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# Differing Professional Opinions

1987 Special Review Panel

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**U.S. Nuclear Regulatory  
Commission**

Special Review Panel



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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
Washington, D.C. 20555

February 22, 1988

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1987 Special Review Panel

**Prepared by:** U.S. Nuclear Regulatory Commission

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**Instructions:** Paragraph three under section on Comanche Peak in Appendix F, page 17, should be replaced as follows:

The OIA investigator assigned to examine the Resident Inspector's allegations has stated that he concluded that many of the allegations were valid and that his conclusions appeared in early drafts of OIA 86-10. However, he has alleged that the final version of OIA 86-10 does not contain all of the conclusions that he reached and that OIA management deleted or downgraded some of his findings.



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**U.S. Nuclear Regulatory Commission**  
**Washington, DC 20555**



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## ABSTRACT

In mid-1987, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission appointed a Special Review Panel to review the existing NRC policy for expressing differing professional views and to recommend possible improvements to the policy, if warranted. Through its own efforts and those of three subpanels and three consultants, the Panel developed recommendations for changes and improvements in five major areas. This report presents those recommendations, along with a detailed explanation of the Panel's findings, copies of the reports of the subpanels and consultants, and the results of a survey of NRC non-clerical employees on the issue.





## CONTENTS

ABSTRACT . . . . .	iii
FOREWORD . . . . .	vii
EXECUTIVE SUMMARY . . . . .	ix
INTRODUCTION . . . . .	1
Background . . . . .	1
Methodology . . . . .	2
DPO PANEL FINDINGS AND RECOMMENDATIONS . . . . .	4
Organizational Climate . . . . .	4
Informal Process . . . . .	7
Formal Process . . . . .	10
Communication . . . . .	13
Open Door Policy . . . . .	14

### APPENDICES

- A: DPO Special Review Panel Charter
- B: Manual Chapter 4125
- C: DPO Survey Questionnaire and Findings
- D: Subpanel 1 Report--DPO Experience at Other Agencies
- E: Subpanel 2 Report--Existing Guidance on the DPO Process
- F: Subpanel 3 Report--Experience in the Use of the NRC DPO Process
- G: Consultants' Reports
- H: Documents Used by the Panel in Its Review



## FOREWORD

In mid-1987 the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) established a five-member Panel to reexamine the use of the NRC's process for handling differing professional views.

The five persons named to the Panel included two from management; two from a list provided by the National Treasury Employees Union (NTEU), representing the bargaining unit employees; and one from another Federal agency, the Federal Aviation Administration. Two alternates--one from management and one from a list provided by the NTEU--also were selected. Three subpanels were established to examine specific aspects of the DPO process, and three consultants were retained.

The subpanels were selected by the Panel from management and from employees nominated by the NTEU. Two of the three consultants retained were from outside the Federal government, while the third was an NRC employee.

The Panel members were:

Paul E. Bird	Director, Office of Personnel. Appointed as Panel Chairman and management representative.
Clemens J. Heltemes, Jr.	Deputy Director, Office for Analysis and Evaluation of Operational Data. Appointed as a management representative.
George Barber	Reactor Operations Engineer, Executive Vice President, Chapter 208, National Treasury Employees Union (NTEU). Appointed as a Panel member from a list supplied by NTEU.
Peter C. Hearn	Senior Reactor Operations Engineer, Vice President, Chapter 208, NTEU. Appointed as a Panel member from a list supplied by NTEU.
Neal A. Blake	Deputy Associate Administrator for Engineering, Federal Aviation Administration. Appointed as a Panel member from outside NRC.
James A. Fitzgerald	Assistant General Counsel for Adjudication and Opinions. Appointed as an alternate management representative.
Charles Morris	Electrical Engineer. Appointed as an alternate Panel member from a list supplied by NTEU.

The three consultants retained were Ellyn R. Weiss, Esq., Harmon and Weiss; Edson G. Case, retired Deputy Director, NRC Office of Nuclear Reactor Regulation; and Carl J. Paperiello, Deputy Administrator, NRC Region III.

The members of Subpanel 1 were Martin Levy, Chairman, and James H. Conran, Sr. The members of Subpanel 2 were Malcolm L. Ernst, Chairman, Rene F. Audette, Thomas H. Cox, Richard J. Goddard, and Rajyashree R. Tripathi. The members of Subpanel 3 were Warren Minners, Chairman, Donald P. Cleary, Janice E. Moore, John D. Randall, and Norman H. Wagner.

Others who contributed extensively to the work of the Panel included J. David Woodend and Alison Barrett, Office of Personnel, who provided logistical support and expert assistance; Patricia A. Rathbun, Mary Louise Roe, and Alice Jeter, Workforce Analysis Systems and Information, Office of Personnel; Marthe E. Harwell, Special Assistant to the Director, Office of Personnel, and Ann Thomas, Division of Publications Services, Office of Administration and Resources Management, who provided writing and editing support; and Lorna Pini, Office of Personnel, who provided text processing support.

## EXECUTIVE SUMMARY

A free and open discussion of differing professional views is essential to the development of sound regulatory policy and decisions. In recognition of that fact, since 1976 the U.S. Nuclear Regulatory Commission (NRC) has provided ways for employees to bring their differing professional views to the attention of the highest levels of management. In 1980, NRC Manual Chapter 4125 was published, delineating the NRC's Differing Professional Opinion (DPO) policy.

At the direction of the Commission, in mid-1987 the NRC Executive Director for Operations established a five-member DPO Special Review Panel (Panel) to reexamine the policy and make suggestions for improvements, if any were warranted.

The Panel was aided in its work by three consultants and three subpanels, comprised of 12 NRC employees. A survey questionnaire on the use of the DPO process was mailed to all NRC non-clerical employees, 2500 persons in all. A total of 1488 responses were received, and the answers to this survey were used by the Panel and the subpanels in their work.

Overall the Panel found that the DPO policy has had some successes, but a substantial number of employees are reluctant to invoke it because they believe that officially airing their differing professional views through the current DPO process would cause them to be viewed negatively by their supervisors or would be harmful to their careers.

Further, in this regard and on the basis of its deliberations, the Panel made five major findings:

- If the NRC is to be successful in assuring that differing views are aired and factored into the decision-making process, the organizational climate must be greatly improved to reduce negative perceptions of the process.
- The current DPO process is a highly structured and formal process that requires extensive documentation of a disagreement after a firm management position has been established. As a result, issues raised are all too often addressed in a confrontational atmosphere.
- The formal DPO process, as it is currently structured, is cumbersome and, by its nature, time consuming.
- The current processes for expressing differing professional views are not widely known among NRC employees.
- The inclusion of the Open Door Policy in NRC Manual Chapter 4125 causes confusion.

As a result of these findings and in order to improve the process for expressing and considering differing professional views, the Panel recommends that NRC:

- Create and maintain an organizational climate of openness and acceptance of differing professional views--a nonthreatening environment in which such views will be expressed and considered in a spirit of cooperation and in the best interest of improving public health and safety. In order to encourage free and open discussion of differing professional views among all employees, features of this recommendation include providing additional training for managers, supervisors, and employees concerning this policy and process; modifying the performance appraisal elements of managers and supervisors; emphasizing the use of the awards system for recognizing valuable submissions and consideration of differing views; and instituting a more effective annual review of the use of the formal DPO process.
- Provide in NRC Manual Chapter 4125 for an informal as well as a formal process for considering the differing professional views of employees on issues directly related to the mission of the NRC. Features of this informal process would include establishing standing review panels at the Region and major Office levels that would make recommendations on the disposition of differing professional views to the Regional Administrator or Office Director; providing for anonymous filing of differing views; and providing for the attachment of differing views to management positions as they move through the Agency review process.
- Revise NRC Manual Chapter 4125 to simplify and clarify the formal process for expressing differing professional opinions. A feature of this recommendation is filing formal DPOs directly with the EDO or Commission, who would make the decision on the matter.
- Clearly and effectively communicate to all employees information on the formal and informal processes for expressing differing professional views. Features of this recommendation include assuring that the orientation of new employees covers this policy and process; using the NRC newsletter and other means to periodically publicize the subject; including the subject in NRC's in-house training programs; and distributing the annual reports of the DPO Special Review Panel to all employees.
- Continue the Open Door Policy but promulgate it in a separate manual chapter. Inform employees of the other avenues through which they can express their views and concerns, including the Open Door Policy and communication with the Advisory Committee on Reactor Safeguards.

## INTRODUCTION

The mission of the U.S. Nuclear Regulatory Commission (NRC) depends upon the ability of all NRC staff members--managers, supervisors, and employees--to work together in a spirit of cooperation and mutual respect. Further, often controversial and difficult problems are faced by the staff that require a high degree of technical judgment and professionalism in order to arrive at a proper and balanced decision. It is not unusual, therefore, considering the nature of NRC's activities, that staff members may have differing points of view. The key to success in the accomplishment of the NRC's mission is ensuring that the decision-making process does, in fact, know and consider all points of view, and that an organizational climate exists that encourages the needed free and open discussion.

### ° BACKGROUND

In April 1987, the Commission requested a reexamination of the NRC's Differing Professional Opinion (DPO) policy to ensure its effectiveness and to recommend any changes believed necessary to improve it. To conduct this examination, the Executive Director for Operations (EDO) appointed a five-member panel (Panel) with two alternates. The EDO charged the Panel to "direct priority attention to NRC's experience in handling differing professional opinions, evaluate the functioning of the DPO process by assessing the degree to which the objectives are met, and make any appropriate recommendations for change."

The EDO went on to direct the Panel as follows:

In this regard, I am particularly concerned that the Special Review Panel recognize NRC's objective of maintaining an organizational climate that encourages employees to make known their best professional scientific and technical judgments. Your efforts should be, therefore, especially focused on the DPO procedures as a process to promptly and effectively resolve differing opinions regarding scientific and technical issues in a manner that promotes confidence among our employees. Our employees should know that they can put forth their best scientific and technical judgments even though they may differ with a prevailing staff view, or disagree with a management decision or policy position, or take issue with proposed or established Agency practices. Employees should view the process as one which effectively resolves their concerns in an open and "above board" manner and which can be used with the assurance that their participation will be viewed as a positive means to help insure the ultimate efficiency and integrity of NRC mission accomplishment.

Appendix A contains a copy of the background documents establishing the Panel.

The policy is officially promulgated in NRC Manual Chapter 4125, Differing Professional Opinions. However, the NRC's commitment to a free and open discussion of professional views had its origins in the Open Door Policy that was communicated to all employees by a memorandum from the Commission in 1976.

In 1980, the Open Door Policy was incorporated into NRC Manual Chapter 4125. The current revision of Manual Chapter 4125 was issued on July 23, 1985.

Since 1981, there have been a total of 22 formal expressions of a Differing Professional Opinion using Manual Chapter 4125 procedures. The number per year has ranged from one in 1981 to a high of seven in 1983, (1981 - 1; 1982 - 3; 1983 - 7; 1984 - 3; 1985 - 2; 1986 - 4; and to date in 1987 - 2). While these DPOs were considered as examples of the Manual Chapter 4125 process, the focus of the Panel was on the process and not on the specific nature, details, or outcome of these individual DPOs.

Manual Chapter 4125 served as the point of departure for the Panel's review. As it presently exists, Manual Chapter 4125 encompasses procedures not only for differing professional opinions but also for the Open Door Policy and for employee submittals of views to the Advisory Committee on Reactor Safeguards (ACRS). The Manual Chapter permits employees to file differing professional opinions on virtually all matters not grievable under the Agency's grievance procedures, including technical, management, legal, and policy issues that may or may not be within the originator's areas of expertise. A copy of Manual Chapter 4125 is included as Appendix B to this report.

#### ° METHODOLOGY

The Panel's findings and recommendations given in this report were developed after deliberate and careful assessment of numerous inputs. The principal sources of information used by the Panel included (1) the results of a survey of NRC employees that solicited their views on the NRC's DPO process (copies of this survey were sent to approximately 2500 non-clerical employees, and 1488 completed forms were returned; see Appendix C); (2) written and oral reports from three subpanels established to study specific aspects of the formal DPO process (see Appendices D, E, and F); (3) written and oral reports from three consultants with extensive experience concerning the disposition of differing views (see Appendix G); (4) extensive documentation relating to the development, implementation, and assessment of the NRC's DPO process, including a 1984 review by the NRC's Office of Inspector and Auditor (see Appendix H for a listing of documents considered by the Panel); and (5) personal knowledge and experience from Panel members' considerable direct involvement in work activities where expressions of a differing viewpoint are frequent.

The three subpanels established by the Panel involved a total of 12 NRC employees working over a six-week period.

Subpanel 1 was charged with determining and assessing the experience of other agencies in handling differing professional views. Initially 13 Federal agencies and private sector organizations were contacted to determine if they had in place formal and/or informal procedures for handling differing views and, if so, how successful these procedures were in satisfactorily addressing the issues raised. Subsequently, additional organizations having knowledge of such programs, including the Brookings Institution and the Government Accounting Office, were contacted for relevant information. (See Appendix D.)



Subpanel 2 was charged with reviewing the adequacy and completeness of existing NRC guidance on the use of the NRC DPO process. Subpanel 2 reviewed extensive Headquarters and Regional documentation including manual chapters, Office letters, Regional guidance, Senior Executive Service contracts, and Commission and EDO policy statements. In addition, the subpanel members interviewed 85 employees on the strengths and weaknesses of the guidance; those interviewed included personnel from the Office of Nuclear Reactor Regulation, Office of Nuclear Regulatory Research, Office of Nuclear Materials Safety and Safeguards, Office for the Analysis and Evaluation of Operational Data, and Office of the General Counsel, as well as from three Regional Offices. Among those interviewed by the subpanel were those individuals involved with DPOs filed in 1985, 1986, and 1987. In addition, the subpanel received and considered a number of unsolicited written and oral comments. (See Appendix E.)

Subpanel 3 was charged with assessing the experience within the NRC with the handling of differing professional views, including the use of the DPO process and cases where another approach was used. Subpanel 3 focused its efforts on individuals who had differing professional views but did not use the formal DPO process. It interviewed many employees, and considered both written and oral unsolicited comments from other employees. This information was used to compile 14 case studies, covering situations where NRC employees had used the DPO process to address a differing professional view (e.g., in the DPO on fire protection filed in 1984) and those where it was not used (e.g., Comanche Peak). (See Appendix F.)

All the information received was individually reviewed by each Panel member and consultant and extensively discussed in a series of Panel meetings. These meetings led, in turn, to the findings and recommendations discussed in subsequent sections of this report.

## PANEL FINDINGS AND RECOMMENDATIONS

It became clear in the Panel's deliberations that there is a wide range of opinions within the NRC on the DPO process, from quite negative to very positive. Some employees would not hesitate to use the process if a situation warranted it, yet others would be reluctant to do so.

Overall, the policy and process have had some success, but in view of the substantial number of employees who are reluctant to use it and the negative views of many who have used it, the Panel believes that the DPO process needs to be revised. Specifically, the Panel has made a major finding in five areas. These findings are underlined in the following section. For each finding, a recommendation is presented outlining a suggested course of action.

### ° ORGANIZATIONAL CLIMATE

If the NRC is to be successful in assuring that differing views are aired and factored into the decision-making process, the organizational climate must be greatly improved to reduce negative perceptions of the process.

Even though the NRC has had in place since 1980 formal procedures for employees to bring their differing professional views or opinions to the attention of management, these procedures are not often used. Many employees and managers surveyed and/or interviewed expressed negative perceptions of the DPO process. However, of those who responded to the employee survey, 27%\* indicated that "...the current DPO policy described in Manual Chapter 4125 is sufficiently effective so that no changes need be made," while 17% of those who responded disagreed. The remaining 56% had no opinion.

Some of the concerns about the present policy include a generalized concern that filing a DPO would bring about negative perceptions of the proponent, that the DPO is viewed as a confrontational approach toward one's management, and that "retaliation" is likely to follow. More than half of the DPO filers interviewed by Subpanel 2 believed that they had been subjected to retaliatory actions ranging from subtle (denial of advancement) to overt (demotion, transfer, or downgraded performance appraisals). Most managers interviewed believed that some stigma would adhere to a manager who had a DPO filed against him/her because it would be perceived by higher management that the manager had failed.

Of those who responded to the employee survey, 46% said they felt that the filing of a DPO would result in their being viewed negatively by management as pertains to appraisals, advancements, awards, or other personnel actions, and 30% expressed the belief that management would take retaliatory action against them. Others (21% of the respondees) said they felt using the DPO process would result in their being viewed negatively by their peers, and 32% said they felt that those who reviewed DPOs were predisposed to the outcome of the process.

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\* Of the individuals agreeing with this statement, 44% were supervisors and 56% were non-supervisors.

The attitude of the participants--managers and employees alike--will determine whether NRC has an organizational climate where managers and employees feel free to air differing professional views. All NRC staff members-- managers, supervisors, and employees--have a responsibility to work together in a spirit of cooperation and with mutual respect to achieve the NRC's mission. As part of this spirit of cooperation, managers and supervisors should routinely discuss the basis for their decisions with those they supervise. In addition, employees should use the process only to raise professional differences and not, for example, as a means to avoid an adverse personnel action.

Although NRC policy calls for a free and open expression of views, some managers may be getting a contradictory message. For instance, as pointed out in Appendix E, some Senior Executive Service contracts contain an element for "Interpersonal Skills" that has a performance standard stating, in part, "Generally resolves differences of opinion without the need for involvement of higher management." While that standard is intended to encourage the resolution of differences at a low level, it could diminish a manager's receptiveness to an employee's carrying a differing professional view further than the informal discussion stage. Managers and supervisors do not receive a strong enough message that the NRC expects they will receive differing views as a part of normal business. In addition, they do not always understand how differing professional views or opinions should be handled.

RECOMMENDATION: Create and maintain an organizational climate of openness and acceptance of differing professional views--a nonthreatening environment in which differing views can be expressed and considered in a spirit of cooperation and in the best interest of improving public health and safety.

- The concept of free exchange of differing professional views or opinions should be endorsed in NRC mission statements such as the Strategic Plan.
- Managers should be receptive to differing professional views or opinions and to inquiries from interested staff. Managers should not be viewed negatively by their higher level management if their employees raise differing professional views or opinions.
- Managers should routinely explain the basis for their decisions, particularly in response to differing professional views or opinions.
- The sensitivity of managers and supervisors to differing professional views or opinions should be enhanced, such as through additional training and short refresher courses in the art of conflict resolution and through discussion at retreats.
- The sensitivity of employees also should be enhanced through including this subject in relevant training programs, such as courses in the art of conflict resolution.

- Performance standards and elements for managers should emphasize the need for special attention to dealing effectively with differing professional views or opinions. They should be revised to eliminate any negative implications associated with employees' raising differing professional views or opinions.
- Managers and supervisors should be recognized and rewarded for dealing effectively with differing professional views or opinions.
- Managers should use the awards process to recognize employees who submit valuable differing professional views or opinions.
- Corrective action should be taken in cases where a manager or supervisor is found to have taken an unwarranted action against an employee because of a differing professional view or opinion, or where an employee misuses the system, as now specified in Manual Chapter 4125.
- A DPO Special Review Panel should annually assess the informal and formal processes for dealing with differing professional views or opinions, including the effectiveness of the process, how well it is understood by employees, and the organizational climate for having these views or opinions aired and properly decided.

° INFORMAL PROCESS

The current DPO process is a highly structured and formal process that requires extensive documentation of a disagreement after a firm management position has been established. As a result, issues raised are all too often addressed in a confrontational atmosphere.

The NRC's formal process for addressing DPOs is almost unique among government agencies. Other organizations have informal, rather than formal, programs and processes for handling differing views. These informal processes tend to emphasize the resolution of potential issues as early as possible, at the lowest possible organizational level, and with a minimum of documentation, emotional involvement, and resource expenditure. Some organizations indicated they had not adopted a highly structured and formal process specifically to minimize the potential for creating conflicts and "win-lose" situations between management and staff.

As a matter of policy, all employees are instructed to express their best professional judgments at all times. Manual Chapter 4125 indicates that each employee not only has a right to make known a differing professional judgment but, indeed, has a duty to do so. However, Manual Chapter 4125 makes a distinction between instances in which various views and opinions are routinely raised and resolved in the ordinary course of business and those in which, after discussion, an employee continues to believe the NRC would be better served if another opinion prevailed. In the latter case, the individual is to submit a written statement of differing professional opinion to his/her supervisor. This written statement is labelled a "DPO," and the Manual Chapter specifies the highly structured, formal procedure for its disposition.

The current process promotes the confrontational aspects of expressing differing professional views by requiring the filing of a formal DPO within the management chain. The Panel believes that the confrontational aspects can be reduced by providing an informal, less cumbersome process for the early consideration of differing professional views.

The formal DPO process is often thought of as a "last resort," and many employees would prefer to attempt to work within the chain of command to resolve differing views. Most survey respondents indicated they would prefer to discuss differing views with their immediate supervisor (58%) or with Office management at least one step higher than the immediate supervisor (65%). Subpanel 2 noted that all of the individuals interviewed by its members strongly preferred to resolve differing professional views through means other than the formal DPO process.

The Subpanel 2 report indicates that employees have a strong preference for an informal process, such as that used in Region III, where issues are addressed by a review panel composed of management and employees that makes recommendations to the Regional Administrator. This approach involves a minimum of documentation and structure, yet it has been effective in resolving differing professional views.

Concerns also were voiced about the importance of providing a means for submitting differing professional views anonymously.

The Panel believes that the informal DPO process should focus on issues directly related to the mission of the NRC. Certain types of issues should be specifically excluded from this process, including (1) issues that are appropriately addressed under grievance procedures or under other appeal procedures, or are specifically provided for in law or government-wide regulation; (2) issues that are subject to collective bargaining; and (3) issues involving allegations of wrongdoing that are more appropriately addressed by the Office of Inspector and Auditor or the Office of Investigations.

Considering these findings, the Panel believes that the NRC program for handling differing professional views or opinions should include informal as well as formal approaches to better assure that differing views are expressed and heard. However, only those issues that are raised to the formal process should be considered DPOs.

Informal means of handling differing professional views or opinions include discussions within the management chain, attachment of differing views to proposed management positions, and the establishment of review panels within Offices and Regions.

The Panel agreed that employees should be strongly encouraged to have early oral discussion on differing professional views and opinions within the normal Office or Region management chain especially with the immediate supervisors. If these oral discussions do not result in an agreed-upon disposition, employees should be permitted to document their views and attach them to proposed staff papers or other material proposing an NRC position. This would permit upper level management to consider the differing view as the proposed NRC position goes through the approval chain.

If an employee chooses to pursue the matter, he/she may initiate a review of the matter by an in-Office or in-Region panel (review panel). This review panel would be appointed for a specified term. The review panel would review written statements of differing professional views, either signed or unsigned. The review panel would evaluate the issue, seek whatever additional input from other sources it feels appropriate, including the help of experts in the area under review, and then make a recommendation on the disposition of the issue or on the path or procedure to gain disposition to the Office Director or Regional Administrator. The review panel would be required to provide documentation sufficient to ensure that the issue is well characterized and that the basis for the panel's recommendation is clear. No other documentation would be required, and the documentation, including the recommendation and disposition of the issue, would remain available within the Office or Region.

Issues not resolved through the informal process could be handled through the formal DPO process, which is independent of the Office or Region. This option should be available to both employees and managers alike.

In all cases, matters involving potential immediate or significant health and safety concerns would be given priority handling by the review panels and brought to the immediate attention of higher level management, as deemed appropriate.

RECOMMENDATION: Provide in Manual Chapter 4125 for an informal process as well as a formal process for considering the differing professional views of employees on issues directly related to the mission of the NRC.

- Individual employees should be strongly encouraged to discuss their differing professional views and concerns within the chain of command, especially with their immediate supervisors, as a first step in resolving differing professional views. No record keeping or documentation of this discussion is required.
- Individual employees should be permitted to document their differing professional views and attach them to the proposed staff position or other documents, to be forwarded with that position as it moves through the management approval chain.
- An informal process should be established whereby a standing panel (review panel) in each Region, major Headquarters Program Office, and other Staff Offices would be permanently established to promptly review differing professional views and either propose a disposition or propose a procedure to gain prompt disposition. The review panel would make recommendations to the Regional Administrator or Office Director, as appropriate.
- The review panels, which would be appointed by the Regional Administrator or Office Director for one year, should normally be chaired by the Deputy Regional Administrator, Deputy Office Director, or equivalent official. Each review panel could include one member (and alternate) appointed from management and one member (and alternate) appointed from a list of at least three bargaining unit employees submitted by the Agency bargaining unit representative. The review panels should solicit the views of experts knowledgeable of the issues raised.
- The review panel process should be initiated by a written statement, signed or unsigned, that is submitted to the Region or Office review panel chairman. Employees should be periodically reminded that issues that are submitted unsigned must be accompanied by sufficient documentation to allow for their proper review and disposition. The development of a form to be used for signed submittals should be considered.
- The review panel should focus on issues directly related to the mission of the NRC. Certain types of issues should be specifically excluded from this process, including (1) issues that are appropriately addressed under grievance procedures or under other appeal procedures, or are specifically provided for in law or government-wide regulation; (2) issues that are subject to collective bargaining; and (3) issues involving allegations of wrongdoing that are more appropriately addressed by the Office of Inspector and Auditor or the Office of Investigations.

- The review panels should give priority handling to issues involving potential immediate or significant health and safety concerns. This includes calling such issues to the immediate attention of higher management.
- The review panel should develop and maintain only the minimum documentation necessary to preserve an accurate record of the proceedings and provide the concerned employee with a reasoned statement of the disposition of the issue. These records should be maintained and available within the Region or Office only.
- If the informal review panel process does not result in a satisfactory or timely disposition of an issue, individual employees may pursue a resolution through the formal Differing Professional Opinion (DPO) process.



° FORMAL PROCESS

The formal DPO process, as it is currently structured, is cumbersome and, by its nature, time consuming.

The informal process described above would serve to avoid many of the shortcomings of the present DPO process by moving the issue resolution process promptly to an Office or Region review panel and a decision by the Office Director or Regional Administrator. However, not all issues will be satisfactorily resolved at the Region or Office level, and a formal DPO process must sometimes be used to raise the issue to a higher management level for a decision.

The Panel addressed a number of the findings identified in the employee survey and subsequent employee interviews that related to the formal DPO process.

The Panel found that Manual Chapter 4125 should be modified to ensure that the formal DPO process involves a review, independent of the Region or Office, and a disposition decision by the EDO or Commission, depending on the source of the issue. The Panel recognized that in some cases the EDO or Commission might wish to call on expertise outside their organizations. In those cases, using the Advisory Committee on Reactor Safeguards, a separate review panel, or other qualified sources inside or outside the NRC would be appropriate.

Employees surveyed and interviewed raised the question of the management level that would be the most appropriate recipient of DPOs. Currently DPOs are submitted to the immediate supervisor, with a copy to the EDO. In proposing the informal review panels at the Office or Region level, the Panel believed that only issues that could not be decided at that level would be handled as formal DPOs. Under the Panel's proposal, a formal DPO would now be submitted directly to the EDO or Commission, as appropriate (depending on the source of the DPO, i.e., whether the individual's office is an EDO or Commission-level Office). This would ensure that a formal DPO receives top level review, and it divorces the process of review from the employee's line organization.

Employee comments also indicated concern about the schedule for handling DPOs, noting that there is much schedule slippage. Accordingly, the Panel agreed that Manual Chapter 4125 should include provision for the timely disposition of formal DPOs through the establishment of milestone schedules, tracking procedures, and appropriate annual oversight by the DPO Special Review Panel.

Employee comments indicated a need for clarification on who can file a DPO. Some felt that the process was intended for staff use only and that it was not designed for management. The Panel believes that either staff or management could initiate a DPO. Some employees felt that the DPO process was cumbersome and difficult to understand and recommended that the process be simplified and streamlined. The Panel agrees that Manual Chapter 4125 should be simplified and clarified.

Employee comments overwhelmingly supported the use of a defined informal process in the consideration of each issue, as described above, and there was general consensus that the use of an informal process would lead to resolution of most issues. For that reason, the Panel determined that if the EDO or Commission receives a formal DPO that has not gone through the review panel process, the EDO/Commission should forward it to the appropriate Regional Administrator or Office Director. The Regional Administrator or Office Director would, in turn, submit the issue to the Region or Office review panel for initial handling. This would permit a proper review of the issue, as well as a documentation of staff and management viewpoints, which might be useful in the EDO or Commission review and disposition of the issue.

The formal DPO process should focus on issues directly related to the mission of the NRC. Certain types of issues should be specifically excluded from this process, including (1) issues that are appropriately addressed under grievance procedures or under other appeal procedures, or are specifically provided for in law or government-wide regulation; (2) issues that are subject to collective bargaining; and (3) issues involving allegations of wrongdoing that are more appropriately addressed by the Office of Inspector and Auditor or the Office of Investigations.

Finally, the Panel found there was a need for communication with the DPO originator, where possible, upon the completion of the process to ensure that the originator was made aware of and understood the disposition. This information could also be made available to other employees by placing the DPO and its disposition in the NRC Headquarters Public Document Room and posting the information, excluding the originator's name, on NRC bulletin boards.

The Panel found that the formal DPO process is necessary and should be preserved, with certain modifications.

RECOMMENDATION: Revise NRC Manual Chapter 4125 to simplify and clarify the formal process for expressing differing professional opinions.

- The formal DPO process should involve a review independent of the originator's Region or Office and a decision by the EDO or the Commission, depending on the source of the DPO.
- The formal DPO process should allow the EDO/Commission the option of using the ACRS, a review panel, or other qualified sources (inside or outside NRC) to assist in deciding an issue.
- The formal DPO process should be initiated by a written statement, signed or unsigned, that is submitted to the EDO or the Commission, as appropriate. Employees should be periodically reminded that DPOs that are submitted unsigned must be accompanied by sufficient documentation to allow for their proper review and disposition.
- The formal DPO process, as described in Manual Chapter 4125, should ensure that DPOs are decided in a timely manner by specifying time periods for action and appropriate annual oversight by the DPO Special Review Panel.

- The formal DPO process should allow any employee--or manager--to initiate a DPO on an appropriate issue.
- Manual Chapter 4125 should be carefully edited to ensure clarity and eliminate redundancy. For example, the use of the term "resolution" should be changed to reflect the fact that it will not be possible to reach agreement in all cases.
- The formal DPO process should stipulate that if the EDO or Commission receives a DPO that has not gone through the Office or Region review panel process, the EDO/Commission shall forward it to the appropriate Regional Administrator or Office Director, who, in turn, will submit it to the appropriate Region or Office review panel. If after the Office or Region review, the originator is satisfied that the matter is settled, a copy of the case file indicating the disposition will be sent to the EDO or Commission, as appropriate. If the matter is not settled to the satisfaction of the originator at the Office or Region level, the Office Director or Regional Administrator will send a recommendation to the EDO or Commission for a final decision. In the case of an anonymous filing, after the Office or Region review, a copy of the case file will be sent to the EDO or Commission. At this point, the EDO or Commission would consider the decision of the Office Director or Regional Administrator and either accept this decision or consider the matter further.
- The formal DPO process should focus on issues directly related to the mission of the NRC. Certain types of issues should be specifically excluded from this process, including (1) issues that are appropriately addressed under grievance procedures or under other appeal procedures, or are specifically provided for in law or government-wide regulation; (2) issues that are subject to collective bargaining; and (3) issues involving allegations of wrongdoing that are more appropriately addressed by the Office of Inspector and Auditor or the Office of Investigations.
- The formal DPO process should not be considered complete until, where possible, the disposition of the DPO is explained to the originator of the differing view and the DPO and its disposition are placed in the NRC Headquarters Public Document Room and posted, excluding the originator's name, on NRC bulletin boards.
- The formal DPO process should include specific requirements for accurate and consistent records of formal DPO proceedings, including defining who is responsible for keeping such records. Records of the handling of a differing professional view within an Office or Region should be maintained only within that component.

◦ COMMUNICATION

The current processes for expressing differing professional views are not widely known among NRC employees.

Both the results of the employee survey (Appendix C) and personal interviews indicated that many employees are not aware of the provisions for formally or informally expressing differing professional views. The Panel found that improvements in the methods of communicating information about the DPO process are needed to increase employees' awareness of the process.

RECOMMENDATION: Clearly and effectively communicate to all employees information on the formal and informal processes for expressing differing professional views.

- The informal and formal processes for resolving differing professional views should be widely publicized to ensure that all employees are familiar with the processes and with the NRC's commitment to airing differing professional views. This publicity should include the following:
  - Assure that the orientation of new employees covers this policy and process.
  - Periodically publicize the subject using such media as the NRC newsletter
  - Include the subject in the NRC's in-house training programs, such as "NRC and Its Environment."
- The annual report of the DPO Special Review Panel should be distributed to all employees.

° OPEN DOOR POLICY

The inclusion of the Open Door Policy in NRC Manual Chapter 4125 causes confusion.

As part of its reexamination of the policy on differing professional views, the Panel also looked at the Open Door Policy.

This Policy, first promulgated by a memorandum to all employees in 1976, was incorporated in Manual Chapter 4125 in 1980. Section I of Manual Chapter 4125 states that the Open Door Policy: "...provides that NRC employees may, on their own initiative, meet with any manager, including a Commissioner or the Chairman of NRC, to discuss any matter of concern to the employee."

