



Differing Professional Opinions Program

2007 Program Review

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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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.

During calendar year (CY) 2007, no new DPO submittals were accepted for review through the DPO process. The lack of DPO submittals may indicate an increased awareness of less formal processes to use to pursue differing views and the benefits associated with them. During CY 2007, six DPO Decisions were issued for cases that were opened in CY 2006 and CY 2005, four DPO appeal cases were opened, and five DPO Appeal Decisions were issued.

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 review of feedback and lessons learned has highlighted areas where changes are warranted to improve program implementation. The small number of DPOs processed in CY 2007 and since the program was revised 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.

Specific program accomplishments and planned actions the staff intends to take are as follows:

Accomplishments

- Developed and refined guidance and tools to aid the staff in implementing the DPO process, such as templates for DPO correspondence and handling strategies and instructions for DPO records.
- Worked with the Office of Administration and the Office of General Counsel to revise the guidance for handling DPOs raised by NRC contractors in the contract clause in the NRC Acquisition Regulations.
- Worked with other offices to eliminate redundant office procedures on the DPO Program.
- Coached DPO participants on the DPO process and DPO Program expectations throughout the process.

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- Conducted numerous employee outreach activities to improve employee understanding of and confidence in the DPO Program.
- Developed supervisory training and published a supervisor's handbook to address the DPO Program, additional ways for employees to raise differing views, and the agency's expectations for maintaining an open, collaborative working environment (OCWE).
- Worked with the Office of Human Resources (HR) to develop a revision of the Senior Executive System performance management system to further emphasize the importance of the DPO Program in the broader context of fostering an OCWE that encourages differing opinions.
- Created new content on the Values page of the NRC's public Web site to address the DPO Program as part of the infrastructure that supports maintaining an OCWE.
- Established the Differing Views Program as an employee resource with responsibility for overseeing the DPO Program and the Non-Concurrence Process and for communicating the NRC's expectations for maintaining an OCWE to better serve employees and improve the agency's overall organizational climate.
- Created responsibility for each office to appoint an employee to function (in a collateral capacity) as a Differing Views Office Liaison (DVOL).
- Continually posted information (such as DPO Program Reviews and summaries of closed DPOs) on the DPO Web site to increase employee awareness and understanding.
- Routinely counseled employees and provided advice on the DPO Program as well as other ways to raise differing views.

Planned Actions

- Continue to develop and refine guidance and tools to aid the staff in implementing the DPO process as well as reflect ongoing lessons learned and process improvements.
- Work with offices to either revise or eliminate office procedures so that guidance not only is consistent with MD 10.159 but also has no adverse impact on the willingness or ability of employees to express a differing opinion.
- Work with other offices to evaluate and revise qualification programs to ensure that they all consistently address the availability of the DPO Program as one way to pursue differing views and reflect NRC's expectations for maintaining an OCWE to better serve employees and improve the agency's overall organizational climate.
- Evaluate the DPO Monthly Status Report to reduce the burden of issuance.

- Revise the Differing Views Web site to identify DVOLs as an employee resource.
- Train DVOLs to ensure that they are familiar with existing agency processes and have access to process materials and resources.
- Work with the DVOLs in evaluation and revision of MD 10.159.
- Work to improve Freedom of Information Act guidance regarding DPO records.
- Promote NRC Team Player Success Stories initiative, post stories on *NRC Reporter* and Differing Views Web site, and coordinate with HR to include initiative in Annual Awards Ceremony.
- Work with the Office of the EDO and other offices to coordinate a Differing Views Forum as a way of reinforcing the value of differing views.

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 required justification for why the employee cannot discuss the issues with his or her supervisor).

DPO PROGRAM OVERVIEW

NRC has a policy 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 and organizational excellence objectives that support the mission: safety, security, openness, effectiveness, timeliness, and operational excellence.
- The DPO Program emphasizes the importance of informal discussions between the employee and his or her immediate supervisor 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 reports 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.

SPOPE AND METHODOLOGY

In accordance with the assessment responsibilities outlined in section 037 of MD 10.159, the DPOPM conducted an in-depth 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) 2007. Given the small number of DPO cases, this report also reviews aspects of the DPO process (e.g., timeliness) since the program was revised (May 16, 2004) to date.

The issues, planned actions, and recommendations in this report are based on the insights from the following sources of information:

Management Directive 10.159

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.

Previous Differing Professional Opinions Program Reviews

The issues and recommendations that were identified in the CY 2005 and CY 2006 DPO Program Reviews and the responses from the EDO (ADAMS Accession No. ML061980069 and ML071870234) were reviewed.

Additional Agency Documents

Additional agency documents including guidance on resolving differing views were identified and reviewed to ensure consistency with the revised guidance on the DPO Program in MD 10.159.

- 48 CFR 2052.242-71, "Procedures for Resolving Differing Professional Views"
- MD11.1, "NRC Acquisition of Supplies and Services"
- Inspection Manual Chapter 1245, "Qualification Program for the Office of Nuclear Reactor Regulation Programs"
- Office of Nuclear Materials, Safety and Safeguards (NMSS), "Policy and Procedure Letter 1-8 - Differing Professional Views and Opinions"
- NMSS, "Division of High-Level Waste Repository Safety Guidance for Resolving Technical or Policy Issues Involving Differing Professional Judgements"
- Office of New Reactors (NRO), NRO Office Instruction NRO-ORG-102, "Delegation of Signature Authority & Obtaining Office Concurrence"
- Office of Nuclear Reactor Regulation (NRR), NRR Office Instruction ADM-200, "Delegation of Authority"
- NRR Office Instruction ADM-504, GEN-SA-6, "Diversity of Opinion and Staff"
- Office of Research (RES), PRM-011, Rev. 0, "Handling Contractor Concerns About RES Programs"
- RES, "Office Instruction No. COM-008, Rev.0, "Addressing Staff Concerns and the Differing Professional Opinions Program"
- Region II, Regional Office Instruction No. 2304, Rev. 5, "Resolution of Differing Professional Opinions"

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- Region II, Regional Office Instruction No. 2230, Rev. 2, “ Supervisory Actions on NRC Staff Concerns”

DPO Cases and Records

All active DPO and DPO Appeal cases in CY 2007 (i.e., cases that were ongoing, received, processed, completed, and tracked) were reviewed. The staff used the DPO Audit Checklist (Appendix B) to evaluate whether the DPO process was implemented in accordance with MD 10.159.

Views of DPO Participants

Employees with first-hand experience with the program, including DPO submitters, DPO Panel members, and office managers, provided feedback on whether the program met its objectives and give suggestions for improving the process. These employees used DPO Program feedback forms (Appendix C). The Office of the EDO (OEDO) also provided feedback on the appeal stage of the DPO process. Several of the participants were engaged in followup discussions to obtain first-hand insights.

