MEMORANDUM OF UNDERSTANDING

BETWEEN

THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

THE IDAHO STATE DEPARTMENT OF AGRICULTURE

1 Objective

The objectives of the Memorandum of Understanding (hereafter, MOU) are:

1) to define roles of the Idaho Department of Environmental Quality (hereafter, DEQ) and the Idaho State Department of Agriculture (hereafter, ISDA) relating to the administration of the Idaho Pollutant Discharge Elimination System (IPDES) program and

2) to develop an IPDES concentrated animal feeding operation (CAFO) program that is as efficient and effective as possible and which avoids a duplication of effort.

DEQ and ISDA propose to help ensure an efficient and effective program and minimize duplication by having employees of ISDA conduct IPDES inspections on behalf of DEQ and thereby utilize the expertise of ISDA and take advantage of ISDA's existing presence on certain animal feeding operations (AFOs) and dairy farms as part of ISDA's existing regulatory programs.

This MOU is intended solely to assist DEQ in implementing the IPDES program for certain AFOs and CAFOs within Idaho. Nothing in this MOU creates or implies duties, rights, benefits, substantive or procedural, for third parties or others. This MOU will become effective January 1, 2020 and will remain effective until such time as both ISDA and DEQ choose to revoke or revise the terms outlined herein.

2 Background and Authorities

1. This MOU is entered into pursuant to the following described authorities. Idaho Code §§39-175A through 39-175E authorizes DEQ to take those actions necessary to obtain approval of and to implement a state national pollutant discharge elimination system (NPDES) program under the Clean Water Act. (This program is hereinafter referred to as the IPDES program.)

2. Pursuant to the authority provided in Idaho Code §§39-175A et seq., DEQ has adopted IPDES rules, IDAPA 58.01.25, that include requirements for CAFOs.

3. ISDA regulates AFOs, CAFOs and dairy farms pursuant to the Beef Cattle Environmental Control Act, Idaho Code §§22-4901 through 22-4910, the Dairy Environmental Control Act, Idaho Code §§37-601 through 37-609, the Poultry

Environmental Act, Idaho Code §§25-4001 through 25-4014, and rules adopted under the authority of these Acts.

4. DEQ regulates swine CAFOs pursuant to Idaho Code §§39-104A, 39-7901 through 39-7916, and rules adopted under the authority of these sections.

5. DEQ has the sole authority with respect to implementing the IPDES program. However, Idaho Code §39-175C(5) provides that the Director of DEQ shall, as appropriate, establish agreements with other state agencies with expertise to administer the IPDES program. Similar authority to establish an agreement regarding the administration of the IPDES program exists in the Beef Cattle Environmental Control Act and the Dairy Environmental Control Act. In addition, Idaho Code §67-2510 provides that all Idaho departments shall cooperate with each other in the employment of services and the use of quarters and equipment, and provides that the Director of a department may empower employees of other departments to perform duties required of his own subordinates. Departments are also directed to assist other departments in the inspection, examination, or securing of data or information.

6. Pursuant to the authorities listed above, ISDA reviews and approves plans and specifications and nutrient management plans for certain AFOs, CAFOs and dairy farms, and conducts inspections of operations and farms to ensure compliance with state law. As a result, ISDA has an existing expertise with respect to AFOs, CAFOs and dairy farms and conducts inspections multiple times a year. This MOU is intended to take advantage of this expertise and the fact that ISDA already conducts inspections on these facilities.

3 General Program Understanding

The intent of this section is to identify guiding principles not specific to the permitting process for CAFOs on which DEQ and ISDA agree and will follow during the effective dates of this MOU.

3.1 Rules, Standards, Technical Policies, Guidelines, and General Enforcement Philosophy

Recognizing the need for collaboration and cooperation in the implementation of the IPDES CAFO program, DEQ and ISDA agree to:

1. work cooperatively in the preparation of rules, standards, technical policies, or guidelines with regards to AFOs and CAFOs that have obtained a permit or may be required to obtain a permit;

2. notify each other of all public meetings and hearings pertaining to rules associated with the IPDES CAFO program;

3. provide each other with draft copies of the documents related to rules associated with the IPDES CAFO program for a 30 day review and comment period prior to the initiation of any formal negotiated rule making; and

4. coordinate prior to any designation of an animal feeding operation as a CAFO or requiring an AFO to apply for an IPDES individual permit or coverage under a general permit.

3.2 Consultations, Technical Assistance, and Training

DEQ and ISDA agree to, within resource limitations, provide consultation, training, and technical assistance to the other when requested. ISDA inspectors certified by DEQ as IPDES inspectors for CAFO related issues will use that certification only in the manner specified by DEQ to assist with fulfilling DEQ's obligations under state and federal environmental statutes.

