May 10, 2011

MEMORANDUM TO: R. William Borchardt
                 Executive Director for Operations

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

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

REFERENCE: DIRECTOR, OFFICE OF ENFORCEMENT,
                 MEMORANDUM DATED MARCH 31, 2011

Attached is the Office of the Inspector General's analysis and status of recommendations 1, 2, 3, 4, 5, 6, 7, and 8 as discussed in the agency's response dated March 31, 2011. Based on this response, recommendations 1 and 5 are now closed and recommendation 3 is now considered resolved. Recommendations 2, 4, 6, 7, and 8 remain in resolved status. Please provide an updated status of the recommendations by August 1, 2011.

If you have any questions or concerns, please call me at 415-5915 or Sherri Miotla, Team Leader, at 415-5911.

Attachment: As stated

cc: M. Muessle, OEDO
       J. Andersen, OEDO
       J. Arlidsen, OEDO
       C. Jaegers, OEDO

AUDIT OF NRC'S NON-CONCURRENCE PROCESS

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Status of Recommendations

Recommendation 1:   Define management's expectations regarding the non-concurrence process and clearly communicate them to staff.

Agency Response
Dated March 31, 2011:   The Executive Director for Operations (EDO) 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 non-concurrence process (NCP) as part of an Open, Collaborative Work Environment (OCWE). Management will communicate this clearly through multiple communication tools, which will include EDO Updates, monthly senior management meetings, all supervisor meetings, senior leadership meetings, and Yellow Announcements.

Senior Leadership Meeting, November 2010: The EDO spoke about the value of and expectations for the NCP at the Senior Leadership Meeting. In his message to the senior leaders, the EDO focused on how these activities continue to contribute to an OCWE at the NRC. He asked the Office Directors and Regional Administrators to periodically communicate the existence and importance of the non-concurrence process, and to convey to the staff that they can take advantage of this tool. (Enclosure 1 includes confirmation of this activity from the Office of the Executive Director for Operations (OEDO).

EDO Update, January 5, 2011: The EDO's message referenced OCWE and noted an increase in the use of the NCP "…which means that some of you may now feel more comfortable expressing your opinions and disagreements, as appropriate. I believe that your active engagement results in the highest quality products and regulatory decisions." http://www.internal.nrc.gov/oedo/updates/2011/2011-0105.html

Recommendation 1 (continued):

All Senior Level System Meeting, March 14, 2011: The EDO spoke about the value of and expectations for the NCP at an all-SLS meeting. (Enclosure 2 includes confirmation of this activity from the OEDO.)

All Supervisor Meeting, March 15, 2011: The Deputy Executive Director for Corporate Management (acting for the EDO) spoke about the value of and expectations for the NCP at an all first line supervisor meeting. (Enclosure 2 includes confirmation of this activity from the OEDO.)

EDO Update, March 23, 2011: The EDO's message referenced OCWE in light of the staff's need to remain committed and flexible during the challenging circumstances following the Fukushima Event.
http://www.internal.nrc.gov/oedo/updates/2011/2011-0323.html

Completion date: Ongoing activities beginning with the November 2010 Senior Leadership Meeting and continuing through 2011.

Point-of-contact (POC): Renée Pedersen, OE in collaboration with the OEDO.

OIG Analysis: The actions meet the intent of OIG's recommendation. OIG has verified and reviewed documentation supporting the completion and/or occurrence of the activities cited in the agency's response. OIG understands that the agency will continue to clearly define and communicate management's expectations regarding the non-concurrence process to staff in future activities occurring throughout 2011.

Status: Closed.

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Status of Recommendations

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 personnel.

       e. The availability of the Differing Views Office Liaisons.

Agency Response
Dated March 31, 2011:   The Office of Enforcement (OE) is in the process of revising MD 10.158.

       a. Because responding to a non-concurrence can take time, including a communication feedback mechanism can improve satisfaction with the process. OE will modify the guidance in the MD to include a feedback mechanism.

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Recommendation 2 (continued):

    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, OE will enhance the guidance to ensure that appropriate adjustments are requested and accepted to ensure that the NCP is implemented successfully. OE will also enhance the guidance to address the timeliness expectations to file a non-concurrence, the expectation to coordinate the schedule with supervision, and the use of official work hours and resources to engage in the NCP.

    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.[1] OE intends to make additional revisions to Form 757 as a way of addressing process improvements prior to the finalization of the NCP MD. In particular, OE intends to create an additional page for the form that will include step-by-step instructions for completing the form. OE will take action to ensure that the guidance in the MD and handbook be updated to reflect and emphasize the intent and nature of the changes to the form.

    d. OE will ensure that the MD and handbook includes enhanced guidance on the responsibilities for key NCP personnel. In particular, the guidance will emphasize the document signer's responsibility to ensure that the response to the non-concurrence be complete and on point. OE is also proposing that an NCP Program Manager be included to help

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[1] 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.

