



Differing Professional Opinions Program

2006 Program Review

Office of Enforcement
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EXECUTIVE SUMMARY

A free and open discussion of differing professional views is essential to the development of sound regulatory policy and decisions. Therefore, since 1976, the U.S. Nuclear Regulatory Commission (NRC) has provided ways for employees to bring their differing views to the attention of the highest levels of management. The Commission's policy on this subject appears in Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program," revised and issued on May 16, 2004.

In accordance with the assessment responsibilities outlined in section 037 of MD 10.159, the Differing Professional Opinions Program Manager (DPOPM) is responsible for conducting an in-depth annual program review to determine if the program met its objectives.

With the exception of the timeliness goals for differing professional opinions (DPO), the DPO Program generally met its objectives for DPOs completed during the review period. Although no submitters received monetary or time-off awards, the Executive Director for Operations (EDO) recognized all submitters with a Certificate of Appreciation for their willingness to step forward and raise differing views.

The 2005 DPO Program Review identified a number of specific issues and opportunities for improvement. Many actions in response to the 2005 DPO Program Review are complete, and good progress has been made on the others:

- Additional guidance and tools to aid the staff in implementing the DPO process were developed, such as templates for DPO correspondence, handling instructions for DPO records, and instructions for developing an agreed upon "Statement of Concern."
- DPO participants were coached on the DPO process and DPO Program expectations throughout the process.
- Employee outreach activities were conducted to improve employee understanding of and confidence in the DPO Program.
- Several office procedures were eliminated or revised to ensure that the guidance is consistent with MD 10.159 and will not adversely impact the willingness or ability of employees to express a differing opinion.
- Additional information (such as DPO Program Reviews and summaries of closed DPOs) was continually posted on the DPO Web site to increase employee awareness and understanding.

MD 10.159 is being revised, and the DPOPM is continuing to work with the Office of Human Resources in developing appropriate training for new supervisors and managers regarding the DPO process and the new agencywide Non-Concurrence Process.

2006 DPO Program Review

The 2006 DPO Program Review identified the following process improvement recommendation to the EDO:

Approve a deviation from the provisions of the NRC Management Directives System (in accordance with section 1.1-033(c) of MD 1.1, "NRC Management Directives System") and eliminate the process step of office managers reviewing and returning DPO Panel reports addressed in section D(4)(g) of the MD 10.159 Handbook, resulting in the DPO processing strategy discussed in Appendix F to this report.

The review of feedback and lessons learned has highlighted areas where changes are warranted to improve program implementation particularly with respect to timeliness of DPO Decisions. The small number of DPOs (six opened in calendar year 2006) under review in 2006 made it difficult to draw conclusions about the long-term effectiveness of the DPO Program. As additional experience is gained, the staff will continue to evaluate the DPO Program, including program effectiveness, and make necessary changes.

BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) must often make difficult decisions on the regulation of nuclear power and the civilian uses of nuclear materials—decisions that can have profound impacts on public health and safety and the environment. In making important decisions, the Commission must have the best information available.

To successfully meet its regulatory responsibilities, the agency must ensure that the decision-making process considers all points of view and that the organizational climate promotes open discussion.

The NRC Open Door Policy (first communicated to agency employees in 1976) and the NRC Differing Professional Opinions Policy (formally established in 1980) illustrate the NRC's commitment to the free and open discussion of professional views. These policies permit employees at all levels to provide professional views on virtually all matters pertaining to the agency's mission.

In 1987, a Commission-appointed panel conducted an extensive review of these policies. As a result of the panel's findings and recommendations (published in NUREG-1290, "Differing Professional Opinions"), the agency issued Inspection Manual Chapter 4125, "Differing Professional Views or Opinions," and Inspection Manual Chapter 4126, "Open Door Policy," on September 30, 1988.

In December 1989, the Executive Director for Operations (EDO) appointed a special review panel (SRP) to assess the revised process for raising differing views and opinions, including (1) how well employees understand the process, (2) its effectiveness, and (3) the organizational climate for having such views aired and properly decided. The agency published the panel's findings in NUREG-1414, "Differing Professional Views or Opinions." As a result of the panel's findings and the conversion of policy into directives, the NRC issued Management Directive (MD) 10.159, "Differing Professional Views or Opinions," and MD 10.160, "Open Door Policy," on March 20, 1991.

In July 1994, the EDO appointed an SRP to assess the Differing Professional View (DPV) and Differing Professional Opinions (DPO) processes. The agency published the findings of this panel in NUREG-1518, "Differing Professional Views or Opinions." The panel recommended eliminating standing DPV panels, instead forming panels on an ad hoc basis depending on the technical issue, and changing the DPO process to require the establishment of ad hoc review panels similar to those recommended for the DPV process.

In March 2001, the EDO established an SRP to evaluate the DPV/DPO process and to make recommendations on the interim policy guidance issued in response to a September 2000 audit by the Office of the Inspector General. As a result of this panel's findings and recommendations (published in NUREG-1763, "Differing Professional Views or Opinions"), the agency issued a revised MD 10.159 on May 16, 2004. The revised DPO Program established an agency-level program manager, eliminated the DPV step, simplified the appeal step, set a new timeliness goal, defined roles and responsibilities for communication points in the process,

and required informal discussions before an employee submits a DPO (or justification for why the employee cannot discuss the issues with his or her supervisor).

DPO PROGRAM OVERVIEW

It is the policy of the NRC to maintain a working environment that encourages employees and NRC contractors to make known their best professional judgments, even though they may differ from the prevailing staff view, disagree with a management decision or policy position, or take issue with a proposed or established practice involving technical, legal, or policy issues. The DPO Program emphasizes that the NRC will not tolerate retaliation, harassment, or intimidation of individuals who raise DPO concerns.

The following provides an overview of the DPO Program:

- The DPO Program exists as a formal process that all NRC employees and contractors can use to have their differing views on established positions considered by appropriate office directors and regional administrators (office managers).
- MD 10.159 describes the DPO Program.
- A DPO can cover a broad range of concerns provided the opinion is related to the agency's mission and to the strategic goals that support the mission (i.e., safety, security, openness, effectiveness, and management).
- The DPO Program emphasizes the importance of informal discussions between the employee and his or her immediate supervisory management as a possible means of resolution.
- If an informal resolution is unsuccessful, an employee can then file a formal DPO with the DPO Program Manager (DPOPM) by using NRC Form 680, "Differing Professional Opinion."
- Disposition of the DPO is assigned to the office manager responsible for overseeing the concern described in the DPO.
- To review the DPO, the office manager normally establishes a three-person panel of knowledgeable employees who have not been involved with the issue. The employee who submitted the DPO may nominate one member of the panel.
- The panel provides its conclusions and recommendations in a report to the office manager, and the office manager subsequently issues a DPO Decision to the submitter.
- If the submitter does not believe the DPO Decision adequately addressed the concerns, he or she may submit a DPO Appeal to the EDO (or the Commission, depending on to whom the individual reports) through the DPOPM.

- The EDO or Commission reviews the concerns and issues a DPO Appeal Decision to the submitter.

SCOPE AND METHODOLOGY

In accordance with the assessment responsibilities outlined in section 037 of MD 10.159, the DPOPM conducted an indepth annual program review, including audits of office and regional performance records. This report documents the review and assessment of DPO and DPO Appeal activities that occurred during calendar year (CY) 2006. Given the small number of DPO cases (six opened in CY 2006), this report also reviews the timeliness of all DPO activities since the program was revised (May 16, 2004) to date.

To accomplish this review, MD 10.159 was reviewed, including the DPO Program objectives (Appendix A) to determine the clarity of process guidance and program expectations and provide a sound basis for reviewing the program’s implementation. All active DPOs and DPO Appeal cases in CY 2006 (i.e., cases that were ongoing, received, processed, completed, and tracked) were reviewed, using the DPO Audit Checklist (Appendix B) to evaluate whether the DPO process was implemented in accordance with MD 10.159. Employees with first-hand experience with the program, including DPO submitters, DPO Panel members, and office managers, used DPO Program feedback forms (Appendix C) to provide feedback on whether the program met its objectives and give suggestions for improving the process. Several of the participants engaged in followup discussions to provide first-hand insights. The issues and recommendations that were identified in the 2005 DPO Program Review and the August 18, 2006, response from the EDO (ADAMS Accession No. ML061980069) were also reviewed.