DEQ will provide to ISDA staff identified as certified inspectors training in IPDES CAFO inspections and opportunities for continuing education credits. DEQ will rely on EPA's NPDES Compliance Inspection Manual (until such time as DEQ has developed an equivalent state specific guidance) to describe the details and requirements of a CAFO inspection.

Procedures for Certifying CAFO inspectors

1. ISDA will provide to DEQ a list of individual inspectors who should be certified by DEQ.

2. DEQ will provide to those identified individuals a list of required training courses that must be completed prior to certification. This training will include 3 basic parts:

   a. EPA's Basic Inspector Training,

   b. Occupational Health and Safety Training, and

   c. IPDES program specific training. IPDES program specific training will include a mandatory reading list, self-study, on-the-job training, review of inspection reports/files, and mandatory refresher training.

3. The inspector's supervisor will certify and provide documentation to the DEQ compliance, inspection, and enforcement lead that the training has been completed. Verification and documentation should be provided prior to or when the inspector submits a request for certification.

3.3 Sharing and Dissemination of Information

DEQ and ISDA agree that efficient and effective management of an IPDES CAFO program relies heavily on seamless transmittal of information from one to the other. To this end, DEQ will work with ISDA to ensure that there is an efficient means of transferring data relating to permitting, compliance, inspection, and enforcement for all aspects of the IPDES CAFO program.

DEQ and ISDA will share information regarding records pertinent to the IPDES CAFO program in electronic form to the maximum extent possible, unless the records are deemed confidential. DEQ will develop an online application process for CAFOs seeking coverage under an individual or general permit.

3.4 Coordination of Programs

DEQ and ISDA will coordinate efforts to the maximum extent possible. This effort will include annual coordination meetings between the IPDES program and ISDA staff

- to inform each agency of any upcoming IPDES enforcement actions,
- to identify inspection needs,
- to set an inspection schedule for IPDES permitted CAFOs,
- to inform ISDA regarding any planned DEQ inspections of IPDES CAFO facilities,
- to inform DEQ regarding the number of non-IPDES CAFO inspections and
- to coordinate training of ISDA and DEQ staff.

DEQ and ISDA will also hold quarterly conference calls, unless deemed unnecessary, to deal with any urgent or outstanding issues regarding IPDES permitted or non-permitted CAFOs and exchange information about inspection results.

4 Roles and Responsibilities for Specific Components of the IPDES CAFO program

4.1 Permitting

DEQ is responsible for IPDES permitting of CAFOs in Idaho. ISDA will provide general technical assistance with regards to the review of permits and nutrient management plans. Once DEQ receives authorization to implement the CAFO component of the IPDES program, any CAFO covered under an EPA CAFO general permit will automatically transition to a DEQ IPDES permit. A CAFO not covered under the EPA CAFO general (or individual) permit but who wishes to seek coverage under the IPDES CAFO general (or individual) permit will need to submit an application for coverage (or NOI). ISDA and DEQ will then review the NMP that the CAFO is using to determine if it meets the requirements of the Clean Water Act. If the NMP meets Clean Water Act requirements, the NMP can be scheduled for public comment. If the NMP does not meet Clean Water Act requirements, even if it has been previously approved by ISDA, DEQ will work with ISDA and the applicant to determine what additional components are necessary in order to provide coverage under a general or individual CAFO permit.

4.1.1 General IPDES Permit for CAFOs

DEQ will:

1. Draft a general CAFO permit pursuant to the IPDES program rules and following the guidance identified in EPA's Permit Writer's Manual for CAFOs.

2. Provide ISDA with a working copy of the draft general IPDES CAFO permit for comment prior to providing a public comment period to allow ISDA staff an opportunity to provide comments and suggestions regarding the draft general permit.
3. Provide notice of a public comment period for the draft general permit and collect public comments on the draft general permit as required under the IPDES program rules.
4. Provide a preliminary draft response to public comments to ISDA staff for review.
5. Follow the process and procedures for issuing a general permit as outlined in IDAPA 58.01.25 and the IPDES User's Guide.
6. Issue final IPDES general permit for CAFOs.
7. Determine if an applicant qualifies for coverage under the general permit.
8. Evaluate the recommendation from ISDA regarding the adequacy of a NMP in meeting Clean Water Act requirements submitted as part of an application for coverage under an IPDES permit.
9. Provide notice of a public comment period for NOIs and NMPs submitted by CAFOs for coverage under the general permit, collect public comments on the NOI and NMP, and otherwise comply with public participation requirements.
10. Provide a preliminary draft response to public comments on the NOI and NMP to ISDA staff for review.
11. Make final determination of approval or disapproval of applicant for coverage under the IPDES CAFO general permit. In the case of approval, DEQ will include the NMP in an appendix to the general permit as conditions specific to that CAFO.

