

January 31, 2007

MEMORANDUM TO: Cynthia Carpenter, Director
Office of Enforcement

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

SUBJECT: DIFFERING PROFESSIONAL OPINION INVOLVING DAVIS-BESSE
REPLY TO A NOTICE OF VIOLATION (DPO-2006-004)

The purpose of this memorandum is to advise you of an appeal that was submitted to me on January 18, 2007, for Differing Professional Opinion (DPO)-2006-004 involving concerns about the accuracy of Davis-Besse's September 14, 2005, reply to a Notice of Violation. The submitter contends that the licensee's response regarding the reasons for denying the 10 CFR 50.9 violation was not accurate, that the licensee failed to follow its own procedures to ensure accuracy, and that the agency should have taken regulatory action.

The employee's DPO appeal (Enclosure 1) raises concerns about the DPO Decision that was issued by you on December 18, 2006. In accordance with the guidance in Handbook section E.1.(b) of Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program," you are required to provide a written statement of views on the contested issue to the Executive Director for Operations (EDO) through the DPOPM. In providing your written views, please keep in mind that the scope of the DPO appeal is dictated by the scope of the DPO. Thus, notwithstanding any additional issues addressed in other documents (e.g., DPO Panel's report, DPO Decision, DPO appeal submittal), the DPO appeal evaluation conducted by the EDO will focus on the scope of the DPO.

In accordance with the EDO-approved milestones and timeliness goals for DPO appeals, please submit your written statement of views on the DPO appeal to me within 14 calendar days of receiving this request.

I will subsequently send the EDO the DPO appeal, your written statement of views, and the DPO case file. The EDO is responsible for reviewing the DPO appeal and providing the individual with a decision normally within 30 - 60 calendar days of receiving the DPO appeal package.

Because DPO documents have specific handling instructions based on the MD guidance, please have your staff profile your response in ADAMS in accordance with the processing instructions included in Enclosure 2.

C. Carpenter

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

Enclosure:

1. DPO Appeal (ML070260672)
2. Processing Instructions for DPO Appeal Decision Documents

cc: (w/o enclosures)

M. Virgilio, DEDMRS

M. Johnson, AO

Differing Professional Opinion Appeal

ENCLOSURE 1

PROCESSING INSTRUCTIONS FOR DPO APPEAL DECISION DOCUMENTS

1. Purpose

The purpose of these instructions is to provide specific guidance for preparing and handling DPO documents in paper and in ADAMS. These instructions are consistent with the guidance and objectives included in Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program."

NOTE: These instructions are not intended to replace existing agency procedures and practices. The staff should continue to follow appropriate guidance (e.g., MD 3.57, "Correspondence Management," the ADAMS Desk Reference Guide, and information security references on the internal web site (SUNSI, SISP)).

2. Preparing the Statement of Views (SOVs)

The SOVs should be marked in accordance with appropriate information security guidance based on the content included in the document. For example, if a DPO Report includes security-related information, it should be marked "Official Use Only - Security-Related Information."

DPO documents should not automatically be marked OOU solely because they are addressed in the DPO process. Although DPO documents are not made public when they are issued, most DPO documents (in some form) will eventually be made available to the public.

Signed copies of DPO documents should be sent to the DPOPM.

Because documents are not declared as official agency records (OARs) in ADAMS until after a DPO Appeal Decision is issued and the submitter is consulted, all documents generated prior to a DPO Appeal Decision should be distributed in paper.

3. Putting the SOVs in ADAMS

Consistent with agency guidance, all DPO documents **must be** dated and marked with /RA/ (record approved), and the concurrence dates are typed in the concurrence grid when they are put in ADAMS.

The decision of whether or not DPO core case documents will be made publically available is made after the DPO process is complete (i.e., after the DPO Appeal Decision is issued).

Therefore, **all DPO core case documents issued before the DPO Appeal Decision document must be added to ADAMS as "Draft Class."**

NRC staff should profile the SOVs using the DPO ADAMS template OE-011. (Non-electronic documents should be scanned into ADAMS.) NRC offices should complete the noted fields as follows:

ADAMS Document Profile Properties for DPO Core Case Documents	
Property Name	Data to be Entered
Class	Draft
Document Type	Differing Professional Opinion Case File
Availability	Non-Publically Available
Title	Office Director's Statement of Views on Contested Issues
Case/Reference Number	DPO-2006-004
Keyword	OE-011
Document Sensitivity	Sensitive
Security Access Rights for DPO Core Case Documents	
Name	Access Level
Employee(s) from originating NRC office	Owner
DPO Staff	Owner

Please have your staff send an email to DPO_Staff@nrc.gov with a link to the new record and the document will be moved into the proper DPO case folder in ADAMS until a decision has been made about the releasability of the documents.

DPO documents are packaged in ADAMS according to the DPO number. Therefore, it is important that your response include the DPO number in the subject line.

If the submitter requests that the DPO core case documents in the DPO file be made available to the public, it will undergo a releasability review prior to being declared in ADAMS. If the submitter requests that the DPO case file not be made available to the public, it will not be made public and only the DPOPM and EDO will have viewer rights in ADAMS.

C. Carpenter

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M. Virgilio, DEDMRS

M. Johnson, AO

DISTRIBUTION: w/o enclosure

DPO-2006-004 file

DPO Day File

ADAMS, Non-Public, Limited NRC viewer rights=DPO Staff

FILE NAME: G:\DPO Program\DPO-2006-004\Request for ODs Statement of Views on Contested Issues.wpd

ADAMS PACKAGE #ML070290578

OFFICE	DPOPM:OE	ActingDD:OE
NAME	RPedersen	MFahey
DATE	01/31/07	01/31/07

OFFICIAL RECORD COPY