AMENDMENT

OF THE 2001 IDAHO DAIRY POLLUTION PREVENTION INITIATIVE
MEMORANDUM OF UNDERSTANDING

Between the

IDAHO STATE DEPARTMENT OF AGRICULTURE,

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, REGION 10, U.S. EPA.

and the

IDAHO DAIRYMEN'S ASSOCIATION, INC.

AGREEMENT

It is expressly agreed by the parties that this agreement is an amendment of the August 30, 2006 amendment to the 2001 Idaho Dairy Pollution Prevention Initiative Memorandum of Understanding which is by reference made a part hereof, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this agreement and are made a part of this agreement as though they were expressly rewritten, incorporated, and included herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and conditions, the parties do hereby agree that paragraph 3 under the General Provisions of the 2001 Memorandum of Understanding shall be amended as follows:

GENERAL PROVISIONS:

3) The term of the 2001 Memorandum of Understanding, as amended August 30, 2006, shall be 6 years and 3 months unless otherwise revoked by any one of the signatory parties following 30 day notice to all parties. The 2001 Memorandum of Understanding, as amended August 30, 2006, may be amended or extended through mutual agreement of the parties. The parties mutually agree to extend the term of the 2001 Memorandum of Understanding from August 30, 2006, to February 1, 2008. This amendment, when accepted by each agency, will be effective from the date of the last signature.

Celia R. Gould 4/23/07
Celia R. Gould — Date
Director
Idaho State Department of Agriculture

4/24/07
Toni Hardesty — Date
Director
Idaho Department of Environmental Quality

4/25/07
Elin Miller — Date
Regional Administrator
Region 10, U.S. EPA

Jack Davis 4-30-07
Jack Davis — Date
Idaho Dairymen's Association, Inc

THE IDAHO DAIRY POLLUTION PREVENTION INITIATIVE
MEMORANDUM OF UNDERSTANDING

OBJECTIVE

The objectives of this Memorandum of Understanding (MOU) are to define roles of the agencies in regulating the dairy industry in Idaho and to recognize the Idaho State Department of Agriculture's (ISDA's) lead role in ensuring dairy waste systems and practices are in accordance with the provisions outlined in the Idaho Waste Management Guidelines for Confined Feeding Operations (CFO Guidelines), a 1997 publication by the Idaho Department of Environmental Quality (IDEQ). This MOU sets forth a working arrangement between the agencies and the Idaho dairymen to reduce duplicative inspection efforts, and to provide a sound inspection program in order to prevent water pollution and protect Idaho's surface and ground water from dairy waste contamination.

BACKGROUND

This MOU succeeds the October 4, 1995 MOU, which was developed because of the recognition by the Idaho Dairymen's Association (IDA), ISDA, the U.S. Environmental Protection Agency (EPA), IDEQ, and other interested parties for the need to formalize an ongoing effort to conserve resources, to more effectively and efficiently use personnel, to reduce duplicative inspection services, and to ensure Idaho dairymen comply with the Clean Water Act (CWA), the Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 58.01.02), the Idaho Groundwater Quality Rule (IDAPA 58.01.11), and the Idaho Rules Governing Dairy Waste (IDAPA 02.04.14) ("Dairy Waste Rules"). This approach capitalizes on the frequent presence of ISDA dairy inspectors on dairy farms and is intended to enable IDEQ and EPA to redirect and focus resources.

AGREEMENT

Whereas ISDA routinely inspects dairies for milk sanitation issues, and;

Whereas ISDA, IDEQ, and EPA have the authority to conduct environmental inspections on these same dairy farms, and;

Whereas it is in the best interests of the residents of the State of Idaho to support more efficient governmental programs, and;

Whereas the protection of water quality will be enhanced through a cooperative and efficient approach to dairy waste management, the undersigned agencies hereby acknowledge ISDA as the lead agency for dairy waste management inspections, and agree to the following:

GENERAL POLICIES

1) Inspections of dairies should generally include a visual inspection of the waste containment and runoff control facilities including land application areas that are part of the dairy.

2) ISDA will conduct inspections of dairies to insure compliance with the Dairy Waste Rules.

3) Inspections shall include the collection of information sufficient to determine compliance with the applicable requirements set forth in "Background."

4) Meetings between ISDA, IDEQ, EPA, and IDA will be the primary method for discussion of program progress. The ISDA, IDEQ and EPA may also identify those instances where enforcement action may be appropriate. An annual review meeting will be held each April between ISDA, IDEQ, EPA, and IDA to address issues regarding waste management and the environment relative to the dairy industry.

5) ISDA, IDEQ, and EPA files will be mutually available under public records laws applicable to the signatory agencies for inspection and copying. The agencies shall respect the confidentiality of files or materials designated CONFIDENTIAL in accordance with applicable federal and state law.

RESPONSIBILITIES

The ISDA will:

1) Enforce its existing rules and promulgate, where necessary, new rules for the purposes of carrying out the objectives of this MOU. Non-compliance with these rules may result in penalties as provided in Idaho Code Title 37, Chapter 4 or the Dairy Waste Rules, including, but not limited to, revocation or suspension of authority to sell milk for human consumption.

2) Maintain and improve, where necessary, existing dairy waste inspection protocols to prevent discharges of dairy wastes.

