



RECYCLED WATER | INFORMATION SHEET NUMBER 9

User Agreements

May 2015

Background

An approval for water recycling from the NSW Office of Water (NOW) is given to a water utility for the supply of recycled water (sewage). While a third party may be identified on this approval, the approval conditions do not extend to a third party recipient. Accordingly, it is recommended that local water utilities enter a legally robust User Agreement when they are planning a recycled water scheme involving a third party/ies.

This Information Sheet has been developed for local water utilities to highlight key matters to consider in such an agreement.

What is a User Agreement?

A User Agreement for recycled water is an agreement between the supplier of recycled water and the recipient/s. It sets out the terms under which the scheme will operate. Under the agreement, the parties agree to a set of obligations and responsibilities under which the water recycling scheme will operate. The terms of the agreement are negotiated between the parties.

Why have User Agreements?

Having a formal User Agreement is a means of reducing the risk that recycled water will negatively affect the environment and/or public health.

All recycled water schemes should be managed in accordance with the Australian Guidelines for Water Recycling (AGWR, 2006) which covers source water through to its final end use.

Where a third party is involved, the utility may lose operational control of a scheme. There is potential for a utility to provide a high quality recycled water product to a third party, only to find that poor scheme management results in non-compliance with the AGWR. For example, this could be due to the third party recipient mixing the recycled water with poorer quality water sources or not implementing adequate site controls.

The success of a recycled water scheme may depend on how arrangements between suppliers and recipients of recycled water are undertaken.

The key for both suppliers and recipients or customers of recycled water is risk prevention to ensure that harm or damage is avoided in the first place. This requires having an effective management system to identify and control risks to the public and the environment at the point of use of the treated sewage, such as:

- a recycled water management plan prepared in accordance with the AGWR
- public liability insurance
- user agreement/s.

Purpose of a User Agreement?

The recycled water User Agreement may establish:

- the rights and obligations of the parties
- who should perform certain duties, when, and who bears the costs
- who bears the risks associated with supply and use of the recycled water
- who should insure or be indemnified against claims relating to these risks; and
- the commercial terms under which recycled water is supplied.

Legal Considerations

Recycled water suppliers and recipients should seek independent legal advice when negotiating and drafting a User Agreement.

Suppliers and recipients of recycled water must comply with other relevant State and Commonwealth laws, for example, laws relating to planning, trade practices, consumer protection, further treatment, distribution, on-supply or on-selling, product safety, private water utilities, competition, agricultural production, food safety, environment protection and public and work health and safety.

Elements of a User Agreement

Key elements of User Agreements usually include:

- Names, addresses and contact details for all parties involved
- Definitions of terms used
- Identification of point of supply of recycled water (handover point – location &/or timing)
- Duration of agreement
- Source, quantity, timing and duration of supply
- Quality of supply
- Allowable uses of the recycled water (&/or non-allowable use)
- Obligations and responsibilities of each party, including constraints, operation, management, cost and maintenance of:
 - Treatment, supply and delivery
 - Maintaining recycled water quality
 - Non treatment barriers and operational controls
 - Monitoring (eg. recycled water quality, quantity, soils, plants, irrigation, flow)
 - Incident management
 - Storage
 - On-supply
 - Reporting
- Ownership, testing and maintenance of infrastructure
- Reduction, interruption or discontinuation of supply and/or use
- Reporting and review
- Compliance with guidelines, codes, standards, management plans or other documents
- Legal considerations
- Signatures of each party

Considerations for negotiating a User Agreement

General

- Parties – supplier, recipient/s including owner/s if different
- Identified area and address/es of recycled water source/s and end use sites
- How long is agreement in place?
- Identify any relevant documents, standards, codes or guidelines
- List of definitions

Treatment

- To what standard will the RW be treated?
- What guidelines, codes or standards will be met?
- Is any further treatment contemplated?
- Who is responsible for treating the RW?

Supply and use of recycled water

- Who may use the RW?
- How is it installed, supplied, maintained?
- Volume of RW to be supplied? (eg. annual maximum or daily volume)
- When will it be supplied?
- What can (or cannot or both) the RW be used for?
- Where is it supplied (handover location)
- What quality will the RW be supplied at?
- Other safety and mitigation measures?
- Guarantees of quantity or quality?
- Exceptions to supply?
- Are there any constraints on its use?
- Is any on-supply contemplated?
- Are mixing of sources contemplated and what controls are required?
- What contingency and notification arrangements will be in place for discontinuation/interruption/lack of supply or demand for use? (eg. off spec water, wet weather or full storage)
- What guidelines, codes, standards or management plans will be met?
- What communication protocols will be in place?
- Safe handling education or induction for recipients/workers/visitors?
- Other safety and mitigation measures?
- Will any advice or ongoing support be available?
- Who is responsible for supply?
- Who is responsible for use of the RW?

Non-treatment barriers and operational controls

- Plumbing requirements
- Spray/irrigation methods/types, timing, trajectory
- Withholding periods post irrigation prior to harvest or public or stock access
- Livestock restrictions
- Public access restrictions

- Signage, fencing and locked gates
- Cross connection &/or backflow prevention controls
- Overflow prevention
- Runoff, deep drainage and surface ponding prevention
- Buffer zone setbacks to water courses, boundaries or to the public
- Irrigation scheduling, nutrient & salinity management
- Crop or pasture selection
- Food safety management plan?
- Site management plan?
- Who is responsible for the non-treatment barriers and operational controls?

Monitoring

- RW quality, flow/volume, irrigation, soils, groundwater, surface water, vegetation as applicable:
 - collection of samples
 - maintenance of equipment
 - laboratory transfers of samples
 - record keeping
 - reporting to other party (include frequency)
 - costs

Costs

- Installation, maintenance and/or operation of works
- Treatment, delivery, supply or use of the RW and any pricing review?
- Site maintenance and management of non-treatment barriers
- Monitoring - initial and ongoing (see above)
- Record keeping, transfer and review
- Who is responsible for costs?

Record keeping and communication

- Daily usage logs

- Regular meetings
- Initial and ongoing monitoring
- Incident management protocols
- Notification arrangements
- Records transfer between parties
- Scheme auditing and review

Legal considerations

- Non-compliance
- Indemnity and exclusion
- Force majeure and termination
- Dispute resolution
- Entry and access powers
- Insurance
- Other relevant state laws
- Other relevant commonwealth laws
- Consent

A number of model User Agreements are available in the references listed below.

More information

[Australian Guidelines for Water Recycling \(2006\)](#)

[Manual for recycled water agreements in Queensland \(2005\), EPA Qld.](#)

[The Reclaimed Water Agreement Manual \(2004\), Russell Kennedy & CSIRO.](#)

For more information visit www.water.nsw.gov.au or contact: rwapprovals@dpi.nsw.gov.au

More information

[The Australian Guidelines for Water Recycling \(2006\)](#)

For more information visit www.water.nsw.gov.au or contact: rwapprovals@dpi.nsw.gov.au

Acknowledgments

NSW Health

Atom Consulting

City Water Technology

© State of New South Wales through the Department of Trade and Investment, Regional Infrastructure and Services 2014. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Primary Industries as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser. This Fact Sheet is not a legal document.

Published by the Department of Primary Industries, a division of NSW Department of Trade and Investment, Regional Infrastructure and Services.