DPO AND DPO APPEAL CASES

Figure 1 illustrates the various DPO activities that occurred during CY 2006. Figure 2 provides information about DPO Appeal activities that occurred in CY 2006.

Figure 1. DPO Activities During CY 2006

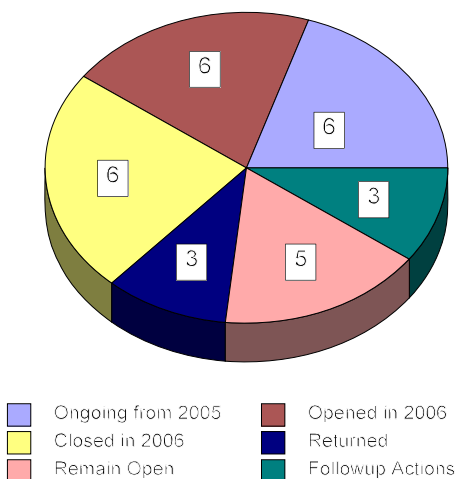
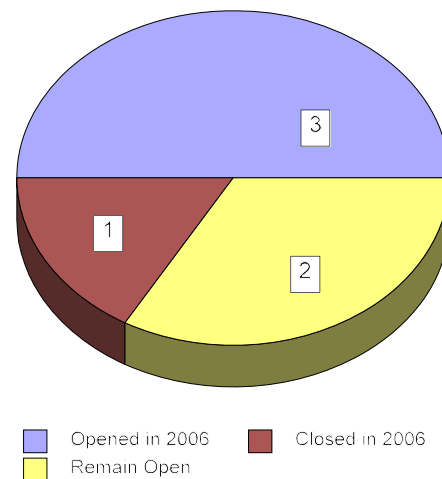


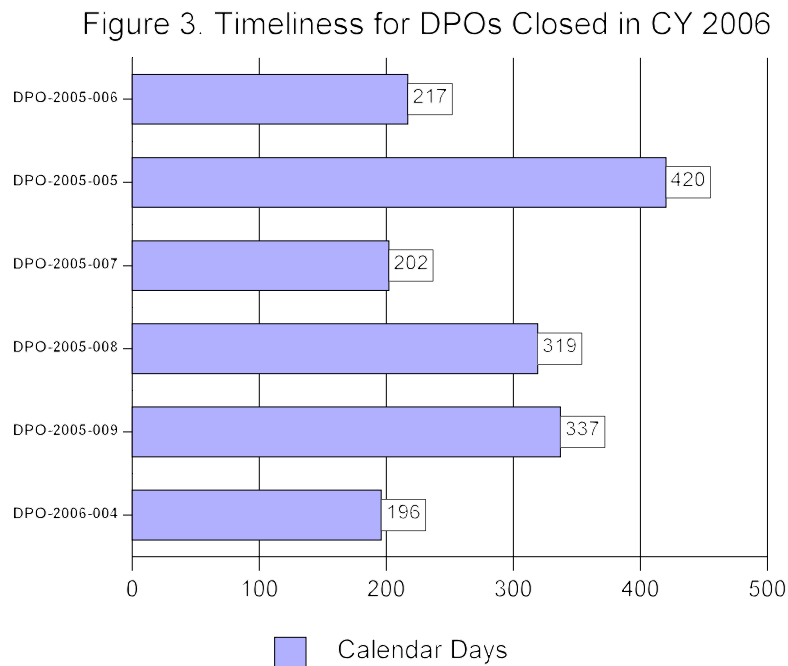
Figure 2. DPO Appeal Activities During CY 2006



2006 DPO Program Review

During CY 2006, nine DPO submittals were screened. Of these, six were accepted for review through the DPO process and three were returned to the submitters with explanations for their return. In one case, the submittal did not directly disagree with an NRC decision. In another case, the EDO had already considered the issues included in the DPO as part of the DPO process, and the submittal included issues that were more appropriately addressed by the Office of the Inspector General (OIG). In the final case, the submittal was considered premature because the staff was still reviewing the issues in the DPO. In accordance with MD 10.159, the appropriate office manager received a copy of the DPO for information in support of the decision-making process on the issues related to the DPO.

DPO (and DPO Appeal) timeliness is calculated beginning on the day the DPO Program accepts a DPO (or DPO Appeal) for review until the day the DPO Decision (or DPO Appeal Decision) is issued. Figure 3 depicts the timeliness of DPOs closed in CY 2006 and summarized in Appendix D. One DPO Appeal was closed in CY 2006, with a timeliness of 51 calendar days.



In response to the recommendation included in the 2005 DPO Program Review, the EDO approved a revision of the timeliness goal for dispositioning DPOs from 60–120 days to 130–190 calendar days. The timeliness goal for dispositioning DPO Appeals is 60–90 calendar days. None of the DPOs closed in 2006 met the EDO-approved timeliness goal for dispositioning DPOs. The discussion on page 8 of this report addresses the timeliness of the DPO process, including recommendations for improvement.

IMPLEMENTATION OF DPO PROCESS

As part of the overall assessment of the DPO Program, the implementation of the DPO process was reviewed. This section addresses key aspects of implementing the DPO process, including accomplishments over the past year and areas for improvement.

1. Guidance

Although MD 10.159 includes guidance and expectations for activities and deliverables, it does not include detailed implementation guidance. In response to the 2005 DPO Program Review, additional guidance and tools were developed to aid employees and managers engaged in the DPO process:

- The DPOPM provided office managers and DPO Panels with a “DPO Equipment Bag” that included the following guidance and templates for DPO activities and correspondence:
 - DPO milestones and timeliness goals
 - memorandum from office managers establishing and tasking the DPO Panel
 - DPO Monthly Status Report input
 - DPO Panel report template and instructions
 - DPO Decision template and instructions
 - DPO highlight template for inclusion in the Commission’s Weekly Information Report (WIR)
 - followup actions and schedule
 - MD 10.159
- Because DPO records have special handling requirements, the comprehensive processing instructions were developed for administrative support staff to use to address DPO documents in paper-based and electronic systems (i.e., ADAMS). The “DPO Equipment Bag” also includes these instructions.
- An implementing guidance requirement of establishing a “Statement of Concern,” was developed. After meeting with a DPO submitter, the DPO Panel develops a written summary of the submitter’s concern and provides it to the submitter for approval before the review begins. This practice ensures that the DPO Panel completely understands an individual’s concerns and that the scope of the DPO review remains focused on the issues in the DPO and the staff position at the time the DPO is submitted. DPO participants viewed this practice positively.

2006 DPO Program Review

In addition, based on the 2005 DPO Program Review and the EDO response, various office instructions were reviewed for a recommendation to either eliminate the guidance or ensure that it is consistent with the goals and objectives of the DPO Program guidance included in MD 10.159.

2. Communication

Communication is critical to the success of the DPO process. To improve communications, in CY 2006 the program streamlined the format of the DPO Monthly Status Report by including a matrix of the DPO milestones and timeliness goals for each DPO. The report also includes a matrix of the DPO followup actions and schedule until the actions are implemented. All senior management and the Commission receive the DPO Monthly Status Report as a communication tool to keep them informed of DPO-related issues and activities.

In response to the 2005 DPO Program Review, coaching to DPO participants on the DPO process and DPO Program expectations was routinely provided. This was especially important because many participants were not familiar with the process. Specifically, the following activities were performed:

- The DPOPM communicated with many individuals before DPOs were submitted. Advice was offered, including the possible benefit of additional discussions with other supervisors, and in several instances, suggestions were made for focusing the concerns in submittals to help readers understand them. Continuing guidance to submitters was provided throughout the DPO process and copies of the DPO milestones and timeliness goals and DPO followup actions from the DPO Monthly Status Report were provided as a way of keeping submitters informed about the status of the DPO.
- When DPOs were originally assigned, the DPOPM typically met with office managers to review the DPO process and responsibilities under MD 10.159. Office managers were routinely kept informed of process responsibilities, provided continuing guidance throughout the process, and advice was offered to office managers on DPO-related issues. For example, it was suggested that meeting with submitters before rendering DPO Decisions may help to ensure that employees' views have been heard and considered. The DPO Monthly Status Report was provided as a communication tool.
- The DPOPM met with DPO Panels before the panel reviews began to ensure that the DPO Panels understood the DPO process and their responsibilities, including the requirement to keep office managers informed of scheduling and resource issues. The DPO Monthly Status Report was provided as a communication tool.
- Routine interactions were conducted with support staff to help process DPO records in accordance with the special handling requirements to ensure consistency with MD 10.159.