3) Conduct periodic inspections of all dairies to include evaluation of waste collection, treatment, handling, disposal, on-site land application sites (that are part of the dairy) and management procedures for compliance with the Dairy Waste Rules and the CWA. Respond to all complaints and information regarding dairy waste management.

4) Notify IDEQ immediately of all discharges that cannot be stopped within 24 hours. All discharges that may present an imminent and substantial danger to public health and the environment shall be immediately reported to IDEQ.

5) Upon request from a signatory party to this Agreement, provide a written summary report to the parties of all observed discharges from dairies that reach waters of the United States or waters of the State. The report will include, at a minimum, known information regarding the number and location of discharges, the size and duration of the discharge, and the resolution actions taken.

6) Prepare and submit an annual report to IDEQ and EPA prior to the annual review. The report will include activities for the past year, including the information outlined in paragraph 5 above, as well as planned and ongoing activities for the current year.

7) Not penalize a dairy under Idaho Code Title 37, Chapter 4 or the Dairy Waste Rules if there is a discharge from that facility that is authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

8) Review and approve the design, construction, and location of dairy waste management systems (including nutrient management plans) for dairy farms, per the Idaho Code and the Dairy Waste Rules.

The IDEQ will:

1) Provide training, information, education, and technical assistance for waste handling to ISDA, and/or to dairies upon request, to the extent of available resources.

2) Conduct inspections of dairies only when requested by ISDA. However, IDEQ retains the right to inspect in any situation it considers to present an imminent and substantial danger to public health and the environment after due notification to ISDA.

3) Initiate enforcement actions, within agency discretion, under the authority of the Idaho Environmental Protection and Health Act, only upon request or referral by ISDA or as a direct result of the investigation actions outlined in paragraph 2 above.

4) Evaluate ISDA inspection records annually, or at a frequency determined to be necessary by the parties to this agreement during the annual review. The IDEQ will prepare and submit a report of this review to ISDA.

5) When IDEQ determines a violation of ambient environmental surface or ground water standards has occurred in an area where a dairy may be contributing to pollutants of concern, IDEQ shall notify ISDA, and ISDA shall provide all available pertinent information regarding the dairies in the area to IDEQ. If sufficient information is not available, IDEQ will request that ISDA develop such information. If ISDA is unable to develop the appropriate information, IDEQ may initiate any necessary actions to collect the information.

The EPA will:

1) In a timely manner, review and act upon NPDES permit notices of intent (general permits) and applications (individual permits) submitted by Idaho dairies.

2) Defer routine compliance inspections and enforcement actions on dairies to ISDA during the term of this MOU. Consistent with General Provisions paragraph 1 of this MOU, and EPA obligations under the CWA, EPA retains the right to inspect and enforce after due notification to ISDA.

3) Provide training, information, education, and technical assistance for waste handling to ISDA and/or dairies upon request, to the extent of available resources.

4) Review and evaluate the ISDA dairy waste management program every twelve months for the purpose of determining whether the program is satisfying the relevant State and Federal requirements and the terms of this MOU. In preparation for the annual review, EPA will meet with IDEQ and ISDA, and determine the scope and manner in which the review will be conducted. Information collected, reviewed and evaluated may include: compliance information, aerial surveillance information, complaints, record keeping, inspection reports, resource allocations, and enforcement actions. In addition, a small number of dairies (not to exceed ten) may be jointly inspected with ISDA. Findings of the review, along with appropriate recommendations, will be presented and discussed at the annual review meeting.

The IDA will:

1) Support continuing education of dairies concerning necessary waste management practices to protect surface and ground water from contamination.

2) Participate in the annual review with the signatory agencies and work cooperatively with the signatory agencies to achieve the objectives of this MOU.

3) Encourage recognition of dairies as part of existing and/or new environmental stewardship award programs.

4) Participate in MOU reviews with the parties, make recommendations for improvement of the program, and work cooperatively with the parties to take appropriate actions to achieve the objective of this MOU.

5) Continue to actively support full funding to effectively implement and accomplish the goals of the Dairy Waste Rules and this MOU.

6) Work with EPA, ISDA, and IDEQ towards obtaining a delegated NPDES permit program for the State of Idaho.

GENERAL PROVISIONS

1) Nothing in this agreement shall be construed as surrendering existing statutory or regulatory authority of the agencies. However, IDEQ and EPA recognize the lead role of ISDA in inspecting dairies as set forth in this MOU and will exercise their authorities accordingly.

2) Nothing in this agreement shall be construed to release a dairy from complying with applicable local, state, and federal environmental statutes, regulations, permits, or consent orders.

3) The term of this agreement shall be 5 years, unless (1) otherwise revoked by any one of the signatory agencies following 30 days notice to all parties or (2) the State of Idaho obtains an approved NPDES permit program. This agreement may be amended or extended through mutual written agreement of the parties. This agreement, when accepted by each agency, will be effective on the date of the last signature.

4) This MOU does not apply to dairies located within the exterior boundaries of Indian Reservations within the State of Idaho.

SIGNATORY AGENCIES:

Patrick A. Takasugi, Director
Idaho Department of Agriculture
Date: 8-21-01

Charles Findley, Acting Regional Administrator
U.S. EPA Region 10
Date: 8-23-01

C. Stephen Allred, Director
Idaho Department of Environmental Quality
Date: 8-30-01

Pete Lizaso
Chairman
Idaho Dairymen's Association, Inc.
Date: 8-22-01