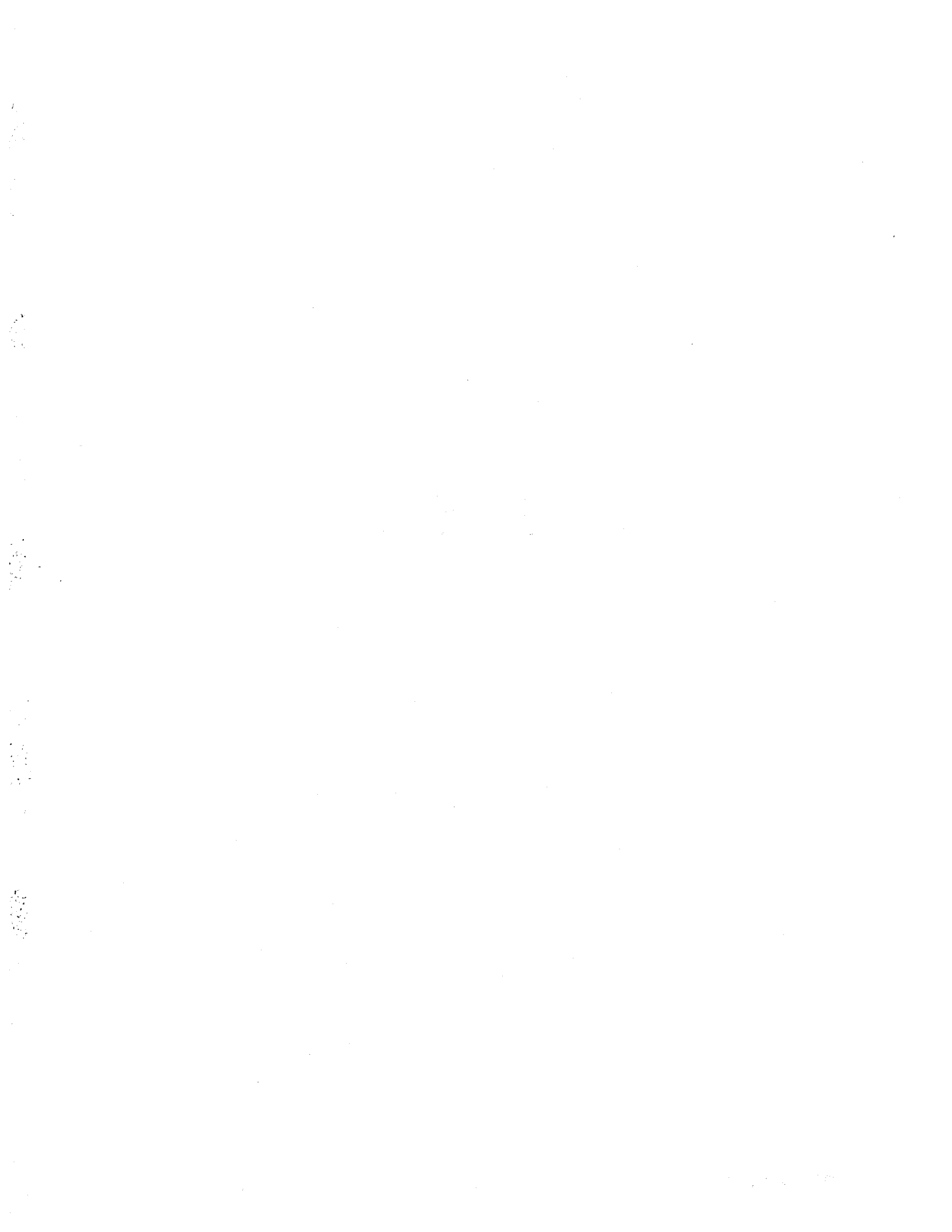
However, Section H of Manual Chapter 4125 states that if the manager to whom an employee expresses a differing professional view determines that the employee has, in fact, a Differing Professional Opinion, the manager is to direct the employee to file a formal DPO under Manual Chapter 4125.

In the course of its interviews with employees on perceptions regarding existing DPO guidance, Subpanel 2 found there was some confusion about the Open Door Policy and how it relates to the DPO process. Some employees felt that the guidance in Section H of Manual Chapter 4125 (see above) seemed to contradict the purpose of having an Open Door Policy. Nonetheless, the subpanel also found that most employees it interviewed are aware of their right to discuss any issue with any NRC manager, including the Commissioners.

After discussions with the subpanel chairmen and with its consultants, the Panel believes that the Open Door Policy should be retained but that steps should be taken to eliminate any perceived confusion and to ensure that employees are aware of the specific avenues they can use to express their views and concerns.

RECOMMENDATION: Continue the Open Door Policy but promulgate it in a separate manual chapter. Inform employees of the other avenues through which they can express their views and concerns, including the Open Door Policy and communication with the Advisory Committee on Reactor Safeguards.

- ° Individual employees should be able to communicate with all levels of their management at any time that they feel it is appropriate to do so.
- ° Employees should be made aware that at any time they may express their differing professional views to the Advisory Committee on Reactor Safeguards (ACRS). However, when the ACRS process has been initiated, any action that has been initiated through the formal or informal process for resolving differing professional views should be suspended until ACRS consideration of the matter is complete, unless the concern involves an immediate health and safety issue.



APPENDIX A  
DPO SPECIAL REVIEW PANEL CHARTER







UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

**ACTION**

JUL 13 1987

MEMORANDUM FOR: Paul E. Bird, Director  
Office of Personnel

FROM: Victor Stello, Jr.  
Executive Director for Operations

SUBJECT: DIFFERING PROFESSIONAL OPINIONS SPECIAL REVIEW PANEL

The Commission's April 20, 1987 SRM requested re-examination of our Differing Professional Opinion (DPO) Policy to ensure its effectiveness and to recommend changes believed necessary to improve it. In order to conduct such an examination, I am designating you as Chairman of the DPO Special Review Panel as called for in NRC Manual Chapter 4125. The Panel will include the following other members:

Neal A. Blake - Outside Member  
Clemens J. Heltemes, Jr. - Agency Appointed Member  
James A. Fitzgerald - Alternate Agency Appointed Member  
George Barber - NTEU Chapter 208  
Peter C. Hearn - NTEU Chapter 208  
Charles Morris - Alternate NTEU Chapter 208

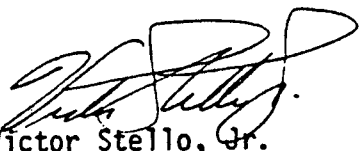
This panel will be assisted by consultants and advisors such as Ellyn R. Weiss, Esquire, of the law firm Harmon and Weiss; Edson G. Case, former Deputy Director, Office of Nuclear Reactor Regulation, and other individuals deemed appropriate from within or outside the NRC.

In accordance with Section K of NRC Appendix 4125, the Panel should direct priority attention to NRC's experience in handling differing professional opinions, evaluate the functioning of the DPO process by assessing the degree to which the objectives are met, and make any appropriate recommendations for change.

In this regard, I am particularly concerned that the Special Review Panel recognize NRC's objective of maintaining an organizational climate that encourages employees to make known their best professional scientific and technical judgments. Your efforts should be, therefore, especially focused on the DPO procedures as a process to promptly and effectively resolve differing opinions regarding scientific and technical issues in a manner that promotes confidence among our employees. Our employees should know that they can put forth their best scientific and technical judgments even though they may differ with a prevailing staff view, or disagree with a management decision or policy position, or take issue with proposed or established Agency practices. Employees should view the process as one which effectively resolves their concerns in an open and "above board" manner and which can be used with the assurance that their participation will be viewed as a positive means to help insure the ultimate efficiency and integrity of NRC mission accomplishment.

The results of the Panel's evaluation should be submitted simultaneously to me and the Commission in the form of a report including proposed revisions to the Manual Chapter, if any, by September 30, 1987 unless an extension of time is necessary.

Secondly, in accordance with Section L of NRC Manual Chapter 4125, the Panel should then direct its attention to the review of the DPOs submitted subsequent to the previous Panel's review, in order to identify any employee whose DPO made a significant contribution to the Agency or to the public safety but who has not yet been recognized for such contribution. Award recommendations should be made by the Panel in such cases as deemed appropriate. Those recommendations should be submitted simultaneously to me and the Commission by November 30, 1987.



Victor Stello, Jr.  
Executive Director for Operations

cc: Chairman Zech  
Commissioner Roberts  
Commissioner Bernthal  
Commissioner Carr  
SECY  
OGC



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

August 27, 1987

MEMORANDUM FOR: Victor Stello, Jr.  
Executive Director for Operations

FROM: Paul E. Bird, Chairman  
Differing Professional Opinions  
Special Review Panel

SUBJECT: EXTENSION OF DPO SPECIAL REVIEW PANEL  
REPORT DEADLINES

This is to request an extension of the Differing Professional Opinions Special Review Panel reporting deadlines established by the Executive Director for Operations' memorandum dated July 13, 1987 to Paul E. Bird, Director, Office of Personnel. The deadline for the first task was "by September 30, 1987 unless an extension of time is necessary." The schedule for the second task was November 30, 1987.

The original deadlines were based on an anticipated level of effort required to accomplish the Panel's mission. Since the Special Review Panel was established, two Panel meetings have been held and three subpanels have been established. Each of these subpanels will provide specific input that will be used by the Special Review Panel in developing its final report. It has become clear that the tasks required of the Panel and the subpanels require additional time in order to accomplish the assigned tasks in a systematic and thorough manner. Thus, it is requested that the completion of the first task be rescheduled to November 30, 1987 and the second task be rescheduled to December 30, 1987.

For your information and use in considering this request, copies of the three subpanel charters are enclosed.

We believe that even with the extended reporting deadlines, the timeframes for completion of the Panel work will be tight. Your prompt attention to this matter will be greatly appreciated.

  
Paul E. Bird, Chairman  
DPO Special Review Panel

Enclosures:  
As stated

Approved 

Disapproved \_\_\_\_\_

cc: See next page

cc: C. J. Heltemes  
G. Barber  
P. Hearn  
N. Blake  
J. Fitzgerald  
C. Morris  
M. Levy  
M. Ernst  
W. Minners  
E. Weiss  
E. Case  
C. Paperiello  
D. Woodend

DPO SUBPANEL 1  
Experience of Other Regulatory Agencies with DPO Process

The DPO Special Review Panel has been requested to thoroughly review the NRC's DPO process, and to recommend revisions to improve its use, practicality and value to the Agency.

In this regard, it is important that we understand and take advantage of the knowledge and perspectives of other agencies using a DPO process. In particular, it would be extremely useful to identify which agencies have "successful" DPO programs and the features and provisions considered critical to obtaining success. In this context, success is considered to be a DPO process which is routinely used by staff, without major reservations, as a means of resolving professional or technical positions that differ from those of management.

Accordingly, contact should be established with the primary action officers of federal agencies, including NASA and the Department of State, and other organizations deemed appropriate. Information should be developed on the following topics:

1. Does the agency have a formal or informal process for identifying and resolving differing professional positions?
  - If so, determine the scope and process.
  - Obtain copies of policy and program documents.
2. Does the agency have other methods (such as a "hot line," an ombudsman, informal processes) which are available for staff use to resolve differing positions?
3. What is the nature and frequency of use of these approaches?
  - What is range of issues raised?
  - What is the frequency of use?
  - What type and level of individuals have used the process?
4. Are these approaches considered to be successful by management and staff?
  - What features are considered "key" to success?
  - What are reasons for lack of use?
5. Other observations or comments of other agencies based on the experience of the agencies in developing or assuring a viable DPO process.

The information obtained from the various agencies should be compiled and organized into a written report for submission to the Special Review Panel by October 14, 1987. The report should reflect fact-finding, and should not include recommendations. In addition, the subpanel will be asked to make an oral presentation to the Special Review Panel on or about October 14, which may include observations or recommendations from individual subpanel members. The report and oral presentation should specifically focus on the characteristics and principles of successful programs and on innovative features of such programs.

In addition, it is expected that periodic status reports and interchanges between the subpanel and the Special Review Panel will occur. These occasions will serve as a means of resolving questions and for the Panel to provide any additional guidance.

DPO SUBPANEL 2  
Adequacy of Existing NRC DPO Program Guidance

The DPO Special Review Panel has been requested to thoroughly review the NRC's DPO process and to recommend revisions to improve its use, practicality and value to the agency.

In this regard, it is important that we focus on the completeness and adequacy of agency guidance on the DPO process. In particular, the scope and criteria for the DPO process needs to be examined in the context of all other NRC programs and policies for the resolution of differing positions, such as open door policy, resolution of issues by peer panels, referral of issues to OIA or to the ACRS, and the normal management process. The review should include NRC Manual Chapter 4125, Differing Professional Opinions, as well as related guidance promulgated by the Regions or other organizational units within the agency.

You are requested to assess the appropriate background documents and discuss them with knowledgeable individuals within the NRC on the following topics:

1. Are the scope, criteria and features of the NRC DPO process sufficiently unique to make it clear when the DPO process should be used and when circumstances warrant the use of an alternative process? In other words, does guidance make it clear which of the options available for resolving issues is the best or most appropriate option to use to resolve a given issue or class of issues (e.g., safety related, administrative, personal, etc.)?
2. Does the open door policy dilute or confuse the DPO process? Should reference to the open door policy be removed from the DPO Chapter? Does the purpose of the open door policy need to be more clearly defined? What place does the open door policy have to improve or facilitate overall Agency communications?
3. Are there differences in guidance among various offices/regions? Does this result in different practices? Are there informal processes which are used by any office/region? If so, are they documented/described formally? Are they used by employees?
4. Is the Agency's guidance understandable in terms of its content, length, format, volume and consistency? Where either formal or informal "peer panels" are used, are the criteria for selection of members adequate, for example, in terms of who (management or the employee) selects the panel, what constitutes "expertise," what degree of independence does the panel have, etc.
5. What options, formal or informal, do NRC officials and employees identify in order to: increase the effectiveness of the processes for resolving differing opinions, improve the process efficiency and practicality, and assure that guidance is consistent with the program objectives and expected results?
6. Is the system too cumbersome?

The information obtained by the subpanel on the Agency's guidance should be compiled and organized into a written report for the Special Review Panel by October 14, 1987. This report should reflect fact-finding, and should not include recommendations. In addition, the subpanel will be asked to make an oral presentation to the Special Review Panel on or about October 14, which may include observations or recommendations from individual subpanel members. The report and oral presentation should include any findings concerning the views of NRC officials and employees regarding changes in the DPO guidance to assure that the DPO process will be used to resolve differing professional opinions and, as a result, it will be considered of high value by both the individuals using the process and by NRC management.

In addition, it is expected that periodic status reports and interchanges between the subpanel and the Special Review Panel will occur. These occasions will serve as a means of resolving questions and for the Panel to provide any additional guidance.



DPO SUBPANEL 3  
Experience in the Use of the NRC DPO Process

The DPO Special Review Panel has been requested to thoroughly review the NRC's DPO process and to recommend revisions to improve its use, practicality and value to the agency.

In this regard, it is important that we focus on the knowledge and experience of those individuals who have participated in the process, have seriously considered using the DPO process but rejected it for another approach, or otherwise have special familiarity through study or involvement with this or similar processes. Thus, a wide spectrum of viewpoints should be solicited from staff and management on such items as:

1. What are the perceived strengths and weaknesses of the DPO process as it is now implemented? What are the "problems" that need to be fixed?
2. Why is the system not being used more extensively?
3. Should the DPO process be revised in any respect in terms of issues to be considered, the manner of resolution or the timeliness of resolution?
4. How is the process viewed by objective potential users? If the process is not perceived as a positive, healthy one, what revisions are suggested to develop such a perception?
5. What other improvements should be considered?
6. Do you feel there has been retaliation from use of the system? Is the fear of retaliation a deterrent from using the system?
7. Is the system too cumbersome?

In addition, a survey of appropriate NRC staff should be conducted by the subpanel.

The information obtained from personal interviews and the survey should be compiled and organized into a written report for submission to the Special Review Panel by October 14, 1987. The report should reflect fact-finding, and should not include recommendations. In addition, the subpanel will be asked to make an oral presentation to the Special Review Panel on or about October 14, which may include observations or recommendations from individual subpanel members. The report and oral presentation should present findings and conclusions as to the general perceptions of employees and managers on these issues, with particular emphasis on their views on ways to improve the process, based on the direct feedback of the individuals most knowledgeable in the process.

In addition, it is expected that periodic status reports and interchanges between the subpanel and the Special Review Panel will occur. These occasions will serve as a means of resolving questions and for the Panel to provide any additional guidance.



**APPENDIX B**  
**NRC MANUAL CHAPTER 4125**



Form NRC-489  
(1-76)

**U. S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL  
TRANSMITTAL NOTICE**

CHAPTER NRC-4125 DIFFERING PROFESSIONAL OPINIONS

**SUPERSEDED:**

	Number	Date
Chapter	<u>NRC-4125</u>	<u>9/19/80</u>
Page	<u>                    </u>	<u>                    </u>
	<u>                    </u>	<u>                    </u>
Appendix	<u>NRC-4125</u>	<u>9/19/80</u>

**TRANSMITTED:**

	Number	Date
TN	<u>4100-92</u>	<u>                    </u>
Chapter	<u>NRC-4125</u>	<u>7/23/85</u>
Page	<u>                    </u>	<u>                    </u>
	<u>                    </u>	<u>                    </u>
Appendix	<u>NRC-4125</u>	<u>7/23/85</u>

**REMARKS:**

This issuance provides all NRC employees with the recently Commission-approved revision to Chapter NRC-4125, Differing Professional Opinions (DPO). During the process of revision, both the Commission and the EDO reaffirmed their continued full support for the DPO Policy and Process. In addition, they stressed the need for NRC management to act objectively in handling Differing Professional Opinions.

This revision reflects the evaluation and report of the Special Review Panel as well as requests from NRC management and recommendations of the Office of Inspector and Auditor, and includes:

1. more emphasis on the establishment of timely procedures for the resolution of differing professional opinions (DPO's).
2. requirement for Office Directors and Regional Administrators to provide for maintenance of written records to provide accountability for actions taken to resolve DPO's and to place completed cases in centrally located office files.
3. statements of responsibilities for Regional Administrators and for the Office of Resource Management concerning the processing and resolution of statements of differing professional opinions.
4. provision for the Office of Resource Management to submit to the Commission an annual, rather than a quarterly, report on DPO's and actions taken to achieve their resolution.

5. statement indicating that RM maintains a file of all initial and final DPO's handled by NRC; and requirement that the Director, RM, will notify the EDO of any DPO's that are not being resolved within the prescribed schedule.
6. statement that managers advising employees to file DPO's will inform the employees' management of that action.
7. addition of a summary and schedule of the DPO resolution process.
8. requirement for Office Directors and Regional Administrators to obtain a control number for each DPO from RM.
9. highlighting of methods to address alleged retaliation for having filed a DPO.
10. requirement for the Director, Office of Administration, to provide an overview of the DPO program in orientation of new employees.

U.S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL

Volume: 4000 Personnel  
Part : 4100 Federal

RM

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CHAPTER 4125 DIFFERING PROFESSIONAL OPINIONS

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4125-01 COVERAGE

This chapter and appendix comprise NRC policy, objectives, procedures, responsibilities and other basic requirements and definitions established to provide for the expression and resolution of differing professional opinions concerning matters related to the agency's mission.

4125-02 POLICY AND OBJECTIVES

021 Policy. It is the policy of the Nuclear Regulatory Commission, and the responsibility of all NRC supervisory and managerial personnel, to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. Each differing professional opinion of an NRC employee will be evaluated on its own merit. Further, each differing professional opinion will be pursued to resolution and the employee's statement of differing professional opinion, together with the agency's final response, will be made available to the public to ensure the openness of NRC decisions that may affect the public.

It is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers NRC employees' differing professional opinions that concern matters related to the agency's mission. This policy is intended to assure all employees the opportunity to express differing professional opinions in good faith, to have these opinions heard and considered by NRC management, and to be protected against retaliation in any form.

022 Objectives.

- a. To define differing professional opinions.
- b. To distinguish between differing professional opinions and the differences of views and opinions routinely raised and resolved among staff members in the ordinary conduct of agency business.

Approved: July 23, 1985  
Appendix B

- c. To provide a primary channel for submitting differing professional opinions.
- d. To specify the recommended content of a statement of differing professional opinions.
- e. To provide reasonable time and reasonable administrative assistance to help employees develop and document their differing professional opinions.
- f. To provide for acknowledgment of receipt of statements of differing professional opinion and for advising originators of planned actions for their resolution.
- g. To provide accountability by requiring a written record of all actions taken on differing professional opinions.
- h. To provide for resolution within the agency of differing professional opinions, if at all possible.
- i. To provide alternative channels for expressing a differing professional opinion either on the record or anonymously.
- j. To provide disciplinary sanctions against employees who take retaliatory actions that affect the originators of, or employees who support, differing professional opinions.
- k. To prevent intentional misuse of these procedures.
- l. To provide for periodic assessment to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes.
- m. To provide recognition to the originators of differing professional opinions if their opinions contribute significantly to achieving the agency's mission.

#### 4125-03 RESPONSIBILITIES AND AUTHORITIES

##### 031 The Executive Director for Operations (EDO):

- a. assures that a written record is maintained to provide accountability for all subsequent actions taken to resolve the differing professional opinions.
- b. ensures that differing professional opinions which are not resolved within four calendar months after their submission are resolved by the responsible office director as promptly as is practicable.
- c. annually appoints a Special Review Panel to evaluate and report on the functioning of the differing professional opinion procedures.

Approved: July 23, 1985



032 Directors of Offices and Regional Administrators:

- a. determine actions to be taken on statements of differing professional opinion (DPO).
- b. obtain a unique control number from RM to place on the original DPO and all subsequent correspondence and documentation on that DPO.
- c. within 10 days of its submission, forward the differing professional opinion either to the appropriate manager within his or her own office or to the director of the office with basic responsibility for the issues raised in the differing professional opinion with copies to the EDO and Director, Office of Resource Management.
- d. convene an impartial peer review group to address the substance of the issues raised either when requested by the originator or when he determines that the complexity of the issues raised justifies such a review.
- e. inform the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Panel of any differing professional opinion that relates to issues pending before them or scheduled for their consideration.
- f. assure that every effort is made to expedite the resolution of differing professional opinions within the time frame specified in Appendix 4125, Section G.2.a.
- g. provide the originator with a copy of the peer review group's report.
- h. inform the EDO of reasons for delay and submit, for EDO approval, a proposed plan for resolution of DPO's not resolved within four calendar months after submission.
- i. provide the originator with written notification of the resolution of his differing professional opinion with a copy to the Director, Office of Resource Management, and the EDO, and access to all documents generated in connection with its resolution.
- j. after the issue is resolved and the case closed, complete files on the DPO will be maintained centrally by the cognizant office.
- k. provide the Office of Resource Management with an annual Differing Professional Opinion Status Report. (See Appendix 4125, Section G.4.)

Approved: July 23, 1985

033 The Director, Office of Resource Management (RM):

- a. provides the Commission with an annual report identifying all differing professional opinions submitted and specifying the actions that have been taken to achieve their resolution.
- b. assigns a unique control number to each DPO at the time the offices initially provide documentation to RM on the origination of a specific DPO.
- c. maintains a file of all initial and final DPO's handled by NRC.
- d. advises the immediate supervisors of originators of DPO's of the requirements to maintain a written record to provide accountability for all subsequent actions taken to resolve the differing professional opinions. (See 4125-036 h.)
- e. notifies the EDO of any DPO's currently under review that are not anticipated to be resolved within 30 days after initial submission.

034 The Director, Office of Administration (ADM), requires all of the Headquarters and Regional personnel offices to include an overview of the DPO program in the orientation for new employees.

035 The Advisory Committee on Reactor Safeguards:

- a. appends comments to all referred statements of differing professional opinion and forwards them for resolution to the appropriate office director, if the differing professional opinion relates to a potential safety issue within their purview.
- b. responds to appeals by an originator if the differing professional opinion concerns matters of public health or safety.

036 Immediate Supervisors:

- a. advise and assist employees in administratively preparing adequate written statements of differing professional opinion and aid them in identifying related information.
- b. in consultation with their managers, determine the amount of the originator's work time and administrative support to be provided in response to the originator's request for assistance.
- c. receive signed statements of differing professional opinion from the originator.
- d. within five working days of receipt acknowledge receipt of statements of differing professional opinion by memoranda to the originators. A copy of the acknowledgment memo and the DPO statement is forwarded to the EDO and the Director, Office of Resource Management.

Approved: July 23, 1985

- e. return to the originator any statement excluded from the definition of a differing professional opinion together with a memorandum citing the specific exclusion with a copy to the EDO and Director, Office of Resource Management.
- f. forward statements of differing professional opinion, via their chain-of-command, to his or her office director for action with a copy to the EDO and Director, Office of Resource Management.
- g. assure that statements of differing professional opinion are incorporated into the receiving organization's normal work tracking system.
- h. maintain a written record to provide accountability for all subsequent actions taken to resolve the differing professional opinion while the DPO is active.
- i. when the DPO is completed or withdrawn, forwards the complete file to the office director's office, where it will be centrally maintained.

037 All Employees:

- a. make known their best professional judgments on any matter relating to the mission of the agency by submitting to their immediate supervisor a signed statement of differing professional opinion when appropriate.
- b. before submitting a statement of differing professional opinion, should consult with their immediate supervisor who will aid them in identifying related information and assist them, if requested, in clarifying the issues.
- c. may request an Open Door meeting with any manager to discuss their views.
- d. may request that their differing professional opinion be presented to an impartial peer review group for review, evaluation, and comment.
- e. may communicate a differing professional opinion concerning a potential safety issue directly to the chairman or any member of the ACRS.
- f. may appeal the resolution of their differing professional opinion to a higher level of NRC management:

4125-04 DEFINITIONS

041 Differing Professional Opinion. A conscientious expression of professional judgment as contained in a written, signed statement submitted to one's immediate supervisor, or submission of an unsigned anonymous statement

Approved: July 23, 1985

(see NRC Appendix 4125, Section H.1) which, on any matter relating to NRC's mission or organizational activities, differs from the prevailing staff view within an organization, disagrees with a management decision or policy position, or takes issue with a proposed or an established agency practice. Differing professional opinions may involve technical, management, legal, or policy issues and are not limited to the originator's area of expertise. Matters that are subject to employee grievance in accordance with Chapter NRC-4157 and matters covered by the negotiated grievance procedure do not qualify as differing professional opinions.

042 Manager. An employee who directs the work of an organization, is held accountable for specific line or staff programs or activities, and whose primary duties are managerial.

043 Peer Group. A group of NRC staff with expertise in the area encompassed by a given DPO, convened for the purpose of addressing the substance of the issues raised by the DPO.

#### 4125-05 BASIC REQUIREMENTS

051 Applicability. These procedures for the expression and resolution of differing professional opinions are for the use of all NRC employees including supervisors and managers. The procedures supplement other stated rights, duties, and safeguards applicable to all Federal employees who make their views known either within or outside their agencies, including:

- a. the independent right of free speech provided by the First Amendment to the U.S. Constitution.
- b. the right of government employees to petition the Congress (5 USC 7102).
- c. the rights of employees to communicate directly with the Congress as outlined in the Code of Ethics for Government Service (10 CFR 0.735 - Annex A).
- d. provisions of the 1978 Civil Service Reform Act dealing with prohibited personnel practices and the regulations of the Merit System Protection Board.

052 Appendix 4125. This appendix provides procedures for the expression and resolution of differing professional opinions.

Approved: July 23, 1985

CONTENTS

	<u>Page</u>
A. Normal Differing Views vs. Differing Professional Opinions.....	1
B. Primary Channel for Expressing Differing Professional Opinions ....	1
C. Content of a Written Statement of Differing Professional Opinion...	2
D. Resources to Assist Originators of Differing Professional Opinions.	2
E. Acknowledgment of Differing Professional Opinions.....	2
F. Written Record of Actions on Differing Professional Opinions.....	3
G. Resolution of Differing Professional Opinions.....	3
1. Definition of Resolution .....	3
2. Resolution Process .....	4
3. Appeal .....	6
4. Reports to the Commission .....	7
H. Alternate Channels for Expressing Differing Professional..... Opinions.....	7
1. Open Door Policy.....	8
2. The ACRS.....	9
I. Prevention of Retaliation Against Individuals who Express or Support Differing Professional Opinions.....	9
J. Prevent Intentional Misuse of Procedures for Differing Professional Opinions.....	10
K. Special Review Panel for Follow-up on Functioning of Differing Professional Opinion Procedures.....	10
L. Recognition of Originators of Significant Differing Professional Opinions.....	11



PROCEDURES FOR THE EXPRESSION AND RESOLUTION  
OF DIFFERING PROFESSIONAL OPINIONSA. Normal Differing Views vs. Differing Professional Opinions

A normal differing view, developed in the free and open discussion of work matters, becomes a differing professional opinion only when the originator brings it to NRC management attention in accordance with these procedures.

In the free and open discussion of work matters, professional differences of opinion are common. Employees may also develop critical views concerning matters other than their personal work assignments, such as issues under consideration in another part of NRC or relating to an agency practice or position that is neither currently under review nor in the agency's decisionmaking process.

In both these instances employees normally try, and should be encouraged, to resolve their concerns through discussions with their co-workers and immediate supervisors. In some cases, such discussions may lead to the submission of a suggestion as part of the NRC suggestion program (Chapter NRC-4154).

However, these informal discussions may not resolve the matter and an employee may be convinced that the agency and the public would be better served if another opinion prevailed. To further pursue such concerns using these procedures, an employee should submit a written statement of differing professional opinion in accordance with these procedures. With the submission of this statement, the employee's differing view becomes a differing professional opinion.

An employee may not use these procedures for differing professional opinions without submitting a written statement. The employee may, however, express any concerns orally or in writing to the ACRS and may also discuss these concerns with any NRC manager as provided in the Open Door Policy. (See Section H).

B. Primary Channel for Expressing Differing Professional Opinions

These procedures are invoked when employees submit to their immediate supervisor a written statement of differing professional opinion. As indicated in the statement of policy, it is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency.

Before submitting the statement, employees should consult with their immediate supervisor who will aid them in identifying related information and assist them, if requested, in clarifying the issues. Originators of differing professional opinions may request agency resources for preparing adequate written statements of differing professional opinion and such requests shall include estimates of the resources required.

After registering a DPO, an individual should be prepared to describe his background as it relates to the issue raised, since the initial credibility given his opinion may rest, in part, on that background.

C. Content of a Written Statement of Differing Professional Opinion

A written statement of differing professional opinion, while being brief, should in all cases include the following:

1. a summary of the originator's perception of the prevailing staff view, existing management decision or stated position, or the proposed or established agency practice.
2. a description of the originator's opinions and how they differ from any items discussed in 1. above.
3. a statement of the originator's assessment of the resulting consequences if the differing professional opinion is not adopted by the agency.

D. Resources to Assist Originators of Differing Professional Opinions

To assist originators in preparing adequate written statements of differing professional opinion, NRC management will allow a reasonable amount of the originator's work time and administrative support. If called to testify before a Licensing Board or an Appeal Board, the employee may receive, upon request, assistance from the staff legal office in preparing testimony or other documents to be filed with the Board. Such assistance will be solely for the purpose of facilitating the filing of the necessary documents and will not constitute legal representation of the employee by the legal staff. The originator's immediate supervisor, in consultation with his or her manager, will determine the amount of the originator's work time and administrative support to be provided in response to the originator's request for assistance.

E. Acknowledgment of Differing Professional Opinions

The immediate supervisor shall, upon receiving a written statement of differing professional opinion, discuss the statement with the originator if this has not previously been done. In addition, the immediate supervisor must, within five working days, acknowledge receipt by a memorandum to the originator with a copy to the EDO and a copy to the Director, Office of Resource Management. This memorandum will also indicate the actions that will be taken to resolve the differing professional opinion.

Upon receipt, statements of differing professional opinion will be incorporated into the receiving organization's normal work tracking system. This tracking should assure that the status of each differing professional opinion is regularly reviewed, aid in its prompt resolution, and provide a systematic basis for keeping the originator informed.



F. Written Record of Actions on Differing Professional Opinions

Once a differing professional opinion has been submitted, a written record must be maintained by the immediate supervisor while the DPO is active to provide accountability for all subsequent actions taken to resolve that differing professional opinion on its merits. This record will consist of signed notations of all supervisory and managerial determinations and actions based upon the differing professional opinion. Changes in the original documentation that are requested by the originator will also be made a part of this written record. Copies of the initial and the final DPO documents will be sent to the Director, Office of Resource Management, and the EDO. All pertinent documentation will be retained by the supervisor while the DPO is active and centrally by the office director for a period of ten years after the DPO becomes inactive.

G. Resolution of Differing Professional Opinions

1. Definition of Resolution

A differing professional opinion is considered resolved by the NRC when:

- a. NRC management adopts the views expressed in the originator's written statement of differing professional opinion; or
- b. NRC management adopts a part of the judgments expressed in the originator's written statement of differing professional opinion and informs the originator of the reasons for not adopting the remainder; or
- c. The responsible office director determines that evaluation of the differing professional opinion fails to justify modification of a management decision, policy position, or a proposed or an existing agency practice; or
- d. The responsible office director determines that the impact of the potential consequences stated in the differing professional opinion is insufficient to justify a detailed evaluation of the differing professional opinion; or
- e. The differing professional opinion is withdrawn by the originator.<sup>1/</sup>

<sup>1/</sup>In such cases, NRC management may elect to pursue the matter further based on its merit even though it is no longer considered to be a differing professional opinion.

In each of the preceding cases, the resolution process is complete only when the originator has been informed of the decision or action of NRC management and, consistent with security classification policy, both the statement of differing professional opinion and the response of NRC management have been placed in NRC's Public Document Room.

