



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001**

September 9, 2004

MEMORANDUM TO: Alexander P. Murray, Senior Chemical Process Engineer  
Special Projects Branch  
Division of Fuel Cycle Safety and Safeguards  
Office of Nuclear Material Safety and Safeguards

FROM: Renée M. Pedersen, Acting Differing Professional Opinions  
Program Manager **/RA/**  
Office of Enforcement

SUBJECT: REQUEST FOR DIFFERING PROFESSIONAL OPINION REVIEW OF  
"DIFFERING PROFESSIONAL VIEW CONCERNING MODELING  
CHEMICAL CONSEQUENCES EFFECTS FOR DETERMINING  
SAFETY REQUIREMENTS AT THE PROPOSED MIXED OXIDE FUEL  
FABRICATION FACILITY"

I am responding on behalf of the Executive Director for Operations (EDO) to your memorandum to him dated August 5, 2004.

My understanding of the facts associated with this issue are as follows.

On December 19, 2002, you submitted a Differing Professional View (DPV) concerning the verification, validation, and quality assurance of computer codes used to identify safety controls. The Office of Nuclear Material Safety and Safeguards (NMSS) formed a panel to review the DPV (NMSS-DPV-2002-03). The DPV panel issued its report on September 30, 2003. The Director, NMSS approved the panel's recommendations and issued a memo dated October 3, 2003, directing the Division Director, Division of Fuel Cycle Safety and Safeguards (FCSS) to take specific actions in response to the recommendations. The Division Director, FCSS issued a memorandum on January 12, 2004, that included actions that had been taken to address the issues and concluded that no further actions were necessary. By memorandum dated January 22, 2004, you raised concerns to the Division Director, FCSS that some of these actions may not have adequately responded to the safety issues raised in the DPV. By memorandum dated May 13, 2004, you noted two specific concerns and you requested the Director, NMSS, provide you with an NMSS assessment of the DPV status. By memorandum dated August 5, 2004, to the EDO, you requested that your DPV be reviewed as a Differing Professional Opinion (DPO).

As previously noted in an August 17, 2004, memorandum to you from the Director, Office of Enforcement, all current issues will be processed as specified in revised Management Directive (MD) 10.159. The revised MD is included on the NRC's internal web page, see **NRC@Work, Policies and Procedures, Management Directives, Volume 10 (10.156-10.163)**, then **MD 10.159**. Under the revised MD, I consider your request included in your August 5, 2004, memorandum to represent a request for a DPO appeal. In accordance with

Section (E)(1) of Handbook 10.159, appeals must be filed within 21 calendar days of receipt of the Office Director's decision. However, because the previous process had no time limit for filing an appeal and because of the delays in responding to your requests on this issue, the 21-day filing requirement is waived. In accordance with the revised MD, all appeals must be submitted in writing in the standard format (NRC Form 690, "Differing Professional Opinion -- Appeal," available on InForms). I appreciate that you have previously provided information addressing your concerns on this DPV. However, given the complex nature and number of the issues associated with your DPV and in order to ensure that your issues are clearly understood, your completion of NRC Form 690 will help the process succeed.

If you choose to file an appeal, please follow the requirements included in Section (E)(1) of Handbook 10.159 to complete NRC Form 690. In particular, Section 11 of NRC Form 690 should focus on the perceived procedural or technical weaknesses in the Office Director's decision and/or the staff's implementation of the Office Director's four decisions included in the October 3, 2003, memorandum. Your appeal should be provided to me as Acting Differing Professional Opinions Program Manager (DPOPM) no later than 21 calendar days from the date of this memorandum. As Acting DPOPM, I will review your appeal on the basis of the information provided on NRC Form 690. Your appeal, as well as a written statement of views on the contested issue from the Director, NMSS, will be forwarded to the EDO for review. The EDO will review the DPO appeal package and will provide you with a decision and the rationale for that decision. After a decision on the DPO appeal has been made by the EDO, the matter will be considered closed.

If you have any questions or comments related to this memorandum or your safety concerns, please direct them to me.

cc: M. Virgilio, DEDMRS  
E. Merschoff, DEDR  
W. Dean, AO  
F. Congel, OE  
J. Strosnider, NMSS

A. Murray

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Distribution:  
C. Mohrwinkel, OE  
DPO Day File  
DPV-2002-003 File  
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OFFICE	OE	OE	EDO	EDO
NAME	R. Pedersen	F. Congel	E. Merschhoff	L. Reyes
DATE	08/19/04	08/19/04	09/08/04	09/09//04

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