

Technical Review Panel Guidance

This guidance provides information concerning the process that a person responsible for conducting the remediation may follow to dispute a site-specific technical decision made by the Site Remediation and Waste Management Program. The guidance applies to the remediation of sites and to landfill closures.

Background

In implementing the Site Remediation and Waste Management program (SRWM), the Department has found that there are times when parties responsible for remediating a site or for implementing landfill closure requirements ("Remediating Parties") have technical disputes with case managers and other involved personnel within SRWM ("SRWM Staff Members") concerning the proper application of closure or remediation requirements at sites. SRWM has established the Technical Review Panel and developed these procedures, which a remediating party must follow in order to raise issues for consideration by the panel, in order to resolve these disputes as quickly as possible to ensure that the remediation of sites or the proper closing of landfills occurs in an expeditious and cost efficient manner.

This guidance concerning the Technical Review Panel policy establishes the process for resolving technical disputes between a Remediating Party and SRWM Staff Members. As of December 5, 2006, remediating parties seeking resolution of a technical dispute through the Technical Review Panel must follow the process outlined below. Please note that the Department has established this Technical Review Panel guidance as a matter of discretion to expedite and improve governmental decision-making. This Technical Review Panel guidance shall not be construed to give rise to legal or equitable rights or remedies beyond those afforded under current law.

Remediating Parties are reminded that during the Technical Review Panel process, they are responsible for oversight costs incurred by SRWM Staff Members. This includes the time of SRWM Staff Members (including the applicable Bureau Chiefs and Assistant

Directors) to review the requests and any supporting documentation, and the time spent discussing the technical dispute in meetings.

Process

I. Elevation of Dispute through Chain of Command

1. After receipt of a Notice of Deficiency (NOD), the Remediating Party may identify technical issues concerning deficiencies noted in the NOD for which there is disagreement between the Remediating Party and the Case Manager . The Remediating Party and the Case Manager should attempt to resolve these technical disputes via telephone, email and/or meetings, as appropriate. The timeframe for resolution is limited by the compliance deadline established in the NOD, as altered by any extensions that granted by the Department in writing.
2. If the Remediating Party and the Case Manager cannot resolve a technical dispute(s) in a timely manner, to be determined by the Case Manager, the Remediating Party must elevate the technical dispute to the Case Manager's immediate supervisor for resolution in order to be eligible for review by the Technical Review Panel. If the dispute cannot be resolved with the Case Manager's immediate supervisor, the Remediating Party must continue raising the issue up the Case Manager's management chain to the Bureau Chief level.
3. Upon a determination by the Case Manager's Bureau Chief that the technical dispute cannot be resolved at the Bureau Chief level, the Bureau Chief will so notify the Remediating Party in writing. The Bureau Chief will issue to the Remediating Party a written determination of their decision regarding the technical issue that is the subject of the dispute. Remediating Parties who have raised technical issues through the Bureau Chief level, and who are still unsatisfied with the Bureau Chief's decision, may proceed with a request to convene the Technical Review Panel.
4. New information, not previously considered by the Case Manager and management chain, may not be the basis for a Technical Review Panel request. Any information

concerning the technical dispute not previously submitted to the Case Manager must be submitted and reviewed by that Case Manager prior to the Remediating Party submitting a request to convene the Technical Review Panel.

II Convening of Technical Review Panel

1. If a Remediating Party is not satisfied with the decision documented by the Bureau Chief, the Remediating Party may submit a request that SRWM convene the Technical Review Panel in order to review the dispute. The request shall be made in writing to the Assistant Commissioner of the SWRM Program at the following address:

Office of the Assistant Commissioner

Site Remediation and Waste Management

P.O. Box 028

401 East State Street, Floor 6

Trenton, NJ 08625-0028

Attention: Technical Review Panel Request

2. The Technical Review Panel Request shall include the following:
- a. A brief statement outlining the technical dispute(s), including substantive documentation of the Remediating Party's position.
 - b. A brief statement concerning the efforts to resolve the technical dispute through discussions with SRWM Staff Members as outlined in I. above.
 - c. A description of SRWM imposed deadlines that may be impacted by a review of the technical dispute(s) by the Technical Review Panel. If the Remediating Party wants a stay of any deadline pending a decision of the Technical Review

Panel, the Remediating Party must include the request and the reasons for the request as part of the Technical Review Request. The stay request must specify the deadline(s) for which the stay is being requested.

d. If the Remediating Party believes that the technical dispute(s) concerns issues that involve another program within the Department and would like a representative of that program to be a member of the Technical Review Panel, the desired program shall be identified and reasons shall be explicitly stated in the request to convene the Technical Review Panel.

e. The Remediating Party may request a meeting with the Technical Review Panel. All meeting requests must include the specific issue(s) for discussion in the meeting as well as three dates and times when the Remediating Party would be available for such a meeting. SRWM will determine whether a meeting will be held, or whether the technical dispute(s) will be decided on the basis of written submissions.