2. Resolution Process

a. Summary and schedule of resolution process:

Originator submits DPO to immediate supervisor;

(Within five working days of receipt) immediate supervisor forwards DPO to office director with comments of all others in chain-of-command appended;

(Within 10 working days of submission) office director forwards DPO to appropriate manager for action [If transferred to another office, DPO must be assigned to responsible program manager within 15 working days after submission by originator.];

(Within 15 days after submission) office director informs ASLBP and ASLAP of any DPO that relates to issues pending before them or scheduled for their consideration;

(Within 30 working days after assignment to responsible manager) DPO normally resolved;

(Four calendar months after submission) if DPO not resolved, responsible office director informs the EDO of reasons for delay and submits, for EDO approval, a proposed plan and schedule for completing resolution.

b. When submitting a differing professional opinion, the originator may request that it be presented to an impartial peer review group for review, evaluation, and comment. If such request is not made by the originator, and if the responsible office director determines that such review is justified by the complexity or the potential significance of the issues raised, he shall convene an impartial peer review group to address the substance of the issues raised in the differing professional opinion. In either case, the responsible office director will assure that members of the peer review groups convened for this purpose are specifically selected for their impartiality and professional competence concerning matters discussed in each differing professional opinion. The responsible office director

- will carefully consider peer review group recommendations in the resolution of applicable differing professional opinions and will provide the originator with a copy of the peer review group's report.
- c. Upon receiving a statement of differing professional opinion from the originator, the immediate supervisor will forward it, via the chain-of-command, to his or her office director for action with copies to the EDO and the Office of Resource Management. The immediate supervisor and all others in the chain-of-command shall append their views concerning matters discussed in the differing professional opinion. The differing professional opinion, with comments appended, shall be provided to the office director within five working days after its submission by the originator. Copies of these comments, together with all other documents generated in response to the differing professional opinion, shall be made available to the originator as they are generated. At his option, the originator may submit written comments for the record concerning views expressed by his immediate supervisor or others in the chain-of-command, or views expressed by intermediate NRC management personnel in the course of resolution of the differing professional opinion.
  - d. The office director will obtain a unique DPO control number and will forward the differing professional opinion, within 10 working days of its submission by the originator, either to the appropriate manager within his or her own office or to the director of the office that has basic responsibility for the issues raised in the differing professional opinion, with copies to the EDO and Director, Office of Resource Management. If transferred to another office for resolution, the differing professional opinion must be assigned to the responsible program manager within 15 working days after its submission by the originator. The responsible manager will incorporate the statement of differing professional opinion into the organization's normal work tracking system and, until the differing professional opinion has been resolved, shall provide the originator with brief monthly status reports. Copies of these reports shall also be provided to the responsible office director. The responsible manager will also inform the originator of other differing professional opinions received that are relevant to that submitted by the originator.
  - e. The responsible office director will, within 15 working days after its submission by an originator, inform the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Panel of any differing professional opinion that relates to issues pending before them or scheduled for their consideration.

- f. Every effort shall be made to expedite the resolution of differing professional opinions. Normally, a differing professional opinion should be resolved by the responsible office director within 30 working days after its assignment to the responsible manager. An extension of 15 working days will, however, be automatically granted upon certification by the responsible manager to the originator that: (1) resolution of the differing professional opinion involves especially complex issues, (2) the workload of managerial personnel involved in resolution of the issues is temporarily heavier than normal, or (3) that resolution of the differing professional opinion involves the participation of several levels of NRC management. Additional extensions of 15 working days each may be granted only upon application to and approval by the responsible office director who will consider comments of both the managerial personnel involved and the originator with regard to the proposed extension.
- g. If a differing professional opinion is not resolved within four calendar months after its submission, the responsible office director shall inform the Executive Director for Operations (EDO) of the reasons for the delay and shall submit, for EDO approval, a proposed plan and schedule for completing its resolution. The responsible office director shall provide the originator with a copy of the EDO-approved plan and schedule for resolution. The EDO will ensure that differing professional opinions in this category are resolved by the responsible office director as promptly as is practicable.
- h. The responsible office director shall provide the originator with written notification of the resolution of his differing professional opinion with a copy to the Director, Office of Resource Management, (see Section 4125-03) and the EDO, and access to all documents generated in connection with its resolution. While the DPO is active, the immediate supervisor will maintain the file. When the DPO is complete or inactive, the office director will centrally maintain the file.

### 3. Appeal

The originator may appeal the resolution of his differing professional opinion to a higher level of NRC management including ultimately, the Commission. Normally, it would be expected that appeals by individuals assigned to Program Offices or to EDO Staff Offices would be submitted to the EDO and that individuals assigned to the Commission or to Commission Staff Offices would submit appeals or to the Commission. Moreover, if a differing professional opinion concerns matters of public health or safety, the appeal may be forwarded through the ACRS with a request that the ACRS comment on the potential safety implications of the resolution that is being appealed.

These procedures make no provision for further appeal of the resolution by NRC management of a differing professional opinion. However, originators who are dissatisfied with either NRC management's resolution of their differing professional opinion or the results of their appeal of this resolution may further pursue their concerns via the Open Door policy or the ACRS as appropriate.

#### 4. Reports to the Commission

The Office of Resource Management (RM) shall provide the Commission with annual reports identifying all differing professional opinions submitted and specifying the actions that have been taken to achieve their resolution. This information shall be provided by the responsible office directors who shall, within five working days after each calendar year, provide RM with a Differing Professional Opinion Status Report that contains:

- a. A listing and a description of all differing professional opinions received together with a brief status report of all efforts that have been taken to achieve their resolution. Items shall be reported and summarized in the following three categories:
  - (1) Differing professional opinions submitted since the last status report.
  - (2) Differing professional opinions previously received and reported but not yet resolved.
  - (3) Differing professional opinions previously received and reported that were resolved on the following dates.
- b. Information obtained from the originator of each differing professional opinion resolved during the year which indicates the originator's general reactions to these procedures. As a minimum, this information should include the originator's evaluation of the utility of these procedures for handling his or her differing professional opinion, areas in which these procedures inhibited rather than aided the achievement of their objectives, and comments or recommendations for improvement of these procedures.

#### H. Alternate Channels for Expressing Differing Professional Opinions

Two alternate channels are available for employees who prefer not to use the primary channel for expressing their differing professional opinions. Once a differing professional opinion submitted via either of these two channels has been forwarded to the responsible office director, subsequent procedural steps involved in resolution of the differing professional opinion are essentially identical with those prescribed for the primary channel. The basic difference between the primary channel and the two alternatives discussed below is that the alternatives permit the originator to select the individual manager to whom the differing professional opinion will be submitted and, in

addition, they make provision for the submission of anonymous differing professional opinions upon request.

1. Open Door Policy

The Open Door Policy of NRC provides that NRC employees may, on their own initiative, meet with any manager, including a Commissioner or the Chairman of NRC, to discuss any matter of concern to the employee. Employees may request an Open Door meeting directly with the selected manager's secretary or administrative assistant and there is no requirement for the approval of requests for such meetings by intermediate management.

An employee's request for anonymity will be honored by any manager contacted via the Open Door except in two special situations that could occur if the manager contacted is an NRC Commissioner. Each Commissioner is legally required to inform all other Commissioners of any information which he believes to be related to the responsibility or the function of the Commission. (This requirement for mandatory information sharing applies only to the Commissioners and does not extend to others within NRC.) Subject to this constraint, NRC Commissioners will honor an employee's request for anonymity made in connection with communications via the Open Door. Therefore, when an employee requests anonymity in an Open Door contact with a Commissioner, no Commissioner will disclose to another Commissioner the identity of the employee unless (a) as a practical matter it is impossible to convey the substance of the information without making known the identity of the employee, (b) disclosure of the employee's identity to the other Commissioners is essential for determination of the accuracy and reliability of the information, or (c) the employee's identity is required to be released by law.

If Open Door discussions disclose that an employee's views constitute a differing professional opinion, the contacted manager should advise the employee to submit a signed, written statement of differing professional opinion in accordance with these procedures and should inform the employee's management that he has been advised to prepare such a statement. If the employee insists on remaining anonymous but wishes to have his or her views considered as a differing professional opinion, the employee should submit an unsigned statement of differing professional opinion to the manager contacted via the Open Door and that manager will forward the anonymous statement of differing professional opinion to the office director having programmatic responsibility for the issues raised in the differing professional opinion. Resolution of the differing professional opinion will then be completed in accordance with these procedures. To protect the employee's anonymity in such cases, however, it may not be possible to provide the acknowledgment of receipt of the differing professional opinion

or the reports on resolution directly to the originator of the differing professional opinion. In such cases, the manager originally contacted via the Open Door shall relay to the originator both the acknowledgment of receipt and all reports received by that manager concerning resolution of the differing professional opinion.

Differing opinions not expressed in writing as required by Section C shall be considered to be normal differing views as discussed in Section B, and may not be pursued further using the procedures for differing professional opinions.

Open Door discussions between employees and managers may also relate to subjects other than normal differing views and differing professional opinions. In these cases, the managers contacted will work to resolve an employee's concerns, to answer any questions, and to honor any request for anonymity. Honoring a request for anonymity may, however, limit a manager's assistance either to discussions with the employee or to providing advice and counsel on matters of concern to the employee.

Managers should advise employees of the proper channels to be used for the resolution of concerns that may not be resolved using these procedures for differing professional opinions. If the contacted manager believes that others should be notified of issues raised in these Open Door discussions, he should notify offices with programmatic responsibility, and others (e.g., the Office of Inspector and Auditor).

## 2. The ACRS

If the differing professional opinion relates to a potential safety issue within the purview of the Advisory Committee on Reactor Safeguards, an NRC employee may communicate orally or in writing directly with the Chairman or any member of the ACRS. Such communication may be anonymous. The ACRS will append comments, as appropriate, to all referred statements of differing professional opinion and will forward these statements for resolution to the appropriate NRC office director.

An NRC employee may also appear before the ACRS or an ACRS Subcommittee as deemed appropriate by the Committee. The ACRS will assure that all such statements that do not constitute a differing professional opinion are forwarded to the appropriate NRC office director for information.

## I. Prevention of Retaliation Against Individuals Who Express or Support Differing Professional Opinions

Any NRC employee who retaliates against another employee for submitting or supporting a differing professional opinion is subject to disciplinary action in accordance with Chapter NRC-4171 (Discipline, Adverse Actions and Separations). This applies to retaliatory actions described in the

following paragraph and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code, as amended by the Civil Service Reform Act of 1978.

Retaliation consists of injurious actions taken against the originator of a differing professional opinion in which a motivating factor for such actions derived from the submission of a differing professional opinion by the originator. Retaliation may involve transfer; detail; ostracism; loss of staff assistance, space, or equipment; physical isolation; the absence of assignments involving substantive work; or the denial of promotion, attendance at professional society meetings, or justified training.

Employees who allege that retaliatory actions have been taken because of their submission or support of a differing professional opinion may seek redress through the negotiated grievance procedure or through the grievance procedure described in Chapter NRC-4157 (Employee Grievances). This is the formal route. Employees may also use the "Open Door Policy" as described in Section H.1 of this appendix.

In a case where an employee files a grievance alleging that he/she has been retaliated against for having filed a DPO, the grievance may be reviewed initially by the same managers (usually lower level management) who allegedly have engaged in retaliation. However, the agency grievance procedures provide for review of the allegation by higher level management. In addition, grievants under agency practice and procedures have the right to present the issue to an independent third party from outside the NRC; grievants covered by the negotiated Union Agreement may, with the concurrence of the Union, proceed to binding arbitration before a third party arbitrator from outside the NRC.

J. Prevent Intentional Misuse of Procedures for Differing Professional Opinions

No NRC employee should intentionally misuse these procedures. Examples of intentional misuse would include but not be limited to frivolous use, attempts to treat a personnel-grievance type action as a differing professional opinion, and repeated attempts to use these procedures to obtain a resolution of views that do not satisfy the criteria for differing professional opinions.

K. Special Review Panel for Follow-up on Functioning of Differing Professional Opinion Procedures

Annually the Executive Director for Operations will appoint a Special Review Panel to evaluate and report on the functioning of these differing professional opinion procedures. Four members of the Special Review Panel will be NRC employees (two managers and two nonmanagers), and the fifth member will be chosen from outside the NRC. Two of the NRC-employee members will be selected from a list of at least five (5) candidates nominated by the National Treasury Employees Union (NTEU). Membership shall not be limited to scientific or engineering personnel. All NRC employees will receive a copy of the letter appointing members of the Special Review Panel. The forwarding memorandum may also solicit



employee comments on these procedures to be considered by the Special Review Panel. Employee recommendations for membership of subsequent Special Review Panels will also be solicited.

The Special Review Panel will study NRC's experience in handling differing professional opinions, evaluate the functioning of these differing professional opinion procedures by assessing the degree to which the objectives are accomplished, and make appropriate recommendations for change. The Special Review Panel may recommend decreasing the frequency of these reviews when evaluations indicate that the NRC procedures for differing professional opinions are functioning effectively.

The findings and recommendations of the Special Review Panel will be distributed simultaneously to the Commission, EDO, NRC employees and the public when the panel's deliberations are complete and before any revisions to Chapter NRC-4125 are initiated.

L. Recognition of Originators of Significant Differing Professional Opinions

In addition, the Special Review Panel described in Section K, above, will annually review all differing professional opinions submitted during the prior year to identify employees whose differing professional opinions made significant contributions to the agency or to public safety but who had not been recognized by his or her supervisor for this contribution. It is anticipated that employees who provide significant contributions to the agency or to public health and safety will be recommended for appropriate awards by their immediate supervisors. Where award recommendations have not been made, they may be made by this Panel in accordance with provisions of NRC's Incentive Awards Program (Chapter NRC-4154). Copies of such recommendations for award will be included in the Special Review Panel's written report to the EDO and the Commissioners.



**APPENDIX C**  
**SURVEY QUESTIONNAIRE AND FINDINGS**





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

September 8, 1987

MEMORANDUM FOR: Survey Participants

FROM: Victor Stello, Jr.  
Executive Director for Operations

SUBJECT: DIFFERING PROFESSIONAL OPINION QUESTIONNAIRE

The purpose of the attached questionnaire is to obtain your views about the NRC's process for expressing a Differing Professional Opinion (DPO). The results of this questionnaire will be used in an evaluation of the current DPO process, and in the identification of potential improvements. This evaluation and associated survey are being undertaken in an effort to determine if the process for resolving differing professional opinions is clearly understood, practical, viable, and highly valued by NRC management and staff.

This questionnaire has been endorsed by both NRC management and the National Treasury Employee's Union (NTEU). Your responses are anonymous, and no information will be available as to who did or did not respond to the questionnaire. Your completed questionnaire will be available only to those NRC employees directly responsible for tabulating the responses. Please do not write your name on the questionnaire.

Your participation in completing this questionnaire is an important aspect of this evaluation of the DPO process and is greatly appreciated. Please return the completed questionnaire by September 25, 1987, in the enclosed envelope addressed to Patricia Rathbun, Chief, Workforce Analysis, Systems and Information, Office of Personnel (W-448). If you have any questions, Dr. Rathbun can be reached on X28275.

  
Victor Stello, Jr.  
Executive Director for Operations

Attachment:  
As stated



I. THIS SECTION OF THE QUESTIONNAIRE ASKS FOR SOME GENERAL INFORMATION ABOUT YOUR JOB SITUATION. PLEASE CIRCLE THE NUMBER CORRESPONDING TO YOUR ANSWER WHERE APPLICABLE.

1. Are you now classified

1. In a non-supervisory role?
2. As a Section Chief or other first line supervisor?
3. As a Branch Chief?
4. As an Assistant Director or higher?

2. Where do you work?

1. A Commissioner's Office or Commission Level Staff Office (ACRS, ASLBP, ASLAP, OGC, SECY, OIA, OI, GPA)
2. An EDO Staff Office (OEDO, DEDRO, OC, OE, OP, OARM, AEOD, OSP, OSDBU/CR)
3. NRR
4. NMSS
5. RES
6. Region

3. What is your current career field?

1. Nuclear Engineer
2. Engineer, Other than Nuclear
3. Physical Scientist
4. Health Physicist
5. Attorney
6. Administrative Specialist  
(Such as Management Analyst, Budget Specialist, Personnel Specialist)
7. Other (Please Specify) \_\_\_\_\_

II. THE NEXT SECTION OF THE QUESTIONNAIRE ASKS YOU TO GIVE YOUR OPINIONS ABOUT THE NRC PROCESS FOR EXPRESSING A DIFFERING PROFESSIONAL OPINION. PLEASE CIRCLE THE NUMBER OF THE ANSWER THAT BEST DESCRIBES YOUR RESPONSE. PLEASE PROVIDE WRITTEN RESPONSES WHEN APPROPRIATE.

4. How familiar are you with the goals and objectives of the NRC process for expressing a Differing Professional Opinion?

1. I am very familiar with the program.
2. I have some familiarity with the program.
3. I have very limited familiarity with the program.
4. I am not aware of this program at NRC.

5. The current DPO process, as described in NRC Manual Chapter 4125, is sufficiently effective so that no changes need be made.

1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree

6. Have you ever considered submitting a differing professional opinion but decided against it?

1. Yes  
2. No

7. In your opinion, which of the following issues are appropriate for the Differing Professional Opinion process? (Circle all that apply)

1. Technical  
2. Administrative/management  
3. Legal  
4. Policy issues  
5. All of the above

8. Are there issues, which in your opinion, are not appropriate for consideration in the NRC's DPO process? If so, please list them below.

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9. There are clearly stated guidelines describing under what circumstances it is appropriate to submit a differing professional opinion.

1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree

10. The procedures which are in place describing the steps to be followed in submitting a differing professional opinion are precise and understandable.

1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree

11. The DPO process was designed for use by supervisors or managers.

1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree



- 12. I would not file a DPO because I consider myself a team player.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 13. I would not file a DPO because I believe it would be viewed negatively by my peers.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 14. The DPO process is excessively cumbersome and too highly structured.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 15. If I use the DPO process, it will take too long to resolve my issue.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 16. The DPO process is used by some staff members to prevent management from taking potential adverse action against them.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 17. I would not file a DPO because I believe that my management would view me negatively as pertains to appraisals, advancements, awards or other personnel actions.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 18. I would not file a DPO because I believe my management would take retaliation against me.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 19. I would not file a DPO because I believe those in a position to review my DPO are predisposed to the outcome.  
1. Strongly Agree 2. Agree 3. No Opinion 4. Disagree 5. Strongly Disagree
  
- 20. Are there additional reasons which would inhibit you from filing a DPO?  
Please explain.

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21. I would prefer to resolve a DPO by the following informal process(es) rather than through the formal written procedure contained in manual chapter 4125: (Circle all that apply)

1. Open/door
  2. OIA
  3. Outside organization e.g. ACRS
  4. Informal discussions with immediate supervisor
  5. Informal discussions with management, at least one step higher than immediate supervisor
  6. Other, please explain.
- 
- 
- 

III. THE FINAL SECTION OF THE QUESTIONNAIRE ASKS YOUR OPINION ABOUT YOUR INVOLVEMENT WITH THE DPO PROCESS.

22. Have you ever been involved with a DPO?

1. Yes
2. No

IF NO, PLEASE SKIP TO QUESTION 26, IF YES, PLEASE ANSWER ALL REMAINING QUESTIONS.

23. What was your involvement?

1. Originator of the DPO
2. Part of management responsible for resolution
3. Part of peer review
4. Independent reviewer

24. How effective was the process?

1. Highly effective
2. Effective
3. Minimally effective
4. Ineffective

25. How would you describe the employee who submitted the DPO?

- 1. Technically qualified in the subject matter
- 2. Not technically qualified in the subject matter
- 3. Other (please explain):

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26. Overall, what suggestions, if any, do you have for improving the DPO process at NRC?

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1911-1912  
1912-1913  
1913-1914  
1914-1915  
1915-1916  
1916-1917

1917-1918  
1918-1919

RESULTS OF DIFFERING  
PROFESSIONAL OPINION SURVEY  
PREPARED FOR THE  
DIFFERING PROFESSIONAL OPINION  
REVIEW PANEL  
OCTOBER 14, 1987

Patricia Rathbun and  
Mary Louise Roe



## 1. INTRODUCTION

In order to determine if the process for resolving differing professional opinions is clearly understood, practical, viable, and highly valued by NRC management and staff, the Office of Personnel, working under the direction of the Differing Professional Opinion Review Panel, developed and administered a questionnaire to all NRC non-clerical staff. The questionnaire was endorsed by both NRC management and the National Treasury Employees' Union (NTEU).

### 1.1 Organization of this report

This report describes the DPO survey and presents the results. Section 2 highlights and discusses the results of the survey. Section 3 summarizes the survey methods and procedures. The appendix contains the survey instrument.

## SECTION 2. SURVEY RESULTS

### 2.1 Population and response rate

- 2500 surveys were mailed to NRC non-clerical employees
- 1488 completed surveys were returned

Who responded:

EMPLOYEE CLASSIFICATION	RESPONSE	EXPECTED VALUE
◦ non-supervisors	71%	73%
◦ supervisors	28%	27%
- section chief	13%	
- branch chief	7%	
- division director and above	8%	
OFFICE		
◦ Commission Office	11%	12%
◦ EDO Staff Office	18%	20%
◦ NRR	21%	20%
◦ NMSS	9%	9%
◦ RES	9%	8%
◦ REGIONS	31%	31%
CAREER FIELD		
◦ Nuclear Engineer	32%	26%
◦ Non-nuclear Engineer	22%	25%
◦ Physical Scientist	6%	8%
◦ Health Physicist	9%	8%
◦ Attorney	4%	4%
◦ Administrative Specialist/Other	27%	29%

## 2.2 Major Findings

The major findings shown below are generally listed in the order in which the questions were asked.

### 2.2.1 Familiarity with and participation in the process

- few respondents were very familiar with the DPO process  
(16%) very familiar  
(46%) somewhat familiar
- about 1/4 (27%) of the employees considered submitting a DPO, but had decided against it
- only a small number of the NRC employees who responded to the questionnaire have been involved with a DPO in any capacity  
(16%) (n=208)
- of those individuals, (23%) (n=45) were submitters of a DPO

### 2.2.2 Clarity and effectiveness of process

- most individuals had no opinion in response to questions regarding the effectiveness of process (56%)
- many individuals also had no opinion with respect to when and how to submit a DPO (44%) & (44%)
- however, there is a variation in the percentage distribution for these questions, which shows that many individuals view the process as described in NRC Manual Chapter 4125 as clear and effective
  - effective (27%)
  - not effective (18%)
  - clear on when (43%)
  - unclear on when (13%)
  - clear on how (46%)
  - unclear on how (10%)

### 2.2.3 Issues considered appropriate for DPO process

- Technical (97%)
- Administrative & Management (57%)
- Legal (67%)
- Policy (70%)

### 2.2.4 Perceptions of the DPO process at NRC

- a. In general, the process was not perceived as designed for use by management
  - (15%) felt the process was designed for use by management
  - (33%) had no opinion
  - (52%) felt the process was not designed for use by management



- b. A set of questions was asked to determine potential barriers which would inhibit an employee from filing a DPO
- being perceived as team player
    - o 18% agreed
    - o 11% had no opinion
    - o 70% disagreed
  - being viewed negatively by peers
    - o 21% agreed
    - o 12% had no opinion
    - o 67% disagreed
  - being viewed negatively by management
    - o 46% agreed
    - o 19% had no opinion
    - o 35% disagreed
  - belief that management would take retaliation
    - o 30% agreed
    - o 24% had no opinion
    - o 46% disagreed
  - process excessively cumbersome and structured
    - o 28% agreed
    - o 51% no opinion
    - o 21% disagreed
  - reviewers predisposed to outcome
    - o 32% agreed
    - o 31% no opinion
    - o 38% disagreed

The employees were also asked to provide any additional reasons which would inhibit them from filing a DPO. These responses are provided below.

- management responsive, so no need to file (16%)
- process is not effective (12%)

- c. The data was inconclusive with respect to staff use of the DPO process to protect against adverse management action
- o 19% agreed
  - o 60% had no opinion
  - o 20% disagreed

- d. The data was inconclusive with respect to respondents perception of predisposition of DPO outcome
  - 32% agreed
  - 38% disagree
  - 30% no opinion

#### 2.2.5 Use of alternate methods to resolve differing opinions

- o discussion with management one step higher than immediate supervisor (65%)
- o discussion with immediate supervisor (58%)
- o open door (48%)
- o outside organization (12%)
- o OIA (5%)

The respondents were also given the opportunity to provide other processes by which to resolve a DPO. Although the percentages of these responses are relatively insignificant, they represent different approaches to the problem.

- o preferred a formal process
- o verbal discussion with select panel of qualified peers/management
- o submittal of a formal memo requesting a response
- o decline to concur
- o document DPO through memo to file

#### 2.2.6 Responses of individuals who have been participants in a DPO Process (208 individuals - 16%)

- o Originator n=47 (24%) of 208
- o Management n=93 (47%) of 208
- o Peer reviewer n=26 (13%) of 208
- o Independent reviewer n=34 (17%) of 208

##### Effectiveness of process

53% effective  
47% ineffective

##### Description of employee submitting DPO

- technically qualified 87%
- not technically qualified 11%

The respondents were also given the opportunity to express additional opinions regarding the employee submitting the DPO. Twenty respondents described submitters as technically qualified, but opinionated/narrow minded or personally upset with management for other reasons.

#### 2.2.7 Suggestions for improvement

- o Take steps to remove negative connotation (7%)
- o Provide training on process (6%)
- o Publicize process and outcomes (5%)
- o Modify to speed up and simplify process (4%)
- o Given proper environment, DPO not necessary (3%)
- o Provide impartial and knowledgeable review groups (3%)
- o Encourage managerial responsiveness (3%)

### SECTION 3.       DIFFERING PROFESSIONAL OPINION QUESTIONNAIRE: PROCEDURES AND METHODS

Conducting the Differing Professional Opinion Questionnaire involved four different steps: developing a survey instrument, modifying the survey based upon suggestions from members of the Review Committee; selecting a sample of potential survey respondents, and developing procedures to carry out the survey. These are discussed briefly, below.

#### 3.1 Development of questionnaire

The first step in the development of the survey involved identifying the content areas to be included in the survey, and developing the survey instrument, or questionnaire. Three topics of concern were identified for inclusion in the survey: general information regarding the survey respondent's job situation; the respondent's opinions about the NRC process for expressing a differing professional opinion; and the respondent's opinion, if applicable regarding personal involvement with the NRC DPO process.

The first section of the questionnaire contained questions about the respondent's job situation: his/her classification in a non-supervisory role, as a Section Chief, Branch Chief, or an Assistant Director or higher; the office or region in which the respondent works; and the respondent's current career field. The second section of the questionnaire solicited answers regarding the respondent's familiarity with the DPO process at NRC: opinions regarding issues which the respondent felt were appropriate for inclusion in a DPO process; the effectiveness of the current NRC procedures; and questions as to whether or not the respondent would use this process. The final section of the questionnaire requested that the respondent describe prior involvement, if any, with the current DPO process: the respondent's involvement in this type of action at NRC; and if the respondent had prior involvement, to provide an assessment of its effectiveness; and to describe characteristics of the originator of the DPO. A final question to all respondents requested suggestions for improving the process.

#### 3.2 Revision of questionnaire

After the draft questionnaire was developed, final modifications were made by the members of the review panel formed to assess the DPO process. Due to time constraints, the questionnaire did not undergo a pre-test.

#### 3.3 Administration of questionnaire

The survey was administered to 2500 NRC employees (all non-clerical NRC employees). The questionnaires were sent in individual envelopes to each of the potential respondents. Anonymity was guaranteed to all respondents. The questionnaires were sequentially numbered upon receipt and no link can be made between the respondent and their name.



**APPENDIX D**  
**SUBPANEL 1 REPORT:**  
**DPO EXPERIENCE AT OTHER AGENCIES**

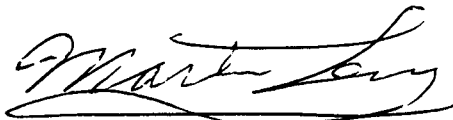


October 19, 1987

FINAL REPORT  
OF  
DPO SUBPANEL 1

TO

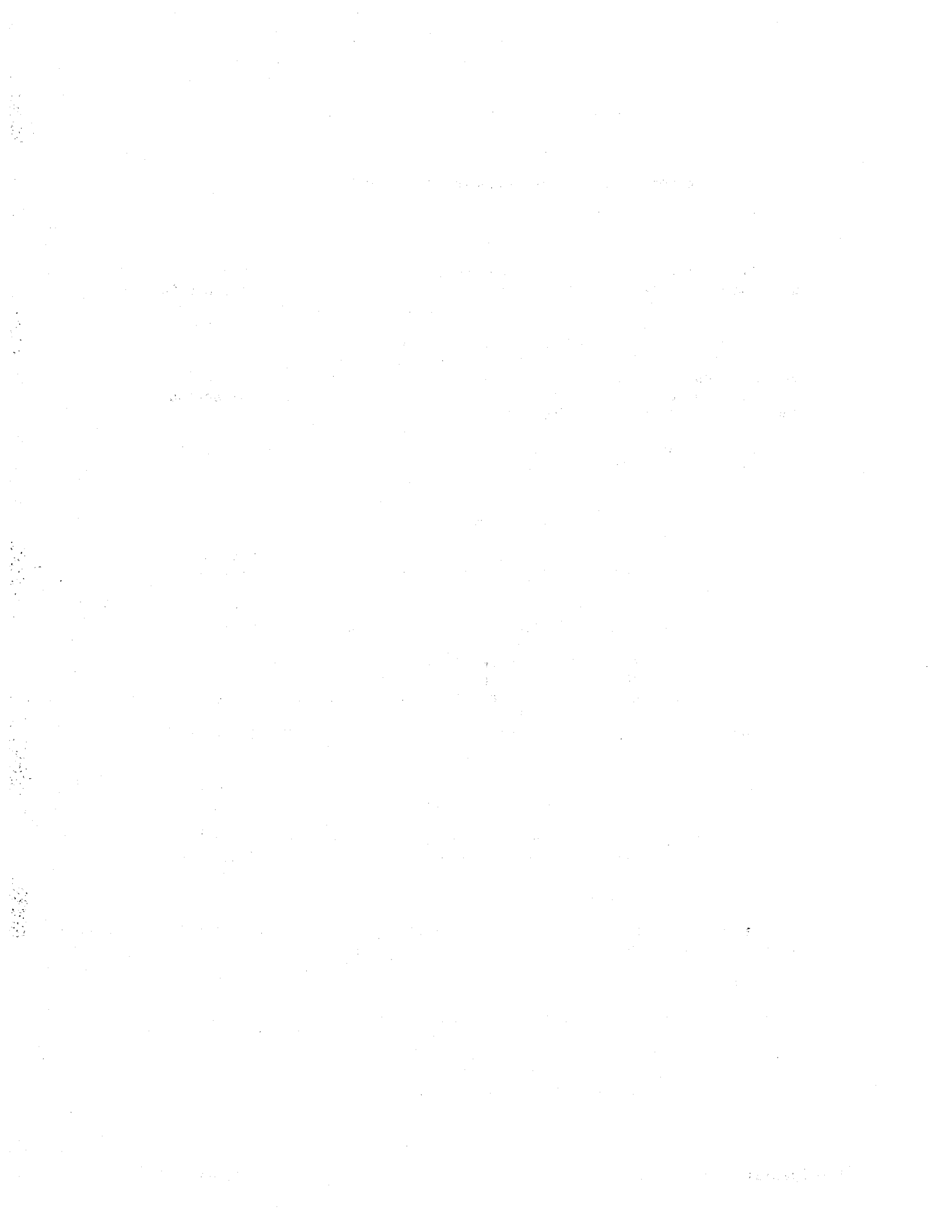
THE DIFFERING PROFESSIONAL OPINION SPECIAL REVIEW PANEL



Martin Levy, Chairman



James H. Conran





## FINAL REPORT OF SUBPANEL 1

### Experience of Other Agencies with DPO Process

#### I. PURPOSE AND SCOPE

The charter for Subpanel 1 directed the Subpanel to identify other government agencies considered to have successful DPO procedures, and to obtain information regarding the structure of those procedures and the features and provisions considered critical to achieving such success. A successful DPO process was defined as one which is used routinely by staff of the agency or organization, without major reservations, as a means of resolving professional or technical positions that differ from those of management. Specific questions to be considered in collecting and screening information from other agencies were the following:

1. Does the agency have a formal or informal process for identifying and resolving differing professional positions?
  - If so, determine the scope and process.
  - Obtain copies of policy and program documents.
2. Does the agency have other methods (such as a hotline, an ombudsman, informal processes) which are available for staff use to resolve differing positions?
3. What is the nature and frequency of use of these approaches?
  - What is the range of issues raised?
  - What is the frequency of use?
  - What type and level of individuals have used the process?
4. Are these approaches considered to be successful by management and staff?
  - What features are considered key to success?
  - What are reasons for lack of use?
5. Other observations or comments of other agencies based on the experience of the agencies in developing or assuring a viable DPO process?

The members of Subpanel 1 initially contacted either management or union official in thirteen agencies/organizations, as follows:

#### -Management Contacts

- \* 1. Department of State (State)
- \* 2. National Aeronautics & Space Administration (NASA)
3. Department of Transportation (DOT)
4. Federal Aviation Administration (FAA)
5. Environmental Protection Agency (EPA)

6. Department of Energy (DOE)
7. Federal Communications Commission (FCC)
8. Sandia National Laboratory (Sandia)
9. Federal Energy Regulatory Commission (FERC)

(\* = Contact with this agency mandated by Subpanel 1 Charter)

-Union Contacts

1. Financial Management Service (FMS)
2. Pension Benefit Guaranty Corporation (PBGC)
3. Internal Revenue Service (IRS)
4. Bureau Of Public Debt (BPD)

The persons contacted in these agencies or organizations were asked to identify any procedures used by their agency or organization for resolving differing professional opinions (as defined in NRC Manual Chapter 4125), and to describe their experience in implementing those procedures, using Questions 1-5 above and the definition of "success" in the preceding as a guide. Copies of formal procedures were requested, if such formal procedures existed; if formal procedures did not exist, a description of any informal or alternate DPO mechanism(s) used by the agency, was requested.

