

# **FINAL REPORT**

## ***Differing Views Program Improvement Project***

### **Rev. 1.3**

Non-Concurrence Process and the  
Differing Professional Opinion Program

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## Differing Views Program Improvement Project - Rev. 1.3

**Executive Summary:** To better serve its stakeholders, the U.S. Nuclear Regulatory Commission's (NRC) Office of Enforcement (OE) initiated a Differing Views Program (DVP) Improvement Project in March 2018 to identify improvements to its Non-Concurrence Process (NCP) and its Differing Professional Opinion Program (DPO). Led by one of the NRC's Process Improvement Black Belts, this project was highly structured and engaged appropriate stakeholders throughout the project. The project began by achieving up-front clarity and alignment with key project participants on all critical project parameters. This was followed by the project lead, and others supporting the project, reviewing the most relevant documents among the vast amount of NCP and DPO documentation that already existed. Recent assessments, surveys, and audits were all reviewed for the purpose of compiling potential process-related concerns, along with compiling any suggestions to address those concerns. These concerns and suggestions were then augmented by concerns and suggestions obtained through interviews with both internal and external NCP and DPO stakeholders, and by written comments from NRC management and staff. This set of concerns and suggestions was carefully studied and systematically processed to develop an initial set of draft recommendations specifically crafted to eliminate, or significantly reduce, the most important and the most commonly cited concerns. The recommendations were then vetted by those most familiar with the NCP and DPO processes, and then presented to senior management for comment. See Tables 4 and 5 for the official recommendations. Implementation plans will be developed upon final review and approval of the recommendations.

**Background:** The NRC's DVP is composed of: 1) the Non-Concurrence Process, which is described by Management Directive (MD) 10.158; 2) the Differing Professional Opinion Program, which is described by MD 10.159; and 3) the Open Door Policy, which is described by MD 10.160. OE is responsible for managing the NCP and DPO processes and the Office of the Chief Human Capital Officer is responsible for managing the Open Door Policy. The Open Door Policy was not included in this project.

In general, an NCP<sup>1</sup> is submitted when someone involved in creating or reviewing a draft document decides to formally raise a differing view on that document when it is routed for concurrence. A DPO is submitted to formally raise a differing view associated with an already established position. Refer to the NCP and DPO MDs for more specific information.

In response to feedback from internal and external NCP and DPO stakeholders, OE initiated an effort in March 2018, to identify improvements to NCP and DPO. This report describes that effort and includes recommendations, based on extensive stakeholder involvement, to increase both the effectiveness and the efficiency of the NRC's NCP and DPO processes.

**Project Approach:** This project was conducted in a structured manner and developed its final recommendations through a systematic approach by utilizing effective process improvement tools to produce consensus-based recommendations that were constructed to address the most important and most frequently cited concerns. The following is a brief description of each phase of this project:

### Phase 1: Stakeholder Alignment on Project Parameters

The first phase of this project was to achieve a high level of up-front clarity and alignment among key project participants on all of the most important project parameters. A Project Charter (Attachment A) was utilized for this purpose and includes the following:

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<sup>1</sup> Although NCP and DPO are initialisms for Non-Concurrence Process and Differing Professional Opinion, another common use of NCP and DPO is that the staff "submit an NCP" or "submit a DPO" to initiate the respective process.

- Overall Objective of the Project
- Problem Statement
- Project Description
- Key Project Participants
- Other Key Stakeholders
- Project Scope
- Project End Date
- Key Deliverables

To summarize the Project Charter, the overall objective of this improvement project is to better serve the NRC's internal and external NCP and DPO stakeholders. There are two parts to achieve this. The first part, which is in the scope of this project, is to recommend a set of practical consensus-based recommendations to improve the effectiveness and efficiency of the NCP and DPO processes. The second part, which is not in the scope of this project, is to implement those recommendations.

Once alignment was achieved on the Project Charter, further alignment and buy-in was achieved through the collaborative development of a detailed Project Plan which identified all of the activities required to produce the agreed upon deliverables, the order in which they needed to be done, the responsible party for each activity, and the time frame allowed for each activity. The project plan also served to keep the project on track and to meet the agreed upon dates.

