OEDO DESK GUIDE FOR DIFFERING PROFESSIONAL OPINIONS (DPO) APPEALS

The DPO Program is addressed in NRC Management Directive (MD) 10.159, "The Differing Professional Opinions Program," dated May 16, 2004, located at the following link: (http://www.internal.nrc.gov/ADM/DAS/cag/Management_Directives/md10.159.pdf). The DPO appeal process is included in Section E of the MD 10.159 Handbook located at the same link.

The DPO program objectives are currently listed on the DPO Program Web site at the following link: http://www.internal.nrc.gov/OE/dpo/objectives.html. The DPO program objectives as of the date of this desk guide are also listed in the enclosure. Please check the related link for any changes.

In accordance with MD 10.159, the EDO has complete discretion to conduct the review of the DPO appeal in any manner deemed appropriate. As such, the EDO may choose to conduct a series of interviews (including one with the submitter), establish another independent review of the issues, or implement another evaluation strategy.

Timeliness

Complete the review and have the EDO issue the DPO Appeal Decision to the submitter within 30 to 60 calendar days of receiving the appeal package from the Differing Views Program Manager (DVPM).

Initial Actions

- Charge your time to activity code ZG0007.
- Provide a copy of the DPO appeal package to the EDO.
- Review the DPO Appeal Process checklist provided by the DVPM. This is a good planning tool.
- Verify the review strategy with the EDO (modify actions in this desk guide accordingly).
- Verify/identify interviews EDO wants to conduct.

ETA later

Schedule the Following Meetings ASAP Because the EDO Calendar Tends to Fill Up Fast:

DURATION	TIME FRAME	PARTICIPANTS	PURPOSE
Varies	ASAP (i.e., before initiation of TRPS review)	• TRPS reviewer and • DVPM	Discuss the case, roles, and process.
½ Hour	After completion of DPR appeal review (i.e., within 30 to 40 calendar days)	• TRPS reviewer, • DVPM, and • EDO.	• Provide high-level briefing of the case, • provide overview of the process and answer questions, • discuss the case, • identify questions, and • provide recommendations with regard to path forward and potential outcomes.

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½ Hour	After the previous meeting (i.e., within 30 to 45 calendar days)	• ~~TRPS~~ TA reviewer, • DPO Panel members, • DVPM, and • EDO.	• Discuss the case, • hear views of the DPO Panel members, • ask the DPO Panel questions, and • EDO presents Certificates of Appreciation to the DPO Panel members. (DVPM provides.)
1 Hour	After the previous meeting (i.e., within 30 to 50 calendar days)	• ~~TRPS~~ TA Reviewer, • DVPM, • EDO, and • DPO appeal submitter.	• Discuss the case, • listen to the submitter's concerns/comments, • ask the submitter questions, and • EDO presents Certificate of Appreciation to the submitter. (DVPM provides.)
½ Hour	After the previous meeting but before finalization of draft closure letter (i.e., within 30 to 55 calendar days)	• ~~TRPS~~ TA reviewer and • EDO.	• Discuss the case, • recommend possible outcomes with justifications, and • obtain EDO alignment on the basis for the EDO closure letter decision.

REMINDER: You can call the DVPM anytime to obtain additional guidance on process, format, content, and previous decisions.

Review DPO Appeal Submittal And All Related Background Information.

NOTE: You may need to schedule additional meetings or speak with the staff involved with the existing position, the DPO Panel members, Office Director, Regional Administrator, and/or the submitter in order to develop a thorough understanding of the case or if you simply need more information.

Write Summary and Provide to EDO (Before Second Meeting in Table Above).