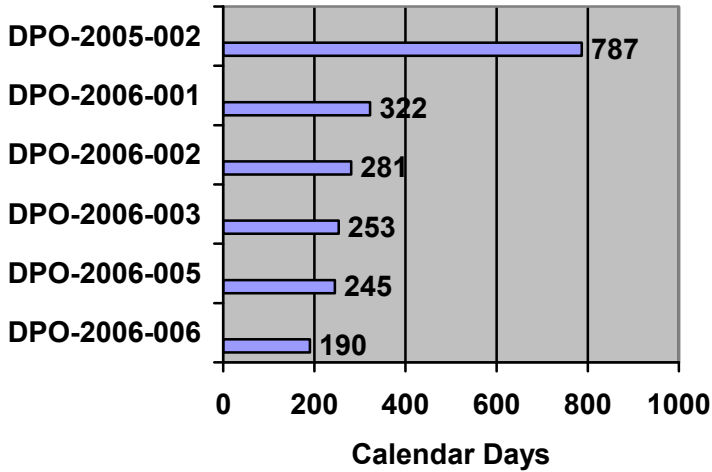
DPO AND DPO APPEAL CASES

During CY 2007, no new DPO submittals were accepted for review through the DPO process. However, during the year, the DPOPM engaged in discussions with multiple employees considering whether to pursue their concerns through the DPO process. The DPOPM advised employees of the various options available to them to pursue differing views and the attributes of each of the options. The lack of DPO submittals may indicate an increased awareness of less formal processes to use to pursue differing views and the benefits associated with them. Numerous outreach activities were conducted during the year to educate employees on the various methods to pursue differing views and emphasized the benefits of promptly raising concerns. This included the particular value of the Non-Concurrence Process (NCP) (see page 21 of this report for additional discussion on the NCP).

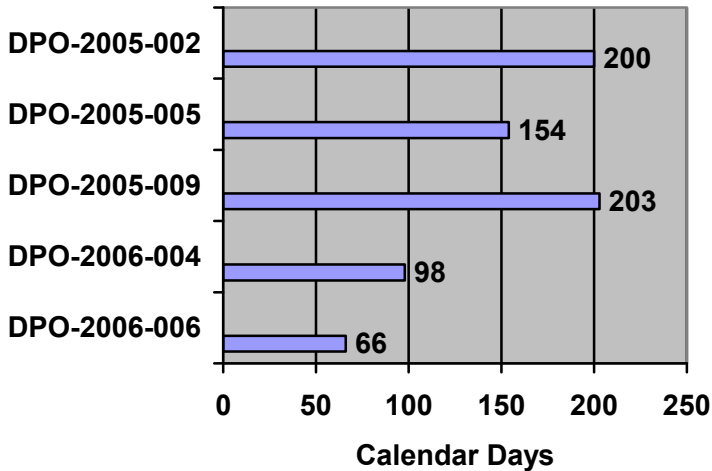
Given the complexities of the issues often associated with DPOs, it is not unusual for a case to be opened in one year and closed in another. During CY 2007, six DPO Decisions were issued for cases that were opened in CY 2006 and CY 2005, four DPO appeal cases were opened, and five DPO Appeal Decisions were issued. Of all the DPO cases opened since the program was revised, half resulted in appeals.

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. Figures 1 and 2 (on the next page) depict the timeliness of DPO Decisions and DPO Appeal Decisions issued in CY 2007, respectively. DPO and DPO Appeal Decisions are summarized in Appendix D.

**Figure 1. Timeliness of DPO Decisions
CY 2007**



**Figure 2. Timeliness of DPO Appeal
Decisions CY 2007**



In response to the recommendation included in the CY 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. Only one of the DPO Decisions issued in CY 2007 met the 190-day timeliness goal. The timeliness goal for dispositioning DPO appeals is 60–90 calendar days. Only one of the DPO Appeal Decisions met the timeliness goal. The discussion on page 10 of this report includes a more detailed discussion of 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

Previous reviews identified that the current guidance in MD 10.159, the MD Handbook, the exhibits, and the DPO Forms (NRC Forms 680 and 690) was not always clear, consistent, or complete. For example, the timeliness goal for the DPO Panel report is not clear. In one section of the MD it states that the DPO Panel should normally take no more than 30 days after meeting with the submitter to issue the DPO report. Another section of the MD indicates that the DPO Panel has 30 days to write the report from clarification of issues. The next revision of MD 10.159 will address these issues.

Although MD 10.159 includes guidance and expectations for activities and deliverables, it does not include detailed implementation guidance. Additional guidance and tools have been developed and refined to aid employees and managers engaged in the DPO and the DPO appeal processes.

- Office managers and DPO Panels were provided 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), and followup actions and schedule.
- The EDO was provided with a DPO Appeal Package for each appeal that included all key DPO documents, guidance and templates for DPO appeal activities and correspondence, and a DPO Appeal Checklist.
- Because DPO records have special handling requirements, comprehensive processing instructions were developed for administrative support staff to use to address DPO documents in paper-based and electronic systems (i.e., Agencywide Documents Access and Management System (ADAMS)). A strategy for placing DPO documents in ADAMS was developed in conjunction with the Office of Information Services (OIS) that allows DPO participants to have access to documents while at the same time limiting the access and viewer rights to reflect the sensitive nature of the documents and protect the identity of submitters. A new root folder, “DPO Case Files” was created in the ADAMS Main Library and individual DPO case folders were created to include key DPO documents. Because the decision on document availability is made when the process is complete, DPO records are maintained in ADAMS as signed, draft class documents. In accordance with the guidance in MD 10.159, once the DPO process is complete, DPO records are combined in an ADAMS package and declared an Official Agency Record (OAR).

On a related note, based on experience, additional guidance may be necessary to address DPO records that may be subject to the Freedom of Information Act (FOIA) process. FOIA guidance should be reviewed to determine the appropriate handling of signed DPO records, e.g., are they part of a predecisional process and therefore, should not be declared OARs until the DPO process is complete. Guidance should also be reviewed to ensure that care is taken to protect the identity of submitters, when appropriate. OE will work with the appropriate offices on this issue.

As previously noted, the NRC's formal process for expressing DPOs is established in MD 10.159. Previous reviews identified that specific guidance for handling DPOs raised by NRC contractors is provided in a contract clause in the NRC Acquisition Regulations (NRCAR), and addressed in MD 11.1, and RES PRM-011. The staff worked with the Office of Administrative Services (ADM) and the Office of the General Counsel (OGC) in modifying the NRCAR clause to be consistent with the goals and objectives identified in MD 10.159. The contract clause was successfully revised to minimize the need for conforming revisions to MD 10.159 (e.g., revised timeliness goals). The next revision of MD 10.159 will include specific guidance for resolving DPOs raised by NRC contractors. At that time, OE will work ADM and RES to review the guidance for resolving DPOs raised by NRC contractors in MD 11.1 and RES PRM-011 to determine if the guidance should be eliminated or made consistent with the goals and objectives in MD 10.159.

A review of additional agency guidance documents revealed that not all DPO guidance is consistent with the guidance in MD 10.159. The existence of multiple DPO guidance documents can lead to different expectations, misunderstood responsibilities, and inconsistent implementation. It can also result in employee and management frustration and increase negative perceptions about the DPO Program. Although offices are not precluded from establishing internal implementing procedures and guidance can be addressed in more than one MD, relying on the guidance in MD 10.159 would ensure that all employees are implementing consistent, controlling agency guidance and would eliminate the need to review and update lower tiered office instructions and other MDs when guidance in MD 10.159 is revised.

Region IV eliminated its office instructions to improve its organizational effectiveness. If an office concludes that additional guidance in office instructions or MDs is necessary, the office should ensure that the guidance is consistent with the goals and objectives of the DPO Program guidance in MD 10.159. The DPOPM will work with offices through the Differing Views Office Liaisons (DVOLs) to review office instructions to ensure that guidance is consistent with MD 10.159 (see page 22 of this report for additional information on DVOLs.)