ISDA will:

1. Review and provide comments on the draft IPDES CAFO general permit within 30 days of receiving the draft copy.
2. Review and provide comments and edits on the preliminary draft response to public comments within 30 days of receiving the draft response to public comments.
3. Review and provide recommendations to DEQ and applicant within 30 days of receiving the NMP regarding the adequacy of a NMP in meeting Clean Water Act requirements submitted as part of an NOI for coverage under the general permit.
4. Review and provide comments on the preliminary draft response to public comments on an NOI and NMP submitted for coverage under the IPDES CAFO general permit within 30 days of receiving the preliminary draft.

4.1.2 Individual permits for CAFOs

DEQ will:

1. Draft an individual CAFO permit pursuant to the IPDES program rules and following the guidance identified in EPA's Permit Writer's Manual for CAFOs.
2. Provide ISDA with a copy of the application for an individual IPDES CAFO permit including the NMP for a 30-day review.
3. Provide ISDA with a working copy of the draft individual permit for comment prior to providing a public comment period to allow ISDA staff an opportunity to provide comments and suggestions regarding the draft individual permit.
4. Follow the process and procedures for issuing an individual permit as outlined in IDAPA 58.01.25 and the IPDES User's Guide.

5. Provide notice of a public comment period regarding the individual permit and associated NMP and collect public comments on the draft individual permit and otherwise comply with the public participation requirements.
6. Provide a preliminary draft response to public comments to ISDA staff for a 30-day review.
7. Make final permitting decision regarding the IPDES permit. If DEQ determines to issue a permit, DEQ will include the NMP in the individual permit as conditions specific to that CAFO.

ISDA will:

1. Review and provide comments to DEQ on the adequacy of applicant's NMP in meeting Clean Water Act requirements within 30 days of receiving the copy of the application with NMP.
2. Review and provide comments on the draft individual IPDES permit within 30 days of receiving the preliminary draft individual permit.
3. Review and provide comments and edits on the preliminary draft response to public comments within 30 days of receiving the draft response to public comments.

4.2 IPDES Inspections and Complaints

DEQ is authorized to conduct investigations, inspections, and enter upon private property to collect information in order to determine compliance with the IPDES program requirements (Idaho Code §§39-175E and 39-108). DEQ is also authorized to enter into an agreement with ISDA relating to the administration of the IPDES program to ensure the IPDES program and the ISDA state programs are coordinated and consistent. To the extent provided in this section, ISDA agrees to conduct inspections on behalf of DEQ in order to assist DEQ in the implementation of the IPDES program. To the maximum extent practicable, ISDA and DEQ will coordinate inspection efforts to ensure the efficient and effective implementation of the program and reduce duplicative efforts by sister agencies.

Pursuant to DEQ's Compliance Monitoring Strategy and consistent with national policy, large and medium CAFOs covered by an IPDES permit should be inspected using procedures consistent with EPA's Compliance Inspection Manual once every 5 years to evaluate compliance with the IPDES permit. These inspections should be carried out by a certified inspector for the purpose of evaluating compliance of the permitted CAFO with conditions identified in the permit.

ISDA inspects, according to the rules regulating their jurisdiction and in keeping with the purpose of ISDA, all CAFOs in Idaho annually regardless of IPDES permit coverage. ISDA inspectors certified by DEQ to conduct IPDES inspections will be able to evaluate practices associated with the land application of manure, litter, and process wastewater to determine if all land application discharges may be classified as exempt agricultural storm water. Information regarding CAFOs with potential to discharge to a surface water should be transmitted to DEQ according to the process laid out below. It is DEQ's sole authority to determine if an unpermitted discharge needs to be permitted.