DPO participant feedback indicated that communications could still be improved. One DPO Panel Chair suggested a monthly meeting with the office manager, DPO Panel, and the DPOPM. Office managers will be advised of this strategy when DPOs are assigned.

3. Independence

One of the key features of the DPO Program is an independent review of the DPO issues by individuals who had not been involved in developing the staff position in question. The office managers benefit from this additional perspective while maintaining the ultimate authority for making decisions on activities for which they are responsible. This section addresses the review of the role of office managers in ensuring independence, the DPO Panel report commenting process, and the appointment of the DPO Panel Chair.

Role of Office Manager

In response to feedback as part of the 2005 DPO Program Review, office managers were advised that to maintain the independence of the DPO Panel and avoid a possible chilling effect on it, they should limit their involvement with the panel to oversight activities (such as resolving scheduling issues) during the review.

DPO Panel Report Commenting Process

Section D(4)(g) of the MD Handbook provides office managers with the opportunity to review and return reports to DPO Panels for clarification. To avoid the perception that DPO Panels were not independent of office managers and promote process fairness and credibility, discretion was exercised to provide submitters with the same opportunity to comment on DPO Panel reports. To ensure independence, submitters and office managers were instructed to limit their comments to the DPO Panel's characterization of the DPO and the existing staff position, respectively. DPO Panels received instructions to review all comments and make a consensus decision whether reports warranted revision (revised reports were identified as the exception).

Notwithstanding the guidance for this provision (in terms of scope and timeliness), experience with this practice to date has not always been positive or productive. In many cases, submitters provided comments beyond the identified scope, resulting in negative feelings when reports were not revised. The process of considering comments caused some DPO Panel members to feel pressure to revise the report. Although this provision is normally expected to take 17 calendar days (10 days to comment and 7 days for the DPO Panel to either revise the report or declare it final), timeliness ranged from 16–103 days with an average of 42 calendar days.

To maintain the independence of the DPO Panel's process and improve overall timeliness, the process of commenting on the DPO Panel's report should be eliminated. The opportunity to comment on reports is not necessary to meet program objectives. Submitters have an opportunity to be heard and understood when Statements of Concern are established in the beginning of the process, and they can subsequently be heard through the DPO Appeal process. Office managers still make conclusions and recommendations in DPO Decisions, which can differ from those made by DPO Panels. If an office manager believes that the DPO Panel's report is not sufficiently clear, the office manager can provide appropriate clarification in the DPO Decision. If an office manager needs clarification on the DPO Panel's report to support the decision on the DPO, he or she can seek clarification by interviewing the DPO Panel.

Appointment of the DPO Panel Chair

The independence of the DPO Panel Chair was also an issue. Current guidance requires that the DPO Panel Chair not be the first- or second-line supervisor of the submitter or, to the extent possible, in the submitter's chain of command. Concerns were raised that having a DPO Panel Chair from the same office responsible for dispositioning the DPO could inhibit the independence of the review. Supervisors (especially new supervisors) acting as DPO Panel Chairs may have anxiety about reaching conclusions that are not consistent with existing positions in their office. Given the importance of independence to the success of the process, it seems prudent that the DPO Panel Chair be from outside the organization responsible for dispositioning the DPO, if possible.

4. Timeliness

As previously stated, the current timeliness goal for dispositioning DPOs is 130–190 calendar days (date of DPO acceptance to date of DPO Decision). The EDO approved revising the goal of 60–120 days in MD 10.159 to 130–190 calendar days last year. None of the DPOs closed in 2006 met the EDO-approved DPO timeliness goal. It appears that the following circumstances contributed to the lack of timeliness: (1) subject matter complexity, (2) competing work assignments, (3) scheduling conflicts of DPO participants, and (4) little perceived consequence to exceeding timeframes at an agency level. To gain a better understanding of DPO timeliness and whether the DPO timeliness goal should be revised again, this section reviews the DPO process milestones and the timeliness for all DPOs that have been processed from the beginning of the revised program (May 16, 2004) to date. Appendix E includes an index of all DPO cases since the revision of the program. Table 1 on page 10 of this report includes the current timeliness goals for the six major process milestone activities, the actual timeliness of milestone activities (including the average values), and recommended timeliness goals. It is important to emphasize that the timeframes for completing process milestones are identified strictly as goals—a way of working towards defining and meeting a meaningful DPO timeliness goal.

Screen, Accept, and Assign DPO

The DPOPM is responsible for screening and accepting DPOs (if appropriate) within 8 days of receiving the submittal, and subsequently assigning the DPO to the appropriate office manager within 5 days. Based on a review of the cases, neither process goal warrants revision.

Establish DPO Panel

Office managers are responsible for establishing DPO Panels. The current EDO-approved goal is 14 days (compared to 8 days in MD 10.159). Sufficient time should be available to establish a DPO Panel that all participants (especially the submitter) believe will perform an independent and credible review. Actual timeliness in establishing a DPO Panel ranged from 11–58 days, with an average of 26 days. In some cases, difficulty in securing a member recommended by the submitter has impacted the timeliness of establishing the DPO Panel. Although submitters are not required to identify three potential DPO Panel members, not doing so can delay the process if the submitter identifies only a single employee who is either unavailable or unwilling

to support the process. Assignment to a DPO Panel is voluntary. Although the average time to establish a DPO Panel was 26 days, the goal should remain at 14 days. Half of the cases made the 14-day goal, and increasing the goal to 21 days would not increase the number of cases that would meet the goal. Office managers are notified as soon as a DPO is accepted and should focus on establishing the appropriate DPO Panel in a timely manner. Given all the variables involved in establishing DPO Panels, certain cases will require additional time.

DPO Panel Review

The current milestone and timeliness goal for the DPO Panel's review is broken into three subtasks—(1) meeting with the submitter (8 days), (2) collecting, reviewing, and evaluating information (30–90 days), and (3) writing the report (30 days). The overall goal for the review is 68–128 days. The range for the review was intended to reflect the flexibility needed to accommodate the diversity of DPOs in terms of the significance and complexity of the issues and the priorities of other agency work. The 13 DPO Panel reviews to date have taken 72–721 days to complete. The 721-day review is an outlier that needed extra time because the DPO Panel required the use of a contractor to review the issues. The average review time for the remaining cases was 154 days. Although the DPO Panel must have sufficient time to perform a thorough, credible, and independent review, failure to disposition DPOs in a timely manner can result in negative staff attitudes. One way to meet both interests is to allow the DPO Panel members to devote more time to the review. When office managers establish DPO Panels, they can establish expectations for the review (e.g., 8 hours per week, 16 hours per week, 20 hours per week). One DPO Panel Chair strongly supported the DPO Panel members dedicating half of their work schedules to the DPO review. Managers of DPO Panel members need to support the DPO Program (and the individuals) by ensuring that DPO Panel members' schedules are adjusted to accommodate the DPO review. Feedback from several participants indicates that work schedules are not adjusted in practice and that many DPO Panel members performed DPO-related tasks outside of normal working hours in order to fulfil program expectations for a thorough and timely review. A new milestone process goal of 150 days is recommended. Half of the cases would have met the recommended goal.

DPO Panel Report Commenting Process

As previously addressed, although this provision is normally expected to take 17 days (10 days to comment and 7 days for the DPO Panel to either revise the report or declare it final), timeliness ranged from 16–103 days with an average of 42 days. Eliminating this step of having office managers and submitters comment on the DPO Panel Report will improve the overall timeliness of the process without impacting the goals and objectives of the DPO Program.

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DPO Decision

The current EDO-approved goal is for office managers to issue a DPO Decision in 21 days (compared to 10 days in MD 10.159). Nearly half of the cases met this goal. It is recognized that some issues will require more review time than others due to their complexity. However, no revision to this process goal is recommended at this time, in order to strive for timeliness in this process.

