MEMORANDUM OF UNDERSTANDING BETWEEN THE IDAHO STATE DEPARTMENT OF AGRICULTURE AND THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING REGULATION OF COMPOSTING FACILITIES

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

I. Purpose.

The purpose of this MOU is to interpret and clarify the relative authorities and responsibilities of ISDA and DEQ relating to the management and processing of waste materials in certain composting facilities, the application and use of certain waste materials, and to provide that until such time as ISDA promulgates rules governing those facilities, DEQ will continue to regulate such facilities.

II. Background.

"Solid Waste" in Idaho is regulated by DEQ and is defined to include "... discarded materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community activities...." DEQ has traditionally regulated solid waste "Processing Facilities" including the operation of commercial composting facilities pursuant to the Solid Waste Management Rules, IDAPA 58.01.06. *et. seq.* Per the Rules, however, DEQ excludes from regulation, "any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture." IDAPA 58.01.06.001.03.b.iii.

In 1998, the Idaho Legislature enacted Idaho Code § 22-110, which provides authority to ISDA to regulate "agricultural solid waste, agricultural composting and other similar agricultural activities to safeguard and protect animals, man and the environment." That section further provides that ISDA may " 'collaborate' with any state agency, federal agency or other governmental entity in the development of rules promulgated pursuant to this action." *Id.*

As described in more detail below, ISDA has statutory authority over management of livestock waste on dairies, beef confined animal feeding operations ("CAFOs") and poultry CAFOs. As also described in more detail below, ISDA has promulgated rules pertaining to agricultural waste and agricultural compost in specific, narrowly defined categories.

Other than those specific categories, general regulatory authority over compost, compost production and compost facilities remains with DEQ.

ISDA and DEQ are entering into this MOU to provide clarity and consistency to the two agencies, to regulated entities and to the public concerning the agencies' relative responsibilities regarding composting operations.

III. ISDA Authorities.

A. Soil and Plant Amendments. Under the Soil and Plant Amendment Act of 2001, 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 nor does it exercise the authority to regulate the production or land application of soil and plant amendments under the Soil and Plant Amendments Law.

B. Commercial Fertilizer. Under the Idaho Fertilizer Act of 2000, Title 22, Chapter 6, Idaho Code ("Commercial Fertilizer Law"), ISDA has and exercises the authority to:

1. Register commercial fertilizers, including review of product labels. I.C. § 22-605 and IDAPA 02.06.12.010 *et seq.*
2. Collect tonnage fees on commercial fertilizers distributed in Idaho. I.C. § 22-609.
3. Inspect, collect and analyze commercial fertilizers samples to ensure that they comply with Idaho law, that they are in accordance with label guarantees, and that they are not adulterated or misbranded. I.C. § 22-610 through -614.

ISDA does not have nor does it exercise the authority to regulate the production or land application of commercial fertilizers under the Commercial Fertilizer Law.

C. Nutrient Management Plans ("NMPs"). ISDA has and exercises authority to review and approve NMPs for beef cattle animal feeding operations (I.C. § 22-4906); poultry animal feeding operations (I.C. § 25-4007) and dairies (I.C. § 37-606).

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

D. Stockpiling of Agricultural Waste. ISDA has promulgated the Rules Governing the Stockpiling of Agricultural Waste, IDAPA 02.04.31.000 *et seq.*, pursuant to Idaho Code § 22-110. Under those Rules:

1. "Agricultural waste" is specifically defined as and limited to "livestock waste." IDAPA 02.04.31.010.02.
2. "[L]ivestock waste" is defined as "manure that may also contain bedding, spilled feed, feathers, water, or soil. It also includes wastes not particularly associated

with manure, such as milking center or wasting wastes, milk, feed leachate, or livestock carcasses or parts thereof." IDAPA 02.04.31.010.08.

3. Other types of agricultural waste are not regulated under the Rules.

E. Dead Animals. ISDA has and exercises statutory authority to regulate dead animal movement and disposal under Idaho Code Section 25-237 and the Rules Governing Dead Animal Movement and Disposal, IDAPA 02.04.17.030.000 *et seq.* Composting of dead animals is allowed under the Rules after specific approval by the Administrator of the Division of Animal Industries. *See* IDAPA 02.04.17.030.06.