An important aspect of how this project was approached was to recognize and utilize the vast amount of information that had already been generated on NCP and DPO, including a recent assessment and multiple surveys. So for this initiative, instead of utilizing a working group to develop the information needed to produce recommendations, the project lead, with the assistance of other OE staff, extracted the appropriate information from the most relevant existing documents. This was then supplemented with information obtained during interviews and from written comments. As interim project documents were developed, the key project participants and consultants were effectively utilized to review them and to provide feedback and direction relative to their respective area of expertise, responsibility, and authority. The key project participants and consultants for this project included:

- The Director, Office of Enforcement (Project Sponsor)
- The Deputy Director, Office of Enforcement (Project Co-Sponsor)
- The Branch Chief of the Concerns Resolution Branch, Office of Enforcement
- The NCP and DPO Program Managers, Office of Enforcement
- The Safety Culture and Federal Employee Viewpoint Survey subject matter experts, Office of Enforcement
- The Agency Allegation Advisor, Office of Enforcement
- The staff lead for the NRC Safety Culture, Office of Chief Human Capital Officer
- A Performance Improvement Specialist, Office of Enforcement
- The National Nuclear Security Administration's DPO contact, Department of Energy

#### Phase 2: Stakeholder Alignment on NCP and DPO Objectives

The next phase of this project was to achieve a broader and more precise alignment on the specific objectives of NCP and DPO and how effectiveness and efficiency apply to those objectives. This review also effectively served as a discovery phase which, among other things, informed the development of the project's interview questions. The documents that were reviewed included:

1. Management Directive 10.158, Non-Concurrence Process
2. Management Directive 10.159, Differing Professional Opinion Program
3. Management Directive 10.160, Open Door Policy

4. 2018 Differing Views Program Assessment
5. Office of the Inspector General Audit of NRC's Non-Concurrence Process, OIG-11-A-02
6. Office of the Inspector General Audit of NRC's Differing Professional View/Differing Professional Opinion Program, OIG-00-A-07
7. Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the NRC
8. 2014 Process Improvement Review of Differing Professional Opinion Process
9. 2014 Differing Views Program Assessment
10. 2014 Non-Concurrence Process Assessment
11. Safety Culture Continuous Learning and Improvement Services, Task Order 3, Differing Views Processing Benchmarking report by LinkVisum Consulting Group dated March 13, 2013
12. NRC report titled "Analysis of Agency Programs Through Which Employees Can Raise Concerns" dated 9/25/2012
13. Evaluation of Issue Resolution Systems, FocalPoint Consulting Group, September 30, 2010

A review of these documents and discussions with various stakeholders revealed that effectiveness and efficiency, as they relate to NCP and DPO objectives, were not explicitly stated. To achieve a more common understanding, a white paper titled "NCP and DPO Effectiveness and Efficiency" (Attachment B) was developed and distributed prior to management interviews to facilitate discussions. This was followed by distributing a statement of just the NCP and DPO objectives. Further discussion with key project participants and senior managers resulted in further refinements and the following definitions.

NCP and DPO Objectives:

- To help inform the decisionmaking process, and
- To provide a formal mechanism for staff to make their differing views known and be addressed.

With regard to these objectives, assume that a potential submitter has a "viable" differing view. For the purposes of this example, a viable differing view is defined as a differing view, which under the right conditions, would substantially change an imminent decision, a current position, or the basis for the decision or position. In this example, the viable differing view would make the decision making process more effective but only if: 1) The submitter actually chooses to raise the viable differing view through the appropriate voluntary process, and 2) the process used to evaluate the viable differing view concludes with an appropriate decision.

It is essential to the effectiveness of NCP and DPO that a submitter's overall experience of either process does not dissuade them or anyone else from attempting to inform the decision making process in the future. With regard to the overall experience, some submitters may be dissuaded from submitting future differing views because they do not trust that the process will conclude with an appropriate decision, while others may be dissuaded because of their perceptions of potential negative consequences. Therefore, it is essential that a reasonable attempt is made to facilitate the submitter's acceptance of the decision and that a reasonable attempt is made to provide a positive experience for the submitter, or at least not a negative one.

Phase 3: Benchmarking

The next phase of this project was to benchmark other external organizations' differing views programs to potentially adopt any best practices that, if adopted by the NRC, would increase the effectiveness or efficiency of NCP or DPO, thereby better serving the NRC and its stakeholders.

This project utilized a benchmarking report titled "Safety Culture Continuous Learning and Improvement Services, Task Order 3, Differing Views Processing Benchmarking" by LinkVisum Consulting Group dated March 13, 2013. This document contains the results of a comprehensive benchmarking effort on

organizations with differing views programs that were deemed by LinkVisum to be relevant to the NRC. More recently, the NRC’s reprisal working group reached out to NASA for additional information. The benchmarked organizations were:

- The National Aeronautics and Space Administration,
- The Federal Aviation Administration, Air Traffic Organization,
- The Food and Drug Administration, Center for Drug Evaluation and Research, and
- Pfizer

Of particular interest were each organization’s applied “Best Practices” associated with the key factors identified by LinkVisum as being necessary for effective differing view processes. Each of those Best Practices is listed in Table 1 along with its applicability to the NRC’s NCP and DPO, and whether the Best Practice was included in this project as an official recommendation.