Table 1. Current, Actual, and Proposed DPO Timeliness Goals

DPO	Screen and Accept DPO	Assign DPO	Establish DPO Panel	DPO Panel Review	Report Comment Process	DPO Decision	DPO Timeliness
Current Goal	8	5	14	68–128	17	21	190
Actual Time (average)	9	7	26	198	42	35	317
Proposed Goal	8	5	14	150	eliminate	21	190
DPO-2005-001	8	0	11	150	103	34	297
DPO-2005-002	11	6	30	721	21	9	787
DPO-2005-003	4	3	14	130	29	20	196
DPO-2005-005	10	12	58	133	74	143	420
DPO-2005-006	20	10	11	106	55	35	217
DPO-2005-007	16	1	13	167	16	5	202
DPO-2005-008	6	8	26	234	20	16	304
DPO-2005-009	11	7	50	184	34	50	325
DPO-2006-001	10	8	12	260	20	22	322
DPO-2006-002	9	10	11	164	91	5	281
DPO-2006-003	9	10	11	146	40	46	253
DPO-2006-004	6	7	25	103	21	40	196
DPO-2006-005	6	1	56	72	25	pending	pending
DPO-2006-006	3	21	36	pending	pending	pending	pending

Conclusion

Although it is recommended that the timeliness goal for the DPO Panel review should be increased and the DPO Panel report commenting process should be eliminated, the DPO timeliness goal is recommended to remain 190 days. About half of the cases would meet the

goal based on this strategy. The small number of DPOs processed under the revised DPO Program made it difficult to draw conclusions about the appropriateness and effectiveness of the timeliness goal. As additional experience is gained, the staff will continue to evaluate DPO timeliness and recommend necessary changes. Appendix F includes the recommended strategy for establishing and extending DPO milestones and timeliness goals.

Schedule Extensions

Recognizing that it is not possible to predict the significance and complexity of DPOs and the effect of shifting work priorities and personal schedules, the process should maintain flexibility to accommodate situations in which more time is required to disposition DPOs. In accordance with the EDO directive, the EDO must approve schedule extensions beyond 190 calendar days. Office managers can request an extension as soon as they are aware that more time is required to disposition a DPO (e.g., contractor support is necessary, issues are more complex than originally considered). Effective oversight of and communication with DPO Panels should minimize the need for multiple extensions. Finally, in response to the 2005 DPO Program Review, the administrative burden of requesting extensions was reduced by using an existing extension process defined by the Office of the EDO (OEDO) for requesting extensions (OEDO Procedure 0370, "Extension Requests and Transfer of Controlled Items"). (See the discussion below for additional recommendations designed to improve schedules and accountability.)

5. Followup Actions

If an office manager identifies followup actions in response to a DPO, MD 10.159 requires that the DPOPM track these issues and keep all parties (including the submitter) informed. MD 10.159 also requires that office managers inform the DPOPM of any delays in followup actions, the reason for the delay, and a revised schedule for the completion of the action. The DPOPM subsequently forwards this information to the submitter. Although many DPO Decisions continue to support the staff position that was the subject of the DPO, the DPO process routinely identifies process improvements. This outcome often provides submitters with a sense of satisfaction in knowing that their willingness to raise a differing view ultimately added value to the agency. Thus, it is important that submitters be informed when followup actions are implemented and when schedule delays occur. An agencywide tracking system does not exist for DPO-related followup actions. The DPO Monthly Status Report is currently used to fulfill this purpose. Experience to date indicates that offices do not always provide information to the DPOPM to fulfill program responsibilities. Although some offices use internal tracking methods for followup actions, this strategy has not routinely been effective in keeping the DPOPM informed. Given the importance of the DPO process, it may be appropriate to consider alternative tracking methods, as discussed in the next section.

6. Accountability

Managers play a vital role in ensuring that the DPO Program accomplishes its objectives. As previously noted, an agencywide tracking system does not currently exist for DPO-related activities or deliverables. To help office managers focus on these issues, it may be appropriate to use a tracking tool that has appropriate recognition and visibility. Although office managers could use their own internal tracking systems to enter, track, and monitor DPO actions, this

approach does not allow the DPOPM to carry out necessary oversight responsibilities. Therefore, to ensure appropriate oversight and visibility for DPO actions, the Office of Enforcement (OE) will work with other offices and coordinate with the OEDO to find an appropriate process to more efficiently track DPO Decisions, DPO summaries for the Commission's Weekly Information Report, and DPO-related followup actions.

7. Recognition

MD 10.159 requires that submitters be considered for recognition, when warranted. Although no submitters received monetary or time-off awards, all submitters were recognized for their willingness to step forward and raise differing views. A process was established to recognize submitters and all other DPO participants for their willingness to support the DPO Program was established. Certificates of appreciation are signed by the EDO and presented to DPO participants.

Because the task of the DPO Panels is significant, challenging, demanding, often controversial, and vital to the success of the process, it is appropriate for office managers to routinely consider whether recognition is warranted for panel members' service. Appropriate recognition for DPO Panel members may validate their contributions on a personal level and help foster an open, collaborative working environment. To avoid a perception that DPO Panels are rewarded when they support established positions, it may be appropriate to routinely provide DPO Panel members with time-off awards.

DPO success stories should be highlighted whenever possible. However, although recognition should be considered for DPO participants (when warranted), visible recognition should take into account an individual's personal wishes for privacy.

8. Retaliation

The DPO Program emphasizes that the NRC will not tolerate retaliation, harassment, or intimidation of employees who raise DPO concerns. No complaints of retaliation for engaging in the DPO process were substantiated. However, perceptions of retaliation can perpetuate negative feelings about the DPO Program and have a chilling effect on employees' willingness to raise concerns.

In response to the 2005 DPO Program Review, the memorandum tasking office managers to disposition DPOs was modified to inform office managers to ensure that all proposed personnel actions involving DPO submitters (e.g., performance appraisals) are appropriately reviewed before the actions are taken to ensure that the proposed actions follow defined processes and are nonretaliatory. The office managers are to ensure that consideration is given to (1) the effect, if any, the personnel action may have on the organizational climate and (2) the specific actions, if any, that should be taken to minimize a potential chilling effect on the workforce's willingness to raise concerns. Given the importance of this issue, it should be included in the responsibilities outlined in the MD.

COMMUNICATION AND OUTREACH ACTIVITIES

This section addresses the various activities and accomplishments throughout the year related to advising employees and increasing awareness about the DPO Program and building working coalitions.

1. Advising Employees

The DPOPM routinely counseled employees and provided advice on the DPO Program as well as other ways to raise differing views, including the Open Door Policy, and the agency's new Non-Concurrence Process (NCP) (see page 16 of this report for additional discussion). Employees were also counseled on strategies for resolving differing views through informal discussions.

2. Increasing Awareness

The NRC OIG 2005 Safety Culture and Climate Survey (referred to as the safety culture survey) indicated that although most employees were aware of the DPO Program, employees in certain categories (new employees and administrative and support staff) and certain offices were unaware of the DPO Program or appeared not to understand its scope and applicability. Furthermore, many employees provided feedback that repeated references to "safety" (i.e., safety concerns, safety mission) led them to believe that the DPO Program did not apply to issues involving the other strategic goals of openness, effectiveness, and management.

To respond to this, briefings were provided to the Office of Administration, Office of Information Services, and Office of the Chief Financial Officer. The briefings emphasized that the DPO Program applies to all NRC employees and NRC contractors with concerns related to the agency's mission and to strategic goals that support the mission (i.e., safety, security, openness, effectiveness, and management).

In addition, in CY 2006 awareness briefings were provided to numerous employees through multiple venues:

- new employee orientation
- "NRC: What It Is and What It Does"
- Nuclear Safety Professional Development Program
- Office of Nuclear Reactor Regulation regulatory awareness seminars
- presentations to commissioner assistants

Revision to Inspection Manual Chapter 1245, "Qualification Program for the Office of Nuclear Reactor Regulation Programs," was also recommended to be consistent with the latest DPO goals, objectives, and process practices. The proposed revision also addresses additional ways to raise differing views and the expectations for all individuals in maintaining an open, collaborative working environment (see page 17 of this report for additional discussion). The DPOPM is continuing to work with the Office of Human Resources in developing new supervisor training to further orient them with the DPO process and the new NCP.