F. Cull Onions and Potatoes. ISDA has promulgated the Rules Governing the Disposal of Cull Onions and Potatoes. IDAPA 02.06.17.000 *et. seq.* Under those Rules:

1. "Cull onions" are specifically defined as "those onions that are not marketable or useable for consumption or are generally considered waste, and shall include the residue left in the field from the production of onion seed as well as commercial onions." IDAPA 02.06.17.010.01.
2. "Cull potatoes" are specifically defined as "those potatoes that are not marketable or useable for consumption or as seed potatoes and shall include the residue left in the field from commercial or seed potato production, or as a result of spoilage while in storage." IDAPA 02.06.17.010.02.
3. Neither definition includes onion or potato manufacturing or process waste.

G. Other Composting Operations and Activities. Other than as set forth above, ISDA has not promulgated any specific regulations related to the siting or operation of "agricultural composting" facilities, has not defined the scope of its regulatory authority over "agricultural composting" generally and has not defined the meaning of "agricultural composting" so as to differentiate it from other forms of composting.

IV. DEQ Authorities

A. Solid Waste Disposal. Under the Idaho Environmental Protection and Health Act, Title 39, Chapter 1, DEQ regulates Solid Waste Disposal as follows:

1. DEQ has authority to "formulate and recommend to the board, rules as may be necessary to deal with problems related to water pollution, air pollution, solid waste disposal, and licensure and certification requirements pertinent thereto; . . ." I.C. § 39-105(2).
2. Solid waste is defined as "garbage, refuse, radionuclides and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community activities. . . .: I.C. § 39-103(13).
3. Solid waste disposal means "the collection, storage, treatment, utilization, processing or final disposal of solid waste." I.C. § 39-103(14).

B. Processing of Solid Waste. Under the Solid Waste Management Rules, IDAPA 58.01.06, DEQ regulates various solid waste management activities including the processing of solid waste.

1. IDAPA 58.01.06.005.32 defines a processing facility as "[a] facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers."
2. IDAPA 58.01.06.009 provides facility classifications for solid waste management facilities regulated under these rules, including four (4) classifications for processing facilities based on the volume of solid waste and waste characteristics managed at a particular facility.
3. IDAPA 58.01.06.010 through .013 identifies requirements applicable to the associated tier level.

C. Hazardous and Deleterious Material Storage. The Water Quality Standards, IDAPA 58.01.02.800, prohibit the storage, disposal or accumulation of hazardous and deleterious materials "adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to insure that those materials will not enter state waters as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third party activities."

1. IDAPA 58.01.02.010.20 defines deleterious material as "any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms."

D. Releases Degrading Ground Water Quality. The Ground Water Quality Rule, IDAPA 58.01.11.400.01 prohibits any person from causing or allowing the release, spilling, leaking, emission , discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that:

1. Causes a ground water quality standard to be exceeded;
2. Injures a beneficial use of ground water; or
3. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.

E. Swine CAFOs. DEQ regulates swine CAFOs as set forth in IDAPA 58.01.09.000 *et seq.*

V. Concurrence

ISDA and DEQ concur that unless properly regulated, the siting and operation of composting facilities can pose concerns for human health and the environment.

ISDA and DEQ concur that the existing regulations concerning composting facilities (other than as specifically set forth above in Section III) in the DEQ's Solid Waste Management Rules are

adequate to protect human health and the environment, and that promulgating separate rules would be duplicative and unnecessary at this time.

Accordingly, ISDA and DEQ agree that, until such time as ISDA promulgates rules relating to operation of agricultural composting and such rules define agricultural composting, DEQ will regulate all composting facilities in Idaho, other than as specifically set forth in Section III above, pursuant to the Idaho Environmental Protection and Health Act and the Solid Waste Management Rules. ISDA will continue to regulate any composting and agriculture waste activities identified in Section III herein.

VI. Effective Date and Application to Existing Facilities

This MOU shall be effective as of the date of the signature by the Directors of ISDA and DEQ and shall continue in effect until such time as ISDA enacts regulations relating to the subject matter hereof or until such time as it is terminated in writing by either party. At such time that ISDA initiates rulemaking for agricultural composting, ISDA and DEQ will work cooperatively pursuant to Idaho Code § 22-110 to ensure agency authorities are adequately defined.

This MOU is not intended to nor does it alter the existing law or otherwise modify the respective regulatory authority of either ISDA or DEQ. Other than as set forth in Section III, existing composting facilities shall be regulated consistent with this MOU and the DEQ's Solid Waste Management Rules until such time as ISDA promulgates rules.

VII. Amendments

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

VI. Signatures

Idaho State Department of Agriculture

Celia R. Gould, Director

4/14/15
Date

Idaho Department of Environmental Quality

Curt Fransen, Director

4/21/15
Date