**Table 1: Benchmarked Organizations’ Best Practices and their applicability to the NRC**

<b>Benchmarked Organization and cited “Best Practice”</b>	<b>Applicability to NRC</b>	<b>Recommend as an NRC improvement?</b>
<b><i>National Aeronautics and Space Administration</i></b>		
NASA offers an option to submit differing views anonymously.	Anonymity would not apply to NCP. The NRC already allows for an anonymous DPO submittal.	No
NASA utilizes an ombudsman.	An NRC ombudsman would likely facilitate more creative, informal, and positive resolutions to NCP and DPO.	Yes
NASA delineates between programmatic authority and technical authority.	The NRC delineates authorities and responsibilities between the program offices and regional offices which have technical authority, and OE which has programmatic authority.	No
NASA has no <i>performance measures</i> other than questions in their safety culture surveys.	The NRC already uses various surveys to ask questions about its NCP and DPO Program.	No
<b><i>Federal Aviation Administration</i></b>		
FAA only allows non-concurrence with Management Directives.	This would not be appropriate for the NRC to adopt.	No
FAA NC’s are limited to “serious operational or legal concerns” or if there are “substantive flaws in the process.”	There is close alignment among senior managers that we must allow unrestricted entry into NCP and DPO.	No
FAA does have other avenues to report unsatisfactory conditions including drawings, docs, procedures, etc.	The NRC has an Open Door Policy by which any subject can be discussed.	No
FAA has no <i>performance measures</i> other than questions in their safety culture surveys.	The NRC already uses various surveys to ask questions about its NCP and DPO Program.	No
<b><i>Food and Drug Administration</i></b>		
FDA has an ombudsman. He is the focal point for DPOs.	An NRC ombudsman would likely facilitate more creative, informal, and positive resolutions to NCP and DPO.	Yes
FDA has an option to raise issue to the next level of management.	The NRC’s Open Door Policy already allows any issue to be raised to any level of management. DPO allows an appeal	No

Benchmarked Organization and cited “Best Practice”	Applicability to NRC	Recommend as an NRC improvement?
	to the Executive Director for Operations (EDO).	
If a decision maker makes a decision contrary to the recommendation, he must write a memo explaining the rationale.	The rationale to support NCP and DPO decisions is already included in the respective NCP and DPO processes.	No
FDA has no <i>performance measure except through surveys</i> .	The NRC already uses various surveys to ask questions about NCP and DPO.	No
FDA improved survey results due to making differing opinions much more visible.	This initiative recommends increased transparency on the outcome of all NCPs and DPOs.	Yes
<b>Pfizer</b>		
Pfizer focuses on “compliance.”	The NRC’s NCP and DPO are necessarily broader than compliance.	No
Pfizer has an ombudsman.	An NRC ombudsman would likely facilitate more creative, informal, and positive resolutions to NCP and DPO.	Yes
Pfizer has multiple avenues, including an Open Door policy to discuss compliance issues.	The NRC already has a sufficient number of avenues including an Open Door Policy.	No
Confidentiality is a priority to protect employees.	For NCP, confidentiality is not a practical option. However, an unsatisfactory NCP outcome can be the subject of an anonymous DPO.	No

Phase 4: Compilation of Concerns and Suggestions

The next phase of this project was to develop a comprehensive list of NCP and DPO problems, referred to as “concerns” in this project, and any suggestions to address them. Concerns and suggestions for this project were obtained from the following sources:

1. The 2018 Differing Views Program Assessment,
2. Information obtained during interviews with internal stakeholders,
3. Written comments submitted by internal stakeholders,
4. Information obtained during interviews with external stakeholders, and
5. Internal and external stakeholder comments resulting from document reviews, briefings, presentations, meetings, conversations, etc.

Periodic assessments of the NCP and the DPO Program are required per their respective Management Directives. The 2018 Differing Views Program Assessment contains extensive information and is the most recent document on NCP and DPO activities. It includes relevant NCP and DPO Safety Culture and Climate Survey data; relevant NCP and DPO Federal Employee Viewpoint Survey data; and data from a survey that specifically targeted staff who were directly involved with NCPs and DPOs, which also includes their extensive written comments. In addition to containing a variety of concerns, the 2018 assessment also includes recommendations, many of which are addressed, in whole or in part, by this DVP Improvement Project.

To get a representative cross-section from those involved in or affected by NCP and DPO, this DVP Improvement Project interviewed senior managers from all regional offices and across NRC headquarters; multiple representatives of each different type of NCP and DPO role; and respondents to a May 31<sup>st</sup> EDO Update soliciting feedback on the programs; and multiple external stakeholders.

Internal stakeholders included:

- the current and former Executive Director for Operations,
- the Deputy Executive Directors for Operations and the Assistant to Operations,
- all Regional Administrators and some of their deputies,
- all Office Directors whose offices had been involved with NCPs or DPOs, and some of their deputies,
- all NRC staff who requested to be interviewed as the result of the EDO announcement (and who subsequently made themselves available), and
- NRC staff who were recommended by others to be interviewed.