2006 DPO Program Review

During 2006, the DPO Web site was modified to increase employee awareness. (All employee briefings highlight the DPO Web site.) The DPO Web site includes an overview of the DPO Program, frequently asked questions, summaries of closed DPOs, DPO Program Reviews, and other ways to raise concerns (including the agencywide NCP). The Web site emphasizes that the DPO Program applies to all NRC employees and NRC contractors with concerns related to the agency's mission and to the strategic goals that support the mission. Employee announcements, newsletter articles, and success stories should be encouraged as a way of supporting and demonstrating the value of differing views on the regulatory decision-making process.

3. Outreach Activities

The agency responded to a request from the U.S. Department of Energy (DOE) for additional information about the NRC's DPO Program. DOE currently has an Employee Concerns Program that all DOE employees, contractors, and subcontractors may use to report concerns regardless of the nature of the issue. DOE is developing a DPO Program, limited to technical issues involving environment, safety, and health, to supplement the Employee Concerns Program. The DPOPM met with the Senior Advisor to the Chief for Health, Safety and Security and discussed the NRC's DPO Program and its relationship to the other processes for raising differing views (including the new agency NCP). The value of having multiple processes for raising differing views was emphasized. The senior advisor from DOE shared insights and experience from DOE processes for addressing employee concerns and differing views. NRC and DOE program documents and procedures were exchanged.

PROPOSED REVISION OF MD 10.159

A revision to MD 10.159 based on issues identified in the 2005 DPO Program Review and additional lessons learned and process feedback is being actively worked. Given the success of the NCP task group in developing the agency NCP as well as the task group's knowledge of related issues, the DPOPM intends to work with and through NCP task group members (to the extent practical) to obtain office input and feedback before issuing the revised MD for review and approval. This may also improve the timeliness of the review and approval process.

High-level revisions will be proposed to include the following:

- an introductory discussion of the agency's open, collaborative working environment (see page 17 of this report) and the various ways individuals can raise differing views (including the DPO process)
- modification of objectives to clarify that DPOs are reviewed and dispositioned in a timely manner consistent with the importance of prompt action on the issue, the safety significance of the issue, the complexity of the issue, and the priority of other work activities affecting the availability of participants
- establishment of the DPO timeliness goal as 190 calendar days between DPO acceptance and the date of the DPO Decision

- modifications to guidance to address the applicability of the DPO process to NRC contractors
- modifications to guidance to make it clear which type of issues do not qualify for review under the DPO Program, including issues that are currently under staff review, those under evaluation through other agency processes, and issues outside the NRC's jurisdiction
- deletion of the process step of commenting on DPO Panel reports
- recommend that the DPO Panel Chair be an SES manager from an outside office to ensure independence
- requirement that office managers ensure that all proposed personnel actions involving DPO submitters (e.g., performance appraisals) are appropriately reviewed before the actions are taken to ensure that the proposed actions follow defined processes and are nonretaliatory
- advise office managers to ensure that consideration is given to (1) the effect, if any, the personnel action may have on the organizational climate and (2) specific actions, if any, that should be taken to minimize a potential chilling effect on the workforce's willingness to raise concerns
- recommendation for office managers to take action to positively recognize DPO Panel members when their actions have resulted in significant contributions to the mission of the agency
- elimination of Exhibit 1 and simplification of the flowchart

DPO PROGRAM RECOMMENDATIONS

The following recommendation is for EDO consideration for an improvement to the program:

Approve a deviation from the provisions of the NRC Management Directives System (in accordance with section 1.1-033(c) of MD 1.1, "NRC Management Directives System") and eliminate the process step of office managers reviewing and returning DPO Panel reports addressed in section D(4)(g) of the MD 10.159 Handbook, resulting in the DPO processing strategy discussed in Appendix F to this report.

ADDITIONAL AGENCY INITIATIVES

This section describes additional agency initiatives that although developed outside of the DPO Program, are related to the agency's desire to promote a positive work environment that values differing views, maximizes the potential of all individuals, and improves our regulatory decision-making at the NRC.

1. Agency Non-Concurrence Process

Although several NRC offices have had non-concurrence procedures in place, some for many years, no procedures applied to all NRC employees. The EDO tasked OE with leading the development of an agencywide process for non-concurrence. OE assembled a task group including individuals from the major program offices (Office of Nuclear Reactor Regulation, Office of Nuclear Material Safety and Safeguards, Office of Nuclear Safety and Incident Response, Office of Nuclear Regulatory Research), Region III, the Office of Information Services, and NTEU. Multioffice collaboration ensured a balanced agency approach. NTEU participation in the task group was especially effective and productive. In September 2006, OE sent the draft directive to all NRC offices for review and comment. The task group considered the office comments and presented a revised proposal to the EDO in November 2006. On November 29, 2006, the EDO issued the draft management directive for interim use pending finalization of the NCP directive. The EDO also assigned oversight of the NCP to OE and identified the DPOPM as the employee contact.

The following provides an overview of the NCP:

- The NCP applies to all documents undergoing concurrence. There are no exceptions based on a document's subject matter or the significance of the issue. The NCP applies equally to administrative issues, policy issues, and technical concerns.
- The NCP is open not only to individuals on document concurrence lists, but also to document reviewers and document contributors if assigned by supervisors to perform these roles.
- Non-concurrence is optional. Employees whose views differ from the consensus view but who elect not to nonconcur may request to be removed from concurrence and not participate in the NCP.
- The NCP requires that individuals document their reasons for non-concurrence.
- Non-concurrence should be viewed as a routine option in the concurrence process and a part of the normal NRC document review and concurrence process. The NCP does not set separate timeliness goals for documents involving non-concurrences; the goal is to process documents in accordance with their normal schedules. The NCP does not require independent review; non-concurrences are addressed by the same individuals (i.e., the document sponsor and document signer) normally responsible for a document in the concurrence process.

The agency is implementing the NCP as an interim policy to allow the staff to gain experience and insights into the process and to provide an opportunity for employees to provide comments and feedback on the design and implementation of the NCP before finalizing the NCP MD.

OE developed a new internal Web page to address the NCP. The new page includes employee resources such as the draft MD 10.158, NRC Form 757, frequently asked questions, a comment form, and other NCP-related information.

2. Open, Collaborative Working Environment

The NRC has always recognized the value of open, candid communications in regulatory decision-making. The expectation that managers be available to the staff via an open door policy was first formally communicated to the staff in 1976, and the NRC Differing Professional Opinions Policy was formally established in 1980. Although agencywide procedures to address non-concurrence were not available until recently, employees have always had the right not to concur on a document (as noted in Article 3.9 of the Collective Bargaining Agreement).

Notwithstanding these processes, the results from the 2005 safety culture survey indicated that many employees were unaware of the various methods of raising different views. Moreover, feedback from employees indicated that employees were unclear about how the processes work and when they should be used. Finally, although the results of the safety culture survey showed an improvement from the previous survey, almost a quarter of NRC employees indicated in the survey that they did not believe that it was safe to speak up at the NRC. Less than half of employees thought that the agency has established a climate in which the truth can be taken up the management chain without fear of reprisal.

Consistent with the agency's improvement efforts following the 2005 safety culture survey and in response to a staff directive in the Staff Requirements Memorandum dated January 9, 2007, a new page was developed on the NRC's public Web site as part of the discussion of NRC values to address the agency's commitment and expectations for an [open, collaborative working environment](#) that encourages all NRC employees and contractors to voice differing views promptly and without fear of retaliation. The Web page notes that all individuals are expected to engage promptly in informal discussions (which should suffice to resolve most issues) and be comfortable with pursuing their concerns through various mechanisms, such as the NRC's Open Door Policy, the new agencywide NCP, and the DPO Program. The Web page also highlights the expected behaviors of individuals by linking to the [NRC Team Player](#) poster.

The EDO subsequently issued a Yellow Announcement to all employees endorsing the value of and expectations for an open, collaborative working environment and highlighting the new public Web page. In addition, expectations for an open, collaborative working environment and ways to raise differing views are stressed through multiple venues, including new employee orientations.

