

EDO Principal Correspondence Control

FROM: DUE: 01/16/09

EDO CONTROL: G20080446

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FINAL REPLY:

Stephen D. Dingbaum, OIG

TO:

Borchardt, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Carpenter, OE

DESC:

ROUTING:

Status of Recommendations: Audit of NRC's
Alternative Dispute Resolution Program
(OIG-08-A-03) (Due to OIG: 1/16/09)
(EDATS: OEDO-2008-0499)

Borchardt
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Arildsen, OEDO
OIG File

DATE: 07/01/08

ASSIGNED TO:

CONTACT:

OE

Carpenter

SPECIAL INSTRUCTIONS OR REMARKS:

Provide a complete response addressing ALL resolved
recommendations by January 16, 2009.

Template: EDO-001

E-RIDS: EDO-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: OEDO-2008-0499

Source: OEDO

General Information

Assigned To: OE **OEDO Due Date:** 1/16/2009 5:00 PM
Other Assignees: **SECY Due Date:** NONE
Subject: Status of Recommendations: Audit of NRC's Alternative Dispute Resolution Program (OIG-08-A-03)
Description:
CC Routing: NONE
ADAMS Accession Numbers - Incoming: NONE **Response/Package:** NONE

Other Information

Cross Reference Number: G20080446, OIG-08-A-03 **Staff Initiated:** NO
Related Task: **Recurring Item:** NO
File Routing: OIG **Agency Lesson Learned:** NO
Roadmap Item: NO

Process Information

Action Type: Memo **Priority:** Medium
Signature Level: OE **Sensitivity:** None
OEDO Concurrence: NO **Urgency:** NO
OCM Concurrence: NO
OCA Concurrence: NO
Special Instructions: Provide a complete response addressing ALL resolved recommendations by January 16, 2009.

Document Information

Originator Name: Stephen D. Dingbaum **Date of Incoming:** 6/30/2008
Originating Organization: OIG **Document Received by OEDO Date:** 7/1/2008
Addressee: R. William Borchardt, EDO **Date Response Requested by Originator:** 1/16/2009
Incoming Task Received: Memo



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

June 30, 2008

MEMORANDUM TO: William Borchardt
Executive Director for Operations

FROM: Stephen D. Dingbaum /RA/
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF
NRC'S ALTERNATIVE DISPUTE RESOLUTION
PROGRAM (OIG-08-A-03)

REFERENCE: DIRECTOR, OFFICE OF ENFORCEMENT,
MEMORANDUM DATED MAY 29, 2008

Attached is the Office of the Inspector General's (OIG) analysis and status of recommendations as discussed in the agency's update dated May 29, 2008. Based on the response, Recommendation 1 is closed, and Recommendations 2, 3, and 4 are resolved. Therefore, please provide a status update on the resolved recommendations by January 16, 2009.

If you have questions or concerns, please call me at 415-5915 or Sherri Miotla at 415-5914.

Attachment: Status of Recommendations

cc: V. Ordaz, OEDO
J. Arildsen, OEDO
P. Shea, OEDO

Audit Report
Audit of NRC's Alternative Dispute Resolution Program
OIG-08-A-03

Status of Recommendations

- Recommendation 1: Develop interim program guidance to include:
- procedures for follow-up and closure of confirmatory orders,
 - roles, responsibilities, and authorities of all involved NRC offices, and
 - procedures to address decision documentation content.

Agency Response dated
May 29, 2008:

Completed. As noted in our original response, the Office of Enforcement (OE) already had an effort underway to revise the Enforcement Policy, and as part of this effort, had developed draft post-investigation alternative dispute resolution (ADR) program guidance for both the Enforcement Policy and the Enforcement Manual, and included it in the draft Enforcement Policy that was issued for review. However, until the Policy revision was completed and approved by the Commission, OE committed to develop interim ADR guidance by April 30, 2008, that included: follow-up of confirmatory orders; roles, responsibilities, and authorities of all involved offices; and procedures to address the content of decision documentation.

OE issued Enforcement Guidance Memorandum (EGM) 04-004, Revision 1, Supplement 1, "Enforcement Memorandum – Post-Investigation Alternative Dispute Resolution Interim Program Guidance," dated April 18, 2008, to address Recommendation 1. Reference ML081130140. In response to Recommendation 2, the EGM also requires OE to track ADR confirmatory orders until program office guidance is developed and implemented (refer to Recommendation 2).

OIG Analysis:

Based on our review of the Enforcement Guidance Memorandum referenced in the agency's response, OIG concludes that the agency's actions satisfy the intent of this recommendation. Therefore, recommendation 1 is closed.

Status:

Closed.

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Status of Recommendations

Recommendation 2: Incorporate the interim guidance into the Enforcement Policy and Manual revisions.

Agency Response dated
May 29, 2008:

Ongoing. There are commitments from three NRC program offices in addition to OE referenced in Recommendation 2. OE is responsible for incorporating the interim guidance developed in response to Recommendation 1 into the Enforcement Policy and Enforcement Manual. The Office of Nuclear Reactor Regulation (NRR), Office of Federal and State Materials and Environmental Management Programs (FSME), and Office of Nuclear Material Safety and Safeguards (NMSS), are responsible for developing and maintaining procedures for the tracking and the follow-up of ADR confirmatory orders falling within their area of responsibility.

- Ongoing. In response to Recommendation 2 of the OIG audit, OE planned to submit the revised Enforcement Policy to the Commission, including ADR program guidance, for approval, by December 2008, and the Enforcement Manual by July 2009 (6 months following Commission approval of Enforcement Policy).

