

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE IDAHO STATE DEPARTMENT OF AGRICULTURE
AND THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
REGARDING REGULATION OF BYPRODUCTS AND WASTEWATER FROM
CULTURED DAIRY PRODUCTION**

This Memorandum of Understanding (“MOU”) is between the Idaho State Department of Agriculture (“ISDA”), 2270 Old Penitentiary Rd., Boise, ID 83712, and the Idaho Department of Environmental Quality (“DEQ”), 1410 N. Hilton, Boise, ID 83706.

I. Purpose.

The purpose of this MOU is to interpret and apply the relative authorities and responsibilities of ISDA and DEQ relating to certain byproducts and wastewater from cultured dairy product (“CDP”) manufacturing, and to describe the circumstances under which those who are land applying certain byproducts and wastewater must obtain a reuse permit under the Recycled Water Rules, IDAPA 58.01.17.000 *et seq.*

II. Definitions.

- A. CDP Flush Water (“CDPFW”): a CDP processing byproduct and wastewater, registered with ISDA as a soil amendment if eligible, consisting of water and CDP solids, which are pumped directly to storage tanks following the CDP manufacturing process. It may include rinse water (also known as flush, push or whitewater), so long as the rinse water has not come in contact with any chemicals or sanitizing agents that have been used in any clean in place (“CIP”) or facility cleaning regimen. It may *not* contain water, chemicals or sanitizing agents which have been used in any CIP or facility cleaning regimen.
- B. CDP Wastewater (“CDPW”): a CDP processing byproduct and wastewater, registered with ISDA as a soil amendment if eligible, which is a byproduct of a facility’s CIP or facility cleaning regimen. It may consist of wastewater and solids, and contains or has come in contact with chemicals or sanitizing agents that have been used as a CIP or facility cleaning regimen.
- C. Nutrient Management Plan (“NMP”): a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e) (1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.
- D. Whey: whey is the liquid substance obtained by separating the coagulum from milk, cream, or skim milk during the process of manufacturing certain dairy products. Whey has multiple beneficial uses beyond the scope of this MOU. However, for the purpose of this MOU, whey may be applied as a soil amendment to the land under a voluntary NMP or as wastewater under a reuse permit.

III. Background.

As a result of CDP manufacturing, certain byproducts have become available for use in Idaho as soil amendments. These byproducts may be roughly divided into three types – whey, flush water (CDPFW) and wastewater (CDPW).

ISDA and DEQ are entering into this MOU to interpret and apply their responsibilities regarding whey, CDPFW and CDPW, in order to provide clarity and consistency to the two agencies, regulated entities and the public, particularly with regard to land application activities for the substances defined in Section II.

IV. ISDA Authorities.

A. Soil and Plant Amendments. - Under Title 22, Chapter 22, Idaho Code, ISDA has and exercises the authority and responsibility to:

1. Register soil and plant amendments, including review of product labels. I.C. § 22-2205 and IDAPA 02.06.41.000.010 - .030.
2. Collect tonnage fees on soil and plant amendments distributed in Idaho. I.C. § 22-2208.
3. Collect and analyze samples of soil and plant amendments distributed in Idaho to determine that the amendments comply with Idaho law, that they are in accordance with label guarantees, and that they are not adulterated or misbranded. I.C. §§ 22-2210, -2214, and -2215; and IDAPA 02.06.41.049 - .050.

ISDA does not have the authority to regulate the land application of soil and plant amendments under the Soil and Plant Amendments Law.

B. Nutrient Management Plans. ISDA reviews and approves NMPs for beef cattle animal feeding operations (I.C. § 22-4906); poultry animal feeding operations (I.C. § 25-4007) and dairies (I.C. § 37-401(4) – (8)).

Under Idaho law, agricultural operations other than those set forth above, and swine operations as set forth in Section V, are not required to have an NMP. Agricultural operations may voluntarily develop and implement an NMP.

V. DEQ Authorities.

A. Recycled Water. DEQ has the authority to issue pollution source permits pursuant to Idaho Code Section 39-115, and to review plans and specifications for wastewater treatment facilities under Idaho Code Section 39-118. Under those authorities, DEQ has promulgated the Recycled Water Rules (IDAPA 58.01.17.000 *et seq.*), which require, *inter alia*, that all reuse facilities obtain a reuse permit from DEQ. *See generally* IDAPA 58.01.17.300.

