

TITLE 37
FOOD, DRUGS, AND OIL

CHAPTER 6
DAIRY ENVIRONMENTAL CONTROL ACT

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

[37-601, added 2014, ch. 284, sec. 1, p. 720.]

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

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

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

(c) Dairy environmental management systems that are constructed, operated and maintained in accordance with plans that are approved by the department of agriculture are an effective means of protecting the state's water resources and providing valuable resources for crop production and other uses;

(d) The department's authority to review, approve and enforce dairy environmental management plans should be consistent and coordinated with the department of environmental quality's authorities pursuant to [title 39](#), Idaho Code, to protect state ground and surface waters and to obtain approval from the United States environmental protection agency to implement and administer an Idaho NPDES program governing the discharge of pollutants to the waters of the United States as defined in the federal clean water act;

(e) The state should encourage and promote performance and innovation in the design, construction, operation and maintenance of dairy environmental management systems; and

(f) Adequate funding from the legislature for the department of agriculture is necessary to meet the requirements and accomplish the purposes of this chapter.

(2) Therefore, the purpose of this chapter is to authorize the department of agriculture to review, approve and enforce dairy environmental management plans to ensure that dairy environmental management systems are constructed, operated and maintained in a manner that protects the natural resources of the state.

[37-602, added 2016, ch. 129, sec. 7, p. 379.]

37-603. AUTHORITY AND DUTIES OF DIRECTOR AND AGENCY COORDINATION. (1) The director of the department shall be solely responsible for approving and enforcing dairy environmental management plans. The department is authorized to adopt rules to implement the provisions in this chapter.

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

(3) Nothing in this chapter shall affect the authority of the department of environmental quality to administer and enforce an Idaho NPDES program for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement action, as set forth in [chapter 1, title 39](#), Idaho Code, and the rules adopted pursuant thereto. The provisions of this chapter do not alter the requirements, liabilities and authorities with respect to or established by an Idaho NPDES program.

(4) The director of the department of environmental quality and the director of the department of agriculture shall, as appropriate, establish an agreement relating to the administration of an Idaho NPDES program that recognizes the expertise of the department of agriculture. The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with dairy farms, and this shall be the authority for the director of the department of environmental quality to so delegate.

(5) The director of the department of environmental quality shall consult with the director of the department of agriculture before certifying discharges from dairy farms as provided under 33 U.S.C. section 1341.

[37-603, added 2014, ch. 284, sec. 1, p. 720; am. 2016, ch. 129, sec. 8, p. 380.]

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

(1) "Agricultural stormwater discharge" means a precipitation-related discharge of dairy byproducts from land areas under the control of a dairy farm where the dairy byproducts have been land applied in accordance with an approved nutrient management plan.

(2) "Best management practice" means 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.

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

(4) "Dairy byproduct" means 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.

(5) "Dairy farm" means land owned or operated by a 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.

(6) "Dairy environmental management plan" means 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.

(7) "Dairy environmental management system" means 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, evaporative ponds and land application areas.

(8) "Dairy nutrient management plan" means a plan prepared in conformance with the nutrient management standard for managing the land application of dairy byproducts that is prepared by a certified planner and approved by the department.

(9) "Dairy storage and containment facilities" means 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 United States department of agriculture natural resources conservation service or by the American society of agricultural and biological engineers (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.

(10) "Department" means the Idaho department of agriculture.

(11) "Director" means the director of the Idaho department of agriculture or his designee.

(12) "Export" means the delivery of dairy byproducts from a dairy farm to a third party for the third party's use.

(13) "Land application" means spreading on, or incorporating into the soil mantle, dairy byproducts as a soil amendment for agricultural use of nutrients and for other beneficial purposes.

(14) "Modification" or "modified" means structural changes and alterations to a dairy storage and containment facility that would require increased storage or containment capacity or alter the function of the waste system.

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

(16) "Noncompliance" means a practice or condition that does not meet the requirements of a dairy environmental management plan. Noncompliance does not include an upset condition.

(17) "Nutrient management standard" means criteria for managing the land application of nutrients and soil amendments published in the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590, or other equally protective criteria approved by the director.

(18) "Person" means any individual, association, partnership, 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.

(19) "Process water" means 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.

(20) "Unauthorized discharge" means a discharge of 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. For

purposes of the department's authorities under this chapter, unauthorized discharge shall not include an upset condition or agricultural stormwater discharge.