Due to relative paucity of response from the agencies and organizations contacted initially by the Subpanel, in identifying and providing formal DPO type procedures, the Subpanel undertook to contact additional organizations and individuals who might provide fruitful leads on agencies known to have formal DPO procedures or particularly effective informal or alternate procedures for dealing with differing employee views. These additional contacts included the following:

1. B. Patterson (Brookings Institute)
2. Government Accounting Office (GAO)
3. M. Nordlinger (OGC/NRC)
4. J. Aron (AEOD/NRC)
  - Merit System Protection Board (MSPB)
  - J.W. Doig (Princeton University)
  - American Society for Public Administration (ASPA)

NOTE: The enclosures referred to in this report are listed at the end of the report. They are available in the NRC Headquarters Public Document Room.

## II. SUMMARY OF SUBPANEL FINDINGS

- Of the thirteen agencies/organizations contacted, only two (State and FAA) identified and provided any formal procedures used for documenting and/or resolving differing employee views.
  
- Only one agency (State) has a formal procedure that could be considered closely analogous to NRCM Chapter 4125. The analogous dissent mechanism is termed the Dissent Channel by State.  
(See Section III.A.1 below, and Enclosures 1 and 2 attached.)
  
- State also identified an alternate formal mechanism for airing differing professional opinions on important policy issues; this alternate mechanism is called the Open Forum. (See Sections III.A.2 and III.A.3 below, and Enclosures 1, 3, and 4 attached.)
  
- FAA does not have formal procedures for handling DPO type situations; but that agency has an alternate mechanism/vehicle for expression of employees' views, which has possible relevance or usefulness in considering ways to improve NRC's DPO process. It is called the FAA Employee Attitude Survey. FAA's Attitude Survey is repeated annually, and the results of successive years are displayed for comparisons. The Subpanel believes that adoption of this mechanism could be a useful and cost-effective enhancement of NRC's DPO process.  
(See Section III.D below, and Enclosures 5 and 6 attached)
  
- Seven agencies contacted by the Subpanel reported use of informal DPO procedures only; these included NASA, DOT, DOE, FCC, FERC, EPA, and Sandia. Information provided by these agencies/organizations regarding the structure of their processes, and regarding their experience with those processes, varied considerably. (See Sections III.B, III.C, III.E, III.F, III.G, III.H, and III.J below, respectively.) NASA, FCC, Sandia, and FERC stated affirmatively that their procedures are exercised regularly, and all four believe that their processes are working very well for them. DOE and EPA were less affirmative in their characterizations of their processes; but neither is aware of any major problem in the resolution of DPO type situations in their agencies. DOT acknowledged that their process is not exercised often; but they believe that it has worked well for them when it was used. (See also Enclosure 8 at page 34 in reference to DOT's Dissenting Professional Opinion process.)
  
- Union officials contacted by the Subpanel at four different agencies were unable to provide any useful information regarding DPO type processes or procedures.  
(See Sections III.K, III.L, III.M, and III.N below.)

- "Additional" contacts were pursued by the Subpanel with GAO, the Merit System Protection Board, the American Society for Public Administration and several individuals (Patterson, Nordlinger and Aron/Doig) known to be knowledgeable with regard to dissent mechanisms in government, in an attempt to identify other agencies that might have formal DPO type procedures or effective informal or alternate procedures. No other candidate agencies were identified as a result of these additional contacts.

The consultation with Dr. Aron, however, did result in the development of additional information that the Subpanel believes will be useful to the DPO Special Review Panel in completing its work.

(See Section III.Q below , and Enclosures 7, 8, and 9 attached.)

### III. DETAILED FINDINGS OF THE SUBPANEL

#### A. Department of State

State has several mechanisms for dealing with differing professional opinions:

1. The Dissent Channel allows individuals to address the Secretary or his principals directly on substantive policy issues. The individual may request limited distribution of his differing views. Acknowledgement of receipt within one week is specified with substantive reply addressing the policy questions, proposals or issues presented also guaranteed. Any action which may or may seem to delay or stop transmission of differing views, or to penalize the individual expressing the differing view, is prohibited. This mechanism is a kind of cross between NRC's formal DPO procedure and the NRC Open Door. (See Enclosures 1 and 2 for further detail.)

Evidently the Dissent Channel is falling into disuse. There were 15 dissents in 1981, 9 in 1982, 5 in 1983, and this number has since held fairly constant.

2. The Secretary's Open Forum is an internal organization open to all employees which encourages responsible presentation of independent views on important policy matters. Its specific charge by the head of the agency is to serve as a direct channel for new or dissenting views. The Open Forum has one full-time position; that of Chairman. Employees become members of the Open Forum by applying for membership; all applications must be accepted. A Chairman and Vice-Chairman are elected by members of the Open Forum to serve one year. The position of the Chairman is located within the Policy Planning Staff (apparently analogous to OPE, when it existed); but the Chairman acts independently of that organization. To ensure the intended independence, no efficiency report (appraisal) is prepared for the Chairman of the Open Forum.

The Open Forum (a) provides the opportunity for exchanges of views with outside experts and off-the-record discussions with government officials, (b) provides a vehicle for the expression of employee opinion on substantive issues through the preparation and transmission to high level agency officials of Open Forum position papers, (c) provides a vehicle for professionals to write frankly, using classified information, for the community of their peers in a quarterly Open Forum Journal, and (d) provides a mechanism for monitoring the Dissent Channel. There is no analogous mechanism in NRC's DPO procedures or process. It has a number of features that could enhance NRC's DPO procedures and process.

(See Enclosures 1 and 3.)

3. The Open Forum Journal is published quarterly and is distributed throughout the agency. All State personnel are invited to submit articles suggesting, or disagreeing with, approved policies. Articles may be classified.

(See Enclosures 1,3, and 4.)

4. Two sections of State's Foreign Affairs Manual (FAM) address explicitly the treatment of differing opinion within that agency: (See Enclosure 1 for more detail)

- 2 FAM 101 states that as a matter of policy principal the free exchange of ideas and criticism shall be supported by managers.
- 11 FAM 243 requires a principal officer to submit significant reports by subordinates even when he does not agree with them.

It appears that all levels of employees and management use the mechanisms outlined above. Except for the drop in numbers in use of the Dissent Channel, State management considers their procedures successful.

#### B. National Aeronautics and Space Administration

NASA has an informal but very open procedure for handling differing professional opinions. It is much like NRC's Open Door mechanism, in that anyone can at any time go to any management official with any technical problem that may arise. The agency is attempting to develop a formal procedure for astronauts; but that effort is still in the planning stage. The informal approach is used by both management officials and non-management employees ranging from astronauts to scientists. Issues can cover the entire technical range, from the procedures used in liftoff to equipment used in rockets. There is frequent use of this mechanism; but, because it is informal, there is not much of a written record. While management does consider this mechanism to be very successful, there is no input from non-management employees in support of that judgement. Management considers the key to success to be the informality and openness of the process.

C. Department of Transportation

DOT uses an ad hoc method much like NRC's Open Door mechanism; but nothing is in writing. An individual can go directly to any level of management; this is most frequently on a technical issue, but can be on a policy issue as well. The procedure is rarely used since it is informal, unwritten, and knowledge of it is not very well disseminated. In addition, confidentiality is not guaranteed, so many employees are afraid to go over the head of their immediate supervisor. To the extent that this process is used, it is used by both technical staff and management. Apparently it has been used mostly by Division Chiefs (the equivalent of a Branch Chief at NRC), a difference being that a Division Chief at DOT is much more involved with both the work and the employees than a Branch Chief at NRC. DOT believes that this informal process works well for them in resolving issues presented by both staff and management, when the process is exercised.

D. Federal Aviation Administration

Persons contacted by the Subpanel at FAA described an array of informal but well-developed and complementary procedures for obtaining and dealing with employees' views on job-related issues. For resolution of differing opinions on complex technical questions that are submitted both from within and outside the agency, FAA has successfully used peer review panels. The individual putting forward the differing technical view may be involved in selection of the peer review panel if he/she wishes; and the panel can include experts from outside the agency. FAA credits the resultant atmosphere of openness and independent assessment of the differing technical opinions that have been addressed using this procedure in achieving resolutions that are credible and generally more acceptable to individuals who have raised technical issues with the agency.

Resolutions achieved using this approach are well documented, though not necessarily in a single dedicated file system) and are open for inspection by interested parties.

Other mechanisms employed by FAA for encouraging expression of employee views include:

- An annual FAA Employee Attitude Survey that is used for soliciting employees' views on a variety of job-related issues, including the receptiveness and responsiveness of FAA supervisors and managers to employees' views suggestions for improvements, employees' willingness or reluctance to talk to their FAA supervisors and managers about problems, etc. This survey is generically similar to the survey instrument used by NRC recently in soliciting NRC employees' views on the NRC DPO system; but there is one key difference between FAA's and NRC's surveys. The FAA survey is an annual survey, with provision for displaying comparisons of

successive survey results. (See Enclosures 5 and 6.) This approach (i.e., an annual attitude survey and the display and comparison of successive years results) could be an effective way for NRC management to assess on a more current and continuing basis the attitudes of NRC employees regarding the utility and efficacy of the NRC DPO process, and the effectiveness of measures taken by management to encourage its use.

- FAA has an Employee Beneficial Suggestion System similar to this agency's Beneficial Suggestion System; this mechanism is not considered particularly relevant in the immediate context.

E. Environmental Protection Agency

The contact at EPA was unaware of any formal procedure analogous to NRC's DPO procedure, and provided only very general characterizations of informal processes that might be employed for addressing DPO type situations. Additional time was requested to better identify any EPA processes that might be considered relevant to our study. A package of documents, including NRCM Chapter 4125, and the two NRC Announcements describing the DPO Special Review Panel, its structure, and purpose, was provided to the EPA contact to clearly indicate the type of (analogous) information sought by the Subpanel. (See Enclosure 10 attached.) No further information was provided by EPA, however, as of COB October 16, 1987.

F. Department of Energy

DOE identified no formal procedures for handling the differing professional views of DOE employees, but relies on an informal process that allows the expression of differing views to any level of management. There appear to be no guarantees of confidentiality in these contacts. There is no systematic way of documenting such contacts or their disposition, so the DOE contact was not able to provide much useful information regarding frequency of use of this mechanism. However, DOE is not aware of any major problems in the DPO resolution area.

DOE also has an Inspector General (IG) to whom employees are encouraged to report suspected waste, fraud, abuse or other wrongdoing. A hotline is made available for reporting such problems, and confidentiality is provided, if requested. DOE provided documentation used in establishing the DOE policy that directed DOE employees to cooperate with investigations by the DOE IG, and announced the availability of the hotline. These documents were not considered relevant to the Special Review Panel's review, however, because their context is identification of wrongdoing and this is not consistent with the principal focus of the DPO process (i.e., the identification and resolution of differing opinions on primarily technical or policy issues).

G. Federal Communications Commission

While the FCC has no formal written procedure for processing differing professional opinions, it has probably one of the most effective practices for handling DPO type situations. If any staff member has a technical or procedural disagreement with higher level management, that individual can write up his/her opinion and attach it to the management position. The written differing opinion then is forwarded up through the chain of management to the Commissioners. A dissenter can argue his/her case at every level, including before the Commissioners. Because individuals with differing opinions are thus more likely to be convinced that their opinions are being given a thorough and fair hearing, they are less likely to be upset by a decision that goes against them. It is also worth noting, however, that because of the nature of the FCC, the issues it considers tend to be less complex technically, and its decisions more of an administrative type (e.g., who is to get a license to broadcast). Both management and non-management personnel at FCC frequently use the procedure, and management attributes its success to the fact that everyone who wishes to do so can contribute information and opinions.

H. Sandia National Laboratory

Sandia was among the last organizations contacted by the Subpanel. This was done at the suggestion of the Special Review Panel, after initial contacts with other agencies developed no formal DPO documentation beyond that provided by State and FAA. The contact at Sandia was unaware of any formal procedures analogous to NRCM Chapter 4125, but felt that owing to the nature of that organization (i.e., a research and development lab), such formal procedures were not necessary. The atmosphere fostered at a research laboratory such as Sandia is one of intellectually honest pursuit of knowledge, and the expectation at every level, both professional and managerial, is that the Sandia staff's best views will be made known, among the professional staff for peer review purposes, and similarly to appropriate Sandia management in any decision process. Sandia appears to believe strongly their informal procedures for dealing with staff differing opinions (whatever it is) works well for them.

The Sandia contact felt that if any formal procedure or policy existed at all in this area, it would most likely be in the form of a Sandia Code of Professional Conduct or some similar policy vehicle. Further time was requested to search for any relevant written documentation, with the promise that any found would be forwarded expeditiously. No additional information was provided by Sandia, however, as of COB October 16, 1987.



J. Federal Energy Regulatory Commission

FERC has no formal procedures analogous to NRCM Chapter 4125, and apparently has little need even for informal processes to resolve the type of differing views that arise there. Differing views occur frequently in the conduct of FERC's regulatory activities; but apparently their experience is that such differences are almost invariably resolved through the normal, informal, give-and-take that occurs between/among FERC peers and management. Exceptions are infrequent enough that FERC management has not considered the need to establish a more formal mechanism like NRC's DPO process. The FERC contact was unaware of any pervasive apprehension among the FERC staff that would prevent staff members from approaching higher levels of FERC management; but, unlike NRC, this kind of situation just does not seem to occur frequently or regularly at FERC. It was suggested that the differences in the respective missions of the two agencies (e.g., FERC is concerned with economic rather than safety regulation), and the very small size of FERC, may account for the differences in the two agencies' experiences in that regard.

K. Financial Management Service

The union officials contacted at FMS had no knowledge of any procedures used for resolving DPO type situations at that agency.

L. Pension Benefit Guaranty Corporation

The union officials contacted at PBGC had no familiarity with the concept of differing professional opinion, and could provide no useful information regarding procedures used by their agency in that regard.

M. Internal Revenue Service

The union officials contacted at IRS thought that the agency had a procedure for handling DPO type matters, but they could provide no useful detailed information regarding the procedure.

N. Bureau of Public Debt

The union officials contacted at BPD had no knowledge of DPO type procedures at their agency.

O. General Accounting Office

GAO was contacted in an attempt to obtain leads on likely candidates (i.e., additional contacts for our DPO study purposes) among the federal agencies that may have been audited or studied in the

past by GAO. Our initial inquiry to the Comptroller General's office was referred to two divisions within GAO, the Division of Human Resources and the Division of General Government. Contact was established at the Associate Director within these divisions. The Subpanel inquired specifically of these contacts if (on the basis of GAO's experience with and/or knowledge of other government agencies) GAO was aware of any other agencies or organizations that have formal DPO type procedures or known-effective informal or alternate DPO procedures. GAO was unable to provide any specific knowledge of other such agencies or organizations, but referred the Subpanel to the Merit System Protection Board as a possibly useful contact in that regard.

P. Brad Patterson (Brookings Institute)

The Subpanel was referred to Mr. Patterson by the Special Review Panel as a possible source of information regarding additional government agencies that have formal DPO type procedures or known-effective informal or alternate DPO procedures. Mr. Patterson was contacted, but could provide no additional leads in this regard. On the basis of considerable study of dissent mechanisms in the government agencies, he believes that State and NRC have state-of-the-art formal DPO type procedures. Mr. Patterson did offer some possibly useful suggestions for agency followup after the Special Panel's work is complete. These suggestions were to the effect that NRC and State should jointly approach OPM or a suitable contact in the Executive Office to determine if there is any interest in those organizations in a broad based and coordinated effort to apply effective DPO type procedures in all federal government agencies. Mr. Patterson offered to identify appropriate contacts within those organizations if the Panel and/or agency is inclined to followup in this manner.

Q. J. Aron (AEOD) and M. Nordlinger (OGC)

The Subpanel was referred to these two individuals within NRC by Ellen Weiss, Consultant to the Special Review Panel. They were identified as individuals who had been substantively involved in the initial development of NRCM Chapter 4125 and in subsequent reevaluation(s) of that DPO procedure. It was considered likely that, in either or both of those contexts, they might have investigated/evaluated DPO type procedures in other agencies; and they might, therefore, be able to suggest additional, fruitful contacts to be pursued by the Subpanel.

The Subpanel contacted both of these individuals as suggested; but the contact with Dr. Aron was delayed somewhat as a result of the Subpanel's lack of awareness of her part-time work schedule at the agency. Ms. Nordlinger had only recently destroyed most of the relevant files in her possession in connection with a move of office location, and so was unable to offer specific suggestions to the Subpanel. She did, however, reinforce Ms. Weiss' suggestion that Dr. Aron should be contacted.

The Subpanel's consultation with Dr. Aron was very fruitful. No additional "candidate" agencies were identified for contact by the Subpanel; but Dr. Aron was able to quickly provide leads that resulted in the development of additional useful information that would not otherwise have been available from the Subpanel's contacts with the agencies/organizations listed above. Specifically, Dr. Aron assisted the Subpanel in the following ways:

- She referred the Subpanel to J.M. Palguta at the Merit System Protection Board; this resulted in the Subpanel obtaining two reports published by MSPB, one on federal agency mechanisms that encourage dissent, and another on employee attitudes towards existing mechanisms for the reporting of waste, fraud, abuse and other wrongdoing. (See Enclosures 7 and 8.) The Subpanel believes that these two reports provide information that will be useful to the Special Review Panel in completing its work.

To be more specific, Enclosure 7 provides the results of a survey by MSPB of employee attitudes toward the efficacy and utility use of existing "whistleblowing" mechanisms in 23 federal government agencies. The principal focus of the mechanisms surveyed by MSPB (i.e., waste, fraud, abuse and other wrongdoing) is, of course, different than that of NRC's DPO procedures; but there are common elements or factors or themes apparent also. This can perhaps provide useful additional perspective in attempting to interpret response patterns observed in the results of NRC's own recent survey of NRC employee attitudes toward NRC's DPO procedures. At a minimum, the Panel should be aware of the recommendations on page 9 of the report when considering possible ways to improve NRC's DPO procedures.

Enclosure 8 contains what appear to be very relevant MSPB conclusions (based on a survey of mechanisms in 22 federal agencies that are intended to encourage constructive dissent) regarding the elements or features considered necessary to successful operation of such mechanisms (e.g., see pages 28 - 31). That information appears to fill some serious gaps in the information this Subpanel was able to collect on Question #4 of the Subpanel Charter (restated in Section I preceding).

- Dr. Aron herself contacted J.W. Doig (Princeton University) and other persons at the American Society for Public Administration (ASPA) to obtain the recent ASPA resolution recommending State's Dissent Channel as the model for formal mechanisms within the government agencies for encouragement of active solicitation of employee views, including constructive dissent, on policy matters. The resolution is provided to the Special Review Panel for consideration in exploring ways to improve NRC's DPO procedures. See Enclosure 9.

On the basis of our contact with Dr. Aron, and specifically her timely and significant contributions to the work of the Subpanel, as indicated above, under severe time constraints, Dr. Aron was recognized (albeit belatedly) as a valuable resource to be utilized in this review, and was invited by the Chairman of the Special Review Panel and the Chairman of Subpanel 1 to join the effort. The short time remaining did not permit Dr. Aron to participate further in the work of this Subpanel or in the preparation of this report; but she was offered the opportunity to provide additional input to the Special Review Panel by separate memorandum as she was inclined and as her schedule, and that of the Panel, permitted. The Panel may wish to involve Dr. Aron in completing the DPO review effort and final report, or in any necessary followup to this Subpanel's effort.

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1. U.S. Department of State, Notice to All Diplomatic and Consular Posts, dated August 21, 1978.
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3. U.S. Department of State, "The Secretary's Open Forum," October 1985.
4. U.S. Department of State, Open Forum Journal, September 1984 Supplement.
5. U.S. Department of Transportation, Federal Aviation Administration, 1986 Survey Questionnaire, dated May 15, 1986.
6. Civil Aeromedical Institute, Aviation Psychology Laboratory, 1986 FAA Employee Survey: National Headquarters.
7. U.S. Merit Systems Review and Studies, U.S. Merit Systems Protection Board, "Blowing the Whistle in the Federal Government: A Comparative Analysis of 1980 and 1983 Survey Findings, A Directors Monogram," October 1984.
8. Palguta, John M., Office of Merit Systems Review and Studies, U.S. Merit Systems Protection Board, "Federal Agency Mechanisms That Encourage Dissent," paper presented to the 1984 annual meeting of the American Association for the Advancement of Science, New York City, May 26, 1984.
9. American Society for Public Administration "Resolution on the Use of Dissent Channels in Government," approved by the National Council, March 24, 1985.
10. Conran, James H., NRC, member DPO Subpanel 1, letter to Daniel J. Fiorino, U.S. Environmental Protection Agency, dated September 14, 1987.



**APPENDIX E**  
**SUBPANEL 2 REPORT:**  
**EXISTING GUIDANCE ON THE DPO PROCESS**

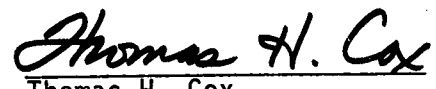




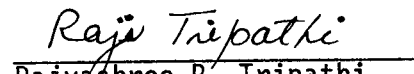
FINAL REPORT  
OF  
DPO SUBPANEL 2  
FOR  
DIFFERING PROFESSIONAL OPINIONS  
SPECIAL REVIEW PANEL  
OCTOBER 1987\*

  
Malcolm L. Ernst, Chairman

  
Rene F. Audette

  
Thomas H. Cox

  
Richard J. Goddard

  
Rajyashree R. Tripathi

\* Revised to include sign-off by Rajyashree Tripathi and to include several nonsubstantive wording corrections.



## FINAL REPORT DPO SUBPANEL 2

### I. PURPOSE

Subpanel 2 of the DPO Special Review Panel was responsible for assessing the completeness and adequacy of NRC guidance provided to potential users of the DPO process; and the compatibility with and usefulness of the DPO process compared to other means for resolving differing opinions. The scope, criteria, and procedures for the DPO process, as set forth in NRC Manual Chapter 4125, thus were examined in the context of all other NRC programs and policies for the resolution of differing positions, such as the open door policy, resolution of issues by peer panels, referral of issues to OIA or to the ACRS, and the normal management process. In addition to NRC Manual Chapter 4125, Differing Professional Opinions, related guidance promulgated by Regional Offices or other organizational units within the Agency was considered.

The basic charter of Subpanel 2 was to answer the following questions:

1. Are the scope, criteria, and features of the NRC DPO process sufficiently unique to make it clear when the DPO process should be used and when circumstances warrant the use of an alternative process?
2. Does the Open Door Policy dilute or confuse the DPO process?
3. Are there differences in guidance among various Offices/Regions?
4. Is the Agency's guidance understandable in terms of its content, length, format, volume, and consistency?
5. Where either formal or informal "peer panels" are used, are the criteria for selection of members adequate?
6. Is the system too cumbersome?
7. Are the perceptions about the DPO process different for those who have participated directly in DPOs compared to those who have not?
8. Is the fear of retaliation a deterrent from using the system?
9. What options, formal or informal, do NRC officials and employees identify in order to: increase the effectiveness of the processes for resolving differing opinions, improve the process efficiency and practicality, and assure that guidance is consistent with the program objectives and expected results?

## II. SCOPE

Subpanel 2 began its task with a review of NRC Manual Chapter 4125, Differing Professional Opinions (MC 4125), as well as documents from within Regional Offices and Headquarters Program Offices providing guidance to potential users of DPOs, or providing means of dispute resolution within those offices as alternatives to the formalized procedures of MC 4125. A number of such documents were located, and they are referenced in Appendix A. The members of the Subpanel then proceeded to conduct 85 personal interviews in Regional and Headquarters offices to solicit viewpoints as to managerial and staff perceptions regarding the DPO process and other processes for resolving differing professional opinions, to identify perceived strengths and weaknesses of the DPO and other processes, and to solicit constructive recommendations intended to improve the various processes. Interviewees came from managerial, supervisory, and staff levels, with each interview lasting 30-45 minutes.

The detailed results of the document reviews are provided in Appendix A, and the detailed results of the personal interviews are provided in Appendix B. A Summary of findings, drawn principally from Appendixes A and B, is provided below.

## III. FINDINGS

### A. Normal Management Process for Resolving Differing Professional Opinions

All available guidance, from the Commission on down, indicates that the preferred and most appropriate way to resolve differences is through the informal process of discussion among peers and one or more supervisory levels. However, there is lack of guidance as to when one should escalate differing opinions, and how. For example, the SES contracts could be perceived to reward a manager who does not escalate differences to higher management, and the Region IV instruction essentially requires an individual to file a formal DPO whenever his or her concern "cannot be resolved through discussion with coworkers and immediate supervision." Also, except for the brief mention of differences of opinion in the SES contracts, other supervisors' and managers' performance standards are mostly silent in this area. Similarly, in some organizations (such as NRR) the only formal instruction issued on the subject of resolution of differing opinions is one covering DPOs (MC 4125).

## B. Scope, Criteria, and Procedures of DPO and Other Processes

### 1. DPO Process

NRC Manual Chapter (MC) 4125, paragraph 041, defines a DPO in extremely broad terms. A DPO is defined as "Conscientious expression of professional judgment. . . which, on any matter relating to NRC's mission or organizational activities, differs from the prevailing staff view within an organization, disagrees with a management decision or policy position, or takes issue with a proposed and established practice." Further, DPOs may involve technical, management, legal, or policy issues, and they are not limited to the originator's area of expertise. Thus, the scope of DPOs is virtually unlimited.

Also, there is a lack of clear criteria for filing a DPO. The only expressed criteria for filing a DPO, as set forth in MC 4125, is that when informal discussions fail to resolve normal differing views between an employee and his management, and if "an employee is convinced that the Agency and the public would be better served if another opinion prevailed," the submission of a written statement of differing professional opinion in accordance with the procedures of the manual chapter is directed. It is upon submission of such statement that the employee's differing view becomes, formally, a Differing Professional Opinion. This guidance varies from the Region IV procedure, which seems to encourage the early filing of a DPO, and from the Region II memorandum, which clearly exhorts staff to exercise fully the complete management chain to communicate and resolve the issue.

Regarding procedures for implementing MC 4125, the process is laid out rather well. However, some of the guidance could be improved, such as the work time permitted for the originator to prepare the DPO and whether a copy of all documents generated in the DPO process should be sent to the EDO. Also, the DPO procedure does not specify the role of the originator in the selection of peer panel members.

### 2. Other Regional or Office Documents Related to the Resolution of Differing Opinions

A number of NRC Program Offices and Regional Offices have issued documents which provide guidance and encouragement to employees to utilize the management chain or other more informal means of problem-solving prior to utilization of the MC 4125 DPO Process. All of the documents reviewed reaffirm MC 4125 policy encouraging employees to make known their professional judgments,

notwithstanding differences from prevailing staff views. The policies and procedures reviewed generally emphasize an employee's responsibility to identify DPOs, and a management responsibility to resolve them.

The Region III Procedure No. 1206, "Inspection Evaluations and Differing Professional Opinions" is noteworthy as a process that utilizes a review panel to advise management on how to disposition the conflicting opinions, initially within the parent organization, yet does not have the formality and high visibility of the DPO process. The Region III process is discussed in detail in Appendices A and B and is considered by Region III staff to be superior to the formal, cumbersome, and potentially alienating procedures involved with a DPO.

### 3. ACRS

The ACRS would appear to be an appropriate forum for the examination of disparate technical viewpoints and, in fact, may receive such issues from multiple sources: as a result of referral from management during the DPO process for comments on safety significance, or by direct communication from an employee identifying a potential safety issue. 10 CFR 1.20; MC 4125, paragraphs E, H.2. However, employees interviewed by this subpanel rendered mixed opinions on the utility of ACRS; some felt it was not expedient, while others felt it was an effective way to resolve technical issues after "touching all the other bases first." Most of those interviewed were not even aware that the ACRS offered an avenue for the review of differing opinions.

### 4. Office of Inspector and Auditor

Under the Open Door Policy of the Commission, OIA hears individual employee concerns regarding NRC operations and activities, investigates them as appropriate, and verifies facts as to integrity of all NRC operations. 10 CFR 1.30(d), (g). However, MC 4125, paragraph H, "Open Door Policy," references OIA as participating in the Open Door Policy only upon notification by a manager of concerns received under that policy which he feels are not properly cognizable and susceptible to resolution under the procedures applicable to DPOs. A review of NUREG-0325, Rev. 10, Functional Organization Charts, supports this by stating that OIA will hear employee concerns involving irregularities or wrongdoing, which are not the typical subject matter of DPOs, i.e., technical or policy-based issues.

5. Grievances

Grievances, under either NRC Manual Chapter 4157 or Articles 50 and 51 of the NTEU-NRC Collective Bargaining Agreement, are mutually exclusive of the process of MC 4125 for the resolution of Differing Professional Opinions. MC 4125-041. Grievances are designed for the resolution of personnel-based disputes and remedial actions based upon adverse personnel actions. In fact, MC 4125, Paragraph J, provides as an example of intentional misuse of the DPO process "attempts to treat a personnel grievance-type action as a differing professional opinion."

6. NRC "Open Door" Policy

The NRC's "open door" policy, based on a 1976 statement of Chairman Anders, was communicated to all office directors by the DEDO in 1981 (See Appendix A). This policy of open communications assures employees of their access to managers at all levels of the Commission in order to convey problems or concerns which, if involving safety matters or other significant regulatory concerns, must receive adequate follow up through informal means or through the DPO process of MC 4125. This process is currently set forth within MC 4125, and is thus perceived as an alternate channel for expressing a differing professional opinion. However, this is not true since, once a determination is made that the person's problem is better handled as a formal DPO, the open door discussion is terminated and the employee is instructed to file a DPO. The majority of interviewees indicated little knowledge or awareness of the "open door" policy as such although, when questioned further, most indicated that they were aware of their right to informally discuss issues with management, at least within their office organization.

7. Peer Review Panels

Informal peer review was often cited by interviewees as a preferred method for resolving concerns, or for surfacing differences of opinion to management in a nonconfrontational setting. The concept of "shopping" an idea or concern among one's contemporaries was not only deemed acceptable but was in fact practiced by most interviewees in one form or another.

Formal peer review, however, is provided under MC 4125 for examination of a differing professional opinion upon request of the originator or, alternatively, by the Office Director or Regional Administrator if deemed necessary. Most interviewees, including some of those who had filed DPOs, were unaware of

their right to request a peer review panel. Those who were aware of the concept felt that their right would be (or had been) ineffective based upon the lack of criteria for appointing an impartial, qualified panel from outside the management structure. Indeed, MC 4125 is presently silent as to the procedure for selecting members of peer review panels.

In the course of this study, the only other use of a "formal" peer review was the Research Project Review Groups employed within the Office of Nuclear Regulatory Research, composed of interoffice technical experts, for the purpose of reviewing the technical aspects of ongoing or proposed research projects. A number of interviewees expressed the view that the Commission has many experts available in most fields but does not always bring them together for a sharing of knowledge and viewpoints.

### C. Perceptions of the DPO Process

The following perceptions of the DPO process were obtained from the employee interviews conducted by the subpanel. As stated, employees interviewed were from managerial, first line supervisory, and staff levels, and included persons who had filed DPOs, persons who had considered filing DPOs but had decided otherwise, persons who had been involved in the processing of DPOs filed by others, and persons having no previous contact with the DPO process.

An almost universal perception was that there should be no need to file DPOs, generally, because problems are better resolved through free and open communication within line management channels. Obviously, numerous regulatory decisions are made daily throughout the Agency. However, only a few (i.e., less than 10) DPOs are filed each year under MC 4125. Thus, it is obvious that the vast majority of decisions made within the Commission are accomplished through the normal line organization process.

Positive perceptions of the DPO among interviewees were somewhat limited. Many of them recognized the need for a safety valve within the Agency for differing opinions. The DPO was seen as a preferable alternative to such things as complaints to Congress or resort to the Office of Inspector and Auditor although most interviewees, when pressed further on this matter, indicated they had little knowledge of the OIA process and had not seriously considered raising an issue to the Congressional level. The DPO was perceived as a formal, comprehensively documented presentation of a technical position, which provides a clear record of the decision making process for further review.



Negative perceptions of the DPO process, however, were widespread throughout the interview group. The leading criticism was that there is a generalized fear that filing a DPO would bring about stigmatization of the proponent, that the DPO was viewed as a confrontational approach towards one's management, and that retaliation was likely to follow. An interesting point is that most managers also believed that there would be some stigmatism were a DPO filed against him/her since to some degree it would be perceived that the manager failed. More than half of those interviewed who had filed DPOs believe that they had been subjected to retaliatory actions ranging from subtle (denial of advancement) to overt (demotion, transfer, or downgraded performance appraisals). However, those who filed DPOs and won their point of view did not believe they were retaliated against. Generally, the majority who had filed DPOs expressed a disillusionment with the effectiveness of the process in resolving their differences of opinion, and stated they would not be likely to file a second DPO; a view shared by about half of those interviewed who had never filed a DPO. The primary reasons given by non-filers as to why they would be disinclined to file a DPO can be itemized as follows:

1. There are other, preferable, ways of resolving issues which are less cumbersome and more effective.
2. Filing a DPO could be considered a career-threatening process, as such an action would be viewed as going against the institution and may invite retaliation.
3. The filing of a DPO tends to lead to the formation of "battle lines" instead of a realistic approach to solving existing problems, and communications are rarely improved subsequent to the filing of a DPO.
4. There is a tendency of some to feel that any person filing a DPO would be stigmatized, i.e., considered to be a troublemaker and not a team player, by managers and peers. Some of the interviewees expressed the opinion that anyone who would file a DPO was considered a "chronic complainer", or "DPO prone." However, one person stated that she would feel positively about anyone who originated a DPO.
5. Many of the interviewees felt that the DPO process was unfair, in that the proponent is taking on the entire management chain in the institution, against all odds. It was felt by numerous interviewees that management tends to join ranks and support its position once a DPO has been filed.