2. Communication

Communication is critical to the success of the DPO process. The DPO Monthly Status Report is an important communication tool that informs all DPO participants informed of the milestones and timeliness goals for each DPO. The report also includes a matrix of the DPO follow-up actions and schedules until the actions are implemented. All DPO participants, 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. Although the DPO Monthly Status Report serves a critical function, the frequency of the report and the format, and process for generating the report will be examined in an effort to reduce the staff burden and improve the efficiency of issuing the report.

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Because employees are not always familiar with the DPO process, DPO participants are routinely coached on the DPO process and DPO Program expectations.

- The DPOPM communicated with many individuals before DPOs were submitted. Advice was offered to help walk through the concerns, including the possible benefit of the individual having additional discussions with other supervisors, and in several instances, suggestions were made for focusing the concerns in submittals to help readers more clearly understand them. Continuing guidance to submitters was provided throughout the DPO process.
- 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 offered advice on DPO-related issues. Typical advice might include suggesting meeting with submitters before rendering DPO Decisions to ensure that employees have been heard and their views considered.
- Meetings were held 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 DPOPM worked with the OEDO to support the review and disposition of DPOs appealed to the EDO. The OEDO was kept informed of process responsibilities and EDO questions were responded to.
- 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. For example, one DPO Panel Chair suggested a monthly meeting with the office manager, DPO Panel, and DPOPM. This suggestion will be communicated to office managers when DPOs are assigned.

3. DPO Panel Review

One of the key features of the DPO Program is an independent review of the DPO issues by knowledgeable 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 under their responsibility. This section addresses the composition and selection of the DPO Panel, including the DPO Panel Chair, and the role of office managers in ensuring quality and independence.

Several concerns were raised about the composition of the DPO Panel. One DPO participant commented that the independence of DPO Panel members was more important than the members' knowledge. The commenter believed that DPO Panel members should not include staff in the same chain of command as the responsible Division Director or staff that report to the management chain (e.g., technical assistant). Alternatively, one DPO participant commented that although the members were independent, the DPO Panel and thus the review

for their case was not credible because the majority of the DPO Panel members lacked the necessary technical qualifications to understand the complex issues.

Another concern was raised about the provision that office managers select two out of three of the DPO Panel members (including the DPO Panel Chair) and subsequently select the final DPO Panel member from the list suggested by submitters. The commenter believed that this process will bias the outcome in favor of the prevailing staff position and suggested that a more collaborative process be used to establish the DPO Panel.

One DPO participant suggested that the current three-person DPO Panel be replaced with a standing DPO Panel comprised of Senior Level Service employees. Under this recommendation, a DPO submitter would present his or her concern to the DPO Panel in an internal meeting observed by other staff, (analogous to Committee To Review Generic Requirements meetings), and the DPO Panel would subsequently present its conclusions and recommendations to the office manager.

The selection 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 may be prudent that the DPO Panel Chair be from outside the organization responsible for dispositioning the DPO. However, as previously noted, the desire for independence may result in the DPO Panel Chair lacking the necessary knowledge to review the DPO issues. Independence may be more important than technical expertise, provided the DPO Panel Chair has general knowledge of the DPO issues and the other two DPO Panel members have the requisite knowledge to support a credible review by the DPO Panel.

Given the crucial role that the DPO Panel plays in the DPO process, the composition and qualification of the DPO Panel (including the DPO Panel Chair) warrant further review to ensure an independent, objective, and technically credible review. OE will work with other offices through the DVOLs to address the composition and qualification of the DPO Panel as part of the evaluation and revision of MD 10.159.

Finally, in an effort to maintain the independence of the DPO Panel and avoid a possible chilling effect, office managers were advised to limit their involvement with the DPO Panel to oversight activities (such as resolving scheduling issues) during the review. In addition, to avoid the perception that DPO Panels were not independent of office managers, as previously noted, the EDO approved a modification to Section D(4)(g) of the MD Handbook to make it clear that DPO Panel reports should only be returned to DPO Panels when reports are incomplete.

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 in response to the recommendation included in the CY 2005 DPO Program Review.

None of the DPOs processed in CY 2006 met the revised 190-day timeliness goal. In an effort to determine whether the timeliness goal should be revised again, the CY 2006 DPO Program Review examined the specific DPO process milestones and the timeliness for all DPOs that were processed from the beginning of the revised program (May 16, 2004). Based on this review, a recommendation was made to maintain the 190-day goal but eliminate the process step allowing office managers and submitters to comment on the DPO Panel report. In a memorandum dated July 23, 2007, the EDO approved the recommendation to eliminate the commenting process and clarified that office managers should only return DPO Panel reports if they were incomplete. About half of the cases processed since the revision of the program would have met the 190-day goal without this step. Appendix E includes an index of all DPO and DPO appeal cases since the revision of the program.

It appears that the following circumstances contributed to the lack of meeting the 190-day timeliness goal: (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. These issues are discussed more below.

Experience has shown that most issues pursued through the DPO process are not simple, straightforward issues. They were technically challenging, complex, and often controversial. Furthermore, while several DPOs have focused on discreet issues or events, others have focused on broader issues, some with precedent-setting implications. The DPO process recognizes that some DPOs may be so specialized and complex that it may be necessary to seek a person outside the agency to serve as a consultant to the DPO Panel in order to provide independence and credibility. The process of contracting services in and of itself can be a time-consuming issue. The 787-day review for one of the DPOs is an outlier that reflects the extra time for using contractor assistance to support the DPO Panel review. In these types of cases, 190 days to perform a thorough, high-quality review is insufficient and possibly counterproductive. Given the complexity of issues and the lack of the DPO Panel members' complete understanding of the issues, one DPO participant believed that more time was necessary to perform the DPO review. The individual thought that the DPO Panel may have been under pressure to complete the review. It is important that the process maintain flexibility to reflect the diverse nature of DPO issues. The 190-day goal should be used as a starting point for the review. The complexity of a DPO should be recognized early in the process and timeliness goals beyond 190 calendar days should be discussed with the appropriate Deputy EDO and a schedule extension should be submitted through the DPOPM for formal EDO approval.

Several concerns were raised about competing work assignments. 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 indicated that work schedules were not adjusted in practice and that many DPO

Panel members performed DPO-related tasks outside of normal working hours in order to fulfill program expectations for a thorough and timely review. One DPO Panel Chair strongly supported the DPO Panel members by dedicating half of their work schedules to the DPO 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) that reflect 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 in the agency and affecting the availability of DPO participants.

The DPO process relies on specific employees to fulfill key activities (e.g., perform the DPO Panel review, issue the DPO Decision, and possibly render a final DPO Appeal Decision). Unlike other duties, individuals cannot delegate their DPO responsibilities to other employees. As such, individual scheduling conflicts (both professional and personal) can contribute to the timeliness. Scheduling issues should be considered when DPO Panel members are selected. However, it is recognized that some scheduling issues are unpredictable and unavoidable. Office managers are routinely challenged in managing their schedules to meet the needs of the agency. Because the EDO attempts to meet with DPO submitters before rendering decisions on DPO appeals, the timeliness of DPO appeals is affected.