External stakeholders included representatives from:

- the Nuclear Energy Institute,
- the Union of Concerned Scientists,
- Duke Energy,
- Dominion Energy, and
- The Department of Energy.

At the conclusion of this phase, over 400 concerns were captured along with over 200 suggestions.

#### Phase 5: Observations and Insights

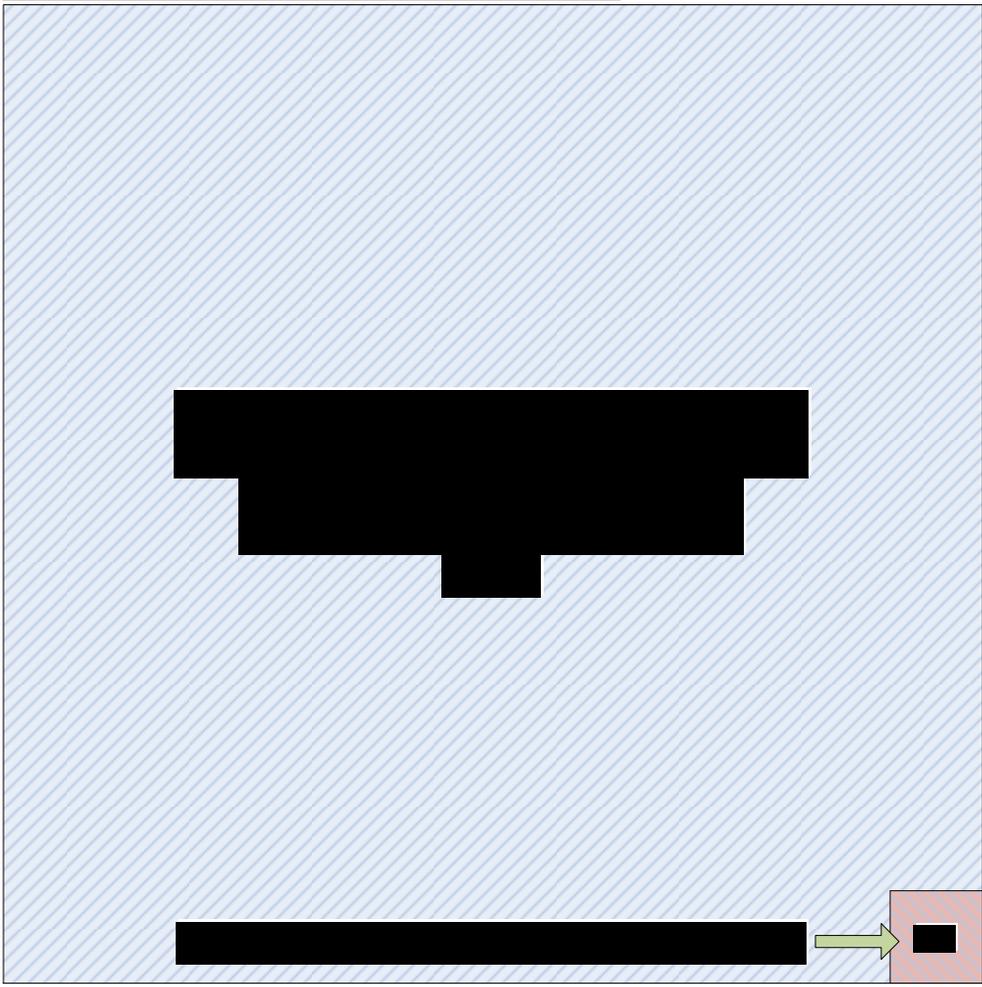
Important suggestions and insightful observations were made by many interviewees during the initial phase of the interviews. Questions related to those suggestions and observations were added to subsequent interviews which revealed a high level of alignment on the following:

1. Theoretically, even if an NCP or DPO never changed an imminent decision, a current position, or the basis for either, the NRC would still have these programs because of the value that the NRC places on providing the staff with a mechanism for having their differing views expressed and responded to in a formal manner and, if requested by the submitter, potentially made publically available.
2. The NRC must continue to allow the staff to avail themselves of the NCP and DPO processes consistent with the current eligibility criteria. That is, entry into these processes should not be made more restrictive by this improvement project. Rather, once the NCP or DPO process is initiated, the process must be made more flexible to allow for easier, less resource intensive dispositions appropriate to the issues raised.
3. The resources expended on any given NCP or DPO should be commensurate with the overall importance of the issues raised.
4. The NRC makes thousands of regulatory decisions every year and the number of times that differing views are discussed, addressed, and resolved during the normal course of developing decisions, without having the need to use the Open Door Policy, NCP, or DPO, is not measurable.
5. The number of NCPs and DPOs can increase for good or bad reasons and the number can decrease for good or bad reasons. Therefore, increases or decreases in NCPs or DPOs is not a measure of their effectiveness. A better measure would be to gauge participants' adherence to the NRC's ISOCER values, iCORE, and Leadership Model at the conclusion of each NCP and DPO.