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Recommendation 2 (continued):

> employees successfully implement the NCP and
> ensure ongoing oversight. OE currently has a POC
> for the NCP (Renée Pedersen) and Ms. Pedersen will
> assume this function. OE is currently revising the
> Differing Views Office Liaison (DVOL) Handbook
> (titled OCWE Handbook) to reflect this position. (See
> Enclosure 3.)

> e. Differing Views Office Liaisons (DVOLs) were
> established in 2008 to serve as office level resources
> to proactively promote OCWE and aid employees in
> ways to raise concerns, including the NCP. Earlier
> this year, the title of DVOL was revised to OCWE
> Champions. OE intends to update the guidance in
> the MD and handbook to reflect the roles and
> responsibilities of OCWE Champions in support of the
> NCP. OE has updated the DVOL Handbook to reflect
> the expectations of this position. (See Enclosure 3.)

> Completion date: Second quarter of 2011.

> POC: Renée Pedersen, OE.

OIG Analysis: The proposed action meets the intent of the
                          recommendation. OIG will close this recommendation when
                          it receives and reviews the revised guidance reflecting the
                          suggested revisions noted in recommendation 2, including
                          implementation of a feedback mechanism, documentation of
                          timeliness expectation, documentation of instructions for
                          completion and processing of Form 757, clarification of roles
                          and responsibilities of key non-concurrence personnel, and
                          reference to the availability of Differing Views Office
                          Liaisons.

Status: Resolved.

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Status of Recommendations

Recommendation 3:   Finalize MD 10.158 by the end of 2011.

Agency Response
Dated March 31, 2011:   OE appreciates the benefits of finalizing the MD by the end of 2011. However, OE recognizes that existing workload issues and resource limitations may make finalizing MD 10.158 by the end of 2011 difficult. The current POC for this activity is also responsible for revising and finalizing MD 10.159, "The Differing Professional Opinions Program."

In an effort to maximize the effectiveness and efficiency for these projects, OE is embarking on an innovative strategy to update the NCP MD in parallel with the DPO MD. OE is collaborating with the Office of Administration on a pilot program to solicit office level reviews by using SharePoint. OE also intends to use OCWE Champions as a resource to focus office level reviews. Because these programs have common themes and issues, it makes sense for the OCWE Champions to review both MDs in parallel. In addition, because of the relationship between the processes, there are also consistency issues within the MDs.

OE also intends to engage employees who have participated in the NCP and the DPO process as part of the MD revision and finalization process.

Although this strategy requires additional resources in the front end of the MD revision process, OE believes that this approach will promote consistency and support a high quality revision that will be submitted to the Commission, for approval and finalization. Given the subject and level of interest of these MDs, OE recognizes that finalization could take longer than the generic time line referenced on the ADM web site.

OE appreciates the benefit of timely guidance to the staff and believes that updating NRC Form 757 to include detailed step-by-step instructions will address this concern on an interim basis until the MD is finalized.

Recommendation 3 (continued):

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.

OIG Analysis:

The proposed action addresses, in part, the intent of OIG's recommendation. Specifically, the agency's proposed finalization date for MD 10.158 is significantly later than the OIG recommended date of end of 2011. OIG is concerned that if MD 10.158 is not finalized until the end of calendar year 2012, it will have been in draft status for 6 years. However, OIG recognizes that resource limitations are a significant factor in the agency's ability to meet the original deadline and that the agency is also responsible for concurrently revising and finalizing MD 10.159, *The NRC Differing Professional Opinions Program*.

Given these considerations, OIG agrees to extend the original due date for completion of this recommendation with the clear expectation that MD 10.158 will be finalized and published no later than December 31, 2012. In conjunction with this due date extension, the agency should provide OIG with regular updates on the progress of finalizing the management directive. Updates are expected to include information on the application of the SharePoint Web site in soliciting office level reviews and the status of milestones associated with the generic timeline for the management directive finalization process as noted on the Office of Administration Web site (http://www.internal.nrc.gov/ADM/DAS/cag/mandirs/mdtime.html#g1).

Status:

Resolved.

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Status of Recommendations

Recommendation 4:	Make non-concurrence process training available in an on-demand format to all staff and managers.
Agency Response Dated March 31, 2011:	OE intends to collaborate with the Office of Human Resources (HR) and develop on-line, on-demand training for all staff and managers. Until the training is complete, OE intends to promote and highlight the information that is currently available to all employees at any time on the NCP (e.g., overview, slide show, FAQs). OE 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. OE is currently reviewing the proposed on-line course, "NRC: Who We Are and What We Do," and 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."
	Although we appreciate the value of on-demand training, we do not believe that it is critical for the successful implementation of the NCP. OE believes that step-by-step instructions included with the NCP Form will be an effective tool in promoting successful implementation and is working in collaboration with ADM to put this in place as soon as practicable.
	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 conjunction with HR.
OIG Analysis:	The proposed action meets the intent of OIG's recommendation. OIG has identified on-demand training as an effective and efficient means by which to provide timely training on the NCP to all agency staff. OIG will close this recommendation when it reviews the fully implemented and deployed, on-demand NCP-related training as made available through the Virtual Orientation Center.
Status:	Resolved.

