

November 22, 2006

MEMORANDUM TO: Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

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

SUBJECT: DIFFERING PROFESSIONAL OPINION INVOLVING MANAGEMENT
POLICY ON LICENSING NEW FUEL CYCLE FACILITIES (DPO-
2006-005)

The purpose of this memorandum is to advise you of a Differing Professional Opinion (DPO) that was submitted to me on November 15, 2006. I received the DPO on November 15, 2006, and screened it in accordance with the guidance included in Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program." I have concluded that the preconditions for acceptance have been met and have accepted this issue as DPO-2006-005 within the DPO Program. The DPO (Enclosure 1) raises concerns that management's policy for licensing new fuel cycle facilities (addressed in an August 4, 2006 memorandum (ML062160073)) is inconsistent with the requirements of 10 CFR Part 70 and the Standard Review Plan (NUREG-1520).

In accordance with section (D)(3)(c) of the MD Handbook, I am forwarding this DPO to you for appropriate action. MD 10.159-036 specifically addresses your responsibilities as an Office Director. In brief, you are required to:

- Establish an independent ad hoc panel (DPO Panel) to review the issue, draw conclusions, and make recommendations to you regarding the disposition of the issues presented in the DPO.
- Establish an overall timeliness goal to disposition the DPO within the revised timeliness strategy of 130 - 190 calendar days.
- Provide appropriate oversight and support to the DPO Panel to ensure timely disposition of the DPO (while maintaining process independence).
- Approve DPO schedule extension requests that are forwarded to the DPOPM (for subsequent EDO for approval) and reflected in the DPO Monthly Status Report.
- Review the DPO Panel's report to ensure that it accurately reflects the existing staff position that is related to the DPO and that it is clear.

- Issue a DPO Decision to the submitter.
- Forward a summary of the DPO for inclusion in the Weekly Information Report.
- Take action to positively recognize the DPO submitters if the submitters' actions result in significant contributions to the mission of the agency.
- Identify appropriate followup actions, establish completion dates, and provide it to the submitter and the DPOPM (for tracking in the DPO Monthly Status Report).
- Notify the DPOPM (for tracking in the DPO Monthly Status Report) of followup action schedule delays, including the reason for the delay and a revised completion schedule. (The DPOPM will subsequently notify the submitters.)

Disposition of this DPO should be considered an important and time sensitive activity. In response to recommendations included in the 2005 DPO Program Review, on August 18, 2006, the Executive Director for Operations (EDO) approved a new timeliness strategy for dispositioning DPOs (ML061980069). The DPO process begins on the day that I accept the DPO and concludes on the day you issue a DPO Decision memorandum. The Milestones and Timeliness Goals for this DPO are included as Enclosure 2.

The EDO-approved timeliness goal to disposition a DPO is 130 - 190 calendar days. The timeliness goal reflects a range to reflect the diversity of issues that may be reviewed under the DPO process. In order to establish an appropriate overall timeliness goal, you should consult with the DPO Panel after they have met with the submitters to establish a timeliness goal for the DPO Panel to collect, review, and evaluate the information associated with this case. The overall timeliness goal should be based on the significance and complexity of the issues and the priority of other agency work. The overall timeliness goal should be communicated to the DPOPM and reflected in the Milestones and Timeliness Goals for the case and included in the DPO Monthly Status Report.

Although timeliness is an important DPO Program objective, the DPO Program also sets out to ensure that issues receive a thorough and independent review. Therefore, if you or the DPO Panel determine that an extension beyond 190 calendar days is necessary at any time during the process, please send me an email with the reason for the extension request and a new completion date.

Because we are in the process of developing additional implementing procedures and are considering changes to the DPO Program, not all guidance may be in MD 10.159. Therefore, I will be meeting and communicating with all parties during the process to ensure that everyone understands the process, goals, and responsibilities. I am sending you a DPO Equipment Bag that includes information intended to aid you, the DPO Panel, and support staff in implementing the DPO process.

