



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

October 12, 2004

MEMORANDUM TO: Luis Reyes  
Executive Director for Operations

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

SUBJECT: DIFFERING PROFESSIONAL OPINION APPEAL CONCERNING  
MODELING CHEMICAL CONSEQUENCES EFFECTS FOR  
DETERMINING SAFETY REQUIREMENTS AT THE PROPOSED  
MIXED OXIDE (MOX) FUEL FABRICATION FACILITY  
(NMSS-DPV-2002-03-APPEAL)

On September 9, 2004, I responded to a Differing Professional Opinions (DPO) review request by an Office of Nuclear Materials Safety and Safeguards (NMSS) employee on the referenced subject DPV. In the memorandum, I told the individual that if he wanted to pursue his safety concerns that they could pursue them under revised Management Directive (MD) 10.159, "Differing Professional Views or Opinions," guidelines, including the submittal of a completed NRC Form 690, "Differing Professional Opinion -- Appeal." I also told the individual that he had until September 30, 2004 (21 calendar days) to file a DPO appeal. In addition, I advised the individual that his appeal 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 in the Director's October 3, 2003, memorandum.

In a memorandum dated September 21, 2004, the NMSS employee expressed his desire to file a DPO appeal and included a completed NRC Form 690 (Attachment 1).

As Acting Differing Professional Opinions Program Manager (DPOPM), in a memorandum dated September 22, 2004, I requested that the Director, NMSS review the NMSS employee's September 21, 2004, memorandum and NRC Form 690 and provide me with a written statement of views on the contested issue.

The Director, NMSS responded in a memorandum dated October 7, 2004 (Attachment 2).

In accordance with the Section (E)(2) of the Handbook included in the current Management Directive (MD) 10.159, "Differing Professional Views or Opinions," I am providing the DPO appeal package (Attachments 1 and 2) for your review. No additional panel need be formed at this stage. You have complete discretion to conduct the appeal in any manner deemed appropriate. You may utilize other knowledgeable resources, as needed, to assist in the consideration of the DPO appeal. Given the history of this case, as well as other numerous issues that this individual has raised, you or a member of the EDO staff, may also choose to question the DPO appeal submitter. This opportunity for dialog could be helpful in ensuring the

individual that his views and safety concerns have been heard and understood by NRC management and may help to improve the image of the revised DPO program.

The EDO will then provide the submitter with a decision and rationale for that decision normally within 30 calendar days after receipt of all solicited views requested by the EDO. Extenuating circumstances may cause a delay making a final decision. In this case, please advise me so that I may advise the individual in accordance with the MD. Please note that the time period for providing a final decision should not exceed 60 calendar days.

In accordance with the guidance in MD 10.159, do NOT place your decision in ADAMS when you issue it to the individual. Email an electronic version of the final document to "DPOPM," and I will place the document in ADAMS as part of the close out process.

For your convenience, I have compiled a chronology of the related case documents (Attachment 3).

After a decision on the DPO appeal has been made and communicated to the individual, the DPO process will be concluded and the matter will be considered closed.

Please send the completed DPO appeal case file to me so that I can take action to process the records in ADAMS appropriately. The case file should include the documents included in Attachment 3, your DPO appeal decision, as well as any other documents you may have generated or reviewed as part of this appeal that you believe to be essential to an understanding of the case.

Please feel free to contact me if you have any questions or require any additional information.

Attachments:

1. September 21, 2004, Memorandum and NRC Form 690 from NMSS employee
  2. October 7, 2004, Memorandum from Director, NMSS to Acting DPOPM With Statement of Views on DPO Appeal
  3. Chronology of DPO Appeal Documents
- cc: E. Merschoff, DEDR (w/o Attachment 3)

L. Reyes

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DISTRIBUTION: (w/o Attachment 3)

W. Dean, AO

F. Congel, OE

J. Luehman, OE

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J. Strosnider, NMSS

NMSS-DPV-2002-03-APPEAL file

DPO Day File

FILE NAME: G:\DPO Program\NMSS-DPV-2002-03-APPEAL\Memo to EDO.wpd

**ML051090218**

OFFICE	OE	OE
NAME	R. Pedersen	F. Congel
DATE	10/12/04	10/12/04

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