

# End-user agreements

## Information sheet – Recycled water

### Background

A notification for water recycling from the DoH Public Health Directorate 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 an end-user agreement?

An end-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 end-user agreements?

Having a formal end-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 an end-user agreement?

The recycled water end-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
- 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 an end-user agreement.

Suppliers and recipients of recycled water must comply with other relevant Territory 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 end-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 (e.g. 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 an end-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? (e.g. 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? (e.g. 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 end-user agreements are available in the references listed below.

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## References

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

Contact Department of Health – Public Health Directorate by calling (08) 8922 7152 or email [wastewater@nt.gov.au](mailto:wastewater@nt.gov.au)

This information was adapted from the Recycled Water Information Sheet series © Department of Primary Industries, New South Wales Government.