I need to do this

The summary should include the following sections/information:

- Background (if necessary)
- DPO Submittal Dated (____Date____)
- DPO Panel Report Dated (____Date____)
- Office Director's/Regional Administrator's Comments on DPO Panel Report Dated (____Date____) *(Optional)*
- Submitter's Comments on DPO Panel Report Dated (____Date____) *(Optional)*
- DPO Decision Dated (____Date____)
- DPO Appeal Submittal (Issues Raised by Submitter) Dated (____Date____)
- Office Director's/Regional Administrator's Statement of Views on Contested Issues Dated (____Date____)
- Potential Questions for DPO Panel Members Staff, Office Director/Regional Administrator, and/or Submitter
- Implications of Reversing the DPO Decision

Actual

may want to ask the panel members or the submitter

Participate in Remaining Meetings, Provide Recommended Outcomes with Justifications, and Obtain EDO Alignment (Refer to the Table Above).

Write EDO Closure Letter to DPO Appeal Submitter (i.e., DPO Appeal Decision).

- Because the DPO process is evloving, please use the DPO Appeal Decision guidance/template provided by the DVPM.
- However, previous guidance/lessons learned for closure letters includes the following:
  - The EDO closure letter needs to be a stand-alone document and should include the following sections/information:
    - SUBJECT: DECISION ON DIFFERING PROFESSIONAL OPINION APPEAL INVOLVING ... (DPO-20__-____)
    - The purpose of this memorandum is to inform you of my considerations and conclusions regarding the appeal you submitted on _____, 200_, on the subject differing professional opinion (DPO).
    - Introduction
    - Chronology (if necessary)
    - DPO Submittal Dated (_____Date_____)
    - DPO Panel Report Dated (_____Date_____)
    - DPO Decision Dated (_____Date_____)
    - DPO Appeal Submittal Dated (_____Date_____)
    - Office Director Statement of Views on DPO Decision and Contested Issues Dated (_____Date_____)
    - Executive Director for Operations Review and Decision
    - Conclusion
  - Include a paragraph that thanks the employee for speaking up.
  - Make it clear that in accordance with Management Directive (MD) 10.159, the DPO documents that will be included in the DPO case file are those documents deemed by the EDO to be essential to understanding of the case. This is a smaller set of documents that what DPO appeal submitters generally envision.
  - Place the reference MD 10.159 as a stand-alone parenthetical in the first paragraph (i.e., after the first sentence). "(The DPO Program is address in Management Directive 10.159.)"
  - Include the following statement: "In accordance with MD 10.159, a summary of this DPO appeal decision will be included in the Weekly Information Report posted on the NRC's public web site to advise interested employees and members of the public of the outcome."
  - Include the following statement, "The public records for this DPO are available in the DPO case file package in ADAMS (ML_____)."
  - Include the following on the distribution list: DVPM, applicable office director, Ad-Hoc panel members, TRPS reviewer, and EDO r/f.
  - Coordinate with the OEDO support staff to ensure that the document is processed in accordance with the instructions included with the guidance/template. In particular, ensure that the staff profiles the final document in accordance with ADAMS template OE-011 (in ADAMS Main Library, ADAMS Document Templates folder, Final Templates folder, OE folder, OE-011: Differing Professional Opinion (DPO)), adds DPO Staff as an Owner, keeps the record in Draft Class, and files it within the

specific DPO case folder within the DPO Case Files folder in the ADAMS Main Library.

- Include the TRPS reviewer, TRPS Chief, and EDO in the concurrence blocks.
- Have the DVPM review the final appeal decision before the EDO closure letter is issued in order to ensure consistency with program goals.
- The DPO Appeal Decision should be delivered directly to the submitter in a sealed addressee-only envelope. The submitter should be aware of the decision before others.

Write a Summary of the EDO's DPO Appeal Decision for the Weekly Information Report (WIR) After the Closure Letter is Issued.

- Use the WIR guidance/template provided by the DVPM.
- The WIR should be written in accordance with EDO procedures (http://www.internal.nrc.gov/oedo/procedures-guidance/Procedure-0410.pdf).
- The general goal is to issue the WIR within 2 weeks of the date of the decision.
- Examples of previous WIR summaries are located on the DPO web site at http://www.internal.nrc.gov/OE/dpo/closed-dpo-cases.html. An example of a previous template (as of the date of this desk guide) is also provided in the enclosure. Please check the related link for any changes.
- **Please do not send the WIR for inclusion.** Instead, have the draft WIR reviewed by the OEDO Communications staff (so you can judge the edits), and then send it to the DVPM. OE will submit it for the WIR (on behalf of the OEDO) when the DPO case file has been declared as a package in ADAMS. The WIR will include a reference to the ADAMS package that includes the public records for this DPO.
- Please be sure to coordinate your review with the EDO because the EDO may want to emphasize certain points.