6. The DPO process is cumbersome and time consuming.

In short, the various perceptions offered by the majority of interviewees made it obvious that greatly improved, two-way communications would improve the DPO process. Most interviewees, when asked about the options of using the ACRS or the Office of Inspector and Auditor as alternatives to the DPO process, stated that they were generally unfamiliar with the use of those two offices. While ACRS was viewed by some as an appropriate forum in which to present complex technical issues for resolution, other interviewees held the opinion that a resolution of serious technical issues would not be likely occur in a timely fashion if presented to ACRS. The Office of Inspector and Auditor was viewed by many interviewees as having lost its own credibility as a result of internal management problems, and a number of interviewees flatly stated that they would never go to the OIA. The informal process for resolving disputed inspection findings which is employed in Region III was generally regarded favorably by interviewees who were familiar with this process, and the Region IV documentation of the normal management process for resolving differences of opinion was considered to be worthwhile. It was felt that these were sincere efforts on the part of Regional management to resolve differing opinions within their own management chain, and to satisfy the concerns of all persons involved.

D. Suggestions for Improving the Process

The following summarizes the suggestions made by the various interviewees to improve either the DPO or other processes for resolving differing professional opinions. These do not necessarily reflect the viewpoints of subpanel members. Thoughts about improvements in the process centered on the use of open discussion with management, reserving the DPO process as a last resort.

1. There was a unanimous opinion in Region III that their less formal process is a good one. The inference follows that such a procedure would be useful to follow in other organizations.
2. There were a large number of comments indicating that communications must be improved substantially within the NRC. Such improved communications would include:
  - a. Essentially all said that management should articulate their rationale for the party line on an issue, particularly if it differs from the technical staff position.

- b. Most said the Agency should publicize the DPO process more than it does, and should publish the results of DPOs that are filed.
  - c. One person said it would be useful to communicate more with regard to who in the Agency is responsible for what.
3. Most said that training could be improved for supervisors and management with regard to conflict resolution and problem solving. Also, some said the selection process for managers could be improved to assure that he/she has conflict resolution skills. Typically, supervisors are chosen because they are technical "hotshots," which erects a natural barrier in some cases to adequate two-way technical communications. In other cases, the manager is much more of a generalist, which also puts special emphasis on the art of conflict resolution and the use of separate peer opinions.
  4. Most said that the DPO process should get out of the line organization quickly. Many suggested using the peer review process, independent from the line, but some believed the peer process did not work well.
  5. Several said names should be deleted from the DPO, since the substance of the issue is more important than the names.
  6. Many said there needs to be a critique of the process after each DPO. Why did it happen? What were the merits of the case? What are the viewpoints of the various people involved in the DPO? This should be done by an independent third-party auditor.
  7. Many said the process should be simplified.
  8. Many suggested that the DPOs should be restricted to safety issues.
  9. There were three rather major changes advocated by a couple of people. One of these was that licensing authority should not be with the NRC; the NRC should only do safety reviews, and some other agency should do the licensing. Another view was that DPO reports should not go into the PDR, because people are afraid to put substance in the DPOs. The third was that an Inspector General Office should be established for the NRC; OIA is only a tool for management and does not have credibility.

Very few comments were received with regard to other processes. However, some of the above suggestions would also improve the other processes. For example, improved communications and improved training would be useful not only for the DPO process, but also for other

processes. In particular, there was one comment to the effect that improved communications with regard to usage of the open door policy would be useful. The bottom line suggestion was that good management dictates reasonable resolution of issues and communication of the decision rationale where there are differing opinions.

#### IV. CONCLUSIONS

The following factual conclusions are patterned after the nine questions posed as the Subpanel 2 charter in Section I of this report and are as follows:

##### A. Scope, Criteria, and Features of DPO Process

Manual Chapter 4125 does not present guidance as to when alternative channels for dispute resolution should be utilized; rather, the employee is faced with a choice of alternatives which may be elected "cafeteria style." The Region III procedure and the Region II memorandum encourage resolution of disputed inspection findings within the Regional organization, whereas the Region IV procedure could be perceived as encouraging the filing of a DPO in lieu of pursuing the issue up the management chain in a more informal manner at the Regional level. Also, the scope of the DPO process is broad and would appear to be duplicative of the scope of the Open Door Policy.

##### B. Open Door Policy

The great majority of interviewees expressed a desire for resolution of differing opinions informally and at the lowest possible level within their management chain. The concepts of informal peer review and the "open door" policy, thus, were readily acceptable to interviewees. However, most people were not aware of the details of the Open Door Policy; and the process is confusing since: 1) the scope is perceived to be overlapping with the DPO scope, yet 2) if an Open Door issue is judged to be a DPO matter, the employee is advised to discontinue the Open Door alternative and file a DPO.

##### C. Guidance Differences

As stated in IV.A, there is some difference in guidance, and guidance as to criteria and thresholds is lacking. Also, implementing guidance at the Regional and Office levels is spotty as to content and detail, although it is not inconsistent with MC 4125.

##### D. Understandable Guidance

Aside from the comments in IV.A and IV.C, the guidance is understandable in terms of content, length, format, volume, and consistency.

E. Peer Panels

There are not criteria for the selection of peer panel members as to their independence or technical qualifications, or with regard to the role played by the originator of the DPO in the selection process.

F. Cumbersome

The DPO process is felt to be cumbersome to the extent that this is detrimental to its use.

G. Perceptions

Staff, supervisor, and manager perceptions about the DPO process are provided in Appendix B. In general, these perceptions are uniformly held by all, regardless of position or whether the individual has been a participant in the DPO process.

H. Retaliation

About half of the people interviewed believed that a person filing a DPO would be subjected to some form of retaliation. This clearly is a deterrent from using the system.

I. Options for Improving the Process

Suggestions for improving the process obtained from the persons interviewed are documented in Section III.D and will not be repeated here. Additionally, improvements could be made in the definition of the scope and criteria for a DPO.



APPENDIX A - FACTS DETERMINED DURING  
PAPER REVIEWS

1. OBJECTIVE

The objective of this task was to review all existing Agency, Office, or Regional policies and procedures for the following:

- a. To determine the adequacy and consistency of agency instructions concerning management's basic responsibility to identify and resolve differing professional opinions without the need to invoke a formal DPO process.
- b. To determine the adequacy and consistency of the Open Door Policy and other processes (other than the DPO) of resolving differing opinions.
- c. To determine whether Agency documents concerning the formal DPO policy, including Manual Chapter 4125, are adequate and consistent.

2. REFERENCES

A. Commission/EDO Policy

1. Federal Register Notice, 51 FR 8382, March 11, 1986, Agency Policy and Procedures for Differing Professional Opinions.
2. Memorandum from L. Barry, Director, Office of Resource Management, Subject: "Differing Professional Opinion Numbering System," December 20, 1984.
3. Memorandum from E. Kevin Cornell, Deputy Executive Director for Operations, to Office Directors, Subject: "Communications Under the NRC Open Door Policy," March 25, 1981.
4. Memorandum from William J. Dircks, Executive Director for Operations, to Office Directors, Subject: "Communications With Congress and The Commission," November 3, 1981.
5. NRC Announcement No. 209, February 11, 1976, to all NRC employees, Subject: "Free Flow of Internal Information and Viewpoints."
6. SECY-83-198, Differing Professional Opinions, 5/20/87.
7. NRC Announcement No. 100, Differing Professional Opinions, 7/22/87.

B. NRC Manual Chapter, MC-4125, revised 7/23/85

C. SES Contracts or Supervisors Job Standards

1. Generic Elements in NRR SES Contracts for 1987, obtained from Office of Deputy Director, NRR.

D. Office Letters

1. NRR Office Letter No. 11, Revision 2, April 23, 1986, "Supplementary Guidance for Processing Resolutions of Differing Professional Opinions."
2. NMSS Policy and Procedures Letter 1-8, Rev. 1, December 28, 1984, Differing Professional Opinions."
3. Memorandum from John G. Davis, Director, Office of Nuclear Material Safety and Safeguards (NMSS) to all NMSS employees, Subject: "Communications With Congress and The Commission."

E. Regional Instructions

1. Region I Instruction 1080.1, Rev. 0, February 15, 1987, "Safety Issue Evaluation."
2. Region II Memorandum from J. Nelson Grace, Regional Administrator, to Division Directors, Subject: "Items for Discussion During Your Next Division Meeting," dated 2/19/87.
3. Region III Manual, Regional Procedure 1206, "Inspection Evaluations and Differing Professional Opinions," revised 1/85, includes attachment, "Inspection Evaluation," revised 6/15/86; Region III Manual, Regional Procedure 1207, "Regional Review of Inspection Evaluations," revised 1/20/83; and Region III Manual, Regional Procedure 1208, "Inspection Evaluation Review Panel Recommendations," revised 8/25/82.
4. Region IV Office Policy Guide No. 2201, Rev. 0, August 29, 1986, "Disposition of Inspection Findings."
5. Region V Instruction No. 0902, Rev. 0, July 15, 1983, "Handling Differences in Viewpoints."

F. NRC Inspection ManualG. Training



### 3. SUMMARY OF REFERENCES

- A.1 The Commission Federal Register Notice of March 11, 1986 was a Policy Statement that announced some revisions to existing policy and procedures concerning DPOs, in order to increase timeliness and strengthen the process. It encouraged employees to make known their best professional judgement even though these may differ from prevailing staff or management viewpoints or decisions. It reassured employees that each DPO will be evaluated on its own merit, and that each DPO would be pursued to resolution. The changes referred to by the policy statement were implemented in the July 23, 1985 revision to NRC Manual Chapter 4125.
- A.2 The purpose of the memorandum from the Director, ORM, was to provide for better tracking of DPO correspondence. The memorandum set up a numbering procedure which was subsequently referenced in the 1985 revision to MC 4125. Offices were to start using the numbering system to log in all DPOs initiated on or after January 1, 1985. The unique reference number for a specific DPO was to be used on any correspondence or report issued as part of the DPO process.
- A.3 The purpose of the memorandum of March 25, 1981 from the Deputy EDO was to (1) reaffirm the existence of the agency's Open Door Policy, and (2) to provide guidance on the implementation of the policy. This memorandum to office directors clearly established relationships among the then available informal and formal processes for reaching differing views among NRC staff and management. All guidance elements in the memorandum are here reproduced verbatim:
- "1. NRC is firmly committed to a policy of open communications, both within and outside the agency, and managers shall continue to take the necessary steps to ensure that this openness exists.
  2. The Open Door Policy provides all employees the opportunity to convey problems or concerns to NRC managers in confidence and without the need to inform intermediate levels of management.
  3. Managers will make every reasonable effort to accept employee requests for meetings under the Open Door Policy and to give employee concerns serious consideration.
  4. It is not necessary or appropriate for managers to undertake or continue open door discussions once they determine that employees' concerns involve matters that are already being considered under other approved agency procedures (for example, the grievance procedure under NRC-4157 or the negotiated grievance procedure).

5. Managers are to exercise their own judgement in responding to concerns raised by employees under the Open Door Policy. Managers are not obliged to conduct open door discussions with employees whom they believe are using the open door policy in a frivolous manner (for example, those who repeatedly raise the same issue without having new information that is relevant.)
  6. Those employee concerns involving safety or other significant regulatory concerns must receive adequate follow-up, either through informal means or through the "differing professional opinions" procedures described in Manual NRC-4125."
- A.4 The November 11, 1981 EDO memorandum to Office Directors was to instruct the staff regarding direct staff contacts with Congress and the Commission "... without the knowledge of appropriate management." The directive was for the directors to assure that their staff "... does not initiate such contacts without management approval and that substantive and/or written responses are routed through my office for concurrence." The memorandum stated, however, that this new directive did not apply with regard to expressing differing professional views.
- A.5 NRC Announcement 209 of February 11, 1976 was issued to reaffirm the EDO's policy "... of having an open door to any employee who may wish to discuss in confidence any problem or concern she or he may have." The announcement referenced an attached memorandum by then Chairman Anders. The Anders memorandum emphasized, on behalf of the whole Commission, the importance of a free flow of information and views. The memorandum affirmed an open door policy on the part of each and every Commissioner, and stated that OIA also was available and accessible by employees to consider concerns directly "... without risk of adverse action against them for having done so." In the memorandum, Anders requested the EDO and all the Office Directors to "... reemphasize your own commitment to free and open communication within the Commission." This was an exhortation to make the informed line management process of issue resolution work, and further to establish "... regular meetings or other occasions with staff at all levels at which employee concerns of every sort can be aired."
- The memorandum closes with the observation that the measures discussed were not new or changes in course or practice for the Commission. Anders also recognized that recent allegations by dissenting employees "... have suggested the appropriateness of reaffirming our commitment to a regulatory process which is open internally as well as externally."
- B. MC 4125 is the primary agency document governing the handling, documentation, and resolution of Differing Professional Opinions (DPOs). Responsibilities and authorities of management, supervision, and staff in the

processing of a DPO through to resolution are fully defined as well as time allowed to reach resolution at each step of the process. Requirements for documentation at each step of the process provide a complete written record of the concern in question, views of all participants in the process, decisions made to achieve resolution, and the basis for these decisions.

Appeal of a resolution made at the authorized management level to the next higher level is also provided for by this process, and if resolution is not achieved at the Office Director level, appeal to the EDO and ultimately the Commission is specifically authorized (Section G.3). The appeal may be forwarded through the ACRS in the case of health and safety matters. The convening of peer review groups to evaluate and comment for the record on DPOs may be initiated by management or upon request of the DPO filer. The Open Door Policy and the ACRS are discussed in MC 4125 as two "... alternate channels available to employees who prefer not to use the primary channel for expressing their differing professional opinions."

While this statement clearly implies that employees might well approach the "alternate" channels even when the employee knows that what he/she wants to express meets the definition of DPO, the detailed descriptions of the "alternate channels" indicate that employees would normally approach a manager in the Open Door Policy with what MC 4125 terms a "normal differing view." For example, under the Open Door Policy description, "If (underline added) Open Door discussions disclose that an employee's views constitute a differing professional opinion, the contacted manager should advise the employee to submit a signed, written statement of differing professional opinion in accordance with these procedures and should inform the employee's management that he has been advised to prepare such a statement." Further, within this Section describing the Open Door Policy, with regard to verbal communications with a manager, it is stated that "Differing opinions not expressed in writing as required by Section C shall be considered to be normal differing views as discussed in Section B, and may not be pursued further using the procedures for differing professional opinions."

The ACRS alternative is described as to be used only "If the differing professional opinion relates to a potential safety issue within the purview of the Advisory Committee on Reactor Safeguards...." The communication with the ACRS may be made in writing or orally, and may be anonymous. No indication is given as to how the ACRS or its members would deal with anonymous, oral, or written communications that are not formal DPOs, if these communications are initiated with single members or the Chairman of the ACRS. The procedure also states that ACRS will respond in writing to all referred DPOs and will forward all statements made before the full ACRS or a Subcommittee "... to the appropriate NRC office director for information."

MC 4125 does not directly address possible employee communications of normal differing views within the informal line management conflict resolution process. It also does not address the possible approach to OIA.

MC 4125 Section K includes provisions for an annual review of the functional effectiveness of the process by a Special Review Panel as well as Panel Review of DPOs submitted in the previous year for significance relative to the agency mission for recommendation of DPO originators for awards.

- C. The generic elements in Senior Executive Service (SES) performance appraisal documents were reviewed. The documents are commonly termed "contracts," reflecting the purpose and construction of the document as an agreement on objectives and standards between a manager and the manager's immediate superior. Certain elements of the SES contracts are common to all such documents within the agency and among these common elements is one termed "Interpersonal Skills," for which the performance standard for "fully successful" performance is as follows:

"Demonstrates ability to motivate most of those supervised to perform in fully acceptable manner. Generally resolves differences of opinion without the need for involvement of higher management. Is effective in relations with employees, peers, union representatives, management of other offices, and outside agencies and organizations."

- D.1 The NRR Office Letter No. 11 of April 23, 1986, was issued to supersede and replace any earlier (12/15/81) instruction of the same title. The issue was to provide "... Supplementary Guidance ... in addition to, rather than a replacement for, an understanding of the Manual Chapter or the detailed steps specified in Manual Chapter 4125." The detailed guidance provided in this office letter is administrative, covering correspondence control and assignments of responsibility to evaluate and expedite a DPO in accordance with MC 4125.
- D.2 An NMSS Policy and Procedures Letter was issued December 28, 1984 to provide NMSS management and staff with information regarding the preparation and resolution of differing professional opinions. The letter addressed general office policy, referenced the MC 4125 procedure as the one to follow once a DPO is identified, and discussed alternate channels for expression of differing professional opinions (Open Door Policy and the ACRS). The NMSS Letter also references the EDO directive of November 3, 1981 proscribing direct communications with Congress or the Commission in circumstances other than DPO actions.

The policy section of the letter primarily excerpts points from Section A of MC 4125, but also points out that "This policy assures all employees the opportunity to express their differing professional opinions in good

faith, to have them heard and considered by NRC management and to be protected from retaliation in any form." The policy section also addresses the informal process of resolution through interaction with peers and line management officials:

"All members of the NMSS staff and management are encouraged to engage in open dialogue to satisfy concerns and differences of opinion in regard to the resolution of issues that involve technical and safety problems that may arise in connection with both licensing activities and policy. Branch Chiefs and Division Directors are encouraged to conduct periodic meetings with members of their respective staffs. This will provide an opportunity to review ongoing work, encourage technical discussions, identify divergent views and afford an open forum for their resolution. Staff members are encouraged to make their differences of opinion known to management and express their opinion openly and freely without fear of reprisal or retribution. It is emphasized that an employee has the right to take advantage of NRC's Open Door Policy at any time during the resolution process or to express concerns to the ACRS. This is imperative in order to best serve the public's interest and fulfill the NRC mission."

In discussing alternate channels for expression of differing views, the letter explicitly states, concerning the Open Door Policy, that:

"Through this policy, NRC employees may, on their own initiative, make arrangements and meet with any manager - including Commissioners or the Chairman, to discuss any matter of concern to the employee. There is no requirement for approval of these meetings by intermediate management."

This description is essentially identical to the instruction in Section H.1 of MC 4125.

Regarding the possible approach to the ACRS, the NMSS letter directed "an additional avenue of expression for differing professional opinions is available relating to safety issues within the purview of the Advisory Committee on Reactor Safeguards (ACRS). NRC employees may communicate orally, or in writing directly with the Chairman or other members of the ACRS. These communications may remain anonymous. The ACRS then appends comments, as appropriate, to written communications of differing professional opinion and forwards these to the appropriate NRC office director for resolution."

The directive quoted above is also essentially identical with that contained in Section H.2 of MC 4125.

- E.1 The Region I instruction of February 15, 1987 establishes the "... procedure for the evaluation and resolution of staff identified safety issues." The procedure does not focus on differing professional views but addresses immediate safety concerns, site specific potential concerns, and generic concerns. The objective of the procedure is to define the various classes of safety issue and describe the options available to Region I technical staff to ensure that identified safety issues receive prompt management attention within the NRC.

The procedure discusses the internal organization contacts and interactions that should take place to deal with defined safety issues, and the procedure implementation is the same for the three types of issues defined. The last step in the implementation section of the procedure (C.5) states:

"Any Technical Staff member who disagrees with the recommended action should escalate the concern orally or in writing through the member's management chain. As a final option, the member is free to follow the guidance in NRC Manual Chapter 4125, Differing Professional Opinions, in order to resolve the disagreement."

- E.2 The available Region II office policy covering differing professional views is contained in a memorandum from the Regional Administrator to his Division Directors that discusses the topics of objectivity, handling issues identified during inspections, unresolved items, minor violations, inspection modules/766 forms, and FOIA requests. This memorandum conveys the Regional Administrator's concerns for the negative effect on the handling of inspection issues that could arise from poor communications between supervisors and inspectors. Such concerns arose from recent events in another Region that indicated such a problem. To avoid this problem, the Administrator emphasized the need for clear, concise instructions by supervisors on the information needed from inspections, and for objective, factual evaluations by inspectors.

It was recognized that the nature of this work will logically encounter differences of opinion on the assessments of information gleaned from inspections, and thorough, open discussion of such differences between supervisor and inspector is encouraged by the Administrator. When resolution cannot be reached, use of the DPO process is recommended to raise the issue to higher management for evaluation and resolution.

- E.3 Region III conducts a process that is not formally described in one document, but is determined from three separate Regional Procedures: 1206, 1207, 1208.

Procedure 1206 indicates by its title and scope an intent to provide an alternative to the NRC MC 4125 process. It also affirms the value of the normal supervisor/subordinate interaction as the normal method for resolving issues. The statement of scope for the document is as follows:

"Considering the size of the Region III Office, the continuing competition for resources, and the need to deal with potential problems in a timely manner, it is important that the concerns of inspectors regarding documentation and handling of safety issues be made known and considered by management. Two systems are available for resolving such issues. They are the Inspection Evaluations and Differing Professional Opinion procedures. Use of either of these systems to resolve issues should not subvert the normal interchange between an employee and his supervisor, which is the normal method for resolving issues.

Use of either of these methods is at the discretion of the employee. If normal employee/supervisor interchange is not effective to resolve safety issues, an employee is encouraged to submit an Inspection Evaluation Form (IEF) or to process a Differing Professional Opinion (DPO). It is suggested that the IEF be tried first to resolve the issues."

Procedure 1206 then describes the steps to be followed in the event an inspector wants to initiate an IEF, and the steps if any employee wants to file a DPO.

In the case of IEF initiation, an inspector may initiate an IEF at any time following an inspection. It is forwarded to the inspector's immediate supervisor, with a copy to the Regional Administrator (RA). The initiating inspector(s) may ask for review of the IEF by an Inspection Evaluation Review Panel (IERP). The inspectors IEF is not released publicly because it is a predecisional document, but the inspector is warned by this procedure that the document will probably be publicly available at some future time.

Procedure 1206 addresses the formal DPO process in a separate Section, as an alternative to the IEF process. This section simply refers to MC 4125 and its associated requirements.

Procedure 1207 prescribes the method by which IEFs initiated within Procedure 1206 will be reviewed. It establishes an IERP composed of 4 managers and 2 inspectors. Whether the managers are within the initiating inspector's direct line of command or not is not specified. All appointments to the IERP are made by the RA's office. The procedure is silent on whether the inspector who originated the IEF may help to select members of the IERP which consider the inspector's IEF.

The IERP is tasked to review all IEFs "... which indicate a significant problem. In addition, any Region III person may request that an Inspection Evaluation be reviewed by the IERP."

The procedure indicates that the IERP is a standing group on which the assignments are changed about every 6 months. The IERP is an advisory group that presents its results, conclusions and recommendations to the RA. The written IERP report is provided to the involved inspectors and line supervisors.

Regional Procedure 1208 establishes the method for making and tracking IERP recommendations and reviewing information from the Region III Divisions and Offices concerning the action taken on the recommendations. The detailed instructions are primarily for correspondence control, but a key point is that:

"The IERP will make its recommendations to the Divisions or Offices by filling out Part 1 of the enclosed IERP Recommendations form. The form will be signed by either Mr. Keppler or Mr. Davis."

The IERP form contains signature blocks only for the IERP (no specific member is designated) and the Division Director to whom the IERP recommendations are made. While the procedure states that "Mr. Keppler or Mr. Davis" signs the form, the form implicitly conveys the message that the IERP is directly making the action recommendation, which presumably could be no action, and that the RA or Deputy RA signature is an informal counter-signature to indicate approval of the IERP recommendations. However, item 4 under "Procedure" in procedure 1207 states that "The Administrator's Office will consider IERP findings and recommendations and will issue a formal request to the appropriate Division or Staff Director for any action requested". Thus, there appears to be some inconsistency between procedures 1207 and 1208 in describing how the IERP recommendations will be documented and acted upon.

Finally, none of the above discussed procedures 1206, 1207 or 1208 specify any schedules governing the action elements described.

E.4 The Region IV office policy guide has as its stated purpose:

"To provide the staff with an understanding of the definite expectations of regional management concerning the identification, classification, and documentation of inspection findings, with particular emphasis on the mechanism for resolution findings involving differing professional opinions."

The instructions to inspectors in this procedure state that if the inspector believes:

- (1) inspector positions are not being adequately considered,
- (2) inspector concerns cannot be satisfactorily resolved through peer review and immediate supervision, and
- (3) additional review of the matter is necessary,

then the inspector has a "positive professional obligation" to utilize the appeal process of MC 4125. Further, failure to use MC 4125 under these conditions could be an indicator of unacceptable performance. The instructions describe detailed actions to be taken in processing draft inspection reports through issuance when DPOs are involved.



The policy guide also emphasizes that an informal resolution process should be exercised through the inspector's immediate supervisor, peers, and successive layers of regional management including the RA, all prior to issuance of a draft inspection report. The clear direction is that the concerned individual should not document his concerns for consideration in the MC 4125 process until the inspection report is issued without the item in contention and disagreement still exists over the item.

At that point the policy guide describes an alternative to the process described above. The inspector may document his differing viewpoint and receive consideration and a written response from the Branch Chief. If agreement is not reached, the inspector may ask for Division level and/or RA review, apparently in writing, before proceeding, if desired, to the MC 4125 process. A logic flow chart is included with the procedure.

E.5 Region V Instruction No. 0902 includes as its purpose:

"To ensure that differences in viewpoints within the Region V staff become known and are resolved in an effective and timely manner to the best interest of the agency and the public."

The instructions list four actions expected of all employees. The first action states that "All employees have the right and duty to express their views and professional opinions openly and candidly during discussions of work matters with their co-workers and supervisors without fear of reprisal." The second action notes that employees should discuss a contrary viewpoint first with their immediate supervisor and, if the employee viewpoint remains unchanged, then discuss with "... another member of regional management." This process is encouraged to continue to include the RA. This second directive is clearly the exhortation to use the informal line management communication to resolve a matter of disagreement without resorting to the formal DPO process.

The third directed action tells the employee that the formal DPO process of MC 4125 should be utilized "At any time an employee believes further informal discussions of a differing viewpoint would be futile, and the individual so desires...."

The fourth and final directive in the Region V instruction is to the supervisors and managers, stating that they "... have a duty to assist an employee in resolving differing viewpoints to the satisfaction of the employee and in the best interests of the agency and the public."

F. The NRC Inspection Manual communicates policies, requirements, procedures and guidance for NRC Regional Office implementation of the inspection program developed by NRR. The Manual contains provisions pertinent to resolution of differing views only in Section 0610, "Inspection Reports."

In a proposed draft revision circulated by memorandum from J. Sniezek, Deputy Director, NRR dated 08/20/87, an expanded Section 0610.04 "Responsibilities" contains requirements for Regional Administrators and Headquarters Division Directors to set up internal procedures to manage the production of inspection reports and particularly, to assure resolution of differences of opinion related to inspections.

Part c. of this Section assigns specific responsibilities as follows:

- "c. Regional Administrators and headquarters Division Directors should set up an internal procedure to provide a record of concurrence by those participating in the conduct of the inspection and review of the inspection report, and to resolve any differences of opinion about the results of an inspection. If the parties to the discussion are unable to resolve the matter, regional or headquarters management should decide how to handle the matter and that decision should be discussed with the inspector and recorded. If an inspector does not agree with a decision of management regarding the results of an inspection, the inspector may seek resolution of a professional difference of opinion as provided in NRC Manual Chapter 4125 "Differing Professional Opinions."

#### 4. ANALYSIS

The first task of subpanel 2 was to examine available agency directives regarding use of interpersonal contacts among peers and line management to resolve differences informally. The available guidance, from the Commission on down, certainly indicates that the preferred and most appropriate way to resolve differences is through the informal process of discussion among peers and one or more supervisory levels. However, the various documents reviewed did not treat differing professional views with a common purpose or with a uniform scope. The documents were generally adequate as "stand-alone" documents for their intended purpose but did not all, for example, intend to deal only with differing professional views. It seems clear then that there are not office level instructions in each program office and region dealing specifically with differing professional views and the administrative processes available to address this situation. Region I treats the matter in one paragraph of a region instruction dealing with safety issues in general (reference E.1); Region II covers the topic seemingly incidentally in a broad-ranging memorandum to management covering several matters other than differing professional views; Region III covers the topic as specifically related to findings in inspection reports, referring only in the opening paragraphs to using the "... normal interchange between an employee and his supervisor, which is the normal method for resolving issues"; the Region IV instruction also is focused on inspection findings and gives little weight to resolving matters in the informal process prior to filing a formal DPO:

"Whenever any inspector believes...and his concern cannot be resolved through discussion with coworkers and immediate supervision,... regional management considers the individual to be under a positive professional obligation to utilize the appeal process of Manual Chapter 4125...."

This kind of instruction seems to force the employee into the formal DPO process even before exercising the informal process above the immediate supervisor level. The Region V instruction directly addresses the issue, as reflected by its title "Handling Differences in Viewpoints." This instruction does cover full utilization of the informal line management process, as shown in Section C.2: "Should an employee have an viewpoint concerning the mission of the agency contrary to that of an immediate supervisor, the employee should discuss the matter fully with the supervisor, and if the employee's viewpoint remains unchanged, the individual should discuss the matter with another member of regional management. Thereafter, if the employee still remains concerned..., the employee should discuss the matter with the Regional Administrator."

As seen from the perspective of regional instructions, there is a variation in both the scope of the direction and the content of the specific directives given to the employee.

Commission and EDO policy/directives do indicate that interaction among the employee, peers, and line managers is the preferred way to resolve issues, before resorting to the formal DPO process. The document contents summarized in Sections A.3 and A.5 above demonstrate this intended direction.

The SES contracts reviewed and summarized in Section C above clearly indicate the importance placed by senior management on utilization of the informal contact between a supervisor or manager and those persons with whom the manager deals with at his own level or below. The SES contract, however, can be seen as inhibiting employee contact with managers above his own supervisor, since the supervisor is measured in part by his ability to resolve matters without involving his superiors. A relative few interviews yielded comments that would support the claim that there are supervisors who have forbidden their subordinates to carry a disagreement to the next higher level of management to obtain a further hearing of the employee's position.

The NRC Manual Chapter 4125, the key implementing document for agency policy regarding the disposition of differing views, does not discuss the informal line management resolution process, although it does discuss other alternative processes such as the Open Door Policy and the use of ACRS as a peer review group. This seems to be a significant deficiency in MC 4125.

Office level communications to staff reviewed for both NRR and NMSS showed, for NRR, no reference to anything other than MC 4125. The NMSS policy and procedures letter is much more comprehensive and substantive, covering the line management and employee responsibilities very thoroughly as described in Section D.2 above.

The NMSS procedure is unique among the documents reviewed in also indicating that MC 4125, the Open Door Policy, and the ACRS are essentially equal alternative channels for use at the employee's discretion.

Thus overall, there is an inconsistency in both scope and depth of Agency instructions, at the Office level, concerning line management's basic responsibility to identify and resolve differing professional views before they become formal DPOs.

The second task of subpanel 2 was to examine Agency documents from the perspective of what is said and directed concerning the Open Door Policy (ODP) espoused by the Commission and lower level offices since the late 1970's.

MC 4125 addresses the ODP in detail; however, including the ODP within the Manual Chapter under a heading of "Differing Professional Opinions" has caused some confusion among many staff members as to whether the ODP is really a separate informal process.

The Region V procedure instructs the managers to assist the employee in seeking a resolution to a concern. However, if all fails, the procedure sends the employee back to the supervisor if he/she wishes to file a formal DPO.

The review step in Region IV procedures provides an opportunity for review of a safety concern at an early stage. Adequate provision is made for discussion with colleagues and regional management for resolution of the concern. Ultimately, the inspector has an option to file a DPO under MC 4125. A flow chart is provided that is most useful in understanding the Regional Procedure and its counterpart should be adopted for MC 4125.

The NMSS procedure addresses the ODP in two places, first emphasizing the employee's right to take advantage of the policy, then briefly describing how the ODP is accessed. No further description, however, indicates the disposition of a concern within the ODP--what a manager does with the employee's petition, how resolution is achieved, or how the formal DPO process is entered as a last resort from the ODP.

The E. Kevin Cornell memorandum of March 25, 1981 discusses the possibility of discussing a disputed safety concern with someone outside the agency. It might just be what the staff has asked for all along, a review by an impartial, objective panel outside the agency's management chain. In addition, the option of raising a safety concern with someone other than

the immediate supervisor might be a slightly lengthy process but it has the advantage of bringing out an issue in the open in a manner that is most satisfactory to the originator. Confidence in the individual with whom a safety concern is raised is significantly important to the originator. Also, it makes the process less contentious by keeping the supervisor (with whom the dispute is likely to occur or who supports the management's point of view rather than the employee's) out at this stage.

Of the Agency documents reviewed, none but MC 4125 and the E. Kevin Cornell memorandum described above discussed the ODP explicitly. The Region V instruction implicitly approached the ODP in its exhortation to "... discuss the matter with another member of regional management," and the Region IV policy could be construed to advise against use of the ODP by its direction to go to MC 4125 directly after failure to resolve a differing view with immediate supervision. Thus, we have an inconsistent and probably inadequate agency treatment of an Open Door Policy, at the Office/Region policy level.

A third task of the subpanel was to examine agency documents to determine the availability and content of ways for identifying and resolving differing views which are different from the formal DPO process of MC 4125 and from the alternatives discussed above (line management resolution, Open Door Policy). Several of the alternatives examined are discussed in following paragraphs.

### Grievances

Grievances, under either NRC Manual Chapter 4157 or Articles 50 and 51 of the NTEU-NRC Collective Bargaining Agreement, are mutually exclusive of the process of MC 4125 for the resolution of differing professional opinions. Grievances are designed for the resolution of personnel-based disputes and remedial actions based upon adverse personnel actions. In fact, MC 4125, Paragraph J, provides as an example of intentional misuse of the DPO process "attempts to treat a personnel grievance-type action as a differing professional opinion."