[Redacted]

[Redacted]

[Redacted]



[Redacted]

Phase 6: Data Preparation and Analysis

The analysis started by assigning the following attributes to each of the 400+ concerns:

- Whether the concern was an effectiveness concern, an efficiency concern, both, or neither.
- Whether the concern was an NCP concern, a DPO concern, both, or neither.
- The source of each concern (which was encrypted and remained confidential).
- Each NCP role and each DPO role performed by the person who provided the comment (per the NCP and DPO Master Tracking system). The roles used are shown in the following table:

**Table 2: NCP and DPO Roles**

<b>NCP Roles:</b>	<b>DPO Roles:</b>
• Senior Management	• Senior Management
• NCP Submitter	• DPO Submitter
• NCP Supervisor	• DPO Panel Member
• NCP Coordinator	• DPO Decision Maker
• NCP Approver	• DPO Other
• NCP Other	

After assigning attributes, categories were developed based on the characteristics of the concerns and each concern was placed into one or more of the following 24 categories.

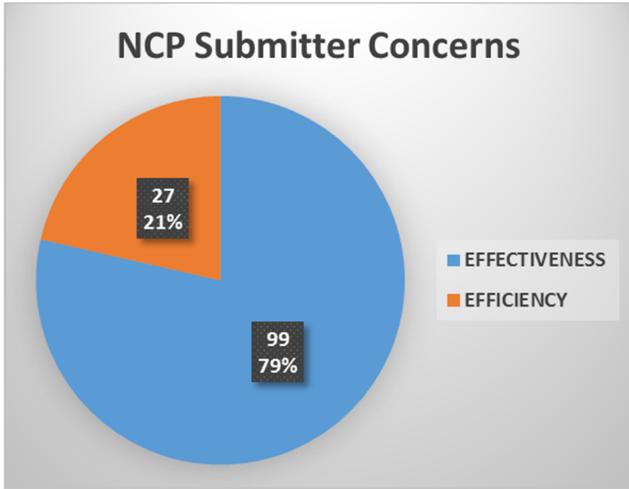
**Table 3: Categories of Concerns**

1	Training	13	OE support and management oversight
2	DV avoidance	14	Accountability
3	Early communication	15	Program organizational location
4	Alternative solutions	16	Reviewer/decider qualifications
5	The screening process	17	Independence
6	Submitter qualifications	18	Objectivity
7	Issue clarity and scope	19	Review quality
8	Process flexibility	20	Post-submittal communication
9	Process guidance	21	Level of effort compared to importance
10	Roles and responsibilities	22	Overall effort to address DVs
11	Trust/confidence	23	Duration of DV resolution
12	Management/peer/legal support	24	Experience and perceptions

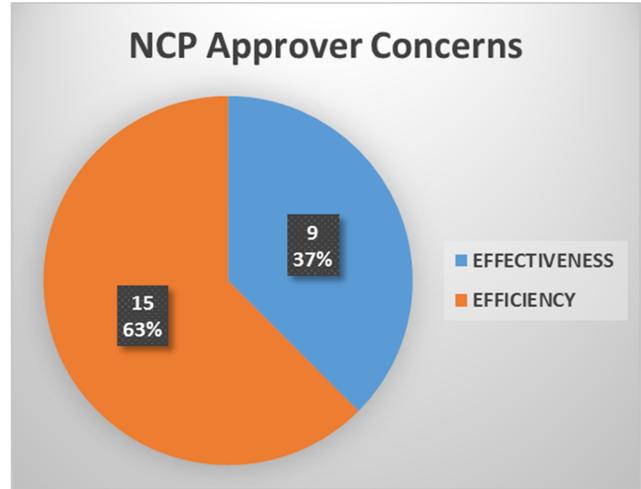
Once the categories and attributes were assigned, process data from the NCP and DPO tracking systems were reviewed to see if it validated any concerns. Concerns related to the timeliness of NCP and DPO were validated by the data. No other process data, specific to the other concerns, is contained in the tracking systems.

The next step was to generate various types of data depictions to reveal insights into relationships between the 400+ concerns. One of the more revealing data depictions was the large variation in the number and types of concerns expressed between submitters and decision makers which is shown below. This set of pie charts shows that the NCP and DPO submitters are primarily concerned with the effectiveness of the NCP and DPO processes whereas NCP Approvers and DPO Decision makers are primarily concerned with the efficiency of the processes. This was the biggest challenge of this project. The processes need to be more effective and yet they also need to be accomplished with fewer staff hours.

