

September 27, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

THRU: Renée M. Pedersen /RA/
Differing Professional Opinions
Program Manager
Office of Enforcement

FROM: Michael F. Weber, Director /RA/
Office of Nuclear Material
Safety and Safeguards

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

As requested in Ms. Pedersen's September 6, 2007, memorandum to me on the subject Differing Professional Opinion (DPO), I have reviewed the appeal on my DPO Decision in accordance with her memorandum and the guidance in Management Directive 10.159. To conduct this review, I reviewed the Final Decision on DPO-2006-005, July 24, 2007, and the August 29, 2007 appeal. Based on my review, I have not identified substantially new information that warrants revision to the NMSS Director's decision on DPO-2006-005.

The appeal basically requests that an alternative approach to resolving the concerns be adopted. In my consideration of the submitters' concerns, I carefully reviewed the concerns, including the issue that the DPO panel misunderstood these concerns. Based on my meeting with the DPO Panel Chairman, I concluded that the concerns were understood sufficiently for the panel to render its conclusions and recommendations. I also carefully listened to the submitters when I met with them and considered the extensive information that they provided before I reached my decision on the DPO. I concluded that the submitters' concerns have merit and needed to be considered through a collaborative process involving staff and managers in the Division of Fuel Cycle Safety and Safeguards, Office of Enforcement, Region II, and the Office of General Counsel.

The appeal is founded on interpretations by the submitters that this process will not result in outcomes that are responsive to their original concerns, but it is not clear on what basis these interpretations are founded. The process has only recently commenced. Rather than allowing this process to run its course, the submitters are requesting that the EDO prescribe (a) the standard for completeness of the design and standard for completeness of the Integrated Safety Analysis (ISA), along with the regulatory basis for these standards; (b) the breadth and depth of ISAs, including clear expectations for SRP revisions; (c) how changes to the inspection program will be implemented; (d) more detail on what and how information will be communicated related to these issues; and (e) a commitment to provide the resources needed to complete the tasks that I assigned in my DPO decision. I had considered a more prescriptive decision in

formulating my initial response to the DPO. However, I ultimately rejected such an approach because I concluded that a collaborative process was necessary to involve internal stakeholders, including the submitters, in developing the solutions to these issues.

Finally, the submitters raise an additional issue to “clear the record” at the conclusion of the appeal regarding the need for a suitable safety basis of the U.S. Enrichment Corporation’s gas centrifuge enrichment facility. I agree. They then go on to state that this was not done for the USEC facility but could have been done via a license condition. I disagree with this characterization. The staff, as confirmed by the Atomic Safety and Licensing Board decision, concluded that the applicant had established a sufficient basis to satisfy the Nuclear Regulatory Commission’s requirements and to issue the license. The suggestion that the basis could have been achieved through a license condition was considered and ultimately rejected by the staff and the Office of General Counsel during the licensing of the USEC enrichment facility.

If you have any questions about my review or need additional information, please advise.

