

From: Alex Murray
To: Renee Pedersen
Date: 3/12/2007 6:09:57 PM
Subject: MOX Red Oil DPO Fwd: Re: DPO Extension Request for DPO-2005-002

Renee,

Thank-you for the opportunity to comment on the DPO Panel Report on Potential Red Oil Events at the Proposed MOX Fuel Fabrication Facility.

I have briefly reviewed the Report. It is an outrageous farce; the report recommendations of inaction do not comport with the findings and conclusions in the report which, in short, agree with the safety concerns raised by the DPO. Phrases like "significant unanswered technical questions," "unclear technical bases," "it is unclear how the design bases will provide adequate protection," and "high consequences" are not phrases that seem compatible with NRC regulations and acceptance, even at the construction stage. Inaction or limited action on identified safety concerns is neither in alignment with the Part 70 regulations nor with the NRC Strategic Plan goals of ensuring safety, openness, effectiveness, and management excellence.

This injustice needs to be corrected.

I demand that::

- the DPO Panel Report recommendations of inaction/limited action are corrected to reflect proactive steps to resolve the safety concerns of the DPO and the DPO Panel Report findings and conclusions. Such proactive steps might include reopening the safety issue and adding it to a tracking system.
- the contractor report is made fully publicly available (it is currently categorized as Official Use Only).
- the letter from FCSS management to NMSS prejudicially commenting against the DPO and the safety issues (circa late 2005) - and any other letters, E-mails, or communications - is (are) made fully publicly available.
- the DPO Panel Report acknowledge the fact that the DPO was submitted by the Lead Chemical Safety Reviewer for MOX, who has now been redirected by management to work on non-MOX activities.

If these are not satisfied, I will conclude the DPO process has failed again, and I will pursue other avenues to ensure the safety issues are addressed.

Alex.

p.s. Some additional comments follow.

General Comments:

1. The cover letter to the NMSS Director is a generic cover letter of inaction that makes no mention of the general consensus that there are safety issues. These safety issues should be reflected in the cover letter.
2. The report is better written than most DPO Panel reports. However, there still is a prevailing partiality of accepting the existing management position and inaction. In addition, citations are weak. There are no citations for comments made by the contacts (basically, who said what) even though statements made by the DPO submitter are attributed as such - this is both inaccurate and unfair. Such citations should be included. Also, any OGC statements or

considerations should be identified.

3. The DPO Panel Report seems to be hinting there is an issue with the regulation, 70.23(b), and SECY-188 (the original Statement of Considerations). If this is the case (for example, 70.23(b) uses may instead of shall in its last sentence), then it should be highlighted by the DPO Panel Report and a recommendation made to correct the regulation (e.g., by a rulemaking) as other Part 70 applications are possible or even likely in the near future.

4. The DPO Panel Report states in several places the ACRS concluded sufficient information had been received from the applicant for sufficient assurance to proceed with construction. However, this is a mischaracterization. Management requested a short, one paragraph letter of endorsement for approving the CAR. Instead, the ACRS provided five pages of comments and noted several areas of concern, including the red oil issue, for which the ACRS stated the applicant's technical bases are not clear. The meeting transcripts are even more critical and imply the ACRS acquiesced rather than endorsed the construction approval. This context should be clearly stated. In addition, the CNWRA report should be provided to the ACRS for their feedback. Note that a finding of unclear technical basis does not meet the regulation (70.23(b)).

5. In several places, the DPO Panel Report states significant costs are not associated with backfits for red oil issues. The bases for these statements are not clear and should be stated. Per the Nuclear Fuel dated March 12, 2007 (page 3), the proposed MOX facility has quintupled in cost. Other recent articles suggest facility costs in excess of \$3 Billion. Changes to an as built facility involving more cells and piping could be very expensive and could approach tens or even hundreds of millions of dollars. The NRC sometimes uses 10% of the total cost as a metric - if this is being used by the report, it should be stated. However, absolute values of many millions of dollars would hardly seem insignificant and would be of great interest - and concern - to DOE, Congress, and the public.

6. In several places, the DPO Panel Report and Package indicate significant technical questions remain unanswered. There is no nexus provided to link "significant unanswered technical questions" to meeting regulatory requirements and NRC acceptance. In short, you can't have it both ways - significant questions and regulatory acceptance.

7. In several places, the DPO Panel Report and Package justify inaction based upon the applicant knowingly accepting the risk. From a quick look, I could not find a statement in the FSER, FEIS, or Construction Permit stating as such for the red oil phenomena. The report should provide such references.

