STATE OF IDAHO

DEPARTMENT OF ENVIRONMENTAL QUALITY

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James E. Risch, Governor
Toni Hardesty, Director

DEQ POLICY MEMORANDUM
PM06-4

PLAN AND SPECIFICATION REVIEW DISPUTE RESOLUTION ADVISORY PANEL FOR ENGINEERING DISPUTES

STATEMENT OF PURPOSE

"The Department shall review plans to determine compliance with applicable facility standards and engineering standards of care. As long as the plans and specifications comply with applicable facility and design standards, the Department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with design standards" (I.C. §39-118). The department in conducting its duty to determine compliance with applicable standards may from time to time be in dispute with the owner's engineer, when the plan and specifications submitted do not meet the applicable facility standards or engineering standards of care. This policy establishes a statewide Dispute Resolution Advisory Panel (Panel). The Panel may be convened for the purpose of conducting reviews of engineering disputes evolving from the plan and specification process in lieu of pursuing the established formal appeal process through the Board of the Idaho Department of Environmental Quality (DEQ).

BACKGROUND

The Department has established an informal dispute resolution process that involves peer review. Any dispute that arises between a design engineer and a DEQ reviewing engineer can be initiated by the aggrieved party at the office location where the project was in process of review at the time of dispute. DEQ initiates actions to expedite the review process to include review by the Regional Engineering Manager, Peer Groups, Regional Administrator, Water Quality Administrator, and, ultimately to the Director of the Department for final action.

Filing a contested case review may be available to resolve certain disputes pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23. This process allows review by the Board of Environmental Quality and eventually an appeal to state District Court.

Experience tells us that the informal resolution process and/or the formal appeal process, may not resolve plan and specification reviews in a timely manner. As such, the Department proposes to implement a pilot "Dispute Resolution Process" that is comprised of professional engineers from the public and private sector that will be charged to provide the agency with

recommendations on how to effectively and efficiently resolve engineering disputes on a timely basis.

STATEMENT OF POLICY

Dispute Resolution Advisory Panel

DEQ through this policy creates a "Dispute Resolution Advisory Panel". Members of the Panel shall be appointed by, and serve at the pleasure of, the Director of the Department. The charge to Panel members is to provide the Department with appropriate recommendations on resolving engineering disputes for water and sewer system projects. This policy shall be in effect as a "trial or pilot" for one (1) year upon the adoption of this policy. The Director will determine the effectiveness of the Panel during the one (1) year period and may elect to suspend, continue, amend or make the policy permanent.

The Panel appointed by the Director shall be comprised of licensed professional engineers experienced in civil engineering projects associated with water and sewer infrastructure. The panel shall be composed of five (5) members. The Department will draw upon a pool of candidates nominated from any professional engineering association, organization or company. Each organization, association or company may nominate up to four (4) senior engineers to serve as panel members; two (2) of which will have specialty experience in water designs, and two (2) with specialty expertise in sewer design. The nominees will have a resume submitted by the nominating organization and will be selected by the Director based on their qualifications and experience. The DEQ Director will appoint four (4) candidates from the lists presented and a stand-by or alternate panel member should a panel member not be available. The Director will additionally appoint one (1) senior water and sewer engineer staff engineer from DEQ to participate on this panel. Panel members will be expected to disclose any conflicts of interest related to the dispute brought to the panel.

Panel members shall be volunteers as defined in Idaho Code § 67-2334. Panel members shall serve on the panel without financial remuneration of any kind and shall not be considered employees of DEQ. Recommendations of panel members shall not be binding on DEQ or any other party to a dispute, and panel members shall not be responsible for the decisions taken by the agency or other parties following submission of a recommendation.

Duties of the Panel:

The members of the Panel will elect a Chair to conduct panel reviews, and a Secretary to develop and document Panel recommendations.

This Panel will only convene to hear issues that address substantive engineering disputes. The Panel will restrict its review to these issues and will not address regulatory, legal, or other non-engineering disputes. Submittals by the aggrieved party will be made to the Panel through the local Regional Administrator where the project is located.

The Panel will meet or teleconference as soon as schedules permit and will require both parties to submit specific issues in writing. The issues papers submitted by both parties shall, at a minimum, address what is at issue, who is involved, the consequence of the action/inaction, and recommendations for resolution of the issue.

The Panel will determine, based on the issues presented, if a review by the Panel is warranted. This determination will be based on any outstanding engineering aspects of the dispute. If the dispute does not involve a substantive engineering issue, then the issue will be dismissed without recommendation and returned to the respective Regional Administrator.

If the Panel does decide to review the dispute, the Panel will meet on an as needed basis as soon as schedules permit to review all disputes in need of resolution.. The decision(s) of the Panel will be based only on the written information provided by both parties. There are no opportunities to hear oral arguments.

Based on a review of each dispute, the Panel will make written recommendations to the Water Quality Administrator. Recommendations will be documented and signed by the Chair and forwarded to the Water Quality Administrator for decision. The recommendations of the Panel are intended to assist in resolving disputes and are not binding on the Department or any other party to the dispute.

IMPLEMENTATION

This policy replaces the original policy PM05-2 which was effective for one year. This policy shall be effective immediately.

DATED this 2nd day of November, 2006

TONI HARDESTY
DIRECTOR