The staff recommends retaining the DPO timeliness goal of 190 days. About half of the cases would meet the goal based on the recommended strategy. The timeliness goal for dispositioning DPO appeals is recommended to remain 60–90 days. The small number of DPOs processed under the revised DPO Program made it difficult to draw conclusions about the appropriateness and effectiveness of timeliness goals. Timeliness goals must be recognized as *goals* rather than hard dates. Flexibility is crucial to the success of the process. The DPO Program should not result in a schedule-driven process that fails to recognize the safety significance and complexity of the issues. Similarly, the DPO Program should recognize the priority of other work in the agency. The DPO Program should emphasize that DPOs should be dispositioned in a *timely* manner that factors in a number of circumstances, including 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 in the agency and affecting the availability of DPO participants. Office managers should request extensions from the EDO as soon as they are aware that more time is required to disposition a DPO. The administrative burden of requesting extensions was reduced by using OEDO Procedure 0370, “Extension Requests and Transfer of Controlled Items.” Effective oversight of and communication with DPO Panels should minimize the need for multiple extensions. As additional experience is gained, the staff will continue to evaluate DPO timeliness and recommend necessary changes. Appendix F includes the EDO-approved strategies for establishing and extending DPO and DPO appeal milestones and timeliness goals

5. Oversight, Tracking, and Record-Keeping

The creation of the DPOPM position allows the agency to monitor DPOs on an ongoing basis to help ensure that appropriate actions are taken to support the successful disposition of individual DPOs. However, the existence of the DPOPM position does not preclude the need for close involvement by office managers. For example, as previously addressed, office managers need to provide necessary oversight to ensure that DPOs are dispositioned in a timely, independent, and credible manner. Although the DPOPM supports office managers throughout the DPO

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process, given their detailed process responsibilities as defined in MD 10.159, and the possible lack of familiarity of the process (due to the small number of DPOs), additional support for office managers is warranted. Actions were taken this calendar year to address this issue. As discussed later on, the DVOL position was established to assist office managers implement the DPO process (e.g., communicating the status of DPOs, tracking follow-up actions, coordinating reviews for record release). This assistance will facilitate coordination and communications with the DPOPM and help office managers stay in process.

Tracking DPO activities is essential to support process implementation and effective communication. If an office manager identifies follow-up 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 follow-up 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 follow-up actions are implemented and when schedule delays occur.

At this time, an agencywide tracking system does not exist for key DPO deliverables, including DPO Decisions and DPO follow-up actions. The DPO Monthly Status Report currently fulfills 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 follow-up actions, this strategy has not routinely been effective in keeping the DPOPM informed. Although the DPOPM and the DVOLs can facilitate coordination and communication, the DPO Program requires an appropriate infrastructure to support effective implementation to meet the goals identified in MD 10.159. An agencywide tracking tool that has appropriate recognition and visibility can help office managers focus on successful implementation. In many ways, the DPO process is similar to the 10 CFR 2.206 petition process. When a 10 CFR 2.206 petition is submitted to the EDO, the OEDO opens an agency-level action item and assigns it to the office manager responsible for its disposition. The Agency 2.206 Petition Coordinator is informed of all assigned petitions and is responsible for maintaining a 2.206 database, generating a monthly status report, and monitoring activities. Although DPOs are submitted to the DPOPM, the DPOPM is an agent of the EDO and Commission in assisting office managers implement the agencywide DPO process as defined in MD 10.159. When the DPOPM accepts a DPO for review, an agency-level action item could be generated based on the defined timeliness goals and assigned to the office manager responsible for its disposition. Consistent with existing practice, office managers could use the OEDO Procedure 0370, "Extension Requests and Transfer of Controlled Items" to request extensions. Therefore, to ensure appropriate oversight and visibility for DPO actions, the agency should consider using the Electronic Document and Action Tracking System (EDATS) in an agencywide manner to track key DPO activities and deliverables (DPO and DPO Appeal Decisions, DPO and DPO appeal summaries for the Commission's Weekly Information Report, and DPO and DPO appeal-related follow-up actions). The OEDO's Work Item Tracking System (WITS) could be used in those instances when EDATS may not be available.

As previously noted, DPO records have special handling requirements. DPO documents generated during the process are maintained as draft class records in ADAMS with limited viewer rights until the DPO process is complete (i.e., when a DPO Decision is issued and not appealed or when a DPO Appeal Decision is issued). Submitters are given a choice of how DPO records are released (i.e., public, non-public). If a submitter wants the DPO records non-public, the MD directs that viewer rights be limited to the DPOPM and the EDO. If a submitter wants the records public, the office manager performs a releasability review to determine how the records should be released. Unlike a review performed under the legal FOIA process, a releasability review is a discretionary process that allows office managers to release internal, deliberative process records to the public that would not normally be released. DPO records are reviewed in accordance with agency procedures and practices, including a Sensitive Unclassified Non-Safeguards Information review to ensure information is not inappropriately released. Although progress has been made in building an infrastructure and establishing guidance to address DPO records, given the atypical process and the infrequency of its use, implementation remains an issue requiring substantive support from OE. As previously noted, assistance from DVOLs should improve DPO record-keeping.

6. Accountability

The staff considered whether metrics should be developed for the DPO Program. MD 10.159 requires office managers to implement the DPO Program in accordance with program goals and objectives (including the timely disposition of DPOs). Managers are routinely challenged to prioritize a multitude of activities, many addressed in operating plans. Including a metric in office operating plans based on the DPO timeliness goal could highlight the significance of this important agency process relative to other agency activities, thereby reducing the timeliness of dispositioning DPOs. However, although a metric could be developed based on the DPO timeliness goal, it may not be appropriate to do so at this time. Highlighting the timeliness program goal could overemphasize its importance compared with other program goals, such as thorough and comprehensive reviews of differing views. The small number of DPO cases processed since the program was revised also contributes to the challenge of developing specific measurable metrics.

Based on issues and recommendations from previous reviews, OE was successful in working with the Office of Human Resources (HR) in addressing the DPO Program in the Senior Executive System (SES) performance management system. Changes were made to previous language in the Executive Core Qualifications (ECQs) on Leading People. The wording was revised and expanded to further emphasize the broader importance of fostering an open, collaborative working environment (OCWE) and encouraging differing opinions by supporting the Open Door Policy, the NCP, and the DPO Program. The language was also revised to amplify expectations at the Meets Expectations level and better describe performance at the Outstanding level. Addressing this issue in the ECQs is a positive step forward and this area will receive additional attention in the future.

Accountability can help improve performance in the DPO Program as well as the broader focus of ensuring an OCWE. (See page 20 of this report for additional discussion of NRC's OCWE.) OE will work with other offices to explore additional methods and strategies to address accountability for improved performance.

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. Certificates of appreciation signed by the EDO were given to all participants. This process was modified to include personal presentation of the certificates from the EDO.

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 OCWE. 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. DPO participants can be nominated under the NRC Team Player Success Stories initiative (see page 23 of this report for additional discussion on this issue.)

8. Retaliation

The DPO Program emphasizes that the NRC will not tolerate retaliation, harassment, or intimidation of employees who raise DPO concerns. Any concerns about retaliation were promptly referred to the Office of the Inspector General (OIG). 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.

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.

In an effort to help avoid perceptions of retaliation based on behaviors, one office manager emphasized to his line managers that the focus of the DPO be on the issues and not on the individuals who raised them. He encouraged line managers to remain objective in considering the issues.