(21) "Unauthorized release" means 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 United States department of agriculture natural resources conservation service or by the ASABE, or other equally protective criteria approved by the director.

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

[37-604, added 2014, ch. 284, sec. 1, p. 721; am. 2016, ch. 129, sec. 9, p. 381.]

37-605. DAIRY STORAGE AND CONTAINMENT FACILITY DESIGN AND CONSTRUCTION. (1) All dairy storage and containment facilities shall be designed and constructed in accordance with engineering standards and specifications published by the United States department of agriculture natural resources conservation service or by the American society of agricultural and biological engineers, or other equally protective criteria approved by the director. Design, construction, operation and maintenance of storage and containment facilities in accordance with such criteria shall be considered a best management practice that is intended to prevent unauthorized discharges, unauthorized releases, violations of state water quality standards, contamination of ground water and surface water and endangerment to human health and the environment.

(2) Each dairy farm shall have storage and containment facilities criteria that are approved by the department and included in the dairy's environmental management plan. Dairy storage and containment facilities criteria shall be implemented by the dairy farm and enforced by the department to ensure that there is no unauthorized discharge or unauthorized release from the dairy farm. The department's review and approval of plans under this section shall supersede the department of environmental quality's implementation of plan and specification review and approval pursuant to section [39-118](#), Idaho Code.

[37-605, added 2016, ch. 129, sec. 11, p. 383.]

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

(2) The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator to which

dairy by-products may be applied. The nutrient management standard shall provide dairy farms with the option of a phosphorous-indexing or phosphorous threshold standard for nutrient management plan implementation.

(3) Nutrient management plans submitted to the department by the dairy farm shall identify each recipient to whom dairy by-products are exported, the amount exported to each recipient, and the number of acres to which they are applied by each recipient. The information provided pursuant to this subsection shall be available to the county in which the dairy farm is located. Only the first recipient of manure compost must be listed in the nutrient management plan.

[37-606, added 2014, ch. 284, sec. 1, p. 722; am. 2015, ch. 141, sec. 79, p. 438; am. 2016, ch. 129, sec. 12, p. 383; am. 2021, ch. 64, sec. 1, p. 196.]

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

(2) The environmental management plan and all information generated by the dairy as a result of such plan shall be deemed to be trade secrets, production records or other proprietary information; shall be kept confidential; and shall be exempt from disclosure pursuant to section [74-107](#), Idaho Code, unless such plan is a required component of an NPDES permit.

[37-606A, added 2016, ch. 129, sec. 13, p. 384.]

37-607. INSPECTIONS. (1) The director or his designee is authorized to enter and inspect any dairy farm to determine compliance with the dairy farm's environmental management plan. The director shall have access to or copy any records pertaining to the dairy environmental management system to ensure compliance with the dairy environmental management plan.

(2) The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

- (a) Enter and inspect at reasonable times the premises or land application site or sites of a dairy farm;
- (b) Review, copy, or review and copy at reasonable times any records that must be kept under conditions of this chapter;
- (c) Sample or monitor at reasonable times substances or parameters directly related to compliance with this chapter.

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

[37-607, added 2014, ch. 284, sec. 1, p. 722; am. 2016, ch. 129, sec. 14, p. 384.]

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

(2) The department of environmental quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a dairy farm to waters of the United States is required to be authorized by an NPDES permit under [chapter 1, title 39](#), Idaho Code. The provisions of this chapter do not define when a dairy farm is required to obtain an NPDES permit for a discharge, do not exempt a dairy farm from NPDES permitting requirements for such discharges or alter the authority of the department of environmental quality with respect to such discharges. The department shall consult with the department of environmental quality regarding its discovery of unauthorized discharges and any compliance, corrective or other enforcement actions the department has undertaken pursuant to the provisions of this chapter to enable the department of environmental quality to determine whether additional action by the department of environmental quality is warranted.

(3) The department shall determine the appropriate corrective, compliance or other enforcement action to be taken with respect to unauthorized releases.

[37-608, added 2016, ch. 129, sec. 16, p. 385.]

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

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

(3) For noncompliance conditions or unauthorized releases, the director or his designee 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) In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged violation of the clean water act related to a discharge of pollutants from a dairy farm to waters of the United States, any pending administrative or civil enforcement action initiated by the director relating to the same discharge shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

[37-609, added 2016, ch. 129, sec. 18, p. 385.]

CHAPTER 7

PASTEURIZATION OF MARKET MILK AND MARKET MILK PRODUCTS [REPEALED]