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Status of Recommendations

Recommendation 5:   Routinely update the Office of Enforcement Open
                      Collaborative Work Environment contact Web page to reflect
                      current Differing Views Office Liaison assignments.

Agency Response
Dated March 31, 2011:   The web page (http://www.internal.nrc.gov/OE/ocwe/contacts.html#ois)
                          has been updated to reflect the latest OCWE Champions.
                          OE will routinely review and revise the web site to reflect
                          updates at least every quarter. This process is captured in
                          the latest revision of the OCWE Handbook. (See Enclosure
                          3.)

                          Completion date: The web page was updated at the end of
                          2010 and was most recently updated on March 29, 2011.
                          The revised guidance in the OCWE Handbook is enclosed.

                          OE considers that all actions necessary to address this
                          recommendation have been completed.

                          POC: Renée Pedersen, OE

OIG Analysis: The proposed action meets the intent of OIG's
                  recommendation. OIG has verified and reviewed that the
                  agency has a reliable process in place to help ensure that
                  (1) the Office of Enforcement Open Collaborative Work
                  Environment contact Web page will be routinely updated as
                  necessary to accurately reflect the current Differing Views
                  Office Liaison assignments and (2) the listed Differing Views
                  Office Liaison assignments are accurate.

Status: Closed.

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Status of Recommendations

Recommendation 6:   Identify and track all Forms 757 submitted to date and store them in a central repository.

Agency Response
Dated March 31, 2011:   OE has already created a central repository in the ADAMS Main Library, called NCP Forms. OE has identified 39 records in ADAMS based on profiling in accordance with ADAMS Template NRC-006 (i.e., document type=non-concurrence process). OE is in the process of forwarding this list to all offices to verify the appropriateness of records currently identified as "non-concurrence process" and help identify all closed NCP forms.

Once all NCP forms have been identified, OE will ensure that they are filed in the NCP Forms folder in ADAMS. OE will also begin assigning tracking numbers in conjunction with the revision of NRC Form 757. OE plans on posting all closed NCP Forms on the NCP web site to increase employee awareness of how NCPs are dispositioned. OE will revise the OCWE Handbook to reflect this process prior to finalizing the NCP MD.

Completion date: Second quarter of 2011. This represents a one-quarter slippage from our November 5, 2010, response due to competing workload issues and, resource limitations.

POC: Renée Pedersen, OE

OIG Analysis: The proposed action meets the intent of OIG's recommendation. OIG will close this recommendation when it is able to verify and review that the agency has a reliable process in place that ensures that all Forms 757 are being consistently identified, tracked, and stored in the identified central repository located in the ADAMS Main Library.

Status: Resolved.

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Status of Recommendations

<u>Recommendation 7</u>:	Develop a formalized system to promote consistent and routine capture and review of submitted Forms 757.
Agency Response Dated March 31, 2011:	OE is currently taking action to revise NRC Form 757 to require that forms be sent to the NCP Program Manager in OE. NRC Form 757 will be revised to include a tracking number that will be assigned by the NCP Program Manager in OE. OE will post closed NCP Forms on the NCP web site. This strategy will be highlighted in training and outreach activities until the guidance in MD 10.158 is revised.
	OE will revise the OCWE Handbook to reflect this formalized process prior to finalizing the NCP MD.
	Completion date: Second quarter of 2011. This represents a one-quarter slippage from our November 5, 2010, response due to competing workload issues and, resource limitations.
OIG Analysis:	The proposed action meets the intent of OIG's recommendation. OIG will close this recommendation when it is able to verify and review that the agency has implemented a formalized system designed to promote the consistent and routine capture and review of submitted Forms 757.
Status:	Resolved.

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Status of Recommendations

Recommendation 8:   Perform regularly scheduled comprehensive assessments of the non-concurrence process.

Agency Response
Dated March 31, 2011:   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.

Because the NCP is not a routine process, OE recognizes the value of providing greater oversight during the process to help participants successfully implement the NCP. OE is sensitive to employees' perceptions on using the NCP and successful implementation can improve perceptions of the NCP. As previously noted, OE plans to revise the guidance to include oversight and coaching during the process by the NCP Program Manager.

Completion date: Consistent with the Internal Safety Culture Task Force 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.

POC: Renée Pedersen, OE

OIG Analysis: The proposed action meets the intent of OIG's recommendation provided that the assessments are distinct to the NCP and are not merely a broader review of the OCWE initiative. OIG will close this recommendation when it is able to (1) verify that the agency has a reliable process in place that ensures the NCP is routinely assessed, and (2) review documentation supporting the completion of the initial program assessment.

Status: Resolved.