3. Differing Views Web Page

Consistent with the new public Web page, a new internal Web page was developed. The new Differing Views Web page is identified on the home page under Employee Resources and should help employees (especially new employees) easily locate information and a contact person who can assist them voice and pursue their concerns. The new Web page addresses the expectations for an open, collaborative working environment and describes the various ways that employees can voice and pursue their concerns, including the following:

- Open Door Policy
- NCP
- DPO Program
- Generic Issues Program
- Reactor Oversight Process Feedback Program
- Report an External Emergency Safety Concern
- Allegations Program
- Office of the Inspector General
- NTEU

The new Web page consolidates information previously included on the DPO and NCP Web pages in one central location. The new Web page also includes information and advice on engaging in productive informal discussions that strive to reach the best outcome for the agency.

APPENDIX A: DPO Program Objectives

The DPO Program has the following objectives:

- to foster informal discussions with peers and supervisors on issues involving professional judgments that may differ from a currently held view or practice
- to establish a formal process for expressing differing professional opinions (DPOs) concerning issues directly related to the mission of the U.S. Nuclear Regulatory Commission (NRC)
- to ensure the full consideration and prompt disposition of DPOs by affording an independent, impartial review by knowledgeable personnel
- to ensure that all employees have the opportunity to (1) express DPOs in good faith, (2) have their views heard and considered by NRC management, and (3) be kept fully informed of the status of milestones throughout the process
- to protect employees from retaliation in any form for expressing a differing opinion
- to recognize submitters of DPOs when their DPOs have resulted in significant contributions to the mission of the agency
- to provide for agencywide oversight and monitoring, to ensure that implementation of these procedures accomplishes the stated objectives, and to recommend appropriate changes when required

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APPENDIX B: DPO Audit Checklist

Question	Yes	No	NA
If DPO was submitted confidentially, was the submitter's identity protected?			
Was DPO screened in 8 CDs? If not, explain.			
If DPO was accepted, was notification made to submitter?			
If DPO was accepted, was notification made to OEDO?			
If DPO was rejected, was submittal returned to submitter with the reasons for return?			
If DPO was rejected, was submittal forwarded to appropriate OD or RA?			
Was DPO assigned to OD or RA w/in 5 CDs of acceptance? If not, explain.			
Was DPO Panel established w/in 8 days? If not, explain.			
Was DPO Panel Chair the immediate supervisor or second-line supervisor of the submitter?			
Was DPO Panel Chair in the submitter's chain of command? If so, what was the rationale?			
Were any of the DPO Panel members involved in directly participating in the formulation of the agency position? If so, what was the rationale?			
Did the DPO Panel Chairperson select a third member from the submitter's list?			
Was a member appointed from OE, if appropriate?			
Did the DPO Panel meet with the submitter w/in 8 CDs? If not, why not?			
Did the DPO Panel request technical assistance through OD or RA, if necessary?			
Did the DPO Panel periodically meet with submitter?			
Did the DPO Panel conduct a detailed review? (Consider the need to issue a revised DPO Panel report.)			
Did the DPO Panel make recommendations to OD or RA?			
Did the DPO Panel provide the DPO Panel report 30 CDs after they met with the submitter? If no, explain.			
Did the OD or RA and submitter provide comments on the DPO Panel report?			
Did the DPO Panel request an extension? If yes, how many days?			
Did the DPOPM notify the DPO Panel, OD or RA, and submitter that DPO extension was approved?			
Did the DPO Panel either revise the report or declare it final w/in 7 CDs of receiving comments? If no, explain.			
Did the OD or RA issue the DPO Decision w/in 10 CDs after getting the final DPO report? If no, explain.			
Did the OD or RA request an extension? If yes, how many days?			
Did the DPOPM notify the OD or RA and submitter that DPO extension was approved?			

APPENDIX B: DPO Audit Checklist (continued)

Question	Yes	No	NA
Did the OD or RA write a summary for the Weekly Information Report?			
Did the OD or RA issue a DPO Decision w/in 120 WDs after the DPO was accepted? If no, explain.			
Did the OD or RA identify followup actions and implementation schedule?			
If the schedule was not met, did the OD or RA identify the reason for the delay and a revised implementation schedule?			
Did the DPOPM notify the submitter and the applicable DEDO of the reason for the delay and the new schedule?			
Were the DPO records properly dispositioned in ADAMS?			
If a DPO Appeal was submitted, was it submitted w/in 21 CDs of the DPO Decision?			
Did the DPOPM request a statement of views from the OD or RA?			
Did the OD or RA provide a statement of views to the DPOPM?			
Did the DPOPM forward the package to the EDO?			
Did the EDO issue a DPO Appeal Decision w/in 30-60 CDs after receiving DPO Appeal package? If no, explain.			
If followup actions were identified were they implemented?			
Did the EDO write a summary for the Weekly Information Report?			
Were the DPO Appeal records properly dispositioned in ADAMS?			

APPENDIX C: DPO Program Feedback Forms

Questions for DPO Submitters	
Q.1	Prior to submitting your DPO, to what level did you raise your issue through informal discussion?
A.1	
Q.2	Looking back, do you think that additional informal discussion (maybe including higher management or the DPOPM) would have been beneficial? If yes, please explain.
A.2	
Q.3	Did you raise your view by using the Open Door Policy or the Non-Concurrence Process? If not, why not (e.g., unaware of policy, office doesn't have procedures, etc.)?
A.3	
Q.4	Do you think the DPO Panel performed a thorough review? If no, please explain.
A.4	
Q.5	Do you think the DPO Panel performed an independent and impartial review? If no, please explain.
A.5	
Q.6	Should the DPO Panel Chair be from outside the office/region?
A.6	
Q.7	Do you think the DPO Panel performed a timely review commensurate with the significance and complexity of the issues, recognizing the balance of other agency work? If no, please explain.
A.7	
Q.8	Is the EDO-approved timeliness goal (130 - 190 calendar days) appropriate or should the OD/RA develop a goal for each DPO?
A.8	
Q.9	Do you think your views were heard, understood, and fully considered by the Office Director (or Regional Administrator)? If no, please explain.
A.9	
Q.10	After the DPO Panel report was provided to the Office Director (or Regional Administrator), do you think the DPO Decision was issued in a timely manner? If no, please explain.
A.10	
Q.11	Based on the conclusions and recommendations in the DPO Decision, in your opinion, were appropriate corrective actions taken (or planned) in a timely manner commensurate with the significance of the issues? If no, please explain.
A.11	

APPENDIX C: DPO Program Feedback Forms (continued)

Questions for DPO Submitters	
Q.12	Were you kept informed of the status of milestones throughout the process (e.g., acceptance of DPO, establishment of DPO Panel, issuance of the DPO Panel Report, issuance of DPO Decision, development of DPO recommendations and schedules, DPO schedule delays)? If no, please explain.
A.12	
Q.13	Do you feel you were retaliated against because you submitted a DPO or that your work environment negatively changed as a result of submitting the DPO? If yes, please explain. Do you want to seek redress?
A.13	
Q.14	Did you receive recognition for submitting your DPO? If yes, please explain (e.g., formal award, positive performance appraisal, informal praise (written or verbal)).
A.14	
Q.15	Having gone through the process, would you go through it again? Would you recommend the DPO process to a peer? Why or why not?
A.15	
Q.16	Was the process implemented in a manner that was consistent with the stated objectives in MD 10.159? If no, please explain. Should the objectives be modified? If yes, please explain and make recommendations.
A.16	
Q.17	In your opinion, is the DPO process effective? Why or why not?
A.17	
Q.18	What changes would you make to the process to make it work better?
A.18	
Q.19	Do you have any additional comments?
A.19	

APPENDIX C: DPO Program Feedback Forms (continued)