### Office of Inspector and Auditor

Under the "Open Door" Policy of the Commission, OIA hears individual employee concerns regarding NRC operations and activities, investigates them as appropriate, and verifies facts as to integrity of all NRC operations. 10 CFR 1.30(d), (g). However, a review of MC 4125, paragraph H, "Open Door Policy," only references OIA as participating in the Open Door Policy upon notification by a manager receiving concerns under that policy which he feels are not properly cognizable and susceptible to resolution under the procedures applicable to DPOs. A review of NUREG-0325, Rev. 10, Functional Organization Charts, supports the view that OIA will hear employee concerns involving irregularities or wrongdoing, which would appear inconsistent with the typical subject matter of DPOs.

### ACRS

The ACRS would appear to be an appropriate forum for the examination of disparate technical viewpoints and, in fact, may receive such issues from multiple sources: as a result of referral from management during the DPO process for comments on safety significance, or by direct communication from an employee identifying a potential safety issue. 10 CFR 1.20; MC 4125, paragraphs E, H.2. However, employees interviewed by this subpanel rendered mixed opinions on the utility of ACRS; some felt it was not expedient, while others felt it was an effective way to resolve technical issues after "touching all the other bases first."

### Selected Regional Instructions

The Region III and IV documents (Refs. 6 and 7), dealing with disposition of inspection findings, are noteworthy in their attempt to provide a logical sequence for the conduct of informal decisionmaking which exposes, examines, and reconciles differing professional opinions at the lowest levels. The Region IV Policy Guide even provides a logic flow chart for this purpose. While encouraging the use of MC 4125 in any case where resolution is deemed otherwise impossible, the policy guide provides for mandatory forwarding of such disputed items for review within the supervisory chain, and emphasizes the willingness of regional management, at all levels, to discuss the issue in the interest of resolution prior to the issuance of the inspection report. The policy guide incorporates a logic flow chart to clarify the responsibilities and available options to the parties.

The fourth task of the subpanel was to examine agency documents with respect to what was said and directed concerning the formal DPO process as presented in MC 4125. Of particular interest was whether the direction to utilize MC 4125 is adequate to instruct the staff unambiguously, and is consistent both with the Manual Chapter and within the inter-related set of documents.

The objectives of the MC 4125 process, staff responsibilities, and lines of authority for resolution are clearly defined in the document. The process is sufficiently general that application of the procedure in the variety of differing opinions that can arise in the different NRC offices would not be expected to vary appreciably throughout the Agency. Specific terminology is defined which should assist user determination on when to use the process, and the process schedules prescribed by the document should assist all participants in determining the time for action, and the type of action required. The location of and responsibility for all documentation concerning filings is clearly prescribed as well as notification of the status of the process to all participants. The process described in MC 4125 is diagrammed in Figure 1.

Certain aspects of the process appear, however, to require further elaboration to avoid varying interpretations on how they function in the process. Those noted in the Appendix to the Manual Chapter 4125 are as follows:

## 1.) Par. B (3rd Sentence)

The requirement that one's background may need to be described apparently in defense of their qualifications following filing of a DPO does not appear necessary in view of the background information already available to the filer's supervision or available from Personnel records. This requirement may only serve to dissuade the filing of an opinion, and would only be appropriate in filings of opinions on subjects outside the assigned work area, or on subjects not addressed in the filer's Personnel records.

## 2.) Par. D (1st Sentence)

Work time for originator preparation of a DPO is determined solely by management without apparent consultation with the originator of potential time needed by this paragraph. Presumably, in practice, such consultation occurs, but the process described here makes no such provision.

## 3.) Par. G.2.a

The second step of the process described in this paragraph and in section 035.f of the Manual Chapter concerns the immediate supervisor's responsibility to forward a DPO within 5 days of receipt from the originator to the Office Director with all intermediate management comments appended. This time interval does not appear to be consistent with the supervisor's acknowledgment schedule to the EDO, ORM, and the originator-which runs concurrently according to section 035.d of the Chapter, and paragraph E. of the appendix. These parallel, simultaneous transmissions could result in a DPO surfacing outside an organization before the Director or Administrator of the organization was formally informed of the action. Though highly unlikely because of prior informal discussions that generally occur in such instances, the possibility does exist for some low profile issues that can come up. A more serious weakness of the process is the denial of an opportunity to resolve a documented DPO within the management chain-of-command before it reaches the Director, and before it is disseminated outside the organization. The current process requires return of the DPO to a Director's management staff within 10 days of submittal for resolution. As the Director's staff has already seen and commented on the DPO in its move up to the Director, it is not clear what could be accomplished through this procedure that could not be accomplished in its first passage up through the management chain. It is believed that allowing the 10 days for internal resolution before transmittal outside the organization would be more efficient in that the record and tracking procedures that currently go into effect internally and externally upon DPO receipt could be reduced when resolution is accomplished internally.

Such an approach is based on the notion that a documented DPO involves better preparation and more careful review of concerns than generally occurs in verbal DPO discussion no matter how extensive they may be. The present system tends to preclude internal resolution once the DPO is documented.

On the basis of the argument presented above, a revised process would eliminate the supervisor acknowledgement to the EDO, ORM, and the originator within 5 days, and allow such acknowledgement to be made by the Director 10 working days after submittal of the DPO if not resolved internally before that time. This change would not alter DPO progress through the system when resolution is not achieved within the organization, but would avoid some documentation when internal resolution is possible.

4.) Par. G.2.b

This paragraph provides for the convening of a peer review group by the responsible Office Director at his option, whether requested by the DPO originator or not. The members of this group are selected by the Director with no apparent consultation with the originator. In cases involving highly specialized technical knowledge, the originator may be as well informed on sources of expertise as the Director, and foreclosing this source of information could deny access to a balanced, truly impartial peer review.

5.) Par. G.2.c

Transmission of the DPO up through the chain-of-command from the first-line supervisor to the Office Director can include added comments by management and the originator when it reaches that level. It is not clear from this paragraph and preceding paragraphs if the copies of the DPO sent to the EDO and to ORM contain this information or just the acknowledgement of the DPO. The 5 working day interval specified for this part of the process appears to be overly short when the possibility of resolution could be effected at intermediate levels.

This particular step of the process automatically surfaces all DPOs filed at any level within an Office or Region up to the Director or Administrator level, to the EDO, and to ORM before the first step in resolution can occur. The opportunity for resolution within the Office or Region below the highest management level while the DPO is progressing up the chain-of-command is denied, and this is considered to be a weakness in the current process.



## APPENDIX B - PERSONAL INTERVIEWS

### A. INTRODUCTION

The basic purposes of personal interviews by Subpanel 2 were to solicit viewpoints as to managerial and staff perceptions regarding the DPO process and other processes for resolving Differing Professional Opinions (DPO), to identify strengths and weaknesses of the DPO process (as prescribed in NRC Manual Chapter 4125) and other processes, and to solicit constructive recommendations to improve the various processes. A number of persons were interviewed, some of whom had actually participated in the DPO process. For clarity, the judgments of those who had participated are highlighted separately (section C) for ease of comparison with the perceptions held by the other interviewees.

Overall, interviews were conducted with 18 managers, 9 first-line supervisors, and 58 staff members. Each interview lasted approximately 30-45 minutes. In general, there was substantial agreement among the interviewees with regard to the DPO process, regardless of their job function or position. The only significant differences of opinion that were discernable during the interviews was that management representatives generally believed there was no fatal problem with the DPO process; but except for the need for a "safety valve," there was no benefit since safety matters were being handled properly by other mechanisms. Conversely, while many of the staff believe that problems were and should be adequately handled by processes other than the DPO, a relatively few believed that there were safety problems that had been identified by the staff that were not being handled per MC 4125 because of the perception that use of the DPO process would result in some form of retaliation.

One topic that was discussed in Region III that was not discussed in interviews outside of Region III was their less formal process for handling differing opinions. This process is documented in Regional Procedure 1206, "Inspection Evaluations and Differing Professional Opinions." This procedure was started approximately ten years ago as a result of Davis Besse construction problems. At that time, a form called the "Inspection Evaluation Form" (IEF) was required to be filled out at the completion of each inspection, and this form would document whether or not there was a difference of opinion maintained by the inspector. During the early years, there were approximately 30 differing opinions identified in the IEF's filed each year. The number of differing opinions decreased as the number of plants under construction decreased, and finally the procedure was made non-mandatory. At present, there are approximately two to three IEF's filed per year perhaps because use of this process has "sensitized" managers and employees to the benefits of open communication. The IEF process requires consideration of each differing opinion by a Region III panel that is composed of representatives of management and staff. While there is no offer of anonymity, the process appears to be highly accepted within Region III, principally because the issues raised have been resolved by third parties within the Region as a matter of standard practice.

## B. PERCEPTIONS ABOUT DPO PROCESS

The first question asked of each interviewee was one designed to determine the familiarity that the individual had with the DPO process. About one-fifth of the people had been part of the DPO process, and their views are provided in a comparative sense in the next section. A few people were fairly familiar with the process, and all the others could be categorized as somewhat familiar with the process. Only a few had actually read MC 4125. The main source of knowledge of the process appeared to be in some limited training sessions and by word-of-mouth.

Each interviewee was asked how many DPOs he/she felt were filed during a year. While the substantial majority guessed in the right range (about two to six per year), essentially all of them were guesses based on their intuitive judgement. Several of the guesses were substantially higher than experience has shown. Most felt that no more than half dozen DPOs per year would be about right in a perfect system, while others thought a perfect system would yield zero DPOs, because all differing opinions would be reasonably resolved through the normal line process. This question frequently evoked the response that they should not have to guess at the number of DPOs -- the results of DPOs should be better publicized.

A follow-on question was to ask each interviewee whether or not they would file a DPO personally, if they felt that there was a need. About a quarter of the interviewees said that they would not file a DPO. However, some of these still said it was a positive tool that should be used by the Agency, and some individuals had seen it work once beneficially to the person filing the DPO. However, they also felt that there should be no need to file a DPO, that the problem should be resolved through line management channels; a belief that was shared by essentially all of those interviewed. About another quarter of those interviewed indicated they definitely would file a DPO if they felt the need. Generally, these were older employees that would be less intimidated by the system. The remainder of those interviewed (approximately half) answered the question with a qualified "yes." The qualifications were that they would have to perceive a serious safety issue, and filing a DPO would be their last resort; however, they would have some concern about filing.

All of the interviewees strongly preferred ways to resolve differing opinions other than the DPO process. They believed that the first mechanism for resolving issues is line management. As stated previously, the Region III persons interviewed believed that if immediate line management could not resolve the issue, the Region III process was the much preferred vs. the DPO.

There was a somewhat lengthy discussion of the reasons why they would be disinclined to file a DPO. These reasons are itemized as follows:

1. There are other ways of resolving issues that should be adequate.
2. About half believed that filing a DPO could be a career threatening process. Such an action is viewed as being against the institution (the party line) and people whose toes are stepped on would not soon forget. The resentment generated in filing a DPO is essentially generated by continuing to disagree strongly after management has made its decision, and this confrontation tends to form battle lines instead of improving communications.
3. Another reason is that peer pressure is felt to be an active ingredient in keeping people from filing DPOs. Fellow workers who might not know the details of the employee's concerns would view the employee as a troublemaker and not a team player. This was not a universal view since one person believed that she would think positively about the originator, but not negatively about the supervisor. However, the same person believes that some people are chronic complainers.
4. There were viewpoints that the DPO process is not fair to people finding problems. The statement was made that if you win against against all the odds you feel very good, but it may not be worth the time, trouble, and potential lasting ill feeling.
5. There is a feeling that it is not profitable to file a DPO because there has never been a management position that has been judged to be wrong.

In discussing these various perceptions with the interviewees it became obvious to all that much improved communications would improve the DPO process since fear of the process could be substantially lessened, if it were perceived to be more of an accepted process that was more readily used and publicized.

#### C. VIEWPOINTS HELD BY PERSONS WHO HAD PARTICIPATED IN A DPO

A number of the interviewees were the originators of Differing Professional Opinions, as well as of members their supervisory and management chain who were responsible, in one form or another, for the processing and forwarding of those DPOs. Their perceptions do not differ substantially from the perceptions reported in paragraph B above.

First, as to the initiators of DPOs, the majority reported that, knowing what they know now, they would not file another DPO. The primary reason cited was their perception that, subsequent to filing the DPO, they had been retaliated against by their management. Several offered the comment that you simply cannot disagree with a management position. Managers would take the filing of a DPO as a personal affront, regardless of the

professionalism with which the DPO was presented or whether a Regional or Office impact would result if the proposed DPO was adopted as Agency policy. The retaliatory actions perceived ranged from demotion and re-assignment to critical comments in performance appraisals, failure to approve travel requests, and failure to be selected for promotion to supervisory positions. Concededly, the perceptions of the originators of DPOs may not in fact reflect the motivation of their managers who took adverse actions against them, or failed to take positive actions perceived by the originators as deserved.

Further, most of the originators, when questioned about the operation of the DPO process, were similarly negative. Almost all of the originators, as well as their managers, felt that the DPO process was excessively cumbersome and it did not effect the desired change. Several originators indicated that the DPO is not a timely means for resolving problems, and that direct communication with the management chain in an informal fashion, or possibly contact with another program office, might result in a quicker resolution of contested issues.

Most of the originators felt that they received support from their peers in filing a DPO, although the support generally took the form of moral encouragement, rather than actual support by joining in the DPO or presenting documentary support as part of the DPO process.

Managers who had been involved in the processing of DPO, surprisingly, described the DPO process as a formal, workable means tending to channel contested issues for resolution within the system. However, the comment was frequently made that the existence of the DPO itself is indicative of a communications failure, and that all DPOs with which they had experience could have been handled in a different manner. Managers interviewed clearly recognized the benefits obtained from free and open communication within the management chain, although some were critical of the "Open Door" policy as they felt employees should not be bypassing organizational levels when raising technical concerns. Many of the managers interviewed felt that the subject matter of most DPOs was not worth the attention and Agency resources which were expended during the DPO process and felt that DPOs, when filed, should deal with significant matters affecting public health and safety, or the efficiency of Agency operations.

All of the persons involved with DPOs supported the view that the issues involved in a DPO and the results of the DPO process should be publicized to a greater degree. Suggestions ranged from NRC Yellow Sheet distribution of the results to documented, periodic third-party audits of the results. While present managers interviewed did not feel that retaliation would be invoked against originators of DPOs, interviewees who themselves had filed DPOs strongly believed that retaliation was almost a "way of life" if one resorted to the DPO process. Comments from originators supported the view that management is responsible for demonstrating that retaliation will not occur, if the DPO process is ever going to work effectively.

D. STRENGTHS AND WEAKNESSES OF THE DPO AND OTHER PROCESSES

1. Strengths of the DPO Process

Most interviewees felt that the DPO process provided a much needed safety valve for the Agency. They believe that simply the existence of the DPO process causes many issues to come to resolution that might not otherwise do so, perhaps because it forced documentation of the issue which was felt beneficial by many (and too cumbersome by most). There were some thoughts that the threat of a DPO also puts pressure on the licensee to fix the problem, since the licensee in some cases might prefer this approach rather than the high visibility of the DPO process. This was felt to be beneficial. There were no other particular strengths identified.

2. Weaknesses of the DPO Process

As stated above, all interviewees in Region III felt more comfortable staying with the Region III informal process rather than the DPO process that would go to the EDO level. Some indicated that the more formal DPO process gets too much visibility at high management levels and one runs the risk of having the person judged negatively for the rest of his/her NRC career based on the resolution of one issue. Other comments made were:

- a. A few indicates the lack of a DPO filed can be used by management as a partial justification of their position.
- b. Most believed that filing a DPO is very time-consuming and generally is a waste of time.
- c. In some cases, a DPO is filed because some individual has an axe to grind, with no real peer support.
- d. The DPO process is an administrative burden. Most management and many staff interviewees considered the process overly cumbersome and not timely.
- e. Many believed that the DPO process is really not a good one for taking on non-technical issues such as budget priorities. The budget should not be part of the DPO process.
- f. Some believed that the peer review process is not effective because it is difficult to get an unbiased peer group that could change management's position.

### 3. Strengths and Weaknesses of Other Processes

As indicated previously, the vast majority position is that other processes, including things such as the Region III less formal process, are the best ways to resolve differences of opinion; and the informal process of interaction with the immediate levels of line management almost always works. With respect to the use of other procedures to resolve concerns, the use of informal peer review was most often cited as a more preferred path to surfacing DPO-type concerns to management. It was felt by many interviewees that this approach would not introduce the confrontation that the DPO introduces at the very start before peer review enters the process.

Questions were asked of each interviewee with regard to their knowledge and potential use of methods such as the open door policy, going to ACRS, or going to OIA. Generally speaking, there is little support for any of these processes. At least one-third of the interviewees were not even familiar with the open door policy, and several said: absolutely no, they would never go to OIA. A few were acquainted with the ACRS process and indicated that it would be a good forum to in which express differing technical opinions. A small minority indicated that no process would be suitable to resolving significant differences of opinion within the Agency, i.e., the only effective way would be a true third-party process outside the Agency.

### E. SUGGESTIONS FOR IMPROVING THE PROCESS

The following summarizes the suggestions made by the various interviewees to improve either the DPO or other processes for resolving differing professional opinions. Thoughts about improvements in the process centered on the use of open discussion with management, reserving the DPO process as a last resort.

1. There was a unanimous opinion in Region III that their less formal process is a good one. The inference follows that such a procedure would be useful to follow in other organizations. Most interviewees felt that such a process should be invoked before the formal DPO process, and the use of an initial peer review group was cited as a decided benefit. The composition of this group would be from within the Region or Office, composed of both management and staff members, as well as perhaps outside members for technical DPOs.
2. There were a large number of comments indicating that communications must be improved substantially within the NRC. Such improved communications would include:

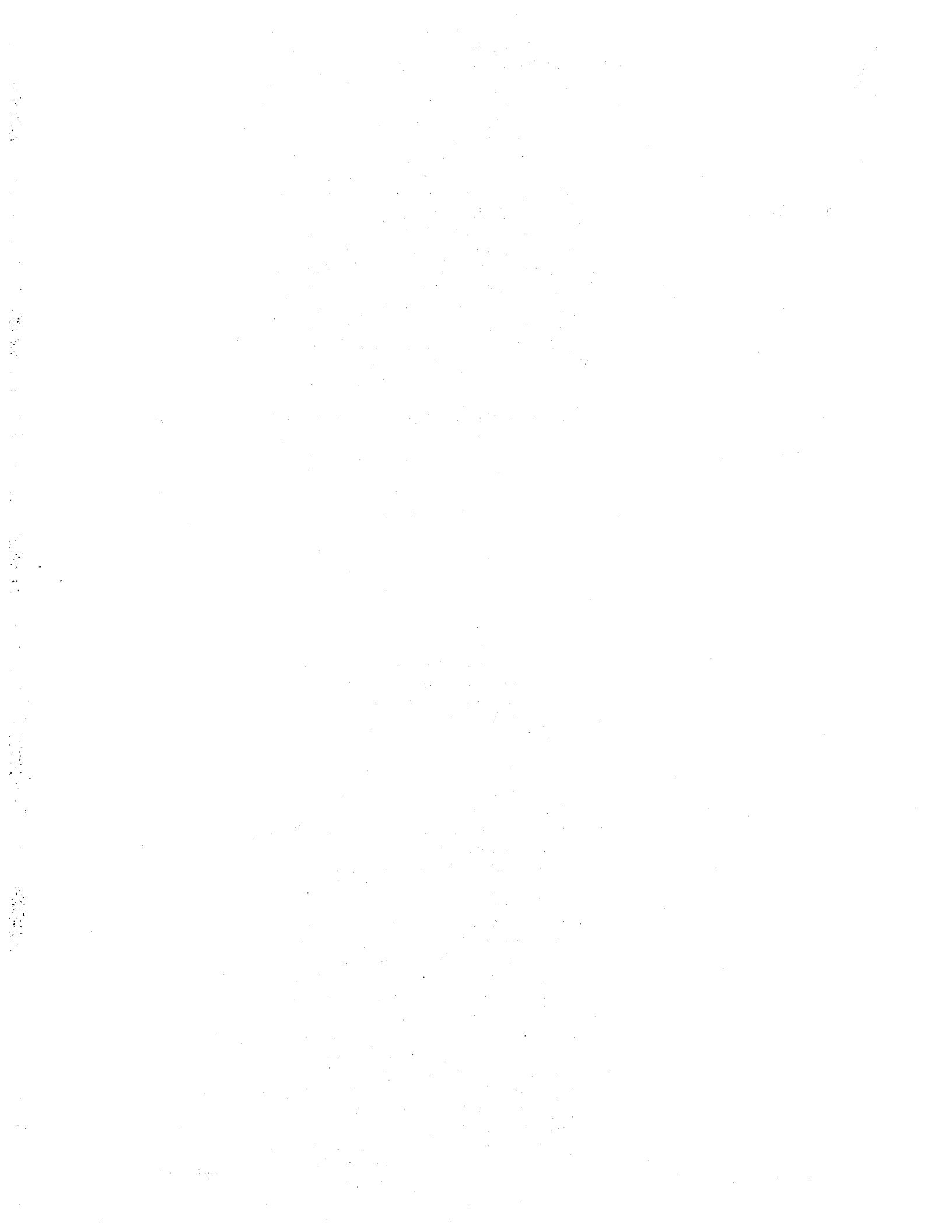
- a. Essentially all said management should articulate their rationale for the party line, particularly if it differs from the technical staff position.
  - b. Most said the Agency should publicize the DPO process more than it does, and should publish the results of DPOs that are filed. However, fear of retaliation cannot be eliminated by improved publicity alone.
  - c. One person said it would be useful to communicate more with regard to who in the Agency is responsible for what. This could reduce some of the staff's agitation level.
3. Most said that training could be improved for supervisors and management with regard to conflict resolution and problem solving. Also, some said the selection process for managers could be improved to assure that he/she has conflict resolution skills. Typically, supervisors are chosen because they are technical "hotshots," which erects a natural barrier in some cases to adequate two-way technical communications. In other cases, the manager is much more of a generalist, which also puts special emphasis on the art of conflict resolution and the use of separate peer opinions.
  4. Most said that the DPO process should get out of the line organization quickly. Many suggested using the peer review process, independent from the line, but some believed the peer process did not work well. Use of an off-line DPO process (assuming that the avenues of line management had already been exhausted) would possibly avoid solidifying already somewhat hard-line positions. This review chain could be within a different Office or some panel reporting to the EDO, or perhaps it could be established on an ad hoc basis depending on the issue involved. The originator should have a say in the composition of the panel, and recognized experts should be used where appropriate.
  5. Several said names should be deleted from the DPO, since the substance of the issue is more important than the names.
  6. Many said there needs to be a critique of the process after each DPO. Why did it happen? What were the merits of the case? What are the viewpoints of the various people involved in the DPO? This should be done by an independent, third-party auditor.
  7. Many said the process should be simplified.
  8. Many suggested that the DPOs should be restricted to safety issues.

9. There were three rather major changes advocated by a couple of people. One of these was that licensing authority should not be with the NRC; the NRC should only do safety reviews, and some other agency should do the licensing. Another view was that DPO reports should not go into the PDR, because people are afraid to put substance in the DPOs. The third was that an Inspector General Office should be established for the NRC; OIA is only a tool for management and does not have credibility.

Very few comments were received with regard to other processes. However, some of the above suggestions would also improve the other processes. For example, improved communications and improved training would be useful not only for the DPO process, but also for other processes. In particular there was one comment to the effect that improved communications with regard to usage of the open door policy would be useful. The bottom line suggestion was that good management dictates reasonable resolution of issues and communication of the decision rationale where there are differing opinions.



**APPENDIX F**  
**SUBPANEL 3 REPORT:**  
**EXPERIENCE IN THE USE OF THE DPO PROCESS**





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 26, 1987

MEMORANDUM FOR: Paul E. Bird, Chairman  
Differing Professional Opinions  
Special Review Panel

FROM: Warren Minners, Chairman  
Subpanel 3

SUBJECT: REPORT OF SUBPANEL 3 TO THE DIFFERING PROFESSIONAL  
OPINIONS SPECIAL REVIEW PANEL

Enclosed is the subject report, which has the concurrence of all of the members of the Subpanel.

*Warren Minners*  
Warren Minners, Chairman  
Subpanel 3

Enclosure:  
DPO Report



Report of Subpanel 3 to  
Differing Professional Opinion Special Review Panel  
Experience in the Use of the NRC DPO Process

Warren Minners  
Donald P. Cleary  
Janice E. Moore  
John D. Randall  
Norman H. Wagner

October 21, 1987



Report of Subpanel 3  
NRC Differing Professional Opinions Special Review Panel

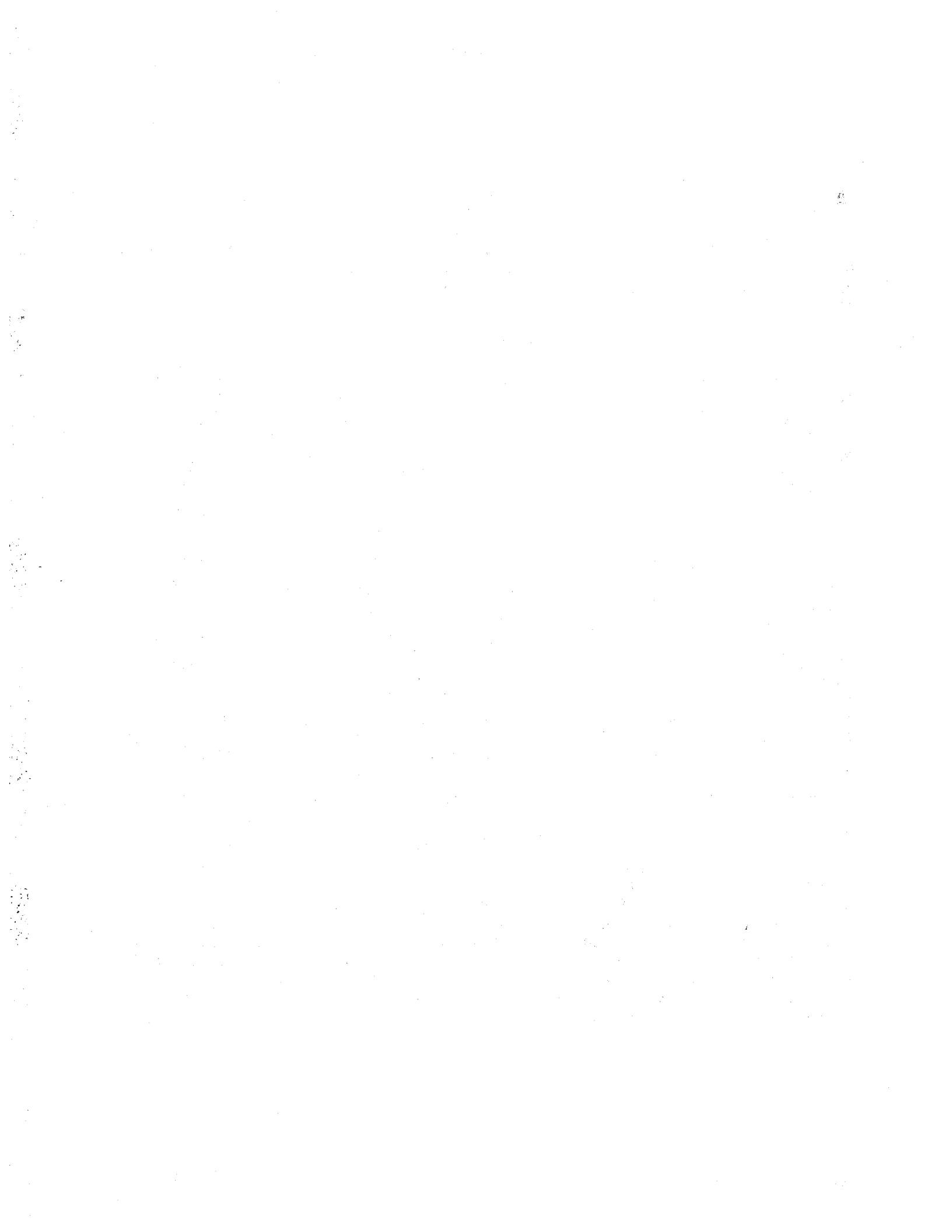
Experience in the Use of the NRC DPO Process

Background

The charter of this Subpanel was to review the NRC's DPO (Differing Professional Opinion) process by making case studies based "on the knowledge and experience of those individuals who have participated in the process, have seriously considered using the DPO process but rejected it for another approach, or otherwise have special familiarity through study or involvement with this or similar process." Subpanel 2 interviewed the individuals who were involved in all of the formal DPOs filed in 1985, 1986 and 1987. DPO's filed before 1985 were not considered because they would not reflect the current process, which was revised in 1985. However, at the request of the Panel, we did interview individuals involved in DPO 22, which was filed in 1984. In order to avoid duplication and to obtain the opposite view, this Subpanel focused on individuals who had differing professional opinions but did not use the formal DPO process.

In order to assure that a perspective of the whole agency was obtained, differing professional opinions were sought in several offices; NRR, RES, NMSS, AEOD, OGC and two Regions. The differing professional opinion on Comanche Peak in Region II, which did not result in a DPO, was of particular interest to the Panel and individuals involved in this issue were interviewed. In addition, individuals in another Region were also interviewed with respect to another issue. Since most DPO's were filed by NRR staff, the experience of other offices was sampled to try to determine whether their experience could be a model for the agency as a whole. The question of whether DPOs resulted in retaliation, sanctions or some other subtle form of stigma was of great concern to the Panel and was specifically investigated in the interviews. We also attempted to determine if the threat or the perception of a threat of retaliation, sanction, or stigma were deterrents to raising differing professional opinions or filing formal DPOs. In an attempt to see if the opposite had occurred, a DPO that resulted in an award or promotion was also sought. In addition to the individuals that the Subpanel sought to interview about the issues selected by the Subpanel, several NRC staff members contacted the Subpanel and submitted (some orally and some in writing) unsolicited comments on the DPO process. Since these unsolicited comments may indicate one aspect of staff attitudes and in the interest of completeness these comments were also summarized.

Interviewees were promised anonymity and all interview notes were destroyed, no names are included in our report, the specific descriptions of the issues are omitted (except in the cases that are already public), and the results of interviews were synthesized all in an effort to ensure the interviewees would respond openly and fairly. The summaries of the interviews are enclosed and are based on notes taken during interviews and in some cases written material that was received by Subpanel members.





Report to Subpanel 3 of  
NRC's Differing Professional Opinions Special Review Panel  
by Don Cleary, RES/DRPS

Member Subpanel 3

Case Study 1-1

This case involved a technical AEOD staff member's concern over a potential safety problem he had identified in a particular type of power plant equipment. He wanted his management to put out a memorandum recommending that a certain approach be taken to better understand the problem and to provide the basis for corrective guidance. His management rejected his recommendation on the basis that a previous memorandum was inclusive of his specific concerns. He was requested to write a follow-up memorandum reiterating the previous memorandum. Because of his concern over the specific safety issue which he had identified he did not write the requested memorandum but rather first approached his technical counterparts in two other offices and then their management to sell them on the need to follow his recommended course of action including getting industry cooperation. He gained the cooperation of other offices in this approach and apparently suffered no adverse repercussions from deviating from his manager's instructions. Not very long after embarking on his alternative course of action his Branch Chief retired. During this period he felt considerable stress because he felt alone in trying to deal with what he believed to be a potentially serious safety problem.

This individual was well aware of the DPO process but believed he had a better chance of success following the course he did. He did not want to "wave a flag." He would hesitate to use the DPO process for several reasons. There are less confrontational and usually less burdensome ways of convincing people to do something about specific safety problems. He interprets the Atomic Energy Act to require the agency to resolve safety issues raised by the technical staff. The DPO process however, puts the burden on the individual rather than the organization. He has little faith or confidence that a peer review panel would be sufficiently expert and objective. He said there are good words on DPO in the NRC Manual but it does not solve the basic problem of management attitude and its tendency to protect the status quo. This attitude makes the DPO necessary but at the same time is a deterrent to its use. He had no specific recommendations for improving the DPO process.

Case Study 1-2

This case involved a technical NMSS staff member's concerns over a number of technical issues related to the conceptual design of a facility and the application of associated regulatory requirements. He believed that in spite of his objections management, from his Section Leader up, avoided facing the issues in its dealing with the applicant. He also believed that management was retaliating against him for his positions through performance appraisals and frequent criticism of his work. This individual had been hired from outside of NRC because of his expertise and experience; eventually, however, he became extremely demoralized and quit.

The individual was generally aware of the DPO process but was convinced that a DPO would be quashed by his management and he would be subjected to retaliation. In fact, he believed at the time that his management could summarily fire him. These perceptions were generally shared by several of his co-workers. He believed the DPO process would place a time and energy burden on the complainant which could be exploited by management; that it would be impossible to constitute a qualified impartial peer review panel not under management's influence; and that management would retaliate. He stated that if he were now back at NRC he would file a DPO only in extreme cases where he was prepared to resign.

Discussions with several of the individual's previous co-workers and Branch Chief revealed considerable diversity in their perception of the basic situation depicted by the individual. The co-workers characterized the management environment as anywhere from authoritarian to despotic. Also, all, including the Branch Chief, said the work environment was complex and difficult in the sense that new technical and regulatory issues were being dealt with and the program had high political visibility. There is some difference of opinion on the accessibility and ultimate reasonableness of the Branch Chief and other managers. Everyone acknowledged that eventually those issues with which the individual was concerned were in fact given consideration. The Branch Chief said these issues were recognized by more staff members than just the individual and that he does not remember the individual expressing any more concern about these issues than did some others.