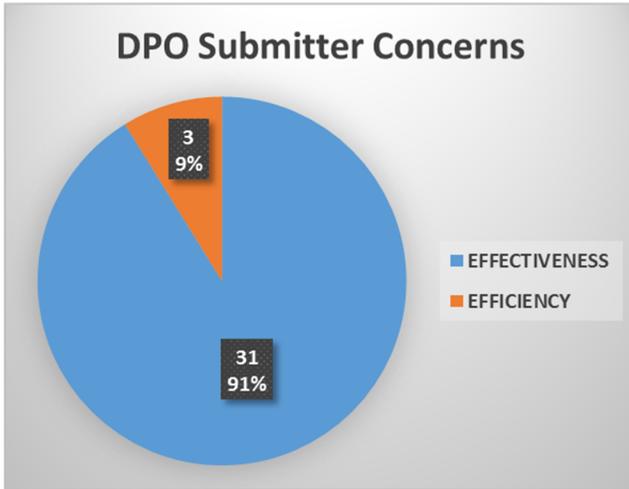
**Figure 2: NCP/DPO Submitter Concerns vs. Approver/Decision maker Concerns**



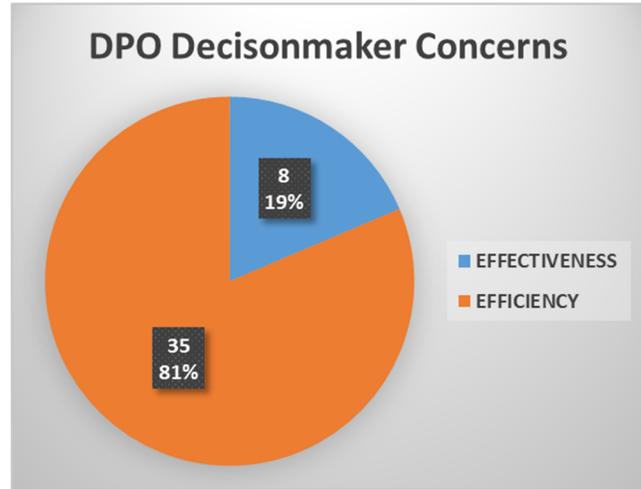
The pie chart above shows that NCP submitters have significantly more concerns about the effectiveness of the NCP process than its efficiency.



The pie chart above shows that NCP approvers have significantly more concerns about the efficiency of the NCP process than its effectiveness.



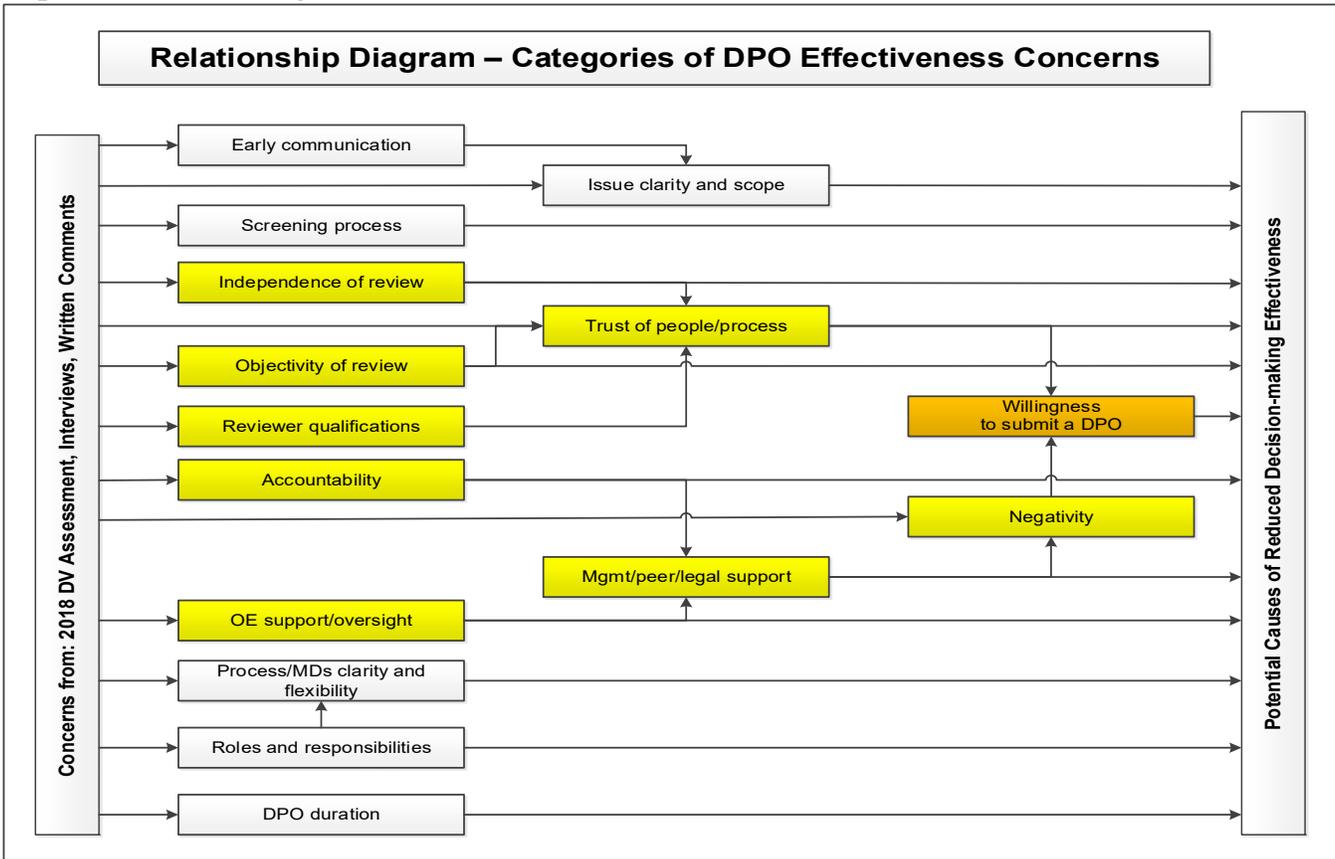
The pie chart above shows that DPO submitters have significantly more concerns about the effectiveness of the DPO process than its efficiency.