One DPO submitter admitted that several employees (including supervisors) raised concerns that pursuing a DPO could impact the submitter's career progression at the NRC. In addition, the submitter stated that they were aware of other staff who were in agreement with the

submitter, but were reluctant to speak up and provide comments. The OIG 2005 NRC Safety Culture and Climate Survey (referred to as the safety culture survey) found that approximately one-third of employees believe submitting a DPO has a negative effect on career development at the NRC. Because of the small population of NRC employees with first-hand experience in the DPO Program, employee views are likely driven by perception rather than facts. Providing additional information to all employees may reduce the amount of employee uncertainty and increase favorable responses in this area. The NRC currently posts statistical data pertaining to [employment discrimination complaints](#) on the NRC's public Web site. However, posting statistical data on DPO-related retaliation allegations may not be appropriate given the small number of DPOs and the desire to respect employee privacy.

Several submitters commented that they felt that their work environment was adversely affected as a result of submitting a DPO. Routinely affirming that diversity of viewpoints is a strength and potential source of valuable ideas (such as through day-to-day communications and staff meetings) and periodically affirming the value of the DPO Program (such as through all-hands meetings, newsletter articles, and yellow announcements) could help reduce staff concerns of retaliation. In an effort to address career development concerns, the EDO approved and agreed to host a Differing Views Forum including a panel of NRC supervisors and managers sharing their personal stories and experiences raising and pursuing differing views.

Requiring training for new supervisors and managers could also ensure that they are familiar with the DPO Program and its expectations and help establish the foundation for developing future leaders who will sustain the desired safety culture. See the discussion beginning on page 20 of this report for additional discussion on initiatives to improve safety culture.

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 outside the agency.

1. Advising Employees

The DPOPM routinely counseled employees and provided advice on the DPO Program as well as other ways to raise differing views within the agency, including the Open Door Policy, and the NCP (see page 21 of this report for additional discussion). Employees were also advised on strategies for resolving differing views through informal discussions.

2. Increasing Awareness

The 2005 safety culture survey indicated that most employees were aware of the DPO Program. However, 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” (e.g., 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 address this, briefings emphasized that the DPO Program applies to all NRC employees and NRC contractors with a broad range of concerns provided the opinion is related to the agency’s mission and to the strategic goals and organizational excellence objectives that support the mission (i.e., safety, security, openness, effectiveness, timeliness, and operational excellence). This information is also reflected on the DPO Web page.

In addition, in CY 2007, a variety of awareness briefings were provided to numerous employees throughout the agency through multiple venues:

- new employee orientation
- “NRC: What It Is and What It Does” (instructor-led course)
- Nuclear Safety Professional Development Program
- Office of Nuclear Reactor Regulation regulatory awareness seminars
- NMSS all hands meeting
- Presentation to SES Candidate Development Program (SESCDP)

OE worked successfully with HR in developing new supervisor training to further orient them with the DPO process. The presentation, “Open, Collaborative Working Environment & Ways to Raise Differing Views,” was provided several times as part of the Supervising Human Resources Course. Both the course and the supervisor’s handbook offer practical guidance in building trust with employees and creating the right climate that fosters differing views. Based on positive feedback, the supervisor’s handbook was subsequently distributed to all office managers and was posted on the Differing Views Web site.

Many management experts are recognizing the need for and benefit of “soft” skills (non-technical skills in communication, motivation, conflict resolution, and team building.) This issue was

highlighted by the report, "Training Supervisors to be Leaders," sponsored by the Partnership for Public Service. The Partnership for Public Service is a nonprofit organization that measures employee satisfaction at federal agencies and has issued, *Best Places to Work in the Federal Government* since 2003. The NRC was voted the number one place to work in the *Best Places* rankings for large agencies in 2007. The NRC is currently evaluating leadership development, including the possible adoption of several recommendations in the report.

OE was also successful in working with HR in scheduling a presentation as part of the Executive Seminar focused on building a corporate culture that values straight talk and rewards integrity. OE will work with HR and explore the possibility of conducting a similar agency-level presentation to promote OCWE and internal safety culture.

As the agency expands, it is important that qualification programs include consistent guidance on the DPO Program. In an effort to further improve our internal safety culture, it is also important that qualification programs consistently address the agency's expectations for maintaining an OCWE. There is great benefit in all employees understanding the various ways and processes to use to raise differing views. The DPOPM will work with offices through the DVOLs to ensure that guidance in qualification programs are consistent with agency goals.

In an attempt to reach all employees, the Differing Views Web site includes a DPO Web page that 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 page 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 in the regulatory decision-making process.

3. Outreach Activities

The DPOPM participated in a meeting between NRC employees and representatives from the U.S. Department of Energy (DOE) Office of Civilian Radioactive Waste Management and Bechtel SAIC Company, LLC. DOE and Bechtel representatives shared information on activities associated with building a safety conscious work environment at the Yucca Mountain site. During the meeting NRC's experiences were shared about establishing an OCWE and the various processes in place for employees to raise differing views (Open Door Policy, NCP, and the DPO Program). The value of having multiple processes for raising differing views was emphasized and the NCP was highlighted as a particular strength.

Appropriate agency representatives also routinely participate in the Employee Concerns Program Forum. This year, staff participated in a panel discussion at the forum on internal safety culture and addressed how the agency's statement on OCWE, performance expectations, and diverse infrastructure for conflict resolution contribute to a positive safety culture. The new NCP was highlighted as a particular strength.

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The DPO Program, additional ways for employees to raise differing views, and the agency's expectations for maintaining an OCWE was addressed in the U.S. National Report presented at the Convention on Nuclear Safety Peer Review Meeting held in April 2008 at the International Atomic Energy Agency in Vienna, Austria.

The importance of the DPO Program was addressed during the 20th Annual Regulatory Information Conference in the broader context of fostering an OCWE that encourages differing opinions. Participants were encouraged to review the NRC's Web site.

A new working coalition was established with the National Aeronautics and Space Administration (NASA) to exchange information, expertise, and experiences to promote best practices in addressing differing views. The staff was invited to the Johnson Space Center to observe NASA's Mission Management Team address dissenting views expressed during a shuttle mission.

PROPOSED REVISION OF MD 10.159

The staff is revising MD 10.159 based on issues identified in previous program reviews and additional lessons learned and process feedback. The DVOLs will assist OE in obtaining office input and feedback before issuing the revised MD for review and approval.

The staff proposes the following high-level revisions:

- an introductory discussion of the agency's OCWE 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 address the role of DVOLs in the DPO process
- modifications to guidance to clarify which 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 allowing office managers and submitters to comment on DPO Panel reports
- 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 non-retaliatory
- policy to ensure that office managers consider, (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 positively recognize DPO Panel members when their actions have resulted in significant contributions to the mission of the agency

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 decisionmaking at the NRC.

1. 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](#) (OCWE) 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 value of an OCWE has been communicated through multiple venues. The EDO issued a Yellow Announcement on March 19, 2007, to all employees endorsing the value of and expectations for an OCWE and highlighting the new public Web page. The EDO issued a memorandum to all office directors and regional administrators emphasizing the beneficial strategy in recognizing and communicating OCWE as a positive piece of an overall internal safety culture. The Commissioners have referenced OCWE in various speeches and presentations and the OE staff routinely addressed OCWE during new employee orientations, all hands meetings, and supervisory training. The supervisor's handbook is included on the Differing Views Web site.

2. Agency Non-Concurrence Process

Although several NRC offices had existing non-concurrence procedures, 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 the National Treasury Employees Union (NTEU). Multioffice collaboration ensured a balanced agency approach. NTEU participation in the task group was especially effective and productive. On November 29, 2006, the EDO issued the draft management directive for interim use pending finalization of the NCP directive. OE has primary responsibility for oversight of the NCP.