3. Upon a determination that the request to convene the Technical Review Panel is complete as per II.2.a. through e. above, the Assistant Commissioner will direct the request to the appropriate Assistant Director for review and approval or denial of the request as outlined in III. below.

III. Approval/Disapproval of Technical Review Panel Request and Issuance of a Notice of Convening the Technical Review Panel

1. The Assistant Director will review the request to convene the Technical Review Panel to determine the eligibility of the request based on the following:

a. The technical dispute(s) that is the subject of the Technical Review Panel request does not concern challenges to enforcement actions, including a Notice of Violation or penalty assessment, matters identified in a Notice of Intent to Terminate, a natural resource damage assessment, or matters related to liability for remediation.

- b. The Remediating Party has followed all of the procedures for requesting review by the Technical Review Panel outlined in I. above.
 - c. The request contains only information that has been previously presented to the SRWM Staff Members who reviewed the technical dispute(s) prior to the request to convene the Technical Review Panel. If new information not previously considered is presented as part of the request, the request will be denied and the Remediating Party will be directed to present the new information to the Case Manager and management chain for their further consideration.
 - d. The technical dispute(s) that is the subject of the review request does not concern matters of policy.
2. The Assistant Director will notify the Remediating Party in writing of the approval or denial of the request to convene the Technical Review Panel.
- a. If the Assistant Director approves the request to convene the Technical Review Panel, the approval letter will include the following:
 - i. Specification as to which requests for stays of deadlines and schedules are approved and which are denied, as applicable. The deadlines and schedules that will be stayed pending a decision by the Technical Review Panel subject to the following exceptions:
 - (1) The Department may at any time require the Remediating Party to take any measures necessary for the protection of public health, safety or the environment.
 - (2) The Department will not stay any deadlines or schedules expiring prior to the Remediating Party's submission of a request to convene the Technical Review Panel.
 - (3) The Department will not stay any deadlines not affected by the technical dispute.

ii. A statement of the technical dispute(s) to be reviewed by the Technical Review Panel.

iii. If the Assistant Director determines that a meeting is necessary, the date, time and place of the meeting will be specified. The Assistant Director will try to accommodate any dates and times proposed by the Remediating Party. If these dates and times cannot be accommodated, the Remediating Party shall make itself available at the date and time established by the Assistant Director.

b. If the Assistant Director denies the request to convene the Technical Review Panel, the denial letter will include the following:

i. The reason(s) for the denial of the request.

ii. Denial of all requests for the stay(s) of deadlines and schedules made by the Remediating Party in the request to convene the Technical Review Panel.

iii. If needed, establishment of revised deadlines and schedules if existing deadlines were impacted due to delays related to the SRWM's process of consideration of the Technical Review Panel request.

IV. Technical Review Panel Process & Decision

1. The Technical Review Panel will be comprised of three Assistant Directors or their designated manager. The designated manager cannot be the Bureau Chief that had previously considered the issue.

2. Upon approval of a request to convene the Technical Review Panel, The Assistant Director will transmit to the other members of the Panel a copy of the request submitted by the Remediating Party, including all supporting documentation.

3. The Technical Review Panel will discuss the technical dispute(s) with appropriate DEP staff and conduct any research it deems appropriate. In cases where a meeting is held, the Technical Review Panel shall discuss the issues with the Remediating Party.

4. The Technical Review Panel's decision resolving the technical dispute will be transmitted in writing to the submitting Remediating Party, with copies to the Technical Review Panel members and the appropriate SRWM Staff Members. The decision letter will include any new compliance dates necessitated by the decision.

5. SRWM shall retain copies of all Technical Review Panel decisions to ensure consistency in future technical disputes. In addition, the Department will post Technical Review Panel decisions on its website at www.nj.gov/dep/srp/guidance/techreview.

Revised December 4, 2006