



UNITED STATES  
**NUCLEAR REGULATORY COMMISSION**  
 REGION II  
 SAM NUNN ATLANTA FEDERAL CENTER  
 61 FORSYTH STREET SW SUITE 23T85  
 ATLANTA, GEORGIA 30303-8931

May 13, 2002

MEMORANDUM TO: Charles R. Ogle, Acting Deputy Director  
 Division of Reactor Safety

FROM: Luis A. Reyes, Regional Administrator

SUBJECT: DIFFERING PROFESSIONAL VIEW AD HOC PANEL

In accordance with Management Directive 10.159, "Differing Professional Views or Opinions," (DPV) Revised December 15, 1999, you are hereby designated as the Chair of an *ad hoc* Differing Professional View Panel. The Panel will consist of a member from the NRC Office of Enforcement and a member that you chose from a list provided by the submitter. I have requested the submitter to provide this list to you.

The purpose of the Panel is to review a DPV, which is described in the attached, May 1, 2002, note to William Travers, Executive Director for Operations (EDO). As you will note in Attachment 2, the DPV was originally submitted to the Office of the EDO as a Differing Professional Opinion on May 1, 2002. On May 6, 2002, the Office of the EDO informed the submitter that the request must first be submitted to Region II as a DPV. In response, the DPV was submitted to Region II on May 13, 2002.

Your Panel must review the DPV in accordance with the procedures in Management Directive 10.159, which include an interview of the submitter to discuss the information provided within 7 days of today's date and make recommendations to me regarding the outcome of the Panel's review within 30 days of today's date or June 12, 2002.

Attachments:

1. May 1, 2002 Note with attached January 29 and January 28, 2002 Notes.
2. May 13, 2002 Note with attached May 6, 2002 Note.

cc w/o atts: [REDACTED] : EYK

CH

TO: William Travers, Executive Director of Operations

FROM: [REDACTED] EKL

DATE: May 1, 2002

SUBJECT: Differing Professional Opinion (DPO)

*C, pb*  
I have been with the NRC [REDACTED] and this is the first DPO I have ever submitted. I am submitting this because a recent enforcement issue [REDACTED] was processed as a Noncited Violation (NCV) instead of a Notice of Violation (NOV). I feel disposition under the current enforcement process has generic or broad implications for [REDACTED] as they normally occur. This issue involves the announcement or communication of a NRC Resident Inspector's presence contrary to 10 CFR 50.74. The licensee reached a different conclusion concerning the event than the NRC but because the licensee wrote a condition report (CR) the enforcement process, as communicated to me by the regional office, requires that only a NCV be issued instead of a NOV. This, in my opinion, allows only a token correction of the problem and does not address the underlying root cause or organizational culture that permitted this to happen. The licensee is correcting a problem that is different than the one that actually occurred.

This rule came about because of issues at Peach Bottom. Inspectors are required to spend a portion of their inspector time on back shift because of this. However, now an actual situation which was fortuitously observed and overheard by an inspector will be resolved by a muted response from the licensee. Instead of a thorough correction of the problem actions have been taken to downplay the issue and try to stop enforcement action.

*EKL*  
This occurred at [REDACTED] I have also been made aware of monitoring of the resident inspector's movements at another site in Region II. The problem is occurring. Something needs to be done so inspectors can do their job as intended. The enforcement process should require that licensees address the issue and not something else just because they wrote a CR. The enforcement process may need to be changed such that only a NCV will be issued instead of a NOV only when there is agreement concerning what actually occurred. Furthermore, some type of generic communication may be necessary to prevent monitoring of inspectors' movements.

Enclosed is more discussion of the issue. Thank you for your time and consideration of this matter.

Enclosures:

- (1) Discussion of issue
- (2) NRC Inspection Report
- (3) Licensee final CR
- (4) Statement by Resident Inspector
- (5) Statement by Senior Resident Inspector

ATTACHMENT 1

Discussion of issue:

Ex 6

The statements by the resident inspector (RI) and SRI along with the inspection report indicate what happened. After [REDACTED] I told him to write down exactly what he heard while it was fresh in his mind. I made a statement also concerning my movement around the site. Important things I considered was that the main truck gate (MTG) is infrequently reviewed due to being away from the power block, the RI path to the MTG was down a road easily visible from the security offices, call was received at the MTG while the RI was there, call was from a Security Supervisor, and movement of SRI was visible from the security offices. If the security officer in the MTG had not used the telephone speaker then the NRC still would be unaware of this problem.

The licensee only took action to review this after I told them there was a rule against this type of action. After reviewing the situation, the licensee concluded as stated in their CR that Security was calling around to tell the security force of a visiting inspector conducting a security audit. This was not credible to me since the visiting inspector, a project engineer, was not walking around and was in the RI office. The verbal communication and action of the security officer did not support this. The site Vice President told security to get someone to conduct an independent review of the matter.

After the CR was completed (normally 30 days), I reviewed it. Their was a statement concerning the independent review by the corporate security office. I was surprised that the review was final since the independent corporate reviewer never had any conversation or contact with either the RI or SRI. I asked if I could talk to the reviewer and a meeting was arranged on site. I asked why he never spoke with either the RI or SRI and he said he asked about this but was rather vague about the answer he got. The way the conversations were explained to the corporate reviewer were different than actually occurred. Many of the important things I considered (first paragraph above) were not discussed. I concluded this was not an independent review.