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 non-concur 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 Non-Concurrence Process," NRC Form 757, "Non-Concurrence Process," frequently asked questions, a comment form, and other NCP-related information.

During CY 2007, more than a dozen employee presentations were conducted on the NCP. Numerous employees were also counseled and advised about the NCP and support was

provided for those employees and managers actively engaged in the NCP.

3. Differing Views Program

Given the dynamic changes anticipated for the regulatory environment, it is important that the NRC have a diverse infrastructure and adequate support mechanisms to address differing views expressed by NRC employees and contractors. It is also important that employees can easily identify resources for differing views. In a memorandum dated March 3, 2008, the EDO announced that the responsibility for overseeing the agencywide NCP and the DPO Program and communicating the NRC's expectations of maintaining an OCWE (including personal performance) and the various ways to raise differing be addressed under the Differing Views Program. These activities (currently conducted by the DPOPM) will continue to be assigned to OE and the title of the DPOPM will be revised to Differing Views Program Manager (DVPM) to better reflect the functions of this position.

4. Differing Views Office Liaison (DVOL)

In an effort to ensure that individuals have adequate support when raising differing views, the EDO tasked each office to appoint an employee to function (in a collateral capacity) as a DVOL. DVOLs will be knowledgeable about various ways to raise differing views, including the Open Door Policy, the NCP, and the DPO Program and will be available to respond to employee questions and initiatives in their organizations.

DVOLs will assist office managers implement the DPO process (e.g., communicating the status of DPOs, tracking followup actions, coordinating reviews for record release). This assistance will facilitate coordination and communications with OE and help office managers stay in process. DVOLs will also help evaluate the DPO process and make recommendations for revisions in MD 10.159, thus eliminating the need for ad hoc task groups and improving the effectiveness and efficiency of process revisions. DVOLs will also be able to answer staff questions about the NCP and will play an active role in reviewing the process and revising the NCP MD.

DVOLs will be provided training to ensure that they are familiar with existing agency processes and have access to process materials and resources. Working together, these efforts will help to enhance the NRC's organizational climate to ensure all the staff recognize that differing views are valued.

5. Differing Views Web Page

The [Differing Views](#) Web page is identified on the NRC's internal home page under Employee Resources and should help employees (especially new employees) easily locate information and contact persons (i.e., DVPM, DVOLs) who can assist them voice and pursue their concerns. The Web page addresses the expectations for an OCWE 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 Web page consolidates information previously included on the DPO and NCP Web pages in one central location. The Web page also includes information and advice on engaging in productive informal discussions and the supervisor's handbook, *Open, Collaborative Working Environment & Ways to Raise Differing Views*. Communication Web pages on the internal NMSS and Office of New Reactors (NRO) Web sites link to the Informal Discussions page of the Differing Views Web site.

6. NRC Team Player Success Stories

The EDO approved a new initiative designed to help celebrate the value of differing views. This initiative is designed to recognize and show appreciation for individuals who have supported an OCWE by exhibiting team player behaviors consistent with the agency's written expectations included on the "Be an NRC Team Player" poster. This initiative is not an official agency award program. It is an engaging initiative where employees (staff and managers) nominate their peers to recognize and value positive actions. NRC Team Player success stories will reflect diversity in employees and offices. A story can reflect a specific incident, or can reflect ongoing behaviors by an employee or manager. Stories will focus on positive behaviors for productive discussions rather than the outcomes of the discussions. In other words, success stories do not have to result in consensus decisions and win/win outcomes.

After a success story is submitted and approved, the EDO will present a certificate of appreciation and an NRC Team Player token of appreciation to all recipients. Information on the NRC Team Player success story initiative is included on the Differing Views Web site and success stories will be showcased as a regular feature on the NRC's internal Web site on the *NRC Reporter*. NRC Team Players will be recognized in the Annual Awards Ceremony.

7. NRC Team Player Display Cases

In an effort to reinforce the value of an OCWE, the EDO approved an initiative to have permanent displays in all NRC office buildings. The display cases are intended to remind employees that OCWE requires an ongoing commitment by all employees and is a crucial element of a strong internal safety culture.

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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 (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 follow-up 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 (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 (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 (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 (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 (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 Decisions and DPO Appeal Decisions Issued in 2007**DPO Decision (DPO-2005-002)****Red Oil Events at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On March 23, 2007, the NMSS Director issued his decision on a DPO on Red Oil Events at the Proposed Mixed Oxide (MOX) Fuel Fabrication Facility. The Director agreed with the DPO Panel Report. Specifically, the Director agreed that the construction authorization for the MOX Fuel Fabrication Facility does not have to be revisited. The applicant for the facility has committed to provide additional information regarding its proposed approach for controlling red oil events in support of the review of the Operating License application. As part of the Operating License application review process, it is the applicant's responsibility to demonstrate adequate protection of the public health and safety and the environment with respect to preventing or mitigating red oil runaway reactions.

DPO Appeal Decision (DPO-2005-002)**Red Oil Events at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On November 9, 2007, the EDO issued his decision on a DPO appeal involving the adequacy of information pertaining to the prevention and mitigation of potential red oil explosion events in a MOX construction authorization request. The construction authorization request was submitted for NRC approval in accordance with 10 CFR 70.23(b). While the EDO agreed with the DPO safety concerns (i.e., a MOX plant red oil explosion could have high consequences), the EDO also supported the conclusions made by the independent DPO Panel in its final panel report as well as the conclusions made by the Director, NMSS on both the DPO Decision and the contested issues. Specifically, the EDO agreed with the conclusions: (1) that the NRC staff, Advisory Committee on Reactor Safeguards, and independent DPO Panel all recognize that these concerns need to be addressed by the applicant through the results of their research, the integrated safety analysis results, or modifications and backfitting, as appropriate; and (2) that the technical issues associated with the DPO and the Center for Nuclear Waste Regulatory Analyses' questions need to be resolved at the license application review stage.

DPO Appeal Decision (DPO-2005-005)**Chemical Consequence Levels at the Proposed Mixed-Oxide Fuel Fabrication Facility**

On March 1, 2007, the EDO issued a decision on an appeal to an August 25, 2006, DPO Decision issued by the Director, NMSS. The appeal related to a June 21, 2005, DPO submitted by an NRC employee on the adequacy of chemical consequence limits proposed by a license applicant. The submitter requested in the original DPO that: (1) the management/staff decision to accept the use of the chemical consequence limits for the proposed facility be revised; (2) an issue on chemical consequence limits identified during the NRC's review of the license application be reopened; (3) the applicant be requested to submit on the docket adequate justification for its use of chemical consequence values; (4) a task force with credentials and experience in chemical consequence assessment and exposure limits be formed to establish an NRC staff position; and (5) a rulemaking process be conducted that presents these proposed limits to the licensees and the public such that consistent guidance for license and applicants can be developed. The EDO agreed with the DPO Decision that a sufficient basis does not exist to reverse the NRC decision on the use of the proposed chemical consequence limits and take

APPENDIX D (continued)

the actions proposed by the submitter. However, the EDO acknowledged that the staff is currently developing a guidance document which addresses, in part, the appropriate standards to use in setting chemical limits which will provide additional clarity on the appropriate considerations in review of chemical consequence limits. The EDO also recognized the efforts of the submitter in raising the concerns and the contribution of the employee in ensuring the agency's safety goals are achieved.