Specific Comments:

8. Panel Report, page 2, last paragraph: This incorrectly states the construction authorization review was to preclude backfitting. No such guidance was given to the staff. It should cite the OGC approved, regulatory statements at the beginning and end of Chapter 8 (Chemical Safety, where the red oil issue is discussed) in the MOX FSER.

9. Panel Report, page 2 - bottom, and page 3, first paragraph: This is an incorrect statement - the DPO Submitter did not object to the applicant's approach. Instead, the DPO submitter noted the applicant was not following the RAGAGEP approach and concluded the applicant had not provided sufficient information to meet the requirements of Part 70 (namely, 70.23(b), 70.61, 70.62, and 70.64) for a construction permit. The DPO Submitter also concluded the staff position accepting the applicant's approach was incongruent with the regulations and the high risk of the potential event. Please correct.

10. Panel Report, page 3, paragraphs 1 through 4: This states the applicant accepted the risk by relying on future research. This seems like a disingenuous and obfuscating argument, as a clear statement of accepting risk does not appear to have been made to nor acknowledged by the applicant. The DPO Submitter has stated concerns that potential backfits or exemptions

could result in a lower level of safety than addressing the issue forthrightly at the construction permit stage. Such statements clearly stating risk acceptance by the applicant should be referenced and summarized. In addition, the report notes a consensus that significant technical questions remain unanswered and a red oil event explosion could have high consequences. Yet, the recommendations are largely long-term, programmatic responses that will result in little or no action (the "inertia of inaction"). The non-sequitur should be explained.

11. Panel Report, page 3 - bottom, and page 4, top: this should note that several parts of the Part 70 regulations were used for the construction authorization review (see Comment 9).

12. Panel Report, page 4, paragraph 3: the ACRS recommendation is taken out of context and is mischaracterized (see Comment 4). The DPO Panel Report should explain why an issue that the ACRS stated had unclear technical bases was found to be acceptable. Fundamentally, if there was a desire by the NRC to proceed forward, why weren't license conditions applied to address the "unclear technical bases?"

13. Panel Report, page 4, last paragraph: this states the red oil caused explosion could have high consequences for worker and public safety, and the environment. The report should state this is also a high risk event unless adequate safety controls/strategies are applied.

14. Panel Report, page 5, top paragraph: This states the applicant's safety strategy. For clarity and accuracy, it should follow the approach outlined in the staff FSER. In addition, it mentions a non-safety diluent washing system to preclude the transfer of organics to heated equipment. The report implies this to be an additional safety feature but this is incorrect. The system is far less effective than the systems used by DOE and, in discussions, the applicant has informed the NRC several times that this system would likely fail on an annual basis. Thus, it offers neither additional safety margin nor defense-in-depth. This should be acknowledged by the report.

15. Panel Report, page 5, bottom: this should factually state that the DPO Submitter was the Lead Chemical Safety Reviewer for MOX and has since been reassigned by management to non-MOX programs (N.B. this looks like apparent retaliation).

16. Panel Report, page 6, bottom half of page: this should be clarified as the terminology is mixed and confusing. In addition, the diluent washing system should be noted as providing neither safety nor defense-in-depth, based on statements by the applicant and its inadequacy as compared to DOE designs.

17. Panel Report, pages 7 and page 8 (top): the DPO Panel Report should clearly acknowledge that these statements by the CNWRA support the safety issues raised by the DPO. In addition, the report should note that most of these statements apply at the construction approval stage (i.e., pertain to design bases and safety strategies).

18. Panel Report, page 8, first paragraph: The NRC has stated that the DOE/DNFSB approach would be acceptable at the construction stage because it is RAGAGEP and process safety information (including ISA-like analyses) is available. The Panel Report should reflect this fact.

19. Panel Report, page 8, last half of page: As noted previously, staff reviewing the MOX construction application were not given direction pertaining to backfitting nor were they directed to consider it. Also, as noted previously, findings related to other sections of Part 70 were also made. There are no explicit statements in the CAR or Permit that identify the risk and the applicant's acknowledgement of the red oil risk. This should be reflected in the Panel Report. In addition, the conclusion of an appropriate issuance of the construction application does not follow from the issues raised.

I may have more comments later.

>>> Renee Pedersen 03/09/2007 12:56 PM >>>
Alex,

FYI, the EDO has approved a new goal for this DPO Decision. In light of this goal, if you have issues with the Panel's characterization of your concerns, now would be a good time to forward them to the Panel.

Please let me know if you have any questions.

Renee
x2742

CC: Dale Yeilding NTEU; James Davis; Walter Schwink; William Ruland