With regard to the DPO process, everyone (including the Branch Chief who said he had had several disagreements with his management) said that it is a last resort course of action which would likely stigmatize an individual. The difficulty of constituting a fair peer review panel for many technical issues was pointed out by everyone. Also, everyone felt strongly that the solution to people feeling their technical and regulatory concerns are not receiving a fair hearing is in changing management behavior not in changing the DPO process. As one person said, "the real question is does a person feel he has had an adequate hearing". This should happen independently of the DPO process. Also most said in effect that if one has confidence and trust in the motivations and objectivity of their management they would in most conceivable cases accept management's decision.

With regard to changes in the DPO process several suggestions were offered. One person suggested that any peer review panel have Union representation to reduce the chance the panel would be unduly influenced by management. Several suggested that branch management should not be involved in the filing of a DPO. One person suggested that a DPO be given the same status as an allegation. That person also said something needs to be done to assure an individual is not stigmatized for filing a DPO.

Report to Subpanel 3 of  
NRC's Differing Professional Opinions Special Review Panel  
by Janice E. Moore, OGC  
Member, Subpanel 3

Case Study 2-1

A Region I employee was selected from a list of names provided by the Region of employees who had raised a concern but had not followed the DPO process. He was interviewed as was the person who was his Branch Chief at the time the concern was raised. The purpose of the interviews was to determine why the employee did not use the DPO process, and to determine how the employee's management reacted to his concern.

The employee found what he considered to be a technical problem at a plant which was close to obtaining an operating license. He wrote a note expressing his concern to his section chief. The section chief forwarded the note to the Branch Chief, and orally relayed the employee's concern to the Branch Chief.

The manager stated that he then spoke with the employee to elicit the details of the employee's concern, and to determine what action the employee thought the NRC should take to resolve the concern. The manager then forwarded the employee's concern to NRR because of its relationship to the licensing of the plant and, according to the manager, a provisional condition was placed in the license to address the concern. The manager stated that he discussed the resolution with the employee and believed the employee was satisfied with the resolution.

The employee also indicated that his concern was resolved, but he indicated that it was resolved by events rather than solely by the action taken by the agency. The employee believes that although management did not agree with his position at the time he raised his concern, by the end of the matter they had changed their position. The manager interviewed did not indicate that he disagreed with the concern, but rather stated that it was a valid one.

The employee was not sure that he got an adequate chance to express his views, principally because the response he received was a request for more details. He also thought that his management was inclined to be more lenient with the licensee than he might have been. However, the employee stated that he found the process he followed to be a satisfactory one and one in which he would not hesitate to engage again if he had a concern to raise.

The employee was specifically asked by his management whether he wanted to file a DPO on the matter. His supervisor apparently offered to do the research to determine how the process would work. The employee indicated that he did not wish to make it a DPO. The employee indicated during this interview that he did not want to pursue that route because he felt the process might be too complicated and too time-consuming. He also seemed to indicate that he did not believe the benefit to be obtained from that process would be worth the effort. He thought some sort of DPO process was necessary as the final recourse for an employee who could not get his

concerns resolved any other way, but the employee seemed to prefer the route he took. He seemed to indicate that he might have used the process had it been much simpler such as a one-page form.

The employee believed that his raising of the concern had a positive effect on the licensing of the plant in question and his supervisor agreed. However, the employee expressed some uncertainty as to how significant that impact was, while his supervisor indicated that, but for the action of the employee, the agency would not have taken the action it did. The manager seemed to believe he had made the importance of the employee's contribution clear to the employee.

This particular manager seemed very much aware of the existence of the DPO process, and did not seem reluctant to have an employee use the process. He did indicate, however, that he preferred to resolve employee concerns through an informal process. He viewed the use of the DPO process as an indication that there was a disconnect between the employee and his management. He believed that most, if not all, concerns should be capable of resolution without the necessity of resorting to the DPO process.

Both the employee and his supervisor indicated that there were no negative repercussions from the employee's action. They both indicated that it was the employee's job to raise concerns he found in the course of his job. As stated above, the employee indicated that he would not hesitate to raise concerns in the future. The manager believed that those he supervised felt free to raise such concerns, and felt free to take those concerns to a higher level of management should they believe it to be necessary. In this case the employee did not find it necessary to go to higher management because his supervisors responded to his concern, and the concern was ultimately resolved to his satisfaction.

#### Case Study 2-2

The purpose of the interviews conducted of OGC personnel regarding the DPO process was two-fold. First the interviews were intended to determine why lawyers generally do not file DPOs. Second, the interviews were designed to find out what steps were taken by those attorneys who had disagreements with a given office or staff position to resolve those disagreements.

Interviews were conducted with eight attorneys and one supervisor. The attorneys were selected from various divisions of OGC. An attempt was made to speak with attorneys who have been with the agency for a long period of time as well as some who have been with the agency for a relatively short time.

All of the attorneys interviewed indicated that they were generally aware of the DPO process, although they had not specifically read the appropriate manual chapter and were not familiar with the details of the process. Two of those interviewed indicated that they had specifically thought of filing a DPO. A third attorney indicated that he might have thought about it but could not remember. The remaining attorneys indicated that they have never felt the need to file a DPO.

In the case of those attorneys who had not considered using the DPO process, they did not indicate that it was because they had never disagreed with proposals of the office or the Staff. Rather, they indicated that their disagreements were resolved by an informal process. This process involved making management aware of their views either orally or in writing and having their views considered. If their views were not accepted, the attorneys felt that they understood the reasoning behind the decision and believed that the position taken was one which was arguably correct. Therefore, the attorneys believed their views had been heard and considered, and that they were involved in the compromise which was ultimately reached. These attorneys did not feel that there was any management disapproval due to their expression of their views.

Of the two attorneys who specifically recalled considering filing a DPO, neither found it necessary to take that step. Both attorneys raised their concerns with their supervisors. Their disagreements were ultimately resolved by management to their satisfaction. Neither of these attorneys indicated that they had experienced any repercussions from the airing of their disagreements. One of the attorneys indicated that he had specifically told his supervisor that he intended to file a DPO if the Staff continued to maintain what he viewed to be an incorrect position. It was his supervisor who at that point undertook to resolve the matter. Both of these attorneys indicated that their management was responsive to their concerns. They also indicated a belief that they could, if necessary, have expressed their concerns to the highest level of management in the office.

All of the attorneys interviewed agreed that as a general matter lawyers do not file DPOs because differences in positions mostly involve differing interpretations of the facts or the law, and that a number of such interpretations could be arguably correct. In view of their training, the attorneys indicated that unless a position was legally or morally untenable, they would be able to argue the merits of the position even though they might not agree that it was the best position which could be taken. Some attorneys interviewed stated that they did not believe the legal positions they took directly affected the public health and safety, and so they did not believe any disagreements they might have had with a given position were of the type which should result in a DPO.

Only one of the attorneys interviewed expressed it as his view that people might not file DPOs because it would adversely affect his/her career. Others did, however, indicate a hesitancy might exist to filing such opinions because it would affect the relationship they had with their supervisor. They did not indicate that the supervisor would consciously engage in retaliation. However, some of the attorneys interviewed believed that a supervisor might feel less comfortable with someone who filed a DPO and would somehow think less of that person. Finally, all of the attorneys interviewed pointed to their ability to refuse to sign any document containing a position with which they disagree as a satisfactory method for expressing their disagreement. The attorneys viewed this mechanism as one which divorces them from a position with which they disagree and thus relieves them of responsibility in the matter.

In summary, it appears from the interviews that lawyers do not generally find it necessary to file DPOs for several reasons. First, there is an informal mechanism in place for the airing and resolution of disputes or disagreements concerning the appropriate position to be taken which the attorneys find satisfactory. Second, at least some attorneys view the DPO process as one to be used when a particular concern which directly affects the public health and safety is at issue, and not a process to be applied to positions which have no such direct effect. Finally, the attorneys believe that as long as a position is not immoral or illegal, they can argue that position despite the fact that they do not agree with it. The attorneys interviewed also believed that they have a way of divorcing themselves from a position with which they do not agree which consists of refusing to sign a document being filed which contains that position.

During the interviews several recommendations were made concerning possible changes or additions to the standard DPO process. The first was that both supervisory and non-supervisory personnel should receive training in the mechanics and objectives of the DPO process. Second, the existing process should be simplified. It was also recommended that once someone has filed a DPO, there should be some procedure short of the grievance procedure for that person to use to obtain a transfer if he/she believes that the working atmosphere has become unhealthy due to the filing of the DPO.

Report to Subpanel 3 of  
NRC's Differing Professional Opinions Special Review Panel  
by Norman Wagner, NRR  
Member, Subpanel 3

Case Study 3-1

Licensing practice had been to limit equipment room temperatures were limited based upon tests where equipment was started with room temperatures equal to or greater than the limit. During relicensing, a licensee objected to this Technical Specification room temperature limitation. The reviewer forwarded a request for additional information to the licensee covering this objection. The licensee provided no response to the reviewer except to show that the equipment had started at the plant at room temperatures lower than the limit.

The reviewer's supervisor had discussed the problem with the equipment assembler and the licensee's staff who concluded that starting the equipment engines in rooms at temperatures less than the limit would cause no problems. The supervisor then ordered the reviewer to close out the issue based on the conclusions reached by the licensee's staff and the equipment assembler without any further data. The reviewer (together with another reviewer) disagreed. The reviewer wrote the SER, as requested by the supervisor but refused to concur and wrote a dissenting memorandum to the Assistant Director. The Assistant Director was advised of the situation and referred the matter to a separate Branch Chief who had been involved in problems with this equipment. The Branch Chief agreed with the earlier opinions by the equipment assembler and the licensee based upon discussions with equipment assembler and other consultants - still without data.

Meanwhile another plant which had previously agreed to examine the problem, by inspecting for wear and tear periodically after starting the equipment every month below the temperature limits, requested to delete the testing proposal. The supervisor then approached the reviewer and requested that the reviewer prepare an SER for this second plant similar to that provided for the first plant. In addition, the supervisor requested that the reviewer concur in the SER, but he refused to concur. The supervisor concurred for the reviewer without the reviewer's knowledge while the reviewer was on vacation.

The reviewers appraisal for this period was FS where heretofore the reviewer had received E or O; the supervisor noted that he had to do extra work because of the disagreement.

The reviewer did not go through the DPO process because his supervisor stated that continued dissent would "cause problems" implying reprisal for such dissent.

When asked whether he would file a DPO in the event of another dissenting opinion the reviewer stated that he would have to evaluate his supervisor before filing since, he felt that there is no protection against subtle actions such as those involved in an appraisal.

### Case Study 3-2

The reviewer took exception to a licensee's conclusions as to the cause of a catastrophic failure of a component. The reviewer's supervisor agreed with the licensee's conclusions and insisted that the reviewer agree with those conclusions. The reviewer continued to disagree and, upon the supervisor's continued insistence that the licensee was correct, asked to be reassigned - and was. The reviewer's appraisal reflected this disagreement since, although receiving glowing reports from his reassignment managers, received only a fully successful rating although he had received only excellent and outstanding ratings in previous years. The reviewer contested the appraisal by putting in a grievance which resulted in deletion of the negative aspects of the appraisal.

The component failed again, catastrophically. This occurred during the grievance process. The reviewer thought about writing a DPO prior to the second catastrophic failure but decided against it this time. He had no need to do so once events confirmed his suspicions as to the cause of the failure. The reviewer felt strongly that introduction of a DPO would be viewed negatively by NRC management, resulting in damage to his career, thus was generally against filing a DPO.

### Case Study 3-3

A project manager (PM) received information from a reviewer that an SER had been issued which closed out some open issues which the reviewer stated were open issues and had not been resolved and that the SER should be revised to so state. The PM spoke to another reviewer at a private company, which had been hired as a subcontractor, who confirmed that the plant had problems in this area. The PM then recommended that the NRC reviewer file a DPO to which the NRC reviewer responded negatively, stating that he considered a reprisal to be a likely result of forwarding a DPO. The PM disagreed.

The PM extensively discussed the issue with the reviewer working for the subcontractor who explicitly identified the problems that still existed with the plant. The PM then looked for information to substantiate the SER but could find none.

A series of meetings was then conducted at the Branch Chief level and above with the Branch Chief who continued to state, adamantly, that the plant protection was adequate. A senior NRC official proposed, about a week before the date for licensing the plant, that the plant be licensed and that the fire protection provisions be confirmed afterwards; this was rejected by both the PM and Branch Chief.

The PM then wrote a letter for the record with copies to the Commissioners and NRC management outlining the issue and sent the letter by teletype to the Commissioners on the morning before meeting with the Commissioners to discuss licensing of the plant; the PM also sent a copy of the letter to senior NRC management. The PM was then directed, by the Director of Licensing to make the staff presentation to the Commissioners with the management recommendations



that the plant be issued a license after which the PM was to discuss the open issues relating to fire protection and to recommend that a license not be issued, in the PM's opinion.

The meeting with the Commissioners was postponed until later that day. Meanwhile, senior NRC officials called the PM to a meeting in which the PM was advised that they had decided not to issue a license at that time. In this case the system worked although no official DPO was forwarded. Afterward, the PM received an award. The PM, who has since left NRC, was asked, whether, if still an NRC employee and an issue were raised wherein the DPO was to be considered, the PM would introduce a DPO. The PM stated that positive and negative aspects would have to be reviewed "long and hard."

The PM suggested that the present DPO system could be improved by maintaining the anonymity of the complainant, perhaps by use of a neutral intermediary such as an ombudsman to handle the DPO complaint.

### Case Study 3-4

#### Unsolicited Comments

- I. A person stated that the DPO process, even when working well, was clumsy and took too long to verify the DPO issue. In addition, the process is not supported by upper management and the process is unrewarding to persons assigned to the DPO panels; this impression was provided by persons who had, previously, been assigned to working DPO panels.

The person providing the statement said that he had supported an issue contrary to the position then in vogue at NRC. He felt that he was stigmatized by that support although there did not appear to be any reprisal directed at him.

This person would not use the DPO process because of the stigma attached to its use by upper management.

- II. Another person wished to discuss treatment of a DPO complainant. The complainant's Branch Chief considered the complainant a troublemaker and was out to "get" him stating that the complainant would never be rewarded for turning in a DPO. This second person continued, stating that he declined to concur in the final report concerning the DPO because the issues had become diluted and some had been removed so that it was not as written by the complainant. This person continued stating that he would not issue a DPO because a DPO complainant is considered a troublemaker.
- III. A DPO complainant (in this case one who filed a DPO) stated that he felt compelled to write a DPO regardless of the potential adverse effect on himself because he was ultimately responsible to the American public rather than to NRC management. Further, he considered it most difficult for the Office Director, to whom the DPO is addressed, to reverse his (the Office Director's) position once having found a particular position acceptable; this could be accepted by mature managers but not otherwise.

While a negative finding by the Office Director could be appealed to the Commissioners, the DPO exponent felt that he would be adversely affected, whereas if the DPO stopped at the Office Director level, it could be found acceptable that the DPO had been proposed and "settled" at the Office Director level) i.e., within the NRC operational chain.

In the case of this complainant, the EDO, himself, provided the DPO to the Commissioners so that application to the Commissioners was not required. A request for peer group review by the complainant was never implemented by management. The issue raised by this complainant in the DPO was rejected by management. Nevertheless, this complainant stated that, where necessary, he would submit a DPO for any other issue where he felt that the accepted position was in error, regardless of the possible reprisals and resultant negative feedback which could include lack of promotions. He recommended that we statistically review promotions received by complainants and NRC staff which did not institute DPO's to determine whether the hypothesis of reprisal by lack of promotion is a valid one.

He noted that the DPO system forced an adversarial confrontation with one's own management and suggested that a third unbiased party (such as an ombudsman) be introduced to avoid such confrontation. Lastly, he noted that DPO managers have too much at stake to OK DPO's.

Report to Subpanel 3 of  
NRC's Differing Professional Opinions Special Review Panel  
by Warren Minners

Case Study 4-1

DPO 22 concerned interpretation of the 10CFR50 Appendix R requirements for fire protection. Five fire protection engineers (three in NRR and two in Region III) jointly filed a DPO that concerned "certain new interpretations of Appendix R which are considered by these staff members to be contrary to existing guidance and not conducive to timely or consistent resolution of Appendix R issues." The issues were generally agreed to be not technical, but related to NRC fire protection policy. Thus, the resolution of the DPO was to review the policy by a Steering Committee whose members were at the Division Director level of management. The Steering Committee concluded that the positions defined in the new "interpretations" are technically and legally consistent with Appendix R. The DPO was formally resolved by a memo from the Director NRR that determined that the "DPO does not justify modification of the management position taken in SECY-85-306," which incorporated the new interpretations.

There was general agreement that the DPO was the result of a lack of communication. Management was making significant changes to past practices, but not explaining the reasons. One interviewee noted that "Management knew that the DPO was coming, but sat back and said, let it come." The DPO was filed because the originators had exhausted everything else, were frustrated and needed to have their opinion considered and formally resolved. However, there was not a total absence of communication since the staff knew what changes were being made and reviewers did present their concerns to higher levels. Their concerns seemed to focus on formal consideration and resolution.

Two of the originators were satisfied with the resolution of the DPO. Their satisfaction was based more on the fact that their opinions were considered rather than that their opinions were adopted, which were not. Two of the originators were not satisfied with the resolution. Conversely, their dissatisfaction was based on the rejection of their technical opinions even though they were considered. The fifth originator left the agency.

Most of those interviewed believed that the DPO process is good. At least one thought the process was necessary to allow expressions of opinions. All agreed that the process took too long, was cumbersome and required too much time and effort of those involved. One interviewee thought that this partially resulted from the Office Director going "out of his way to placate" anyone who filed a DPO. Those involved, but not originators, were especially critical of the time required. Most wondered whether the DPO was worth all of the effort.

None of the interviewees would now file a DPO - although some qualified this and still would file a DPO if the situation warranted it, e.g., "was grave." One originator considered filing a second DPO on another issue, but sent a

memo-to-file instead. Another interviewee who was not an originator, considered filing a DPO, but did not because it would require too much time. One originator believed that with his present management chain, he would never feel the need to file a DPO. Another interviewee did not file a DPO because he felt that his management would not be receptive, even though management had suggested that he do so.

Many thought that DPOs would not be necessary if the Open Door Policy was effective. One interviewee thought that a memo-to-file was sufficient in most situations. He felt that some documentation was necessary to protect him from becoming a scape-goat. One interviewee involved in resolving this DPO recommended that the DPO procedure explicitly require that the originators state "what would be needed (sufficient) to resolve the DPO."

Most of the interviewees thought there was no retaliation as a result of the DPO. One originator was concerned at the outset that "sanctions" might be applied, but did not perceive that any had been. One interviewee thought that the originators has acquired some status as a result of their DPO, although the originators were not so sure. One originator noted that a "we versus them" atmosphere was present during the resolution process. One interviewee, not an originator, believed that he suffered retaliation which was the reason for his present less desirable assignment.

#### Case Study 4-2

##### Unsolicited Comments

A technical reviewer who was involved in a difference of opinion, but did not file a formal DPO, stated that a staff member should be able to have a difference of opinion and not be considered to be "off-the-wall." He felt that reviewers should not be forced to follow rigid direction, but that managers need to handle differences appropriately. He felt that in some cases managers only want to hear one side. In his opinion the formal DPO process is "overkill."

Copies of the Jack Anderson and Joseph Spear Washington Post column, "NRC Cracks Down on Criticism" with a marginal comment, "This is precisely why the DPO process at the NRC does not work!" and the Inside NRC article, "New Incident Surfaces in Congressional Probe of Roberts Conduct" were anonymously submitted.

A technical staff member submitted copies of previous memoranda which outlined his differences on some technical issues, were related to his DPO, or provided comments on the DPO process. The comments on the process included suggestions that a peer review group should be comprised of people of equal or better qualifications in the field than the DPO originator, concerns should not be limited to the subject matter of the DPO originator's organization unit, an ombudsman has a lot to offer, and managers should be precluded from using coercive measures against the DPO originator.

An administrative staff member submitted for "review and evaluation a formal Differing Professional Opinion which has been submitted to NRC management for consideration." The EDO found that since the DPO "concerns a matter which was subject to the negotiated grievance procedure, it is rejected and will not be processed further under Chapter 4125."

Report to Subpanel 3 of  
NRC's Differing Professional Opinions Special Review Panel  
by John D. Randall, RES  
Member, Subpanel 3

Case Study 5

Introduction

From September 14, 1987 through October 2, 1987, I interviewed several NRC staff members who contemplated filing Differing Professional Opinions (DPO's) in accordance with the procedures given in NRC Manual Chapter 4125 (MC 4125) but ultimately decided not to do so. In those cases in which the staff members elected to make their differing opinions known to their supervisors with whom they were disagreeing, and in which other parties were affected by the disagreement, I also interviewed the supervisors and other affected parties.

At the beginning of each interview conducted at Headquarters, I informed the interviewee that my interest in the differing opinions to be discussed was to examine the expression of these opinions for any insight that the expression of the opinions might provide for improving the DPO process. I stated that I was not trying to resolve or take sides in any conflicts that might have arisen in connection with the expression of the differing opinions. For each such interview, I informed the interviewee of the contents of the Opening Statement prepared by the Special Review Panel.

For each interview conducted away from NRC Headquarters, I mailed a letter stating my interest in the differing opinions to be discussed and attached to the letter a copy of the Opening Statement so that the interviewee would have the letter and the Opening Statement well in advance of our interview. Copies of a typical letter and its attachment are provided in Enclosure 1.

In all of the interviews that I conducted, I promised the interviewees confidentiality in preparing this report. None of the interviewees asked that his or her name be used in this report. The case studies reported here are based on extensive notes that I took during the interviews, my recollection of the interviews, and written material that was provided to me.

The first case study reported here concerns the differing opinions expressed about modification of inspection reports on the Comanche Peak Steam Electric Station (CPSES), a nuclear power plant under construction near Granbury, TX. This case involves many more people than I could interview for the purpose of preparing this report. However, by going through some of the documentation of the case, and by acting on the recommendations of some of the early interviewees, I believe that I was able to interview enough interested parties in the case to get the information needed for this report.

The second case study, much less complicated than the first one, concerns differing opinions expressed by a RES staff member over the awarding of some contracts to a contractor whom the staff member judged not to be qualified for

performing the work called for in the contracts' Statement of Work. In this case, the differing opinions were exchanged primarily between the staff member and his Branch Chief and I interviewed both parties.

The third discussion of case studies involves some situations in RES that, either because of the non-communication of the differing opinions to other staff or management or because of the age of the case, do not involve other staff or management still at NRC. These case studies are based solely on interviews conducted with the persons holding the differing opinions.

### Comanche Peak

On several occasions from September 14, 1987 through September 24, 1987, I interviewed several individuals who were involved with various aspects of the situation at the CPSES that led to the issuance by NRC's Office of Inspector and Auditor of "Report of Investigation 86-10, Allegations of Misconduct by Region IV Management with Respect to the Comanche Peak Steam Electric Station" (hereafter called OIA 86-10). The incidents leading to the issuance of OIA 86-10 are discussed in that report, a review of that report (the report of the Comanche Peak Report Review Group), published testimony to the United States Senate (Hearing before the Senate Committee on Governmental Affairs, April 9, 1987), and several other documents.

Briefly, what happened at the CPSES was that a Resident Inspector thought that inspection findings made by him and some of his colleagues were being downgraded in or deleted from final Inspection Reports without justification by various managers in Region IV, where CPSES is located. The Resident Inspector decided to take a formal stand against what he believed to be improper alterations of inspection reports and he chose the Open Door Policy, described in MC 4125 as an alternative to filing a DPO, as the vehicle for taking his stand. He contacted one of the Commissioners and expressed to the Commissioner his concerns that important violations of NRC regulations and American Society of Mechanical Engineers standards were being ignored by Region IV management. He also alleged the Region IV management had tried, with some success, to coerce him to give formal approval to Inspection Reports that he thought were too lenient toward the licensee, the Texas Utilities Generating Company. The Commissioner authorized OIA to investigate the Resident Inspector's allegations of managerial misconduct in Region IV. (Note: Although the CPSES is located geographically in Region IV and its inspections were managed by Region IV at the time when these allegations were made, its NRC inspection has since been turned over to NRC's Office of Special Projects.)

The OIA investigator assigned to examine the Resident Inspector's allegations concluded that many of the allegations were valid. He stated his conclusions in early drafts of OIA 86-10. However, the final version of OIA 86-10 does not contain all of the conclusions reached by the OIA investigator and he has alleged that OIA management deleted or downgraded his findings.

Clearly this case is a very complicated and controversial one. The conflicts that have arisen from it have not been resolved to the satisfaction of all parties involved. As a member of Subpanel 3 with no training or experience in resolving such a complex conflict, I examined this case only for insights &

that it might provide for altering the DPO process so that, for example, had the altered DPO process been in place when the Resident Inspector contemplated using it, he indeed would have used it.

I interviewed several players in the CPSES drama: at NRC Headquarters; at the Region IV offices in Arlington, TX; and at the site of the CPSES. Several DPO-related issues, which can be stated in the form of questions, recurred throughout the interviews. The questions are listed below.

- 1) Why was the DPO process not used?
- 2) Should the DPO process have been used?
- 3) Would you use the DPO process, in its present form, under any circumstances?
- 4) How can the DPO process be improved?
- 5) Would you use the DPO process if it were improved?
- 6) What can be done to enhance the credibility of the DPO process?

In the following text, responses to these questions are discussed without attribution to the respondents. An observation from my notes and recollections from interviews is that there was very little correlation between the type of answer given and the type of person giving it. A response that might seem to be a typical staff member's response or a typical manager's response was in fact often shared by staff members and managers.

1) Why was the DPO process not used? The DPO process was not used because there was a perception that Region IV management had adopted a policy to be lenient toward the licensee in reporting inspection findings. Given the way that a formal DPO has to go through several stages of managerial consideration, there was a perception that the DPO would not get unbiased consideration at any level of management in Region IV. Furthermore, in light of alleged harassment by Region IV managers for expressing opinions differing from their own, issues involving inspection findings, which are appropriate policy and technical issues for DPO's, were thought to be intertwined with issues related to alleged harassment by Region IV management, which is an appropriate issue for a grievance but not a DPO.

2) Should the DPO process have been used? Not surprisingly, answers to this question varied from "no" to "maybe" to "yes."

Two reasons for answering "no" were given in response to Question 1. Filing a DPO was called a "kiss of death" for one's career. Even though MC 4125 specifically prohibits retaliation for filing DPO's, those who believed that a DPO was a kiss of death careerwise thought that retaliation would occur anyway and that NRC management would not try to stop it. From an entirely different point of view, one respondent said that if all NRC employees behaved professionally, the DPO process would not be needed and the series of events described in OIA 86-10 would not have happened.



Those respondents who answering "maybe" did so because they were not sure that the DPO process would have led to a resolution of the issues raised in OIA 86-10. These respondents pointed out that although MC 4125 imposes a schedule for resolving issues raised by a DPO, allowance is made for the schedule to slip and, consequently, there are old, unresolved DPO's in existence at NRC.

Some of those respondents who answered "yes" thought that the disagreements over the technical merits of inspection findings could have been separated from the allegations of managerial misconduct. These respondents did not believe that Region IV management would retaliate against anyone who filed a DPO in Region IV. One respondent said that he was appalled that the DPO process was not used. Other respondents stated that if a Region IV-wide or NRC-wide policy that DPO's must be used to resolve sufficiently contentious technical disagreements were in place at the time of the CPSES allegations, then the DPO process would have had to be used. There is more discussion of this point in the last paragraph of the discussion of Question 3.

3) Would you use the DPO process, in its present form, under any circumstances? Here again, the responses ranged from "no" to "maybe" to "yes."

Many of those who responded "no" did so because of a perceived threat of retaliation by management. Some of these respondents said that they were familiar with instances of managerial retaliation for DPO's that had been filed both in Region IV and elsewhere inside NRC. The alleged retaliation took several forms, among them calling into question the qualifications and character of the person who filed the DPO, reassignment of the person who filed the DPO to a (usually) inferior position, and abuse of confidentiality of the DPO process by leaking the name of the person filing the DPO and ridiculing both the person and the contents of the DPO. One respondent said he that heard only about "bad" DPO's but, "Who can remember a good DPO?" Some of the respondents stated that Region IV management does not abide by the first sentence in MC 4125-021, given below.

It is the policy of the Nuclear Regulatory Commission, and the responsibility of all NRC supervisory and managerial personnel, to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices.

The respondent to Question 2 who said that if all NRC employees behaved professionally, the DPO process would not be needed and the series of events described in OIA 86-10 would not have happened said that he would not use the DPO process because it would not be needed. Another respondent said that if he made his differing views known to Region IV management through its command chain, e.g. by memorandum, he would be satisfied that his differing opinion had been stated and he would not need to resort to the DPO process. One other reason given for not filing DPO's was that the time needed to resolve a DPO is often much longer than the life of the importance of the issue(s) in dispute.

Those respondents who answered "maybe" did so because they thought that

if the issue in question were important enough with respect to NRC's mission to protect the public health and safety from radiological hazards, they would file the DPO even if retaliation for doing so was a possibility. These respondents also said that they would try more informal and less contentious means of expressing differing opinions before resorting to the DPO process.

Those respondents who said "yes" thought that a DPO should have been used in this case. They pointed out that Region IV now has policy guidance in place that makes the filing of DPO's mandatory if more informal and less contentious means of resolving differing opinions do not work. A copy of this policy guidance is given in Enclosure 2.

4) How can the DPO process be improved? Three respondents thought that this question was irrelevant, one because he thought that a high degree of professionalism would obviate the need for the DPO process, one because he thought that making his differing views known by memorandum was sufficient, and the last because he thought that the mechanics of the DPO process did not need to be changed. The third respondent said that he thought that the credibility of the DPO process was undermined by NRC management. Other respondents agreed that a real, as opposed to a required but not heeded, removal of the potential for managerial retaliation for filing DPO's would, by itself, improve the DPO process. The issue of credibility of the DPO process is addressed further in connection with the responses to Question 6.

Suggestions for improving the mechanics of the DPO process included simplifying the paperwork required for filing a DPO, the appointment of impartial referees who could mediate DPO's at a very early stage of the DPO process, and extending the right to file DPO's to contractors and consultants. Several respondents cited examples of contractors and consultants whose contracts had been terminated allegedly in response to their taking issue with some NRC position or policy.

The need for simplification of the DPO process was based on the perception, mentioned in the discussion of responses to Question 3, that the time needed to file a DPO is often much longer than the time during which the issue(s) raised by the DPO are important. An analogy was made between filing a DPO and filing an agency grievance: a grievance is filed at its first level simply by the transmission of a short memorandum from the person grieved to the person who allegedly caused the grievable action; likewise a DPO could be initiated by a short memorandum from the filer of the DPO to the appropriate NRC manager. At this point, an impartial panel or an ombudsman, analogous to grievance referees from the Office of Personnel, could try to mediate the DPO and seek an expeditious remedy for the issue(s) raised. If that procedure fails, the more complex documentation and procedures called for in the current DPO process should be used. Some respondents said that if the more complex procedures of the DPO process had to be followed, then consideration of the DPO should move up the managerial chain and should not start at the top and come down. One respondent suggested that, should NRC have an Inspector's General office, that office should handle the DPO.

Those who suggested the use of the impartial panel or ombudsman mentioned in the previous paragraph said that such persons should be required to maintain the confidentiality of the person filing the DPO. One respondent

suggested using regional counsels as ombudsmen. He had no suggestion about how to select ombudsmen in Headquarters offices.

Another suggested method for initiating a DPO in a simple way is to have non-concurrence on an NRC document be interpreted as an indication of a differing opinion that should be resolved by the DPO process. Under this system, the manager responsible for the document would be responsible for reporting the differing opinion to his superior and the onus for initiating the DPO would fall on the manager.

5) Would you use the DPO process if it were improved? Except for the respondent who thought that professionalism would obviate the need for the DPO process and the respondents who thought there is nothing wrong with the mechanics of the present DPO process, all other respondents said that they would use the DPO process if it had the right improvements. Although the respondents had occasionally vague and occasionally contradictory ideas about the improvement of the mechanics of the DPO process, there was general agreement that the credibility of the DPO process had been undermined by the perceived negative reactions by NRC management to past DPO's.

6) What can be done to enhance the credibility of the DPO process? A few respondents found this question to be irrelevant because they thought that the DPO process is credible as it stands. Other respondents thought that the process lacks credibility.

As indicated in the previous discussion, while some respondents made suggestions for improving the mechanics of the DPO process, more respondents, including the ones who suggested the mechanical improvements, agreed that the DPO process lacks credibility. One reason, mentioned several times already, is that the perception exists that NRC management does not abide by the rules of the DPO process. Another reason given was that some NRC managers, including some very high level managers, were alleged to have said that they would do almost anything to avoid having a DPO filed by someone working for them. These managers were said to view a DPO by one of their staff or lower level managers as a mark against their managerial abilities. Finally, one respondent pointed out that Appendix H of MC 4125 itself undermines the DPO process by offering it as an option to be considered along with expressing differing opinions by using the Open Door Policy or raising the issue(s) in question with the Advisory Committee on Reactor Safeguards (ACRS).

Most respondents who thought that the present DPO process lacks credibility were pessimistic that any mechanical changes in the process could, by themselves, improve its credibility because of the perceived negative attitude of NRC managers toward the process. However, there were respondents who were more optimistic that the DPO process's credibility could be improved.