Please take appropriate actions to ensure that all employees involved in the process to evaluate this DPO exercise discretion and treat this matter sensitively. Although these individuals have not filed the DPO confidentially, all steps should be taken to treat the individuals as if the submitters had. In other words, the employees' names should not be used in discussions (the employees may be referred to as the "DPO submitters"), documents should be distributed on an

as-need basis, and managers and staff should be counseled against “hallway talk” on the issue.

In addition, I strongly encourage you to be aware of and review all proposed personnel actions involving the submitters (including performance appraisals) to ensure that the proposed actions follow defined processes and are non-retaliatory. You may consider performing an assessment to determine what, if any, effect the personnel action may have on the organizational climate and consider specific actions planned or taken to minimize a potential chilling effect on the workforce’s willingness to raise concerns. We need to do everything that we can in order to create an organizational climate that does not chill employees from raising dissenting views.

As a final administrative note, please ensure that all correspondence associated with this case include the DPO number in the subject line and is dispositioned in ADAMS in accordance with the specific ADAMS instructions included in the DPO Equipment Bag.

If you or your staff have any questions, please feel free to contact me at (301) 415-2741 or email DPOPM@nrc.gov.

Enclosures:

1. DPO submittal
2. Milestones and Timeliness Goals

cc: (w/o attachments)

M. Virgilio, DEDMRS

M. Johnson, AO

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- M. Virgilio, DEDMRS
- M. Johnson, AO

Distribution: w/o enclosures

J. Luehman, OE
 DPO-2006-005 file
 DPO Day File
 ADAMS, Non-Public, Limited NRC viewer rights=DPO Staff

FILE NAME: G:\DPO Program\DPO-2006-005\DPO Tasking Memo from DPOPM to OD.wpd

ML063260174

OFFICE	DPOPM:OE	DD:OE	D:OE
NAME	R. Pedersen	J. Luehman	C. Carpenter
DATE	11/22/2006	11/22/2006	11/22/2006

OFFICIAL RECORD COPY

DPO-2006-005: Management Policy on Licensing New Fuel Cycle Facilities

Subject: This DPO raises concerns that management's policy for licensing new fuel cycle facilities (addressed in an August 4, 2006 memorandum (ML062160073)) is inconsistent with the requirements of 10 CFR Part 70 and the Standard Review Plan (NUREG-1520).

Assigned to: Jack Strosnider, NMSS, OD
DPO Panel:

DPO Milestones and Timeliness Goals

DPO Milestone	Timeliness Goals	Actual Date
Individual submits DPO (NRC Form 680)	None	11/15/2006
DPOPM screens and accepts DPO	8 CDs	11/20/2006
DPOPM assigns DPO to OD or RA	5 CDs	11/22/2006
OD or RA establishes DPO Panel	14 CDs	
DPO Panel meets with submitter	8 CDs	
DPO Panel collects, reviews, and evaluates information (date when DPO Panel completes review)	30 – 90 CDs ¹	
DPO Panel writes report	30 CDs	
OD or RA comments on DPO Panel report submitter comments on DPO Panel report	10 CDs	
DPO Panel evaluates comments and either revises report or declares original report final	7 CDs	
OD or RA issues DPO Decision	21 CDs	
TOTAL CDs (from acceptance of DPO) Initial Goal = 03/30/2007 - 05/29/2007 ²	130 – 190 CDs³	

¹The timeliness goal for the DPO Panel review should be established by the Office Director in consultation with the DPO Panel (after the DPO Panel has met with the submitters) and should be based on the significance and complexity of the issues and the priority of other agency work.

²The Office Director should establish an overall goal based on the timeliness for the DPO Panel review and the remaining steps of the DPO process. The overall goal should be communicated to the DPOPM and reflected in the Milestones and Timeliness Goals for the case and included the DPO Monthly Status Report.

³If the case is expected to take longer than 190 calendar days, the Office Director must approve the extension request, explain the reasons for the proposed schedule, and forward it to the DPOPM (for subsequent EDO for approval). The new timeliness goal will be reflected in the Milestones and Timeliness Goals for the case and included the DPO Monthly Status Report.