1. "Reuse" is defined as "[t]he use of recycled water for irrigation, ground water recharge, landscape impoundments, toilet flushing in commercial buildings, dust control, and other uses." IDAPA 58.01.17.200.35.
2. "Reuse facility or facility" is defined as "[a]ny structure or system designed or used for reuse of municipal or industrial wastewater including, but not limited to, industrial and municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the recycled water is applied. This does not include industrial in-plant processes and reuse of process waters within the plant." IDAPA 58.01.17.200.36.

The DEQ Director may exclude facilities from the permitting requirements "if covered adequately by other law." IDAPA 58.01.17.100.02(c).

B. Nutrient Management Plans. DEQ has the authority to review and approve NMPs for swine animal feeding operations. Title 39, Chapter 79, Idaho Code and IDAPA 58.01.09.200.07.

VI. Requirements for Land Application of Whey, CDPFW and CDPW.

ISDA and DEQ interpret and apply their authorities as follows:

A. An agricultural facility or operation which is a dairy, beef, poultry or swine animal feeding operation and receives and land applies whey which meets the following criteria will be exempt pursuant to IDAPA 58.01.17.100.02(c) from obtaining a permit under the Recycled Water Rules, IDAPA 58.01.17.000 *et seq* if:

1. The receiving facility possesses an NMP that has been duly approved by ISDA (in the case of dairies, beef animal feeding operations and poultry animal feeding operations) or DEQ (in the case of swine animal feeding operations) prior to application;
2. Whey that is land applied pursuant to an NMP may only be land applied during the growing season, unless specifically authorized by ISDA. Runoff from the application area must be prevented; and
3. The byproduct being received must be whey. The facility may not receive or land apply any CDPFW or CDPW byproducts or wastewater that have come in contact with CDPFW or CDPW.

B. An agricultural facility or operation which is not a dairy, beef CAFO, poultry or swine animal feeding operation and receives and land applies whey will be exempt pursuant to IDAPA 58.01.17.100.02(c) from obtaining a permit under the Recycled Water Rules, IDAPA 58.01.17.000 *et seq* if:

1. The receiving facility possesses an NMP that is consistent with 40 CFR 122.42(e)(1) and has been duly approved by ISDA; and
2. The NMP contains standards for managing the amount, placement, form and timing of the land application of nutrients and soil amendments that are equally

protective of the standards utilized for beef or poultry animal feeding operations. Such NMP will not address wastewater storage facilities and is restricted to the growing season, unless otherwise authorized by ISDA. Runoff from the application area must be prevented.

3. The agricultural facility or operation and ISDA has entered into an agreement which provides, *inter alia*, that failure to abide by the terms of the voluntary NMP will result in the facility or operation being required to obtain a reuse permit from DEQ under the Recycled Water Rules and immediate cessation of land application until a reuse permit is obtained.

C. An agricultural facility or operation must obtain a reuse permit from DEQ under the Recycled Water Rules prior to land applying CDPFW or CDPW.

D. An agricultural facility or operation which desires to receive and land-apply whey may obtain a reuse permit from DEQ under the Recycled Water Rules prior to land applying whey.

E. If an agricultural facility or operation is applying whey and has an NMP, any odor issues will be governed by the Agricultural Odor Management Act (Title 25, Chapter 38, Idaho Code) and rules promulgated thereunder.

F. If an agricultural facility or operation does not have an NMP, and/or is applying whey, CDPFW or CDPW under a reuse permit, any odor issues will be addressed via the Recycled Water Rules.

VII. **Contacts.**

ISDA

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VIII. **Effective Date, Duration, Termination.**


This MOU begins on August 9, 2013 and continues through July 31, 2015. This MOU may be terminated or extended by either party upon thirty (30) days written notice.

IX. **Amendments.**

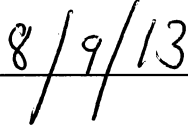
No amendment, change or modification or any term of this MOU shall be valid unless it is in writing and signed by both parties.

X. Signatures.

Idaho State Department of Agriculture




Celia R. Gould, Director




Date

Idaho Department of Environmental Quality



Curt Fransen, Director



Date