Initially, the regional office indicated there needed to be agreement about what happened concerning the issue or otherwise the violation would have to be a NOV instead of a NCV. In an attempt to determine that the licensee was really complete with their review following my conversation with the corporate reviewer, I asked about any follow up report since we were needing to disposition the issue and violation. On March 28, 2002, I received a call from my branch chief that a call was made from the licensee's corporate attorney to the NRC regional attorney stating something to the effect if the NRC issues a violation for this then they would fight it to the end. I wrote a memo to file concerning this as I thought this was highly unusual and somewhat a threat. I indicated to my branch chief I had made an inquiry and this may have promoted the call. I heard a day or two later the Site VP called the Regional Administrator stating something to the effect that if we issued a violation they would not contest it but he was reluctant to take strong personnel action against the Supervisor since he had a piece of paper (the CR) stating something different occurred.

I don't know all that transpired in the regional office concerning this but I was given direction to do the quarterly exit stating a NOV would be issued. Later, a day or two before the report was signed out the decision was made to only issue a NCV because the enforcement policy only requires that a CR is written regardless if they agree with the NRC or not. I objected and did not agree. It is my opinion that when a written response on the docket is required then licensees generally get to the bottom of an issue and correct the problem. If this is our

enforcement policy it should be changed. The licensee can still deny this but at least we have made our best attempt to resolve the issue.

I find it extremely frustrating that when by very fortuitous circumstances a problem like this is found and the licensee is allowed to say something different occurred and correct only that. I now wonder how many times while I conducted a back shift inspection my presence was announced and communicated. If security supervisors are involved in something like this then what is the culture of the security force. Now that increased security is at the site I think it is important that the integrity of the security force be without question. Our enforcement policy should allow us to make our best effort pursuit of this.

From: [REDACTED] *Exp 6*  
To: [REDACTED]  
Date: 1/29/02 2:33PM  
Subject: Security walk down

*Exp 6*

The following are my notes on what occurred yesterday relating to the security issue we've been talking to the licensee about. Yesterday, 1/28, after 1:00 pm I was doing a general inspection at the security diesel room. I then walked over to the security main truck gate. I entered the guard area (requires badging in) and discussed a couple of items with two guards that were there, a male and a female. They asked me a couple of questions relating to whether I knew if the security force was going to become a government job, i.e., like at the airports, and if the current security force was going to get an opportunity to apply for the jobs. I told them I had not heard and I didn't know anything relating to that subject. The guards also asked if the present heightened security activity was going to become permanent. I told them I did not know. We engaged in a few minute conversation relating to other security items. I then asked if all the equipment, truck gate, badge readers, cameras, x-ray, sniffer, etc, was operable and if any equipment was broke. The guard told me that all the equipment was operable and that there was presently no issues at the truck gate. Soon after that, a call came in and the guard used the speaker phone to answer the call. I heard the caller say "NRC is walking around," and then the guard quickly picked up the handset and continued the conversation using the handset. I heard the guard say "yes, he is right here, [REDACTED] is right here sitting in front of me." After the guard hung up the phone I asked him "what was the purpose of that call?" The guard told me "they know you are in here because you swiped your badge to get in," (not really answering my question). I asked two additional times what was the purpose of the call and why was the caller saying that NRC was walking around? The guards just repeated the same thing. I then asked the guard who was it that had called, and he replied that it was a supervisor, I believe he said [REDACTED]. As I was walking out of the room, the guard said, "I guess Juan is in trouble." I did not reply to that statement and badged out of the room. I then badge out the protected area through the turnstile and came back in through the regular security process to verify the equipment, i.e., turnstile, badge reader, x-ray equipment, sniffer, etc was in working order. I came back to the NRC office and communicated the above [REDACTED].

**:: Announcement of Inspector at Truck Gate**

On 1/28/02 in the afternoon, around 1:35 p.m. I went outside the protected area to get our mail. I remember the mail lady had previously said she would be out there from 2-4 p.m. I went a little early as I wanted time to go through the mail before our secretary came in the next day. After I returned [REDACTED] briefed me about the issue at the truck gate. I noted the time to be around 1:40 p.m. I discussed the issue with licensing.

I also discussed with [REDACTED] at the time that the call to the truck gate could have been about me walking outside to get the mail and coming back into the plant.

**From:** [REDACTED]  
**To:** Randy Musser  
**Date:** 5/13/02 9:21AM  
**Subject:** DPV

EX6

I submitted this as a DPO to the EDO office since I thought this was an enforcement policy issue which only headquarters could change. The EDO office has communicated back to me that this should first be submitted to the region as a DPV.

Therefore I am submitting what I send to the EDO as a DPV to the region. I believe you have the CR referenced and the inspection report. Attached is the e-mail from EDO office, the discussion sent to EDO, statements from [REDACTED]

EX6

**CC:** Loren Plisco

From: Isabelle Schoenfeld  
To: [REDACTED]  
Date: 5/6/02 12:09PM  
Subject: DPO

Ent b

Ent b [REDACTED] Thank you for your communication to the EDO. I am the EDO's Coordinator for the DPO Process and received your communication, Subject: Differing Professional Opinnion (DPO) to the EDO, dated May 1, 2002. I phoned you today and learned that you are out of the office until next week. I am sending you this e-mail based on the possibility that you may access your e-mails when you are out of the office.

Please note that the DPV and DPO process steps are addressed in Management Directive 10.159. Page 3 under Submittals (1) states that "All submittals must go through the DPV process before they can be processed as a DPO." Your memo to the EDO doesn't refer to your having previously submitted a DPV. Could you please get in touch with me on your return so that we can discuss whether your DPO issue had first been addressed through the DPV process, and if not, what you need to do to initiate a DPV.

Thnx,  
Isabelle  
301 415-8705