Follow-Up Actions

- As a result of the DPO appeal submittal review, the EDO may opt to identify additional recommendations and follow-up actions beyond those previously identified in the DPO Decision.
- If follow-up actions are identified, they should be communicated to the submitter, staff, and DVPM. The goal is for this to occur within 2 weeks of the appeal decision.
- Follow-up actions should be tracked in EDATS until they are implemented.

Enclosure

DPO Program Objectives and WIR Template for DPO Appeals (as of the date of this desk guide)

ENCLOSURE NOTE: Please check the related links for any changes.

Differing Professional Opinions (DPO) Program Objectives (as of Date of Desk Guide)

The DPO program objectives are listed on the DPO Program Web site at the following link: http://www.internal.nrc.gov/OE/dpo/objectives.html. They are also listed below for convenience.

- To foster informal discussions with peers and supervisors on issues involving professional judgments that may differ from a currently held view or practice.
- To establish a formal process for expressing DPOs concerning issues directly related to the mission of NRC.
- To ensure the full consideration and prompt disposition of DPOs by affording an independent impartial review by knowledgeable personnel.
- To ensure that all employees have the opportunity to (a) express DPOs in good faith, (b) have their views heard and considered by NRC management, and (c) be kept fully informed of the status of milestones throughout the process.
- To protect employees from retaliation in any form for expressing a differing opinion.
- To recognize submitters of DPOs when their DPOs have resulted in significant contributions to the mission of the agency.
- To provide for agency-wide oversight and monitoring, to ensure that implementation of these procedures accomplishes the stated objectives, and to recommend appropriate changes when required.

Weekly Information Report (WIR) Template for DPO Appeals (as of Date of Desk Guide)

Use the WIR guidance/template provided by the DVPM. The WIR should be written in accordance with EDO procedures (http://www.internal.nrc.gov/oedo/procedures-guidance/Procedure-0410.pdf). The general goal is to issue the WIR within 2 weeks of the date of the decision. Examples of previous WIR summaries are located on the DPO web site at http://www.internal.nrc.gov/OE/dpo/closed-dpo-cases.html. A template is also provided as below.

> On (date), the (Director, Office of ...; Regional Administrator, Region X) issued a decision on a Differing Professional Opinion (DPO) involving (subject) (DPO-20yy-nnn). On (date), an NRC employee submitted a DPO that focused on (brief description of the issue(s), e.g., whether a violation of regulatory requirements existed, whether the staff's application of the Reactor Oversight Process was inappropriate, whether the license amendment was adequate, etc.,). On (date), an Ad Hoc Review Panel provided the results of its independent review to the (Director, Office of ...; Regional Administrator, Region X). The Panel concluded (brief description of disposition of issue(s), e.g., that a violation of regulatory requirement existed, that the staff's application of the Reactor Oversight Process was appropriate, that the license amendment was inadequate, etc.,). The Panel also recommended (brief description, e.g., that the inspection procedure be revised, that a more structured and specialized training and certification program be developed, that revisions to the Significance Determination Process be considered, etc.,). Based on a review of the Panel's report and additional comments from the DPO submitter, (include any other documents or meetings with involved individual) the (Director, Office of ...; Regional Administrator, Region X), agreed with the Panel's conclusions and recommendations. [If the OD/RA agrees with some conclusions and recommendations and disagrees with others, include a description of agreement/disagreement, e.g., the Regional Administrator, Region III agreed that a violation of regulatory requirements existed and that the staff's application of the Reactor Oversight Process was appropriate, but disagreed that the license amendment was inadequate.]