DPO Appeal Decision (DPO-2005-009) Solvent Flammability Limits at the Proposed MFFF

On April 19, 2007, the EDO issued a decision on an appeal to an August 25, 2006, decision made by the Director, NMSS. The appeal related to a September 23, 2005, DPO submitted by an NRC employee on the adequacy of chemical consequence limits proposed by a license applicant. The original DPO focused on five issues surrounding the lower flammability limit of chemical combustion concentrations, how it was applied in the MOX Construction Authorization Request (CAR), and compliance with the regulations. The EDO agreed with the DPO Decision that the DPO submitter did not raise safety concerns that have technical or legal implications on the staff's approval of the CAR. Most the concerns were related to the inherited issue with the two-step licensing process. The applicant made the business decision to proceed with the two-step licensing process knowing the associated uncertainties and potential risks. The NMSS staff approved the CAR in accordance with relevant regulations for the two-step licensing process. Upon receipt of the DPO appeal, the EDO initiated an extensive review of related information. In order to fully understand the issues, the EDO also met with the members of the DPO Panel and the DPO submitter.

DPO Decision (DPO-2006-001) Point Beach Problem Identification and Resolution Substantive Cross-Cutting Issue

On March 1, 2007, the Region III Regional Administrator issued a decision on a DPO regarding the NRC's closure of the substantive cross-cutting issue in the area of problem identification and resolution at the Point Beach Nuclear Plant during the 2005 end-of-cycle performance assessment. The DPO questioned whether the NRC's decision to close the issue was correct. The DPO Panel concluded that the decision to close the cross-cutting issue did not result in a reduction of inspection effort or a reduction in safety at the Point Beach Plant. After reviewing the DPO Panel's report and Manual Chapter 0305, the Regional Administrator agreed with the panel's conclusions.

DPO Decision (DPO-2006-002) Oconee ECCS Sump Screens

On February 17, 2007, the NRR Director issued his decision on a DPO regarding the use of leak-before-break (LBB) technology in the design of a facility modification involving installation of new emergency core cooling system (ECCS) recirculation sump strainers at Oconee, Units 1 and 2. On May 3, 2006, an NRC employee submitted a DPO that focused on the concern that ECCS sump strainer modification should not have been approved by the NRC nor implemented by the licensee. This contention stemmed from the submitter's interpretation of Commission

APPENDIX D (continued)

policy that LBB technology cannot be used if the dynamic effects of the pipe rupture adversely affect ECCS and containment. On November 13, 2006, the DPO Panel provided the results of its independent review to the NRR Director. The panel concluded that the submitter's concern regarding inappropriate application of LBB technology in the ECCS recirculation sump strainer modification at Oconee, Units 1 and 2, was based on an incorrect understanding of the Commission's regulations and policy on the use of LBB technology in the design of the ECCS. The regulations and policy support the staff's decision to authorize the application of LBB technology to this modification. The panel also recommended that the staff should develop a knowledge management document clearly describing the NRC's policy and practice on the application of LBB. The submitter did not have any comments with regards to the panel's report issued on November 13, 2006. Based on the review of the panel's report and other background information, including the submitter's comments when the panel met with the submitter on July 20, 2006, to obtain clarification on certain details of his concerns and his confirmation on the panel's summary of the issues, the NRR Director agreed with the panel's conclusions and recommendations.

DPO Decision (DPO-2006-003)
Oconee Use of Leak Before Break in ECCS

On January 20, 2007, the NRR Director issued a decision on a DPO regarding the use of leak-LBB technology in the design of a facility modification involving the ECCS at Oconee, Units 1, 2 and 3. On May 3, 2006, an NRC employee submitted a DPO that focused on the concern that the cross-connect modification between the redundant discharge lines of the low pressure injection (LPI) system inside the containment building should not have been approved by the NRC nor implemented by the licensee because the LPI system, as modified, would not meet requirements in 10 CFR Part 50. This contention stemmed from the submitter's interpretation of Commission policy that LBB cannot be used if the dynamic effects of the pipe rupture adversely affect the ECCS. On December 5, 2006, a DPO Panel provided the results of its independent review to the Director of NRR. The panel concluded that the submitter's concern regarding inappropriate application of LBB technology in the LPI cross-connect modification at Oconee, Units 1, 2 and 3 was based on an incorrect understanding of the Commission's regulations and policy on the use of LBB technology in the design of the ECCS. The staff's decision to authorize the application of LBB technology to this modification was appropriate and conforming to NRC's policy and regulations. The panel also recommended that the staff should develop a knowledge management document clearly describing the NRC's policy and practice on the application of LBB. Based on a review of the panel's report and additional comments from the DPO submitter, including those when the panel met with the submitter on July 20, 2006, to obtain clarification on certain details of his concerns and his confirmation on the panel's summary of the issues, the NRR Director agreed with the panel's conclusions and recommendations.

DPO Appeal Decision (DPO-2006-004)
Davis Besse's Reply to the NRC's April 21, 2005, Notice of Violation

On May 3, 2007, the EDO issued a decision on an appeal to a December 18, 2006, DPO Decision made by the Director, OE. The appeal was related to an NRC employee who submitted a DPO, dated May 5, 2006, on the accuracy of the September 14, 2005, FirstEnergy Nuclear Operating Company's (FENOC) response to the NRC 's Notice of Violation (NOV). The

APPENDIX D (continued)

original DPO contended that the FENOC submittal was incomplete and inaccurate and should have been a cited violation of 10 CFR 50.9, "Completeness and Accuracy of Information." The DPO raised concerns with the agency's decision that the FENOC statement was not material and therefore, not a violation, and the agency's lack of regulatory action.

On receipt of the DPO appeal, the EDO reviewed relevant documents, met with the DPO Panel, conferred with OGC, and met with the DPO submitter. The technical concerns addressed the NRC decision not to issue a violation based on the inaccurate statements in the FENOC submittal. After careful review and deliberation the EDO concluded that the actions taken by staff in response to the DPO are adequate. The EDO agreed with the DPO Panel decision that based on the staff's prior understanding of the factual backdrop which attended FENOC's submittal that no additional 10 CFR 50.9 violation occurred. Additionally, the EDO verified that the Panel's recommendation, to release the initial correspondence from FENOC's general counsel addressing FENOC's submittal publically, was carried out. As such, the EDO found there was no need to reopen the DPO on the "Davis Besse Reply to a Notice of Violation." The EDO also recognized the efforts of the submitter in raising the issues and concerns, and the contribution of the employee in ensuring the agency's safety goals are achieved.

DPO Decision (DPO-2006-005)

Management Policy on Licensing New Fuel Cycle Facilities

On July 24, 2007, the Director, NMSS issued a decision on a DPO involving a management policy on licensing new fuel cycle facilities. On November 15, 2006, several NRC employees submitted a DPO that focused on the acceptability of the staff's approach in licensing new fuel cycle facilities, including whether an August 4, 2006, memorandum that provided guidance to staff reviewers was consistent with NRC requirements in 10 CFR Part 70 and associated staff review guidance. On March 30, 2007, a DPO Panel provided the results of its independent review to the Director, NMSS. The panel concluded that a programmatic review, as described in the August 4, 2006, memorandum was consistent with the requirements of Part 70. The panel also recommended that licensing review guidance and the NRC's oversight program for fuel facilities be revised to clarify aspects identified in the review. Based on a review of the panel's report and additional comments from the DPO submitters, the Director, NMSS, agreed with the panel's conclusions and recommendations and tasked the Division of Fuel Cycle Safety and Safeguards to review and revise licensing guidance and inspection guidance, as well as develop and execute a communications plan regarding the clarifications and revisions.