As noted in response to Recommendation 1, OE has developed draft post-investigation (enforcement) ADR program guidance for both the Enforcement Policy and the Enforcement Manual. The draft ADR program guidance was included in the draft of the Enforcement Policy that was issued for office and regional comment in November 2007. The draft Policy was revised based on comments, and is now out for final concurrence. Once the Enforcement Policy is approved by the Commission (expected in early 2009), OE will revise the Enforcement Manual to include the more detailed guidance more appropriate for the manual.

- Completed. In response to Recommendation 2 of the OIG audit, NRR committed to develop inspection procedure guidance on the process to follow-up

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confirmatory orders July 31, 2008.

NRR revised inspection procedure IP 92702, "Follow-up on Traditional Enforcement Actions Including Violations, Deviations, Confirmatory Action letters, Confirmatory Orders, and Alternative Dispute resolution Confirmatory Orders," dated January 10, 2008. Reference ML072320154. This procedure provides guidance for tracking and follow-up of ADR confirmatory orders.

- Ongoing. In response to Recommendation 2 of the OIG audit, FSME committed to develop inspection procedure guidance on the process to follow-up confirmatory orders by July 31, 2008.

FSME intends to review current guidance, including inspection manual chapter (IMC) 2800, "Materials Inspection Program," to ensure that it contains the necessary guidance for tracking and follow-up of ADR confirmatory orders, and intends to revise the guidance if necessary.

- Ongoing. In response to Recommendation 2 of the OIG audit, NMSS committed to develop inspection procedure guidance on the process to follow-up confirmatory orders by July 31, 2008.

NMSS has completed revision of IMC 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program," dated March 21, 2008, to incorporate tracking and follow-up of ADR confirmatory orders. Reference ML080670196. Additionally, NMSS intends to review the current guidance in IMC 2690, "Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for Part 71 Transportation Packagings," to ensure that it contains the necessary guidance for tracking and follow-up of ADR confirmatory orders, and intends to revise the guidance if necessary.

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Status of Recommendations

Note:

- a. In the January 14, 2008, response to the IG audit, the staff did not identify the need for the Office of New Reactors (NRO) to develop procedure guidance regarding the process for tracking and follow-up of confirmatory orders. NRO has informed OE that they are developing inspection procedure guidance and will ensure it contains the necessary guidance for tracking and follow-up of ADR confirmatory orders.

- b. The Regional Offices will be responsible for the tracking and follow-up of ADR confirmatory order open action items in accordance with the guidance contained in the Enforcement manual and the appropriate inspection program documents (IMC 2600, IMC 2800, IMC 2690, IP 92702, etc.).

OIG Analysis:

OIG acknowledges the agency's continued progress in meeting the full intent of this recommendation, including the completed revision of Inspection Procedure 92702. OIG will close the recommendation once the agency submits finalized versions of the new procedures and guidance committed to by the program offices as referenced above so that OIG can ensure the intent of this recommendation is fully satisfied.

Status:

Resolved.

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Status of Recommendations

Recommendation 3: Develop a uniform system to track all ADR cases from initiation to closure.

Agency Response dated
May 29, 2008:

Ongoing. In response to Recommendation 3 of the OIG audit, OE committed to implement the new updated enforcement action tracking system (EATS) by December 2008, six months after turnover of the system by the Office of Information Services (OIS), to allow for training and full parallel system testing.

OE is working with OIS in the development of a new updated EATS. This system will allow OE enforcement specialists the ability to track enforcement ADR cases from initiation to issuance of a confirmatory order. Tracking of confirmatory orders from issuance to follow-up (closure) will be performed in accordance with the guidance developed by the program offices (NRR, FSME, and NMSS) as described in Recommendation 2. In the interim, tracking of ADR cases from initiation to closure is performed by the OE ADR Program Administrator using a Microsoft Access database as described in EGM-04-004 (reference Recommendation 1). The EGM requires that OE provide the regional and program offices with a quarterly status report for ADR confirmatory orders that have not had a follow-up inspection. OE issued the regional and program offices a quarterly report on May 13, 2008. Reference ML081340669.

OIS has focused additional resources on the development of the new EATS. As of May 12, 2008, OIS is approximately 60 percent complete with the development of the system and is on schedule to complete turnover of the system to OE for testing by June 30, 2008.

OIG Analysis:

OE, in concert with OIS, continues to make progress on the development of a uniform tracking system that will allow for tracking of ADR cases from initiation to closure. Therefore, OIG will close the recommendation once the agency

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submits, and OIG reviews, support that the updated EATS is functioning as intended to satisfy this recommendation.

Status: Resolved.

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Status of Recommendations

Recommendation 4: Create a Management Directive for NRC's ADR programs.

Agency Response dated
May 29, 2008:

Ongoing. In response to Recommendation 4 of the OIG audit, the staff committed that in July 2008, the NRC's Agency Dispute Resolution Specialist would provide a plan of action to the Executive Director for Operations (EDO) on the development of an overarching web page or other reference resource that focuses on the Dispute Resolution Specialist's responsibilities and provides general information about the NRC's ADR programs and where the various information may be found.

The Office of General Counsel (OGC) is in the process of naming a replacement for the NRC's former Agency Dispute Resolution Specialist who retired in December 2007. In parallel with that effort, OGC is developing recommendations and a suggested plan of action to address this OIG recommendation for the EDO's consideration.

OIG Analysis:

OIG notes that the process for naming a new Agency Dispute Resolution Specialist is still not completed six months after the position was vacated due to a retirement. However, OIG acknowledges that OGC is working towards filling this position in parallel with developing recommendations and a suggested plan of action to address this recommendation. OIG cannot close this recommendation until such plans have been finalized and submitted for OIG's determination as to whether the agency's actions meet the intent of this recommendation.

Status:

Resolved.