The pie chart above shows that DPO decision makers have significantly more concerns about the efficiency of the DPO process than its effectiveness.

Another aspect of the NCP and DPO concerns is the multi-layered cause and effect relationships. That is, process participants must not create a negative or unsatisfactory experience for the submitter because it may cause a potential submitter to choose to not raise a potentially important differing view in the future. Moreover, if the negative experience is learned of, or observed by, other staff, they too may choose to not raise a potentially important differing view. For example, the Relationship Diagram below shows that to improve the level of “Willingness to submit a DPO,” shown in the orange box, the contributors to that orange box, shown by the yellow boxes, would also have to be improved. A number of these multi-layered relationships were analyzed.

**Figure 3: Relationship of DPO Effectiveness Concerns**



**Phase 7: Development of the Official Recommendations**

The next stage of this project was to tabulate the 200+ suggestions made by the interviewees, comment submitters, documents, etc., and determine which of the 24 categories of concerns each suggestion would likely help solve. This systematic approach of using stakeholders’ suggested solutions to solve actual stakeholder problems resulted in multiple potential solutions for each concern category. Combining all similar, realistic, and practical solutions for each concern category, consistent with those areas of high alignment previously described, yielded a draft list of recommendations.

The next stage of this project was to vet the draft recommendations. Multiple iterations of review and comment were performed by those most familiar with the NCP and DPO processes. The vetting process included reviews by:

- The NCP and DPO Program Managers and Branch Chief
- OE’s Safety Culture and FEVS subject matter experts
- The Office of the Chief Human Capital Officer’s (OCHCO’s) lead for NRC Safety Culture and Open Door Policy

- Agency Allegations Advisor
- OE Office Director and Deputy
- 

Through this initial vetting process, the draft recommendations became official recommendations. The official recommendations were then presented to:

- The Office of the Executive Director for Operations (OEDO) prior to and in preparation for presenting the official recommendations at an Agency Mission Meeting (AMM)
- Office Directors and Regional Administrators during the following AMM
- OEDO subsequent to the AMM

**The Official Recommendations:**

The following tables include the Official Recommendations developed by this DVP Improvement Project. Table 4, “Transformative Recommendations” lists the recommendations that are expected to have the biggest positive impact on increasing the effectiveness and efficiency of NCP and DPO. Table 5, “Recommendations on change management, minor process changes, and process documentation,” contains recommendations that, among other things, need to be implemented to ensure a smooth transition to the improved NCP and DPO processes.