Questions for DPO Panel Members	
Q.1	Do you think that additional informal discussion (maybe including higher management or the DPOPM) would have been beneficial? If yes, please explain.
A.1	
Q.2	Did developing a statement of concern with input from the submitter help the focus of your review?
A.2	
Q.3	Do you think the current procedures support the objective of the DPO Panel performing an independent and impartial review? If no, please explain.
A.3	
Q.4	Should the DPO Panel Chair be from outside the office/region?
A.4	
Q.5	Did you feel pressure to agree with the existing staff position? If yes, please explain (e.g., perception or actual DPO Panel member, staff, or management behavior).
A.5	
Q.6	Did the OD/RA provide any expectations for the amount of time he/she expected you to spend on this activity (8hrs/week, 10%, etc.)?
A.6	
Q.7	Did your management adjust your work schedule to accommodate this additional activity, or did you end of spending additional time (OT, CT, or personal time) to complete all of your work activities?
A.7	
Q.8	Do you think the DPO Panel performed a timely review commensurate with the significance and complexity of the issues, recognizing the balance of other agency work? If no, please explain.
A.8	
Q.9	Is the EDO-approved timeliness goal (130 - 190 calendar days) appropriate or should the OD/RA develop a goal for each DPO?
A.9	
Q.10	Do you think that either the OD/RA or submitter should be allowed to comment on the report?
A.10	
Q.11	Did the OD/RA meet with you (before/after) the report was issued to ask questions about the content?
A.11	
Q.12	Do you think the current DPO timeliness goal for the OD/RA to issue a DPO Decision normally 21 calendar days after receiving the final DPO Panel report is appropriate? If no, please explain and recommend an appropriate goal.
A.12	

APPENDIX C: DPO Program Feedback Forms (continued)

Questions for DPO Panel Members	
Q.13	Do you think review of this DPO added value to the NRC? If yes, please explain.
A.13	
Q.14	Do you think the submitter deserves recognition for issues related to the DPO?
A.14	
Q.15	Do you feel you were retaliated against or that your work environment negatively changed as a result of your role in the DPO process? If yes, please explain. Do you want to seek redress?
A.15	
Q.16	Did you receive recognition for your role in the DPO process? If yes, please explain (e.g., formal award, positive performance appraisal, informal praise (written or verbal)).
A.16	
Q.17	Having gone through the process, would you feel comfortable submitting a DPO? Would you recommend the DPO process to a peer? Why or why not?
A.17	
Q.18	Was the process implemented in a manner that was consistent with the stated objectives in MD 10.159? If no, please explain. Should the objectives be modified? If yes, please explain and make recommendations.
A.18	
Q.19	In your opinion, is the DPO process effective? Why or why not?
A.19	
Q.20	What changes would you make to the process to make it work better?
A.20	
Q.21	Do you have any additional comments?
A.21	

APPENDIX C: DPO Program Feedback Forms (continued)

Questions for Office Directors or Regional Administrators (OD/RAs)	
Q.1	Do you think that additional informal discussion (maybe including higher management or the DPOPM) would have been beneficial? If yes, please explain.
A.1	
Q.2	Do you think the DPO Panel performed a thorough review? If no, please explain.
A.2	
Q.3	Do you think the current procedures support the objective of the DPO Panel performing an independent and impartial review? If no, please explain.
A.3	
Q.4	Should the DPO Panel Chair be from outside the office/region?
A.4	
Q.5	Do you think the DPO Panel performed a timely review commensurate with the significance and complexity of the issues, recognizing the balance of other agency work? If no, please explain.
A.5	
Q.6	Is the EDO-approved timeliness goal (130 - 190 calendar days) appropriate or should the OD/RA develop a specific goal for each DPO?
A.6	
Q.7	Should DPO Panels be required to review DPOs as a full-time task (half-time, 10% obligation, etc.)?
A.7	
Q.8	In light of the objective to ensure that submitter's views are heard, should OD/RAs be required to meet with/talk to the submitter before rendering a decision?
A.8	
Q.9	Do you think the current DPO timeliness goal for the OD/RA to issue a DPO Decision normally 21 calendar days after receiving the final DPO Panel report is appropriate? If no, please explain and recommend an appropriate goal. If no, please explain.
A.9	
Q.10	What actions, if any, did you take to ensure that the submitter would feel free from retaliation from raising the DPO?
A.10	
Q.11	Do you think review of this DPO added value to the NRC? If yes, please explain.
A.11	

APPENDIX C: DPO Program Feedback Forms (continued)

Questions for Office Directors or Regional Administrators (OD/RAs)	
Q.12	Did you recommend that the submitter receive an award or other recognition related to the DPO? If so, what type of recognition was rendered (e.g., formal award, positive performance appraisal, informal praise (written or verbal))?
A.12	
Q.13	Do you think any member of the DPO Panel deserve recognition for their role in the DPO process? If so, what type of recognition was rendered (e.g., formal award, positive performance appraisal, informal praise (written or verbal))?
A.13	
Q.14	Should the process require OD/RAs to specifically consider whether DPO Panels receive recognition?
A.14	
Q.15	Was the process implemented in a manner that was consistent with the stated objectives in MD 10.159? If no, please explain. Should the objectives be modified? If yes, please explain and make recommendations.
A.15	
Q.16	In your opinion, is the DPO process effective? Why or why not?
A.16	
Q.17	What changes would you make to the process to make it work better?
A.17	
Q.18	Do you have any additional comments?
A.18	

APPENDIX D: Summaries of DPO Cases Closed in 2006

DPO-2005-005

Chemical Consequence Levels at the Proposed Mixed-Oxide Fuel Fabrication Facility

On August 25, 2006, the Director, Office of Nuclear Material Safety and Safeguards (NMSS), issued a decision on a differing professional opinion (DPO) involving chemical consequence levels at the proposed mixed-oxide fuel fabrication facility (MFFF) (DPO-2005-005). On June 21, 2005, a U.S. Nuclear Regulatory Commission (NRC) employee submitted a DPO that focused on chemical consequences from some potential events at the proposed MFFF, the applicant's proposed mitigative strategies for such events (using limits based on temporary emergency exposure limits (TEELs) from the U.S. Department of Energy (DOE)), and whether the NRC staff's position accepting the use of TEELs would endorse limits that do not provide adequate assurance of safety.

On April 4, 2006, an ad hoc review panel provided the results of its independent review to the Director, NMSS. The panel concluded that there is no basis for reversing the NRC position on the use of TEELs, chemical consequence limits do not need to be reopened, and the applicant need not submit additional information on the docket regarding the use of TEELs. The panel also concluded that the establishment of an expert NRC panel to develop values to be substituted for the TEEL values is not justified, and that a rulemaking process to promulgate the NRC's own chemical consequence limits would not be cost-effective, based on safety considerations. However, the panel recommended that the agency conduct a review of chemical consequence limits before issuing the operating license.

Based on a review of the panel's report, the Director, NMSS, agreed with and adopted most of the panel recommendations. However, he did not agree with and did not adopt the recommendation that the agency should conduct a review of chemical consequence limits before issuing the operating license. He noted that the NRC had already reviewed and approved the TEEL values as the design bases for the principal structures, systems, and components and stated that to reopen that review, after the NRC had already approved the final design bases, without some supporting contrary safety finding would constitute an inconsistent and unstable regulatory approach, contrary to the NRC's principles of good regulation.

DPO-2005-006

Publication of a Draft NUREG on Fire Model Verification and Validation for Public Comment

On June 23, 2006, the Executive Director for Operations (EDO) denied the appeal of the decision previously made by the Director, Office of Nuclear Regulatory Research. The DPO focused on whether the NRC should publish draft NUREG-1824, "Verification and Validation of Selected Fire Models for Nuclear Power Plant Applications," which the agency issued for public comment in January 2006, without first publishing certain benchmark exercise research reports that addressed potential issues and limitations with two of the five fire models in the verification and validation report. An ad hoc review panel determined that it was acceptable to publish the draft NUREG for public comment. The EDO also found that it was acceptable to publish the draft NUREG for public comment without first publishing the results of the eight benchmark exercises because all of the information from the research was appropriately considered.

APPENDIX D: Summaries of DPO Cases Closed in 2006 (continued)

DPO-2005-007

Farley Application of Control Rod Technical Specifications

On March 8, 2006, the Regional Administrator, Region II, issued a decision on a DPO regarding the application of technical specifications at the Farley nuclear power plant (DPO-2005-007). On August 2, 2005, an NRC employee submitted a DPO regarding the appropriate application of technical specifications on June 17, 2005 (when two control rods in a shutdown bank did not return to the full-out position following the performance of a surveillance procedure), and the appropriate documentation of the issue in an inspection report. On February 15, 2006, the panel provided the results of its independent review to the Regional Administrator, Region II. The panel concluded that Farley was in compliance with the technical specifications for the plant conditions related to the control rod system on June 17 and 18, 2005, and no enforcement action was warranted. The panel also concluded that the inspection report should have documented the inspection activities performed for this issue. The panel recommended that management have discussions with the staff on (1) the importance of reviewing the background information and bases for major amendments and licensing actions, (2) the documentation requirements of Inspection Manual Chapter 0612 regarding the information that inspection reports should include to ensure that expectations are clear and future reports accurately document all inspections performed by the staff, and (3) the availability and purpose of regional instructions on alternatives for resolving disagreements on technical issues. Based on a review of the panel's report and additional comments from the DPO submitter, the Regional Administrator, Region II, agreed with the panel's conclusions and recommendations. The region completed the actions to respond to the panel's recommendations on May 18, 2006.

