is defined as the spreading on or incorporating into soil mantle dairy products as soil amendment for agricultural use of nutrients and other beneficial purposes. DECA requires that dairy environmental systems be designed, approved, constructed and maintained to prevent degradation of ground and surface water.

DEMS plan the umbrella term for the plans that address the two components of DEMS: storage and containment and reuse. The plan is designed for managing DEMS, which consist of dairy storage and containment and storage criteria. It includes criteria for the design, construction, operation and maintenance of those facilities. It also describes storage and containment areas and structures within a dairy farm where dairy products are collected, stored or treated in conformance with NRCS standards or other standards that the director of ISDA may deem protective. Also included is the definition of nutrient management standard criteria for managing the land application of nutrients and soil amendments published in the United States Department of Agriculture (USDA) nutrient code.

Finally, this bill suggests that the DECA does not clearly manage how to encourage and promote performance innovation in DEMS. This directs ISDA to implement programs to accomplish this purpose.

Senator Lee asked about the use of the word "pollutants" from a dairy farm on line 1, page 10. Is this how it is defined in the MPDs permit? What is the difference between what is categorized as a pollutant and what is now being categorized as dairy by-product? **Mr. Steenson** answered that discharge is a term of statute under the Clean Water Act with a specific regulatory meaning. It means a discharge of a pollutant to a Water of the U.S. A pollutant would be a constituent, chemical, nutrient or sediment that may adversely affect water quality and the beneficial uses of water quality that a receiving water body is to support. A dairy by-product may or may not become a pollutant. It only becomes a pollutant if it is discharged into Waters of the U.S.

Senator Harris said in the legislation the program will be paid for by fees. What are the fees now and will there be an increase? **Mr. Burnell** replied that fee rules were established for municipalities, industrial discharges and storm water or multi-sector general permits. These permits will generate a fee, and some of those funds will help fund this program but most of the \$2 million in funds will come from the General Fund.

The cost for the fees for the municipal side is \$1.74 per household unit on an annual basis. A minor industrial permit is \$4,000 and a major industrial permit is \$13,000. The construction and multi-sector permits depend on the size of the facility and level of effort that goes into the permitting of a structure.

Jonathan Oppenheimer, representing the Idaho Conservation League, spoke in support of this legislation. The Idaho Conservation League supports the implementation of the IPDES and recognizes the need for the oversight of the DECA and BECA to reside under the authority of DEQ.

Paul McKay, representing the Milk Producers of Idaho, spoke in support of this legislation. He says the group endorses the agreement between DEQ and ISDA that allows ISDA to handle the inspection process while the enforcement remains with DEQ. ISDA inspectors are familiar with CAFO operations and more suited to carry out the inspection process. In addition, ISDA inspectors are frequently on the dairies. The Milk Producers support the changes that were negotiated with DEQ for the DECA that make the act easier to understand by the operators.

Britany Hurst, representing the Idaho Cattle Association (ICA), spoke in support of this legislation. She stated that the ICA had worked extensively with DEQ throughout the process of drafting the legislation. **S 1260** maintains the integrity of the existing BECA, which was their top priority through the negotiations process. It was also important to the ICA that a memorandum of understanding be included in the statute. It was paramount to their industry that there is a balance between the on-the-ground expertise of ISDA and the regulatory oversight of DEQ. This legislation fulfills those requirements.

MOTION: **Vice Chairman Bayer** moved that **S 1260** be referred to the 14th Order for amendment. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

INTRODUCTION AND PRESENTATION: **College of Agricultural and Life Sciences. Rich Garber**, representing the University of Idaho, stated that this is an exciting time at the UI under the new leadership of Dean Michael Parrella of the College of Agricultural and Life Sciences. **Dean Parrella** said that he graduated with a bachelor of science degree in animal science from Rutgers University; he earned a master's degree and Ph.D. in entomology from Virginia Technical College. His most recent position was at the University of California at Davis, where he had a major research program and held some administrative positions. He was Chairman of the Department of Entomology and Nematology for 15 years and the Associate Dean of Agricultural Programs at Davis for 10 years.

PRESENTATION: Idaho Dairy Products Commission (IDPC)/United Dairymen of Idaho. Karianne Fallow, CEO, said United Dairymen of Idaho is the dairy checkoff organization for the Idaho farmers. IDPC is the promotion and marketing arm for our farmer investors who are regulated by U.S. Department of Agriculture.

Ms. Fallow said that dairy nutrition is a great source of pride for farmers and for dairy food manufacturers. Dairy is an important food group for health professionals, educators, school food service and food assistance programs (see attachment 1). IDPC core focus and initiatives are based on youth wellness.

IDPC believes healthy students are better students. Students who have healthy diets and get adequate physical activity tend to be focused, achieve more academically and have fewer absences. IDPC knows that habits start at a young age; by inspiring trust in dairy as a foundation for wellness IDPC can encourage a lifelong consumer who gravitates to healthy and nutritious foods for their diet. The contribution of dairy products in the diet is unmatched. Dairy products are some of the most affordable, accessible and naturally nutrient rich foods as indicated in the new Federal Dietary Guidelines.

Ms. Fallow explained that dairy holds a unique place in school meals because of the affordability and accessibility of the nutrient package in milk and other dairy products. Milk, cheese and yogurt are important components of the school meal portfolio.

Ms. Fallow concluded that the dairy industry announced the availability of \$35 million in grants to help schools upgrade their kitchen equipment and infrastructure in order to offer students better access to nutritious foods. More than 30 million children rely on the USDA's National School Lunch and School Breakfast Program for one to two meals per day. According to a 2014 survey, 88 percent of schools reported that they lacked at least one piece of equipment in their kitchens to serve healthier foods. These new grants will give millions of additional children access to more nutritious meals by providing schools with the funds to purchase additional equipment to help meet updated national nutrition standards. Because the dairy checkoff program has been such a significant presence in our Idaho, IDPC has been tasked with helping administer these grant monies from the USDA. She says that IDPC is honored to communicate this new funding opportunity to our Idaho schools.

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GRADUATION:**

Farewell to Committee Page Nina Harelson. **Chairman Rice** asked Nina Harelson to tell the Committee about her experience as a page for the Committee and plans for the future.

ADJOURNED:

There being no further business, **Chairman Rice** adjourned the meeting at 9:22 a.m.

Senator Rice
Chair

Carol Deis
Secretary