One respondent said that the DPO process needs "importance and integrity." He said that Region IV's policy, as stated in Enclosure 2, of having the DPO process be the only way to resolve technical and policy disagreements that can not be resolved by more amicable and informal means, should be adopted by all of NRC. He made a comparison with the American judicial process, which is the only legally available process in American society at large for settling disputes that can not be settled

informally and amicably. The risk of filing a DPO should be seen as less than the risk of not filing a DPO and allowing the issue(s) in question to remain unresolved, just as the risk of appealing to the judicial branch of government is less than the risk of not appealing to the judicial branch and allowing a legal dispute to remain unresolved. Removing the alternatives of the Open Door Policy and appeal to ACRS as ways of expressing differing opinions would establish the importance of the DPO process.

Establishing the integrity of the DPO process, according to several of the respondents, is going to be very difficult unless NRC management makes a concerted, honest effort to change the perception that it either does not take the DPO process seriously or views it as a threat. According to these respondents, NRC management could begin by respecting the confidentiality of those who file DPO's and by not reacting to the filing of DPO's as threats to their positions. Also, NRC management will have to establish a record of not retaliating against staff members who file DPO's. Establishing such a record would take a very long time to accomplish.

#### Office of Nuclear Regulatory Research

I interviewed several RES employees who considered filing DPO's but decided not to do so. All of the situations that I studied in RES were much less complicated than the CPSES case. One case did involve extensive interaction between a RES staff member and his Branch Chief. The staff member made his opinions known formally by writing memoranda to his Branch Chief. I interviewed both parties. In all of the other cases, the employees who contemplated filing DPO's did not use any alternative means of expressing their differing opinions formally. What follows is a description of the first case followed by a summary of all of the other cases.

#### Differing Opinion over Contracted Research

In 1985 and 1986, a RES staff member became concerned that two substantial research contracts were being awarded to a contractor who, in the staff member's opinion, did not have the capabilities for doing the work called for in their Statements of Work. An essential element of the work required expertise in the staff member's field, but neither the RES personnel awarding the contracts nor the contractor's personnel had strong expertise in this field.

The staff member held several informal discussions with his Branch Chief and was not satisfied that his views were receiving adequate attention. He was very concerned that NRC might be wasting considerable funds on essential nuclear safety-related work by having the wrong contractor do the work. Because of his concern, he decided to explore the possibility of filing a DPO with his Branch Chief concerning the two contracts. He discussed the possibility of filing a DPO with NTEU representatives and they urged him to file it.

However, after examining the requirements of the DPO process, the staff member decided that too much paperwork was required to carry the process out and that too much time would elapse during the DPO process for it to have any beneficial effect that would lead to the awarding of the two contracts to more

suitable contractors. The staff member decided to make his views known in a formal way by writing memoranda to his Branch Chief on each of the contracts in question. The staff member said that he was not deterred from filing a DPO by a fear of retaliation for doing it, he just thought that writing memoranda to his Branch Chief was a more effective way to make his views about the contracts known. Although the staff member made his views known to his Branch Chief, he believes that his Branch Chief did not take them into consideration when the contracts were awarded.

The Branch Chief agrees with the staff member that the staff member's delineating his problems with the two contracts in memoranda was an appropriate way to raise the issues that concerned the staff member. The Branch Chief does not agree with the staff member's assertion that the staff member's views were not considered in awarding the two contracts. In addition to receiving the staff member's comments, the Branch Chief solicited peer reviews of the SOW's for the two contracts from several other RES contractors. The Branch Chief said that he weighed both the staff member's and peer reviewers' comments in modifying the SOW's for the contracts before awarding them.

With respect to modifying the DPO process, the staff member said that he planned to submit suggestions for simplifying the mechanics of the process directly to NRC'S Differing Professional Opinions Special Review Panel. His suggestions will be similar to the suggestions listed in the discussion of responses to Question 4 of the Comanche Peak section of this report which recommend using brief memoranda to initiate the process and having impartial referees mediate it.

The Branch Chief said that, ideally, collegial scientific and technical discussions among RES staff and management should resolve differences of opinion arising due to the various technical perspectives among staff members representing many different areas of expertise. He thought that it would be very unusual for a DPO to be filed in RES over research issues if collegial scientific and technical discussions were working properly. He pointed out that, although all RES work is safety related, its impact is a long-term one and it does not have the immediate safety related consequences that inspection findings and licensing decisions might have.

#### Summary of Other RES Cases

I interviewed several other RES staff about differing opinions that they had contemplated formalizing, but did not formalize, as DPO's. In these cases, there was no formal notification of management about the differing opinions involved.

In the first case, a staff member was concerned that a research program was evolving that was not addressing some important, complex issues. In attempts to discuss these issues informally with his management, he perceived that his management was not interested in the issues because it was not capable of understanding them. The staff member is of the opinion that his views now are being held against him, that he has been taken out of the decision-making process concerning the research program, and that his management has slandered him by questioning his technical qualifications to others. His solution to his problem is to seek employment elsewhere.

The staff member decided not to file a DPO about his concerns because he thought that it would be a waste of time. His reasoning was that RES management would not understand the issues raised and that retaliation would be taken against him for filing the DPO.

In the second case, a staff member was concerned about the way in which a Final Rule was being prepared. Logically, the rule should have been issued after a related rule was issued by another federal agency. However, the other agency had not even issued a Proposed Rule when NRC was prepared to go forth with its Final Rule. In the staff member's opinion, the NRC Final Rule was being prepared on the assumption that the other federal agency's rule would take a certain form, as indicated by informal drafts circulated by that agency. The staff member thought that the NRC rule could be written in such a way that it would be adaptable to any form that the other agency's rule took. In addition to the issue of compatibility of NRC's rule with the draft of the other agency's rule, there also was a very serious question about whether the basis for the other rule was technically sound. Both NRC staff and managers knew that they would have to comment on the other agency's rule when it was published as a Proposed Rule. If NRC tailored its Final Rule too closely to the other agency's informal draft rule, then NRC would limit its latitude in commenting on the other agency's Proposed Rule when it was published. Although these issues were acknowledged as valid issues by licensing and other research personnel, they set out to develop a Final Rule that would be explicitly adaptable to the other agency's informal draft.

The staff member was very familiar with the evolution of this rule, having worked on versions of the rule that appeared in the Federal Register in an Advance Notice of Proposed Rulemaking and as a Proposed Rule. Several other RES and licensing staff who had worked on the Advance Notice of Proposed Rulemaking and Proposed Rule, were familiar with the technical problems associated with the other agency's informal draft, and were familiar with the NRC rule's evolution shared the staff member's opinions about how the Final Rule should be written.

The staff member gave serious consideration to filing a DPO over the way that the Final Rule was being prepared. He decided to give the preparers of the Final Rule a chance to prepare the rule and present it to the Commission. If the preparers of the rule did not provide the Commission with information on all options available for formulating the rule, the staff member planned to file a DPO. After observing and reviewing the presentation of the draft Final Rule to the Commission, the staff member decided that the preparers of the rule had presented the various options for formulating it adequately to the Commission and had incorporated many of his suggestions into the draft Final Rule. Furthermore, in his judgment, the draft Final Rule presented to the Commission was sufficiently technically sound that NRC had preserved its latitude in commenting on the other agency's Proposed Rule. Although the staff member thought that the draft Final Rule could have been prepared better -- it was still compatible with the other agency's informal draft rule but it had enough caveats to allow it to be adaptable to other forms of the other agency's rule -- he was satisfied that NRC's rule was sound enough that he did not need to file a DPO. Possible retaliation for filing a DPO was not a factor in his decision not to file one.

The third case involves a RES staff member who contemplated filing a DPO over a government policy that involved NRC and two other federal agencies. His position is that the policy is ill-advised because it is technically unsound. He believes that the government is wasting billions of dollars in implementing this policy.

The staff member was involved in the implementation of this policy at one of the other federal agencies at a very early stage. Results of full-scale testing of the technical aspects of this policy caused the staff member to believe that the policy might not be technically sound. After leaving the other agency and joining NRC, the staff member became involved in RES's efforts to support the regulatory aspects of the policy. Through this work, he became convinced that the policy was technically unsound and so informed his RES managers. He alleged that after stating this opinion to his RES managers, he was removed from the RES program associated with the policy. He further alleges that work being done now by RES in response to the policy will not help NRC make any decisions concerning the policy and that some of the subject research program's contracts were awarded to personal friends of the person managing it. He decided not to file a DPO because he thought that RES would retaliate by trying to drive him out of NRC. He was very skeptical that any changes in the DPO process would improve it. He said that any changes in the DPO process would be analogous to dressing up a corpse in order to make it look better.





ENCLOSURE 1  
TEXT OF LETTER SENT TO INTERVIEWEES



September 18, 1987

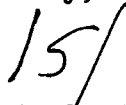
Dear \_\_\_\_\_:

I am writing this letter to confirm our appointment on \_\_\_\_\_ to discuss the events described in OIA Report 86-10 in which conflicts involving you and several other Region IV personnel over inspection reports on the Comanche Peak nuclear power plant are discussed. I am examining this case as member of Subpanel 3 of NRC's Panel on Differing Professional Opinions.

The purpose of the DPO panel is to improve the DPO process and not to resolve or take sides in any conflicts within NRC in which the DPO process was used or was considered but not used. I am investigating the Comanche Peak situation only with respect to any insight that it might provide in improving the DPO process. It is not my mandate to try to resolve or take sides in any conflicts that have arisen within NRC over events related to Comanche Peak, and I shall make no effort to resolve or takes sides in them.

In order to be thorough in this study, I have to talk to people who were involved on both sides of the Comanche Peak conflict. I am giving to each person whom I am interviewing in this study a copy (attached to this letter) of the DPO Panel's Opening Statement.

Sincerely,



John D. Randall  
Waste Management Branch  
Division of Engineering  
Office of Nuclear Regulatory Research



At the request of the EDO and with the concurrence of the NTEU, a Special Review Panel has been convened to evaluate NRC procedures for handling Differing Professional Opinions (DPOs). As part of our evaluation, persons who have had prior experience with the agency's DPO process are being asked to provide their views on how the process works and is perceived. Because you have had some experience with the DPO process, we are asking you for your views.

In order to help promote candor and frankness, we can assure you that the source of all comments will remain anonymous. Your name will not be referenced or collated with your remarks in our notes. There is, of course, no transcript or recording of our discussions, and there will be no personal identifiers in the Special Review Panel's files, notes or report.

This subpanel is one of three examining the DPO process at the NRC. Each subpanel will prepare a report of its findings by mid-October. The information will then be evaluated by the five-member Special Review Panel comprised of management, union and outside representatives. They will prepare a final report to the EDO and the Commission by the end of November. Their report will be widely disseminated as a NUREG.

Your voluntary cooperation in this undertaking is greatly appreciated, and really needed in order to assure that any impediments to an effective DPO process are identified and appropriate improvements recommended.

Do you have any questions on our objectives or process?



ENCLOSURE 2  
REGIONAL OFFICE POLICY GUIDE NO. 2201, REVISION 0  
DISPOSITION OF INSPECTION FINDINGS







UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV  
611 RYAN PLAZA DRIVE, SUITE 1000  
ARLINGTON, TEXAS 76011

AUG 29 1986

Regional Office Policy Guide No. 2201, Revision 0

DISPOSITION OF INSPECTION FINDINGS

A. Purpose:

To provide the staff with an understanding of the definite expectations of regional management concerning the identification, classification, and documentation of inspection findings, with particular emphasis on the mechanism for resolution of inspection findings involving differing professional opinions.

B. Discussion:

The function of NRC inspectors during inspections is to verify compliance of a licensee with requirements incumbent upon him, and commitments he has made to the NRC.

Inspector findings are normally discussed with the licensee during inspection exit meetings, during which the findings are normally categorized as apparent violations, deviations, unresolved items, followup items or improvement items. The licensee should be cautioned by the inspectors that the findings as he portrays them may be revised after consideration by regional supervision and management. In no case should the licensee be advised of the fact that the severity level of a violation has been determined or that escalated enforcement is being planned based on the findings from a specific inspection. After review of the inspection findings by regional supervision, determinations of severity level, and the need for an enforcement conference will be established. Subsequent correspondence with the licensee will be processed from the region, and if an enforcement conference is held, severity level determinations will be finalized after the enforcement conference.

Inspectors also identify weaknesses in licensee programs or practices which are not at variance with requirements and commitments, but which, in the opinion of the inspector should be corrected. In some cases, inspector findings may require revision of NRC requirements or interpretation of the applicable requirements or commitments. In cases of this nature and in cases needing program office guidance, the matter shall be identified by the inspector to his supervisor. If requested by the supervisor, a memorandum shall be prepared by the inspector to his supervisor, identifying the problem and proposing the appropriate resolution or posing the question on which guidance is sought. After discussion, the inspector's Branch Chief may endorse the inspector's memorandum, and transmit it to his counterpart in the appropriate program office for assistance in resolution.

AUG 29 1986

Regional Office Policy Guide No. 2201 - 2 -  
Revision 0

The process of review of inspection findings may lead to issuance of an NRC inspection report that differs in some substantial way from the inspector's original judgement. Supervision and management are responsible for evaluating the significance of an inspector's findings and for assuring that correspondence relating to these findings is consistent with NRC policy and guidance. Whenever any inspector believes that his positions are not being adequately considered as part of the normal discussion of work matters, and his concern cannot be resolved through discussion with co-workers and immediate supervision, and if the inspector believes additional review of the matter is necessary, regional management considers the individual to be under a positive professional obligation to utilize the appeal process of Manual Chapter 4125, "Differing Professional Opinions," to assure consideration of his concerns by appropriate management. Similarly, supervisors and management have the positive responsibility and obligation to process the individual's concerns in accordance with the procedures and schedules contained within Manual Chapter 4125. Failure to utilize and follow the provisions of Manual Chapter 4125 to assure resolution of identified concerns should be considered not only as nonprofessional, but also may be an indicator of unacceptable performance.

C. Action:

The following procedures are designed to assure proper consideration, documentation and resolution of inspector findings. The enclosure depicts the logic flow for resolution of findings.

1. Supervisors should discuss inspection findings with inspectors during or immediately following the inspection and solicit the views of other NRC staff on the matters under discussion. Differing viewpoints shall be discussed with the involved inspector and resolved at that stage if possible. If the issue can be resolved, the inspection report draft will be edited to reflect the final determination and issued. Satisfactory resolution includes the case where the difference is recognized to be a matter of judgement and the inspector accepts the judgement of the supervisor. Should there remain cases where a mutually acceptable understanding cannot be agreed to by all parties, or one party feels that his viewpoints have not been adequately considered, the issue shall be referred to the next higher level of supervision for resolution. The issue may also be discussed with regional management including the Regional Administrator if the concerned individual feels that further consideration may resolve the issue before issuance of the inspection report. The inspection findings should not be altered or deleted after the involved inspector has signed the report cover sheet without discussion with, and concurrence of, the involved inspector. If

AUG 29 1986

Regional Office Policy Guide No. 2201 - 3 -  
Revision 0

agreement cannot be obtained, the supervisor shall direct the involved inspector to remove the item from the inspection report for separate consideration. The inspection report shall then be issued without the questioned item.

2. After issuance of a report, should there remain concerns on the part of any person involved in the inspection report preparation process regarding the technical adequacy or accuracy of the issued inspection report, or should any party feel that his viewpoints have not been adequately considered, the concerned individual may document his concerns for full and complete consideration in accordance with NRC Manual Chapter 4125, "Differing Professional Opinions." For each item, the concern of the inspector should be identified along with the appropriate regulatory references. Each item should contain sufficient information to permit full review and consideration without referring to other documentation. The documentation shall be sufficiently complete to accurately portray the technical aspects of the concern and to explain significance to safety. The handling of the item, and the outstanding concern shall be described if appropriate.
3. The inspector's supervisor and next higher level of supervision shall review the submitted item of concern, its basis for disposition, discuss the matter with the involved personnel, and prepare a memorandum acknowledging receipt of the concern as required by NRC Manual Chapter 4125. The response shall be discussed with the concerned individual, and a copy given to him for his records. A copy of the initial concern and the response shall also be placed in the regional docket file if it pertains to a docketed facility. If the matter concerns an issue under review by a hearing board, the NRR Project Manager or appropriate program office contact shall be informed by the Branch or Section Chief.
4. If the responses prepared by supervision are not sufficient to allay the concern of the individual following the discussion, the matter shall be processed in accordance with NRC Manual Chapter 4125 for consideration by appropriate regional and headquarters management.

D. Contact:


Suggestions or comments should be directed to the Deputy Regional Administrator (ext. 222).

AUG 29 1986

Regional Office Policy Guide No. 2201 - 4 -  
Revision 0

E. Effective Date:

This Policy Guide is in effect when issued.

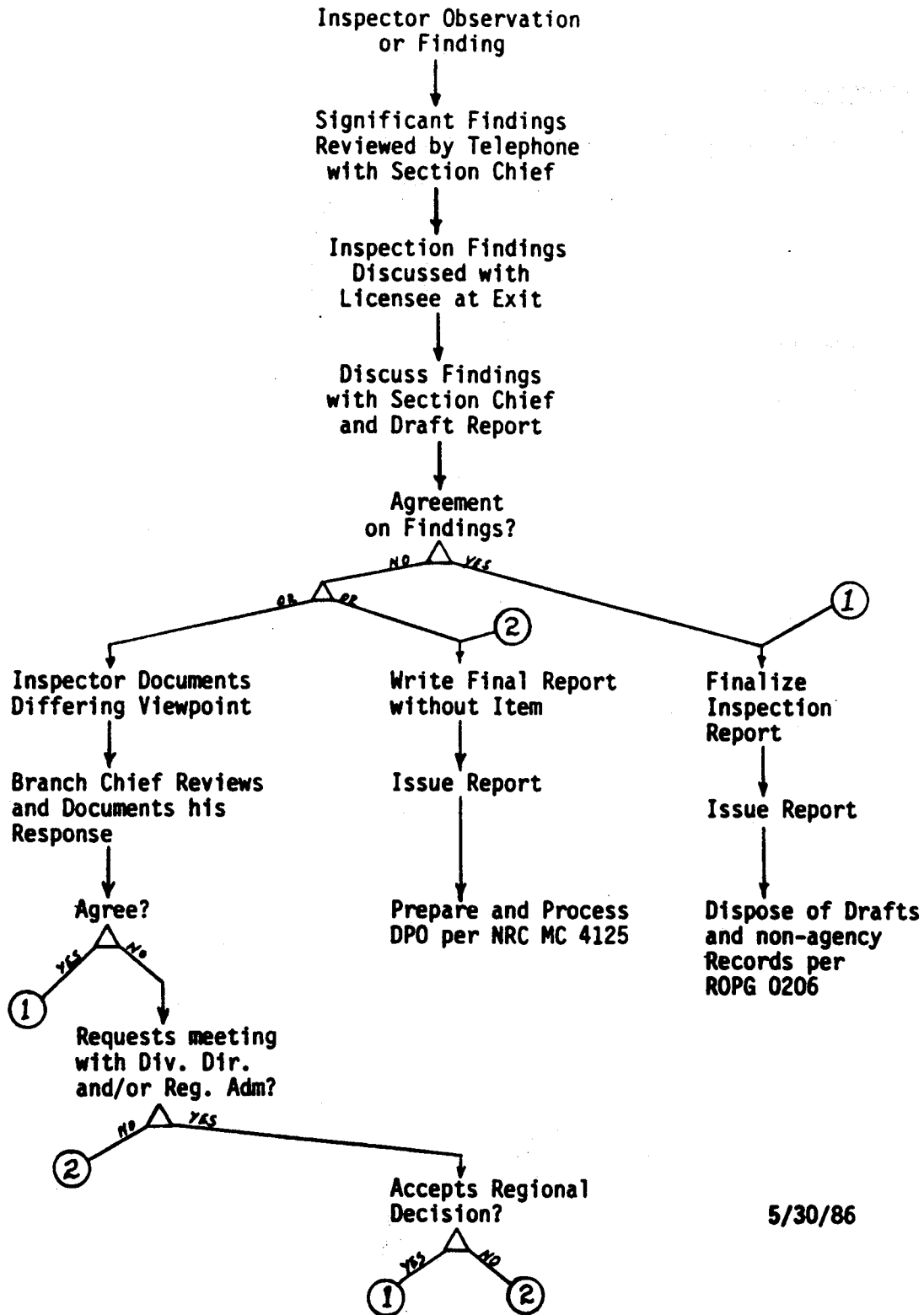
  
for Robert D. Martin  
Regional Administrator

Enclosure:  
Logic flow chart

Distribution List C

LOGIC FLOW CHART

Enclosure to  
ROPG 2201



5/30/86



**APPENDIX G**  
**CONSULTANTS' REPORTS**







UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
799 ROOSEVELT ROAD  
GLEN ELLYN, ILLINOIS 60137

October 21, 1987

MEMORANDUM FOR: Differing Professional Opinion Review Panel  
FROM: Carl J. Paperiello, Deputy Regional Administrator, Region III  
SUBJECT: CONSULTANT REPORT

This report reflects my personal views on the features that should exist in an acceptable NRC DPO process. They reflect my views from the reports prepared by the three sub-task groups, my experiences on the Region III inspection evaluation review panel, my membership on the Comanche Peak Report Review Group, and my ten years of NRC supervisory and managerial experience.

The policy ought to have a mechanism to provide staff members with a hearing or consideration of their views by an individual one or more steps above their direct supervisor. This mechanism can be relatively informal. I view it as significant that the questionnaire sent to all employees shows that 65% of the staff prefer discussion with management one step higher than their immediate supervisor as an alternative method of resolving differing opinions. I believe this position is supported by a number of statements in both Task Group 2 and the Task Group 3 reports. This would indicate that a tiered DPO process might be advantageous.

It is necessary to create an open, non-threatening atmosphere within the NRC for the process to work well. From the statements in both Task Group 2 and Task Group 3 reports, as well as responses to the questionnaire, it is clear that approximately half the staff believes that filing a DPO can adversely affect their career within the agency. Furthermore, not only the staff, but their managers feel threatened by a formal DPO. Although a good DPO procedure can help modify this feeling, only a fundamental open attitude on the part of the entire agency staff can really create this change.

Formal DPO's should be directed to a committee within the agency for review and recommended disposition. A number of statements in both task group reports indicate that a major function of the DPO process is to get the issue out of the direct line management. Some suggest directing issues to an intermediary or an ombudsman for disposition. Much discussion has gone into the use of peer panels for review of DPO's, however, in my experience, a number of issues may not be resolvable by a peer panel. For example, if an inspector believes a given issue represents a violation of the NRC regulations, a review by the Office of the General Counsel would appear more appropriate than a review by a panel of the inspector's peers. A number of alternatives to peer review have also been suggested for resolution of DPO's. It would appear to me that different issues ought to be resolved by different methods. Some issues might

October 21, 1987

best be resolved by the use of outside experts, or national professional groups, or attachment of minority opinion papers on issues presented to the Commission, and perhaps one of several other methods. I envision DPO's that can not be resolved less formally at a lower level being presented to an agency-wide committee made up of management as well as staff members who would recommend to the EDO an appropriate method for resolving the DPO. For some issues, a peer panel might be the appropriate disposition mechanism.

I recommend that the process allow weak issues to surface as well as good issues. If we truly want to insure that important issues be aired appropriately, our mechanism must allow some of the weaker issues to surface. If we use a review committee these weak issues should be dispositioned without too much effort. Furthermore, issues that are incorrectly identified as DPO's could be easily redirected, such as grievances.

The result of the DPO process at all levels should be documented. If the DPO process is handled on a local basis the results should be documented and maintained locally and not circulated throughout the agency. A number of individuals, although wishing a hearing, only want quiet discussions with local upper level management. Local records would be available if the issue was raised to a higher level or in response to an investigation.

I find it of interest that in one case noted in Task Group 3 the manager helped the employee use the DPO process. I believe that the DPO process should allow anyone to initiate a DPO on an issue, including the manager who recognizes that a subordinate has a serious disagreement with a policy or position that the manager is espousing. Generally speaking most managers can handle disagreements with a subordinate by asking for an outside opinion on their own, however, I can envision some cases where a manager cannot identify a mechanism within the agency for resolving the subordinate's concern. This manager might wish to bring this to the attention of the DPO review committee for at least recognition within the agency that a conflict exist. These are cases which probably will require a peer review process or a minority opinion position as solutions since they are unlikely to be issues that can be simply resolved by a referral to an authoritative source.



Carl J. Papariello  
Deputy Regional Administrator

cc: E. G. Case, Consultant  
E. R. Weiss, Consultant

# HARMON & WEISS

2001 S STREET, N.W.

SUITE 430

WASHINGTON, D.C. 20009-1125

GAIL MCGREEVY HARMON  
ELLYN R. WEISS  
DIANE CURRAN  
DEAN R. TOUSLEY  
ANDREA C. FERSTER

TELEPHONE  
(202) 328-3500

## Report to DPO Panel

Ellyn R. Weiss  
October 22, 1987

I have actively participated in all panel meetings and deliberations, reviewed all Subpanel Reports distributed thusfar, participated in one interview related to Comanche Peak and read a substantial portion of the underlying documentation related to the Comanche Peak/Region IV issues and the fire protection DPOs. I believe that the Panel and Subpanels have done a conscientious and thorough job in defining the scope of their tasks and carrying them out.

As a consultant to the panel who has represented a state, Intervenors and public interest groups before NRC for some 15 years, I bring a different perspective to this issue; I have observed it from the outside and bring to the table an inherent sympathy for those who press for strong definition of safety requirements and for vigorous enforcement. Nonetheless, I was struck by the degree of agreement among the panel and subpanel members concerning the problems of the DPO process - and the degree to which these views were confirmed by the personal interviews, case studies and survey conducted as part of this effort.

There is a widespread perception throughout the agency that filing a DPO is unhealthy for one's career. Some of this is inherent in the highly formalized, cumbersome and time-consuming nature of the process: even an open minded manager may resent the time required to consider and document his or her response to a DPO. In addition, insofar as the system requires a filer to begin by challenging the immediate supervisor who has already effectively decided against him, it can be seen as futile, even rigged.

Several constructive suggestions have been made by those interviewed and those on the panel for addressing these "process" issues. Some common threads run among them:

1. A formal documented DPO option must be preserved, even if only for a safety valve or last resort.
2. An alternative informal process should be established agency-wide where a standing committee (some suggested an ombudsman or mediator) in each Region and HQ branch would be permanently established to do a rapid initial "screening" of all differences of professional opinion and establish a mechanism for their prompt resolution. The originator could appear before this group (or mediator), explain the issue and participate in deciding the mechanism for its resolution.
3. The formal DPO process should move an issue quickly outside of line management.
4. If peer panels are to be used in the formal DPO process, the originator should have a say in selecting the panel.

Another perhaps ironic effect of the current DPO process is that it tends to militate against timely resolution of differing opinions related to safety issues and the more difficult such an issue is to decide on its technical merits (one measure of the merit of the DPO), the longer it takes to resolve. Ultimately,

one reason given by management against accepting the views of the fire protection engineers involved in the fire DPO was that it was simply too late to reverse management's interpretation of the rule since it had been relied on by licensees. The informal mechanism should have the added virtue of giving priority to those issues with significant potential impact on safety. I believe that the Committee (or ombudsman) should be directed to give high priority to timely resolution of the most safety significant issues.

Having said this, however, it is my strong feeling that the more serious problems with the DPO process go well beyond procedures; management's official words to the effect that it welcomes the open voicing of differing professional views have been overshadowed by a well-publicized series of actions widely viewed as completely contrary to those words. The interviews conducted by the Subpanels reflect extensive cynicism among the staff. A substantial portion of those surveyed (about 1/3) actually feared active retaliation against them should they invoke the DPO process. Perhaps a deeper feeling, though, is pervasive cynicism that management's words do not reflect reality. As many interviewees noted, no amount of tinkering with the procedures can possibly be effective in this environment.

The panel might wish to consider, in this regard, the letter from the Executive Director for Operations to Congressman Gegendson of August 11, 1987, that was distributed to the members. It contains what is presumably the agency's official description

to its Congressional Oversight Committee of two of the cases which the subpanels have particularly investigated, Comanche Peak and the fire protection DPOs. In my opinion, in neither case is the nature of the technical difference fairly described; they are one-sided, and fail to acknowledge that the issues involved important technical safety-related differences. For example, it is not mentioned that virtually every cognizant fire protection professional was involved in the fire protection DPO. Regardless of whether one agrees with how these cases were ultimately resolved, those involved have a right to expect the two sides to be fairly portrayed. When they are not, cynicism is inevitable.

The Comanche Peak case is described in the following two sentences: "One inspector and his management handled matters between them in a manner which led to a confrontation. The report of the Review Group resolved any concerns over safety issues at Comanche Peak."

Without going into details, I do not believe that anyone familiar with the Comanche Peak case could view this as a fair description. Portraying this as a personality dispute trivializes and misapprehends the issues. Moreover, it is simply inaccurate to say that the Review group "resolved" the concerns. In fact, the Review group addressed the adequacy of hardware and even there, a large number of items are still open. More important, no-one would even have been looking at the serious questions that have now mired this project and may have made it effectively impossible ever to know whether it has been built to

applicable standards, had it not been for the inspector involved. The NRC's system for verifying construction adequately broke down in this case. Given the degree to which the agency depends on licensees to follow the rules, verified by inspectors on a limited audit basis, such a breakdown is extremely dangerous.

If the agency truly wishes staff to come forward with differing opinions, it will have to demonstrate readiness to fairly consider them even when they reflect poorly on management or licensees. In this regard, I do not think it is an accident that almost all of the issues raised by DPO's were by staff seeking to take stronger positions on safety and enforcement issues than management wished. The fact that the Comanche Peak dispute was addressed outside the DPO process is irrelevant to these observations; it simply reinforces the fact that the lack of credibility of the DPO process is part of a broader problem. This attitude is reflected in many of the interviewee's comments.

It has been suggested that the grievance procedure is an answer to employees' fear of retaliation. Such a suggestion misses the message coming from the data collected by the sub-panels. It is surely no answer to the failure of one highly formalized, adversary and cumbersome procedure to follow it with another highly formalized, adversary and cumbersome procedure. While the grievance procedure is a necessary mechanism for redress of fragrant retaliation, it is ineffective not only against more subtle manifestations of management disapproval but also against the attitude that has cost the DPO process its credibility.

At several points during the panel's meetings, Neal Blake of the FAA has described parts of a system at that agency which he believes has led to more open and fair communication and consideration of differing views. One element includes systematic performance review of management's success in having differences aired and resolved. I received the Report of Subpanel 1 too late to consider it in writing these remarks. I believe the panel should consider these FAA procedures carefully for possible use at NRC, along with the Open Forum and Open Forum journal concepts used at the State Department. As stated above, I would also endorse agency-wide use of an informal procedure such as that listed in Region 3. Open, informal, expression of give-and-take on technical issues in a non-threatening environment would be a first step toward attacking the cynicism found among the staff. It could also have the important benefit of airing issues early before positions are set in stone and become matters of "policy" and "management judgment" - too often euphemisms for "we've already made up our minds."

In sum, my observation is that the lack of credibility of the DPO process is only tangentially related to its structure or procedures. DPO will - and should - be only a last resort. It follows that the agency's efforts should be directed to identifying and attacking the root problem. We would likely disagree on the scope of the root problem, but the material assembled in this effort shows that one important aspect is the failure of the agency to ensure fair and open exchange of technical and policy



issues in the daily working environment, without fear of negative consequences.



APPENDIX H  
DOCUMENTS USED BY THE PANEL  
IN ITS REVIEW



## APPENDIX H

### DOCUMENTS USED BY THE PANEL IN ITS REVIEW

The documents listed below were considered by the Panel in its review of the Differing Professional Opinion process at NRC.

- Announcement to all NRC employees expressing the Agency's commitment to the DPO process and informing them of the establishment of the Special Review Panel, dated July 22, 1987.
- Charters establishing and defining the mission of the three 1987 DPO Study subpanels.
- Commission memorandum dated May 30, 1985, giving approval for publishing the most recent revision of NRC Manual Chapter 4125.
- Memorandum from A. Bert Davis to Paul E. Bird, subject: Region III Inspection Evaluation Process, dated May 19, 1987.
- Memorandum from Victor Stello, Jr., Executive Director for Operations, establishing the Special Review Panel, dated July 13, 1987.
- Minutes of Differing Professional Opinions Panel Meeting, dated September 10, 1982.
- NRC Manual Chapter and Appendix 4125, Differing Professional Opinions, dated July 23, 1985.
- Office of Inspector and Auditor Review of NRC's Policies and Procedures Relating to Differing Professional Opinions, dated December 1984.
- Summary sheets of DPOs filed.



NRC FORM 335 (2-84) NRCM 1102, 3201, 3202 <b>BIBLIOGRAPHIC DATA SHEET</b> SEE INSTRUCTIONS ON THE REVERSE.		U.S. NUCLEAR REGULATORY COMMISSION		1. REPORT NUMBER (Assigned by TIDC, add Vol. No., if any)  NUREG-1290	
2. TITLE AND SUBTITLE  Differing Professional Opinions: 1987 Special Review Panel			3. LEAVE BLANK		
5. AUTHOR(S)  Special Review Panel			4. DATE REPORT COMPLETED MONTH   YEAR November   1987		6. DATE REPORT ISSUED MONTH   YEAR November   1987
7. PERFORMING ORGANIZATION NAME AND MAILING ADDRESS (Include Zip Code)  U.S. Nuclear Regulatory Commission Washington, DC 20555			8. PROJECT/TASK/WORK UNIT NUMBER		
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13. ABSTRACT (200 words or less)  In mid-1987, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission appointed a Special Review Panel to review the existing NRC policy for expressing differing professional views and to recommend possible improvements to the policy, if warranted. Through its own efforts and those of three subpanels and three consultants, the Panel developed recommendations for changes and improvements in five major areas. This report presents those recommendations, along with a detailed explanation of the Panel's findings, copies of the reports of the subpanels and consultants, and the results of a survey of NRC non-clerical employees on the issue.					
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