October 31, 2008

MEMORANDUM TO: James L. Caldwell, Regional Administrator
Region III

FROM: Renée Pedersen, Differing Views Program Manager
Office of Enforcement */RA/ by C. Carpenter //for//*

SUBJECT: DIFFERING PROFESSIONAL OPINION INVOLVING FENOC RESPONSE TO NRC REQUEST FOR INFORMATION

The purpose of this memorandum is to advise you of a Differing Professional Opinion (DPO) that was submitted to me as the Differing Views Program Manager (DVPM). I received the DPO on October 16, 2008, 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-2008-002 for review within the DPO Program. The DPO (Enclosure 1) raises concerns that FENOC's May 2, 2007, response to an NRC Request for Information violated 10 CFR 50.9 in that it failed to provide information concerning a consultant's assessment of the Exponent Report, notwithstanding the NRC's specific request for any assessments of the report provided to the licensee by others. The submitter disagrees with the agency's decision that enforcement action was not warranted.

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 a Regional Administrator. 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.

- ❑ Provide appropriate oversight of and support to the DPO Panel to ensure a thorough and timely review of the DPO (while maintaining process independence).

- ❑ Review the DPO Panel's report to ensure that it clearly, accurately, and completely addresses the tasks outlined in your memorandum establishing the panel.

- ❑ Issue a DPO Decision to the submitter within the current EDO-approved 190-day timeliness goal (April 30, 2009).

- ❑ Request EDO approval for DPO extensions beyond the 190-day timeliness goal. (Requests should be forwarded thru the DVPM with the reason for the delay and a new completion date.)

- ❑ Forward status updates during the disposition of the DPO and until the time that all followup actions are complete. (Updates should be emailed to the DVPM by the last day of the month and will be communicated to the submitter and distributed to all DPO

participants and the cognizant DEDO and the Commission in the DPO Monthly Status Report.)

- ❑ Identify and assign appropriate followup actions and establish completion dates within 2 weeks of issuing the DPO Decision. (The DVPM and submitter should be copied on any followup action memoranda or correspondence.)

- ❑ Notify the DVPM of followup action schedule delays, including the reason for the delay and a revised completion schedule. (The DVPM will subsequently notify the submitter, reflect it in the DPO Monthly Status Report, and report it to the applicable DEDO.)

- ❑ Forward a summary of the DPO to the DVPM for inclusion in the Weekly Information Report. (In the event the DPO is appealed, the summary will be postponed until the DPO Appeal Decision is issued.)

- ❑ Take action to positively recognize the DPO submitter if the submitter's actions result in significant contributions to the mission of the agency.

- ❑ Review documents in the DPO case file for public release when the case is closed if the submitter requests public release.

Disposition of this DPO should be considered an important and time sensitive activity. The EDO-approved timeliness goal to disposition a DPO is 190 calendar days. DPO timeliness is calculated beginning on the day the DPO is accepted for review until the day the DPO Decision is issued. Process Milestones and Timeliness Goals for this DPO are included as Enclosure 2. The timeframes for completing process milestones are identified strictly as goals—a way of working towards reaching the DPO timeliness goal of 190 calendar days.

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. I will subsequently forward this request to the EDO for approval.

In an effort to provide necessary oversight and tracking, you should open an action item within your office to address the three key deliverables: (1) DPO Decision (4/30/09); (2) Followup action memorandum (5/14/09): and (3) Weekly Information Report summary (5/14/09). Tracking numbers will be included in the DPO Monthly Status Report.

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.

An important aspect of our internal safety culture includes respect for differing views. As such, all employees involved in the process should be instructed to exercise discretion and treat this

matter sensitively. Documents should be distributed on an as-need basis. In an effort to preserve privacy, minimize the effect on the work unit, and keep the focus on the issues, employees should be instructed to simply refer to the employee as the DPO submitter. 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 submitter (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, because DPO records have special handling requirements, please ensure that all correspondence associated with this case be processed in accordance with the special instructions included in the DPO Equipment Bag.

If you or your staff have any questions, please feel free to contact me directly at (301) 415-2742 or email Renee.Pedersen@nrc.gov.

Enclosures:

1. DPO submittal
2. Milestones and Timeliness Goals

cc: (w/o enclosures)
M. Virgilio, DEDMRT
V. Ordaz, AO

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Distribution: M. Satorius D, RA, RII; J. Heck, RIII DVOL; C. Carpenter, D:OE; Submitter; S. Magruder, DD:OE; DPO-2008-002 file

ADAMS Document Profile Properties for DPO Core Case Documents	
Property Name	Data to be Entered
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Document Type	Differing Professional Opinion Case File
Availability	Non-Publically Available
Title	Tasking memo from DVPM to RIII RA
Case/Reference Number	DPO 2008-002
Keyword	OE-011
Document Sensitivity	Sensitive
Security Access Rights for DPO Core Case Documents	
Name	Access Level
DPO Staff	Owner
RIII DPO Group	Author

File in ADAMS folder DPO-2008-002 in DPO Case Files root folder

ADAMS PACKAGE # ML083030101

OFFICE	DVPM:OE	DD:OE	D:OE
NAME	R. Pedersen	S. Magruder	C. Carpenter
DATE	10/30/08	10/30/08	10/31/08

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