DPO Appeal Decision (DPO-2006-005)

Management Policy on Licensing New Fuel Cycle Facilities

On January 9, 2008, the EDO rendered a decision on an appeal to a DPO decision issued by the Director, NMSS. The DPO involved the staff's concerns regarding United States Enrichment Corporation (USEC) providing incomplete design and Integrated Safety Analysis (ISA) information necessary to review USEC's license application for the American Centrifuge Plant (ACP). On August 29, 2007, NRC employees submitted this appeal addressing the fact that the DPO Panel did not address two broad issues regarding the completeness of the design and completeness of the ISA. The submitters also raised concerns related to the NMSS Director's

APPENDIX D (continued)

tasks in the July 24, 2007, DPO Decision and concerns on commitment to resources and contents of communication plans necessary to resolve the issue. Based on a review of the relevant information and meetings with the DPO Panel and the submitters, the EDO supported the DPO Decision that a programmatic review is consistent with the requirements of Part 70 and that the Standard Review Plan (SRP) can be interpreted to allow a programmatic review when considered along with the rule itself and the Statement of Considerations for the rule. To ensure consistency during reviews of future materials facilities applications, the EDO's decision clarified previous staff commitments to: (1) review and revise, as necessary and appropriate, the NRC's licensing guidance (e.g. NUREG-1520) to incorporate guidance on the information needed for the licensing of fuel facilities in accordance with 10 CFR Part 70 (2) review and revise, as necessary and appropriate, inspection guidance for conducting the operational readiness review required in 10 CFR 70.32 (k), and (3) develop a process or mechanism to ensure that all installed Items Required for Safety are reflected in the ISA summary.

**DPO Decision (DPO-2006-006)
Westinghouse Crossflow Instrument**

On June 29, 2007, the Director, NRR, issued a decision on a DPO regarding the Westinghouse/AMAG (W/AMAG) Crossflow Ultrasonic Flow Meter (UFM). On December 13, 2006, an NRC employee submitted a DPO where he indicated that the W/AMAG CROSSFLOW Ultrasonic Flow Meter (UFM), when installed in accordance with the guidelines in the NRC-approved topical report CENPD-397-P, Revision 1, will function within its claimed accuracy as specified in the topical report. The submitter was concerned that the NRC staff's November 2006 draft safety evaluation for suspending the previous approval of the W/AMAG CROSSFLOW topical report does not provide a sufficient basis for the staff's proposed suspension. Furthermore, the submitter believed the staff did not respond satisfactorily to the issues presented in his October 2006 non-concurrence of the suspension safety evaluation. On June 12, 2007, a DPO Panel provided the results of its independent review to the Director, NRR. The panel reached the following overall conclusions: (1) the cross-correlation technology used by the W/AMAG CROSSFLOW UFM is capable of measuring fluid flow rate, but the basis for the estimation and maintenance of CROSSFLOW's accuracy has not been adequately established; (2) the previously approved CROSSFLOW topical report and the subsequent information provided by W/AMAG does not provide sufficient information for the user to ensure that the CROSSFLOW UFM will function within its claimed accuracy; and (3) the NRC staff's November 2006 draft safety evaluation for suspending the previous approval of the CROSSFLOW topical report provides a sufficient basis for the proposed suspension.

Regarding the staff's response to the submitter's non-concurrence on the November 2006 draft safety evaluation for suspending the CROSSFLOW topical report, the staff followed the established NRC process for responding to non-concurrences. The staff satisfactorily responded to the key technical issues presented in the submitter's non-concurrence. The submitter did not have any comments with regards to the panel's report issued on June 12, 2007. Based on the review of the panel's report and other background information including the submitter's comments when the panel met with the submitter on February 28, 2007, and the e-mails exchanged between the submitter and the panel on March 7, 2007, and April 12, 2007, the Director of NRR agreed with the panel's conclusions.

APPENDIX D (continued)

**DPO Appeal Decision (DPO-2006-006)
Westinghouse Crossflow Instrument**

On September 25, 2007, the EDO rendered a decision on an appeal to an August 2, 2007, DPO Decision issued by the Director, NRR. The DPO involved the staff's preparation of a draft safety evaluation suspending approval of topical report CENPD-397-P, "Improved Flow Measurement Accuracy Using Crossflow Ultrasonic Flow Measurement Technology." On July 18, 2007, an NRC employee submitted this appeal addressing the fact that they did not believe the staff had a sufficient basis for suspending approval of topical report CENPD-397-P. The employee had initially submitted a DPO on the subject on December 18, 2006. Based on a review of the relevant information and meetings with the involved individuals, the EDO concluded that the actions taken by the staff in response to the DPO were adequate; therefore, the appeal was denied.

APPENDIX E: DPO Case Index

Case Number	Subject	Office	DPO Opened	DPO Decision	DPO Time	Appeal Opened	Appeal Decision	Appeal Time
DPO-2005-001	Force-on-Force Evaluation Criteria	NSIR	01/14/05	11/07/05	297			
DPO-2005-002	Red Oil Events at Proposed MFFF	NMSS	01/25/05	03/23/07	787	04/23/07	11/09/07	200
DPO-2005-003	Oconee Pipe Whip Restraints	RII	02/18/05	09/06/05	196			
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	420	09/28/06	03/01/07	154
DPO-2005-006	Publication of a Draft NUREG on Fire Model Verification & Validation for Public Comment	RES	07/11/05	02/12/06	217	05/03/06	06/23/06	51
DPO-2005-007	Farley Control Rod Technical Specifications	RII	08/18/05	03/08/06	202			
DPO-2005-008	Emergency Preparedness for Day Care Centers and Nursery Schools	NSIR	09/13/05	07/14/06	304			
DPO-2005-009	Solvent Flammability Limits at the Proposed MFFF	NMSS	10/04/05	08/25/06	325	09/28/06	04/19/07	203
DPO-2006-001	Point Beach End-of-Cycle Assessment	RIII	04/13/06	03/01/07	322			
DPO-2006-002	Oconee Sump Screens	NRR	05/12/06	02/17/07	281			
DPO-2006-003	Oconee Use of Leak Before Break in ECCS	NRR	05/12/06	01/20/07	253			
DPO-2006-004	Davis-Besse Reply to a Notice of Violation	OE	06/05/06	12/18/06	196	01/25/07	05/03/07	98
DPO-2006-005	Management Policy on Licensing New Fuel Facilities	NMSS	11/20/06	07/24/07	245	08/29/07	01/09/08	133
DPO-2006-006	Westinghouse Crossflow Instrument	NRR	12/21/06	06/29/07	190	07/21/07	09/25/07	66

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APPENDIX F: EDO-Approved Strategies for Establishing and Extending DPO and DPO Appeal Milestones and Timeliness Goals

DPO Milestone	Timeliness Goals*
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.

DPO Appeal Milestone	Timeliness Goals*
DPOPM receives, screens, and accepts DPO appeal	6 days
DPOPM requests statement of views from office manager	5 days
Office manager provides statement of views to DPOPM	14 days
DPOPM provides DPO appeal package to EDO	5 days
EDO issues DPO Appeal Decision	30 – 60 days
DPO TIMELINESS (acceptance of DPO appeal/DPO Appeal Decision)	60 – 90 days