

November 5, 2010

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: Michael F. Weber **/RA/**
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

SUBJECT: RESPONSE TO AUDIT OF NRC'S NON-CONCURRENCE
PROCESS (OIG-11-A-02)

This is in response to the October 7, 2010, memorandum transmitting the Office of the Inspector General's (OIG) audit report titled, "Audit of NRC's Non-Concurrence Process." I appreciate the OIG staff observing and evaluating the NRC's Non-Concurrence Process (NCP) and the OIG's recommendations for improving the process.

The Nuclear Regulatory Commission (NRC) is committed to establishing and maintaining an open, collaborative work environment (OCWE) that encourages all employees and contractors to promptly raise concerns without fear of retaliation and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission. In addition to informal discussions, which should be sufficient to resolve most issues, individuals have various mechanisms for expressing and having their concerns heard by decision makers. The NCP was specifically developed to complement other agency policies and practices for airing differing views, such as the "Open Door Policy" described in Management Directive 10.160, and the "Differing Professional Opinions (DPO) Program" described in Management Directive 10.159.

The NRC staff has carefully reviewed the two findings and the eight specific recommendations presented in the draft report.

The staff agrees that opportunities exist for improvement in the two areas of: 1) agency guidance and training and, 2) capture and review of operating experience.

The staff also believes that an additional opportunity for improvement exists by focusing on the continual improvement in OCWE and our internal safety culture. The staff appreciates the insights that we have gathered from this audit as well as those from the Internal Safety Culture Task Force (ISCTF)¹, the latest OIG Safety Culture and Climate Survey, the subsequent focus group report, and the problem identification and corrective action report. These insights

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¹ See SECY-09-0068, "Report of the Task Force on Internal Safety Culture."

reinforce that opportunities for improvement must focus on both process issues and behavioral issues. The staff is currently involved in numerous activities designed to strengthen our programs and processes and influence attitudes and behaviors to support and continuously improve NRC's internal safety culture.²

Recommendation 1

Define management's expectations regarding the non-concurrence process and clearly communicate them to staff.

Response

Agree. Management will continue to emphasize and further aggressively pursue our commitment to the welcoming of sharing differing views and the acceptability and value of using the NCP. Management will communicate this clearly through multiple communication tools, such as EDO Updates, monthly senior management meetings, all supervisor meetings, senior leadership meetings, and Yellow Announcements.

Completion date: Ongoing activities beginning with the November 2010 Senior Leadership Meeting and continuing through calendar year (CY) 2011. Point-of-contact (POC): Renée Pedersen, OE in collaboration with the OEDO.

Recommendation 2

Revise MD 10.158 to include detailed guidance on:

- a. Dispositioning of non-concurrences to include a feedback mechanism on the status of the non-concurrence.
- b. Timeliness expectations.
- c. Completion and processing of Form 757.
- d. Roles and responsibilities of key non-concurrence process personnel.
- e. The availability of the Differing Views Office Liaisons.

Response

Agree. The staff recognizes that the guidance in MD 10.58 can be improved.

- a. Because responding to a non-concurrence can take time, the staff agrees that including a communication feedback mechanism can improve satisfaction with the process.
- b. NCP guidance currently reflects that non-concurrences should be addressed within the normal schedules for processing documents. Although the guidance does recognize that adjustments may be necessary, guidance can be enhanced to ensure that

² See SECY-10-0009, "Internal Safety Culture Update."

appropriate adjustments are requested and accepted to ensure that the NCP is implemented successfully. Guidance can also be enhanced in terms of the timeliness expectations to file a non-concurrence, including schedule coordination with supervision and use of official work hours and resources.

- c. Form 757 was revised in 2009 based on lessons learned in implementing the process. Four specific revisions were made to improve oversight and implementation of the process.³ The staff agrees that the guidance in the MD and handbook should be updated to reflect and emphasize the intent and nature of these changes. The staff also intends to create examples of responses to non-concurrences to address the concern identified in the OIG survey where only 50 percent of the respondents provided a positive response to the statement, "My supervisor adequately explains the resolution of differing views that were raised."
- d. The staff intends to enhance the guidance on the responsibilities for the document sponsor and document signer, especially emphasizing the responsibility to ensure that the response to the non-concurrence be complete and on point.
- e. Differing Views Office Liaisons (DVOLs) were established in 2007 to serve as additional, office level resources to complement the agency-level resource, the Differing Views Program Manager (DVPM). The staff agrees that guidance should reflect the availability of DVOLs, as well as the availability of the DVPM to support the NCP.

In addition to improving the guidance, the staff also recognizes that procedural awareness, adherence, and attention to detail in implementing the guidance can be improved. Staff confusion on the process and responsibilities can be reduced if procedural compliance is emphasized.

