

August 18, 2006

MEMORANDUM TO: Michael Johnson, Director
Office of Enforcement

FROM: Luis A. Reyes **/RA/**
Executive Director for Operations

SUBJECT: RESPONSE TO STAFF RECOMMENDATIONS ON DIFFERING
PROFESSIONAL OPINIONS PROGRAM 2005 REVIEW

The Office of Enforcement (OE) completed the 2005 Program Review of the Differing Professional Opinions (DPO) Program. Within the 2005 Program Review document, OE made six recommendations for the Executive Director for Operations to consider. Enclosed are the Office of the Executive Director for Operations responses to the six recommendations.

Enclosure: As stated

cc: NRR
NMSS
RES
ADM
NSIR
Regions

CONTACT: John G. Lamb, OEDO
301-415-1727

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| DATE | 07/06/06 | | 07/21/06 | | / /06 | | 08/17/06 | | 08/18/06 | |

**OFFICE OF THE EXECUTIVE DIRECTOR FOR OPERATIONS
ANALYSIS OF RECOMMENDATIONS FROM
DIFFERING PROFESSIONAL OPINIONS PROGRAM
2005 PROGRAM REVIEW**

The Office of Enforcement (OE) completed the 2005 Program Review of the Differing Professional Opinions (DPO) Program. Within the 2005 Program Review document, OE made 6 recommendations for the Executive Director for Operations (EDO) to consider. Below are the recommendations with the analysis of the recommendations.

Recommendation 1

Consolidate all agency-level DPO-related guidance in Management Directive (MD) 10.159, including specific guidance for resolving DPOs raised by NRC contractors. Request that Office of Administration (ADM) review the guidance in MDs 11.1 and 11.7 for resolving DPOs raised by NRC contractors and either eliminate the guidance or make it consistent with the goals and objectives in MD 10.159. ADM should make the NRC Acquisitions Regulations (NRCAR) clause for contractors consistent with the goals and objectives of the DPO Program guidance included in MD 10.159. The DPO Project Manager (DPOPM) has been working with ADM and OGC to revise the NRCAR contract clause.

Analysis of Recommendation 1

Agree with Recommendation 1. MD 10.159 should be the controlling document for the NRC. As noted in footnote 4 on page 7 of the 2005 Program Review, ADM, NMSS, RES, Region II, and Region IV have procedures that may have inconsistent expectations and responsibilities for discussions held before the submittal of a DPO. ADM, NMSS, RES, Region II, and Region IV procedures that provide DPO guidance should be deleted and replaced with a reference to MD 10.159. All NRC staff and contractors should use MD 10.159 for DPOs. The DPOPM should work with the various offices to ensure this is accomplished. The DPOPM should continue to work with ADM and OGC to revise the NRCAR contract clause.

Recommendation 2

Issue proposed interim procedures (from the EDO) that supercede and replace the MD 10.159 guidance for DPO and DPO appeal timeliness goals and the extension process for schedule revisions with the timeliness strategy (in Appendix G) and the management notification process addressed in this discussion.

Analysis of Recommendation 2

Partially Agree with Recommendation 2. Agree that the DPO timeliness goals should be changed from 60 - 120 calendar days to 130 - 190 calendar days and the DPO appeal timeliness goals should be changed from 30 - 60 calendar days to 60 - 90 calendar days. Disagree that the timeliness goals should be issued as an interim procedure. The purpose of MDs is to effectively communicate guidance and information to NRC employees. All NRC employees are aware of MDs and can locate MDs on the NRC internal webpage. Interim

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procedures may result in NRC employees failing to identify and follow guidance. MD 10.159 should be revised to reflect the proposed timeliness changes and the timeliness goals should be re-visited during future DPO Program Reviews to determine if MD 10.159 should be further revised. In the meantime since there are so few cases, OE should continue to submit extension requests for the timeliness goals to the EDO in accordance with the Management Directive 10.159 and the EDO will approve an extension request aligned with the timeliness strategy in Appendix G of the 2005 DPO Program Review, in most cases.

Recommendation 3

Include a metric in office operating plans for the review of DPOs based on the process strategy and timeliness goals established in a revised MD.

Analysis of Recommendation 3

Disagree with Recommendation 3. Since there were only two DPOs in 2005, it is hard to determine if there is a widespread problem. This recommendation should be re-visited in future DPO Program Reviews to see if a trend exists after implementing Recommendation 2. MD 10.159 requires Office Directors and Regional Administrators to implement the DPO Program in accordance with program goals and objectives including the following: (1) providing the DPOPM with status updates of DPOs in accordance with established schedules, (2) ensuring that milestones are met, and (3) taking corrective action for missed milestones. Recommend the DPOPM notify the appropriate DEDO if corrective actions are not taken for a missed milestone or corrective actions are ineffective in recovering the schedule. The DPOPM should assess this recommendation every quarter. If corrective actions are not taken for a missed milestone or corrective actions are ineffective in recovering the schedule after two consecutive quarters, recommend commenting upon DPO timeliness in the OE Senior Performance Official's Report input.

Recommendation 4

Address the DPO Program in the Senior Executive Service (SES) performance management system.

Analysis of Recommendation 4

Disagree with Recommendation 4. The recommended actions proposed in the analysis of Recommendation 3 should address this concern.

Recommendation 5

Require DPO training for all new employees.

Analysis of Recommendation 5

Disagree with Recommendation 5. New employees should receive DPO information as part of their indoctrination. New employees should be made aware of the DPO program and the purpose of the program.

Recommendation 6

Require DPO training for all new supervisors and managers.

Analysis of Recommendation 6

Agree with Recommendation 6. The DPOPM should work with the Office of Human Resources to set this up as soon as practical and within the existing budget.