DPO-2005-008

Emergency Preparedness for Day Care Centers and Nursery Schools

On July 14, 2006, the Director, Office of Nuclear Security and Incident Response (NSIR), issued a decision on a DPO involving emergency preparedness for day care centers and nursery schools (DPO-2005-008). On September 7, 2005, an NRC employee submitted a DPO that focused on the adequacy of preplanned evacuation resources and relocation centers for day care centers and nursery schools within the Commonwealth of Pennsylvania (referred to as the Commonwealth) and on whether the Commonwealth and the Federal Emergency Management Agency within the U.S. Department of Homeland Security (DHS/FEMA) had failed to comply with DHS/FEMA guidance. On June 8, 2006, an ad hoc review panel provided the results of its independent review to the Director, NSIR. The panel concluded that DHS had arrived at a defensible finding of reasonable assurance that children at day care facilities and nursery schools would be evacuated in the event of a radiological emergency at a power plant in the Commonwealth. The panel also concluded that the DHS/FEMA finding is consistent with the relevant regulations and guidance documents as well as legal implementation of Federal, State, and local requirements.

APPENDIX D: Summaries of DPO Cases Closed in 2006 (continued)

DPO-2005-008 (continued)

Emergency Preparedness for Day Care Centers and Nursery Schools

The panel also recommended that NSIR continue to work with DHS/FEMA, as it undertakes a comprehensive review of its guidance documents, to emphasize the value of clear guidance to the public and others outside of the radiological emergency preparedness community. Based on a review of the panel's report, the Director, NSIR, agreed with the panel's conclusions and recommendations.

DPO-2005-009

Solvent Flammability Limits at the Proposed MFFF

On August 25, 2006, the Director, NMSS, issued a decision on a DPO involving solvent flammability limits at the proposed MFFF (DPO-2005-009). On September 23, 2005, an NRC employee submitted a DPO that focused on the applicant's proposed approach to the use of controls to reduce the likelihood of solvent-fire explosion events at the proposed MFFF and whether the NRC staff's position accepting the applicant's approach would provide adequate assurances of safety. The DPO also expressed a concern that the staff did not contact the committee handling National Fire Protection Association (NFPA) 69, "Standard on Explosion Prevention Systems," for clarification of the code.

On June 2, 2006, an ad hoc review panel provided the results of its independent review to the Director, NMSS. The panel concluded that the DPO did not raise any safety concerns that have technical or legal implications for the staff's approval of the construction authorization request (CAR). The panel noted that the applicant made the business decision to proceed with the two-step licensing process, knowing the associated uncertainties and potential risks. The panel concluded that the staff's approval of the CAR was in accordance with relevant regulations for the two-step licensing process and is therefore consistent with the regulatory framework. It also concluded that the approval does not set a precedent. The panel recommended that, if the staff finds the applicant's safety strategies and controls ineffective during the operating licensing phase, the staff should consider appropriate agency regulatory processes, such as backfit, to ensure the protection of public health and safety. With respect to consultation with the NFPA committee for code clarification, the panel determined that the NMSS staff, based on professional expertise and experience, has the authority to evaluate and make determinations on appropriate code application during the review process. Therefore, the panel did not recommend any additional action.

Based on a review of the Panel's report, the Director, NMSS, agreed with and adopted the panel's recommendations, subject to the clarification that, with regard to the backfit process, if the staff becomes aware during the operating licensing phase of the need for significant changes to safety strategies and controls, or other issues that would call into question its conclusions in the CAR, the staff would review this new information at that time, consistent with backfit requirements, to the extent they are applicable.

APPENDIX D: Summaries of DPO Cases Closed in 2006 (continued)

DPO-2006-004

Davis Besse's Reply to the NRC's April 21, 2005, Notice of Violation

On December 18, 2006, the Director, Office of Enforcement, issued a decision on a DPO regarding the FirstEnergy Nuclear Operating Company's September 14, 2005, response to the notice of violation and proposed imposition of civil penalties that was issued to the Davis Besse Nuclear Plant on April 21, 2005 (DPO-2006-004). On May 22, 2006, an NRC employee submitted a DPO that focused on the licensee's response to one of five escalated violations cited in the agency's April 21, 2005, notice of violation and the manner in which the staff addressed concerns regarding the completeness and accuracy of this response and associated violations. On October 18, 2006, an ad hoc review panel provided the results of its independent review to the Director, Office of Enforcement. The panel concluded that the licensee's reply to the notice of violation did not constitute an additional violation of Title 10, Section 50.9, "Completeness and Accuracy of Information," of the *Code of Federal Regulations* (10 CFR 50.9) and that the agency's final determination concerning this issue was appropriate. Based on a review of the panel's report, the Director, Office of Enforcement, agreed with the panel's conclusions.

APPENDIX E: DPO Case Index

Case Number	Subject	Office	DPO Opened	DPO Decision	Appeal Opened	Appeal Decision
DPO-2005-001	Force-on-Force Evaluation Criteria	NSIR	01/14/05	11/07/05		
DPO-2005-002	Red Oil Events at Proposed MFFF	NMSS	01/25/05	03/23/07	04/23/07	
DPO-2005-003	Oconee Pipe Whip Restraints	RII	02/18/05	09/06/05		
DPO-2005-004	NRR Declination of TIA on MSIV Local Leak Rate Testing	NRR	04/04/05	withdrawn 04/14/05		
DPO-2005-005	Chemical Consequence Levels at Proposed MFFF	NMSS	07/01/05	08/25/06	09/28/06	03/01/07
DPO-2005-006	Publication of a Draft NUREG on Fire Model Verification & Validation for Public Comment	RES	07/11/05	02/12/06	05/03/06	06/23/06
DPO-2005-007	Farley Control Rod Technical Specifications	RII	08/18/05	03/08/06		
DPO-2005-008	Emergency Preparedness for Day Care Centers and Nursery Schools	NSIR	09/13/05	07/14/06		
DPO-2005-009	Solvent Flammability Limits at the Proposed MFFF	NMSS	10/04/05	08/25/06	09/28/06	04/19/07
DPO-2006-001	Point Beach End-of-Cycle Assessment	RIII	04/13/06	03/01/07		
DPO-2006-002	Oconee Sump Screens	NRR	05/12/06	12/17/07		
DPO-2006-003	Oconee Use of Leak Before Break in ECCS	NRR	05/12/06	01/20/07		
DPO-2006-004	Davis-Besse Reply to a Notice of Violation	OE	06/05/06	12/18/06	01/25/07	
DPO-2006-005	Management Policy on Licensing New Fuel Facilities	NMSS	11/20/06			
DPO-2006-006	Westinghouse Crossflow Instrument	NRR	12/21/06			

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APPENDIX F: Recommended Strategy for Establishing and Extending DPO Milestones and Timeliness Goals

DPO Milestone	Recommended Timeliness*
DPOPM receives, screens, and accepts DPO	8 days
DPOPM assigns DPO to office manager	5 days
Office manager establishes DPO Panel	14 days
DPO Panel conducts review <ul style="list-style-type: none"> – meets with submitter – collects, reviews, and evaluates information – writes report 	150 days
Office manager issues DPO Decision	21 days
DPO TIMELINESS (acceptance of DPO/DPO Decision)	190 days

*The timeframes for completing process milestones are identified strictly as goals—a way of working towards reaching the Differing Professional Opinions (DPO) timeliness goal of 190 calendar days.

The timeliness goal for dispositioning a DPO (i.e., DPO Decision) will be established as 190 calendar days after a DPO has been accepted for review under the DPO Program.

Office managers should send requests for extension beyond the 190-day timeframe to the Differing Professional Opinions Program Manager (DPOPM), who will forward the request to the Executive Director for Operations with a recommendation.