Completion date: Second quarter of CY 2011. POC: Renée Pedersen, OE.

Recommendation 3

Finalize MD 10.158 by the end of 2011.

Response

The staff agrees that MD 10.158 should be finalized. Due to the relatively small number of non-concurrences that occurred in the first few years since its 2006 issuance, a decision was made to gain additional experience before finalizing the guidance. However, given the existing workload issues (including revising the DPO MD in 2011) and resource limitations, finalizing

³ Form 757 was revised in 2009 to (1) require that a copy of the NCP submittal be sent to the Differing Views Program Manager—to increase implementation coaching opportunities, (2) provide more detailed instructions for completing Section C—to emphasize the need for a current and complete discussion, (3) require signature of document signer—to emphasize the responsibility to ensure that concerns raised by the filer were adequately addressed and the response to the concerns documented in Section C were complete and on point, and (4) indicate whether the filer wants the form public or non-public—to emphasize the requirement for the document sponsor to get filer's input on this issue.

MD 10.158 by the end of 2011 may be difficult to complete. The staff appreciates the benefit of being more responsive to employee feedback and intends to finalize MD 10.158 before the current due date of June 2013. The current due date was established as part of an ISCTF recommendation to conduct a broader review of OCWE (including the NCP and the DPO Program) after the next OIG survey.

Completion date: The staff plans on completing MD 10.158 no later than the end of CY 2012, and will attempt to improve upon that date as resources allow. POC: Renée Pedersen, OE.

Recommendation 4

Make non-concurrence process training available in an on-demand format to all staff and managers.

Response

Agree. Although information on the NCP (overview, slide show, frequently asked questions) is currently available to all employees at any time by accessing the NCP web page from the OCWE web site, training could be enhanced by providing a more interactive, on-line training tool. The staff also recognizes that training on the NCP can be improved in other areas, such as new employee general awareness and supervisory training focused on behaviors. The staff is currently working to include the NCP in the Virtual Orientation Center and is evaluating options for behavior-based training such as "Safely Speaking" and "The Speed of Trust."

Completion date: The staff will develop on-demand training to all staff and managers approximately six months after the guidance in MD 10.158 is finalized. POC: Renée Pedersen, OE in collaboration with the Office of Human Resources.

Recommendation 5

Routinely update the Office of Enforcement Open Collaborative Work Environment Contact Web page to reflect current Differing Views Office Liaison assignments.

Response

Agree. Many updates have already been made to the web page and identification of DVOLs in several offices is pending. The staff plans on reviewing the web page every six months to ensure that contacts are current.

Completion date: The web page will be updated to reflect current contacts by the end of November 2010. POC: Renée Pedersen, OE.

Recommendation 6

Identify and track all Forms 757 submitted to date and store them in a central repository.

Response

Agree. The staff will ensure that all non-concurrences to date are accurately captured and appropriately entered in ADAMS. The staff has already created a central repository in the ADAMS Main Library.

Completion date: First quarter of CY 2011. POC: Renée Pedersen, OE.

Recommendation 7

Develop a formalized system to promote consistent and routine capture and review of submitted Forms 757.

Response

Agree. Although ADAMS is an effective tracking tool if the implementing guidance is properly followed, the staff recognizes that it may be more effective to use a tracking method with more oversight and control. Form 757 will be revised to require that forms be sent to the DVPM. This requirement will be highlighted in training and outreach activities until the guidance in MD 10.158 is revised.

Completion date: First quarter of CY 2011. POC: Renée Pedersen, OE.

Recommendation 8

Perform regularly scheduled comprehensive assessments of the non-concurrence process.

Response

Agree. Although the NCP is not routinely exercised, waiting too long to perform a formal assessment could make it challenging for program management to perform a comprehensive assessment of the NCP and determine what revisions are needed to improve MD 10.158.

Completion date: Consistent with the ISCTF recommendation to conduct a broader review of OCWE (including the NCP and the DPO Program), the staff will perform assessments of the non-concurrence process within one year after each OIG Safety culture and climate survey.⁴
POC: Renée Pedersen, OE.

⁴ See SECY-10-0009, "Internal Safety Culture Update."

Finally, because the NCP is not a routine process, the staff recognizes the value of providing greater oversight during the process to help participants successfully implement the NCP. The staff is sensitive to employees' perceptions on using the NCP and successful implementation can improve perceptions of the NCP. The staff plans to revise guidance to include oversight and coaching during the process by the DVPM.

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
SECY

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cc: Chairman Jaczko
 Commissioner Svinicki
 Commissioner Apostolakis
 Commissioner Magwood
 Commissioner Ostendorff
 SECY

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