



December 29, 2025

Hank Allen
hank@seatofarm.com

Subject: Request for DEQ Review of Agricultural Reuse Standards in Light of Emerging Contaminants

Dear Mr. Allen:

Thank you for taking the time to write and for clearly articulating your concerns regarding recycled wastewater reuse for agricultural irrigation in Idaho. I appreciate the thoughtful way you framed this issue and your emphasis on long-term soil health, groundwater protection, and the integrity of Idaho's agricultural resources.

The Department of Environmental Quality regulates recycled water projects using a fit-for-purpose framework grounded in the best available science and applicable federal and state authority. Recycled water is treated to standards that correspond to its intended use - such as irrigation, industrial use, or dust suppression - and are designed to protect public health and the environment. These requirements are implemented through enforceable, site-specific permits.

While there is no federal regulatory program governing recycled water reuse, its use is recognized and addressed within existing federal frameworks. For example, the U.S. Food and Drug Administration acknowledges that recycled water may be used in agricultural operations and, under the Food Safety Modernization Act Produce Safety Rule, agricultural water quality and treatment requirements apply regardless of source, including recycled water. Available literature indicates that many state recycled water programs impose treatment and management requirements that are more advanced than federal food safety requirements for produce and sprouts. This reflects a broader recognition that properly treated recycled water, when managed under protective standards, can be used for agricultural irrigation. For reference here are a couple resources: Reusing Water for Agricultural Activities Resources (<https://www.epa.gov/waterreuse/reusing-water-agricultural-activities-resources#:~:text=Using%20recy%E2%80%A6>) and the Water Research Foundation (<https://www.waterrf.org/>).

Consistent with this approach, recycled water projects in Idaho are authorized only when the treatment level and management practices are appropriate for the intended use. Permits include requirements for treatment, disinfection, monitoring, operational reliability, and use restrictions, and are subject to public notice and comment prior to issuance. This process allows DEQ to evaluate site-specific conditions and proposed uses and to consider public input before making a final decision.

You are correct that Idaho's recycled water rules (IDAPA 58.01.17) were developed primarily to address pathogen control and conventional wastewater parameters, reflecting the scientific understanding and

statutory authority available when the rules were adopted. Emerging contaminants such as PFAS, pharmaceuticals, hormones, and microplastics are an area of increasing national focus, and DEQ continues to monitor evolving science, federal policy developments, and approaches taken by other states as this body of information continues to develop.

At the same time, DEQ's authority is defined by Idaho statute and rule. Idaho Code § 39-107D applies to any rule proposed by the department that is broader in scope or more stringent than federal law, or that regulates an activity not regulated at the federal level. When triggered, this statute requires the department to clearly identify how a proposed rule exceeds federal requirements and to support that proposal with the best available peer-reviewed science, including identification of affected populations and environmental receptors, quantification of risk and uncertainty, and documentation of supporting and conflicting studies. These requirements reflect deliberate legislative direction regarding how Idaho agencies may consider regulatory approaches that go beyond federal baselines.

Because EPA has not established Clean Water Act water quality criteria or recycled water reuse standards for PFAS or other emerging contaminants, any effort by DEQ to impose new statewide treatment requirements or restrictions for these contaminants would likely constitute regulation broader in scope than federal law and therefore trigger the requirements of Idaho Code § 39-107D. While DEQ could initiate such a rulemaking, doing so would require extensive scientific justification, stakeholder engagement, and legislative review consistent with that statute. In the absence of a clear federal regulatory framework or sufficiently mature consensus science suitable for statewide application, meeting those requirements would be challenging and uncertain. In short, Idaho law establishes a high bar for adopting new statewide environmental requirements without federal standards or legislative direction.

Under IDAPA 58.01.17, municipal recycled water treated to a Class A standard is expressly allowed for use in irrigation for all crops and landscape applications when treated to applicable standards and managed in accordance with the specific permit requirements. Any expansion of regulatory requirements for agricultural reuse - particularly actions that would impose blanket treatment standards, restrict reuse, or differentiate reuse based on crop type - would require a formal rulemaking process and, in some cases, legislative direction.

Other states have adopted recycled water frameworks that reflect their own statutory authorities and policy choices. Colorado does allow irrigation of both commercial and non-commercial edible crops using reclaimed water under defined treatment and management categories, including Category 3 Plus reclaimed water treated with secondary treatment, filtration, and disinfection (5 Code Colo. Regs. § 1002 84). Washington, California, and Idaho likewise rely on treatment-based standards and use controls rather than categorical prohibitions based on crop type. While some states have chosen to adopt more precautionary or restrictive approaches, Idaho's framework reflects deliberate legislative choices regarding how environmental regulations are developed and implemented. DEQ does not have unilateral authority to impose new prohibitions or treatment requirements for agricultural reuse absent a rulemaking process conducted consistent with Idaho law.

With respect to irrigation canals, it is important to note that canal systems in Idaho are managed primarily for agricultural irrigation and are part of a broader water delivery system. Canal water commonly includes a mix of inputs such as diverted surface water, agricultural return flows, nonpoint source inputs, and lawfully permitted and treated wastewater authorized by Idaho Pollutant Discharge Elimination System (IPDES) permits. Recycled water projects are evaluated within this context to ensure they are protective and compatible with downstream uses. Irrigation canal water is not intended for use

as drinking water or other potable source however, it is regulated based on its intended non-potable application.

I appreciate your clarification that this request is not opposition to water reuse, but rather a call for updated, science-based evaluation. DEQ remains engaged in national discussions with EPA and other states as research, analytical methods, and risk assessments related to emerging contaminants continue to develop. As that body of science matures and as federal direction becomes clearer, those developments will inform any future consideration of recycled water policy in Idaho. DEQ's role is to ensure that recycled water projects meet applicable requirements and are implemented in a manner that is safe, protective, and consistent with Idaho law and current scientific understanding.

Because recycled water reuse is authorized and implemented through site-specific permits, the most effective opportunity for public engagement is during the recycled water permitting process. Members of the public are encouraged to provide comments on draft recycled water permits when they are noticed, allowing DEQ to consider project-specific conditions, proposed uses, and management practices prior to permit issuance. You can subscribe to DEQ's public comment page at <https://www.deq.idaho.gov/public-comment-opportunities/> to make sure you're notified of any potential public comment opportunities.

Public participation is also welcome during formal rulemaking or guidance development processes, and interested parties are encouraged to engage directly with municipalities proposing recycled water reuse to better understand individual projects. At this time, DEQ is reviewing a number of chapters as prescribed by Idaho Code 67-5292 and will take forward into negotiated rulemaking those that are identified by the agency and the Governor's office as necessary.

Thank you again for taking the time to raise these questions and for your interest in how recycled water is regulated in Idaho. DEQ values informed public engagement on complex water quality issues and appreciates the opportunity to explain the legal and scientific framework under which the department operates. We will continue to monitor emerging science and federal policy developments related to recycled water reuse and emerging contaminants, and we will apply that information consistent with Idaho law and established regulatory processes as it becomes available.

Sincerely,



Mary Anne Nelson, PhD
Administrator, Surface and Wastewater Division