DEQ will:

1. Reserve all of its inspection and investigation authorities, and may, as it deems appropriate, inspect any animal feeding operation (AFO) or CAFO for compliance with requirements of the IPDES program. DEQ will, in general, inform ISDA and the facility at least 7 days before conducting an inspection of a CAFO, unless DEQ deems there to be an immediate threat to public health or the environment presented from the discharge of pollutants to Waters of the United States (WOTUS).
2. Select IPDES permitted CAFOs for inspection in accordance with DEQ's Compliance Monitoring Strategy.
3. Coordinate any planned inspections with ISDA staff during the annual meeting.
4. Inform ISDA of the results of any inspections conducted by DEQ staff within 30 days of the inspection.
5. Forward to ISDA within 30 days any complaints received along with a record of the action(s) taken, if any, regarding a discharge of pollutants to surface water from a CAFO.
6. Forward to ISDA within 10 days any complaints received regarding a CAFO that does not relate to the IPDES program requirements.
7. Upon receipt of information from ISDA regarding a discharge to surface waters of the state from a non-IPDES permitted CAFO, be responsible for determining whether such a CAFO is required to obtain an IPDES permit.
8. Upon receipt of information from ISDA regarding a discharge to surface waters of the state from an AFO, be responsible for determining whether such a facility should be designated a CAFO, and whether it is required to obtain an IPDES permit.
9. Upon receipt of information from an inspection of an IPDES permitted CAFO, determine whether follow-up enforcement action is warranted.

ISDA will:

1. Perform inspections of non-IPDES permitted CAFOs at a frequency stipulated in ISDA rule and policy. ISDA and DEQ shall inform DEQ of the number of planned inspections of such facilities during the annual meeting. During an ISDA inspection, the inspector will evaluate the CAFO for the potential to discharge to surface waters of the state.
2. Inform the DEQ IPDES Program Manager and Compliance, Inspection, and Enforcement Lead via email of any non-IPDES permitted AFO or CAFOs with a potential to discharge to a surface water of the state. This information should be provided no later than 30 days after the inspection identifying the discharge. Upon request from DEQ, provide DEQ access to any available information necessary for DEQ to determine whether an IPDES permit is required.
3. Forward to DEQ via email any complaints received regarding a non-IPDES permitted CAFO discharging pollutants to surface waters of the state along with the record of any actions taken regarding the complaint. Upon request from DEQ, provide DEQ access to any available information necessary for DEQ to determine whether an IPDES permit is required.
4. Perform inspections of IPDES permitted CAFOs in order to determine compliance with IPDES permit requirements according to a schedule agreed to with DEQ at the annual meeting. Such inspections shall be conducted in accordance with EPA's Compliance Inspection Manual.
5. Forward to DEQ in an electronic format the results of inspections on IPDES permitted CAFOs carried out by certified ISDA inspectors.

6. In the event an ISDA inspector is denied access to any facility or information related to the IPDES program requirements, he or she shall notify DEQ. It shall be DEQ's responsibility to follow up with appropriate action in response to the denial.
7. ISDA inspectors shall be available as witnesses and to provide support in a DEQ IPDES program enforcement action related to an inspection conducted by the ISDA inspector.
8. An inspection by ISDA is the gathering of evidence and the physical observation of certain conditions and is not a determination of compliance with IPDES program requirements.

4.3 Enforcement Actions

DEQ retains all enforcement authority for any violations of the IPDES program requirements. ISDA and DEQ shall coordinate and consult with respect to enforcement for actions that violate both IPDES program requirements and the requirements of the ISDA programs.

5 Dispute Resolution

In the event of a dispute regarding implementation of this MOU, the parties shall make all reasonable efforts to resolve the dispute at the lowest staff level. Directors of both ISDA and DEQ will be notified of all disputes arising under this MOU. The parties may request the assistance of a mutually agreed upon facilitator at any time. If a facilitator is engaged, the timelines will be adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process;

1. Disputes that cannot be resolved between the immediate staff involved should be documented as to timing, issue, background, attempts for resolution and any other relevant facts. A request for resolution will be presented to the immediate supervisors.
2. If the dispute cannot be resolved at the immediate supervisors' level within 20 days, this step should be documented and the entire packet sent to the DEQ Water Quality Division Administrator and ISDA Animal Industries Division Administrator.
3. If the dispute cannot be resolved at the administrator level within 20 days, this step should be documented and the entire packet sent to the Deputy Directors of both agencies for resolution.

6 Alterations and Amendments

This MOU may be amended by mutual agreement of the parties. Such amendments will be documented in writing and signed by the MOU signatories, or their designees. If representatives of either agency encounter a situation where deviation from the above outlined processes and agreements is necessary and warranted, they should notify the other party as soon as possible, but no later than 10 days after the situation occurs, and begin a cooperative dialogue to reach an agreeable solution. The parties shall modify this agreement as needed to ensure proper program implementation and to maintain IPDES AFO/CAFO delegation from EPA.

7 Signature Page

John H. Tippets
Director,
Department of Environmental Quality

Date March 14, 2018

Celia R. Gould
Director,
Idaho State Department of Agriculture

Date 4/9/18