**Table 4 Transformative Recommendations**

#	Key Words	Official Recommendation to address Area of Concern	NCP, DPO, or Both	Basis for Recommendation
1	DPO process flexibilities	<p>Revise the DPO process to allow for a graded approach through process flexibilities. The process flexibilities are based on the priority of the issue as determined during the recommended evaluation phase (described by Recommendation #5.)</p> <p>Recommended DPO Process Flexibilities:</p> <p>a. Allow the DPO decision maker, including the EDO for DPO appeals, to process a DPO via a summary disposition, in lieu of a panel, if it is determined during the recommended evaluation phase, or otherwise, that a more extensive review is not required.</p> <p>For example, a panel may not be needed if the issue is: 1) a repeat issue, 2) there is no new information relevant to the issue, and 3) the decision maker is confident that a previous review was thorough and reached the appropriate conclusion(s). A summary disposition would not disallow an appeal.</p> <p>b. Allow the DPO decision maker to form a panel with fewer than three people when the evaluation factors are favorable to this approach (as determined during the recommended evaluation phase, or otherwise), and the panel member(s) possess sufficient technical expertise and independence to make appropriate recommendations.</p>	DPO	<p>DPO process flexibilities, based on the priority of the DPO, is the primary way to reduce the number of staff hours required to disposition a DPO. There is a very high level of alignment among the NRC’s senior leaders, and others, that entry into DPO (and NCP) should not be made more restrictive by this initiative. Instead, once a submittal has been accepted, there must be process flexibilities afforded to the decision makers to disposition DPOs (and NCPs) relative to the issue’s priority.</p> <p>To best serve our internal and external stakeholders, decisions must be timely and sufficiently informed and have an adequate basis. If an issue contains little or no merit, either because it is not significant or because it’s a repeated issue, with little or no new information, the decision maker must have the authority to disposition that issue easily and quickly. Similarly, if a new issue can be properly reviewed by just one person, then a 3-person panel should not be required.</p> <p>The NRC strives to accomplish its Mission in the most effective and efficient manner. Because the NRC has limited resources, it must apply them to the most important matters, recognizing that not all issues are at the same level of importance and, therefore, the NRC should not apply the same amount of resources to each one. NCP and DPO need to be structured to more effectively and efficiently arrive at the right decision (while welcoming and appreciating information submitted via DPO and NCP as part of the decision making process).</p>
2	Delegation	<p>a. Allow an Office Director and a Regional Administrator to delegate DPO cases to their deputies.</p> <p>b. Allow a Senior Level advisor to chair a DPO panel.</p>	DPO	<p>The workload of DPOs needs to be distributed among other qualified individuals in order to improve the timeliness of DPO dispositions.</p>

#	Key Words	Official Recommendation to address Area of Concern	NCP, DPO, or Both	Basis for Recommendation
3	"Ombudsman-like" soft skills	<p>Apply a greater level of expertise in the soft skills, such as using an ombudsman, to prevent, address, and resolve conflict; to coach NCP and DPO participants; to informally seek the resolution of non-process and non-technical issues among staff, managers, and executives; and to identify and eliminate the causes of negative experiences and negative perceptions associated with the NCP and DPO Programs.</p> <p>Looking at this a different way, a major challenge of the NCP and DPO can be the interactions among the individuals involved in the processes. Any reluctance to submit an NCP or DPO needs to be overcome and we need to err on the side of more expertise in this area than what some may see as necessary. It is essential that the perceptions of NCP and DPO become realistically positive.</p> <p>In addition to enhancing communications throughout the NCP and DPO processes, the ombudsman would casually meet with the submitter, and other process participants, upon the disposition of each NCP or DPO, to determine how satisfied each individual was at each stage of the process and what, if any, enhancements should be made.</p>	Both	<p>With regard to accomplishing our Mission, the two scenarios that we must avoid are: 1) a potential submitter who has a viable differing view but chooses to not raise it via NCP, DPO, or otherwise, and 2) a submitter who chooses to submit a viable differing view, but the process fails to result in a change to a decision, position, or the basis for either one.</p> <p>Interviews conducted during this initiative revealed that the likelihood of a submitter choosing to not use NCP or DPO appears to be related to their perceived level of the negativity associated with NCP and DPO, of which the perceived level of ineffectiveness of the NCP and DPO processes is a main contributor. Therefore, someone highly skilled in being able to prevent and resolve any negative experiences and eliminate negative perceptions is essential. Of all the recommendations associated with NCP and DPO, the expert application of soft skills would improve, by far, the greatest number of areas of concern and would have the greatest overall positive impact.</p> <p>Specifically, the expert application of soft skills is expected to improve the following areas of concern: 1) lack of early communication, 2) not sufficiently seeking alternative solutions, 3) submittal screening issues, 4) submitter motives and submission quality, 5) achieving greater and earlier clarity of the issues, 6) improving trust, 7) increasing support and accountability, 8) resolving issues with independence and bias, and 10) enhancing communications throughout the process.</p> <p>Using an ombudsman was suggested by many interviewees; three of the four benchmarked organizations, NASA, FDA and Pfizer, utilize a position designated as "ombudsman"; and so does the Department of Energy. Using an ombudsman at the NRC in conjunction with a CAP was recommended by FocalPoint and recommended in an NRC report titled "Analysis of Agency Programs Through Which Employees Can Raise Concerns" dated 9/25/2012.</p>

#	Key Words	Official Recommendation to address Area of Concern	NCP, DPO, or Both	Basis for Recommendation
4	Pre-submittal resolution	<p>Upon becoming aware of an imminent NCP or DPO, OE should:</p> <p>a) be more pro-active in engaging the appropriate parties to resolve the differing view through alternative, less resource-intensive means such as informal discussions, meetings, the Open Door policy, etc., and</p> <p>b) consider using an expert facilitator, mediator, or ombudsman (see Recommendation #3) to potentially increase the number of differing views resolved early in the process and in lieu of NCP and DPO.</p>	Both	<p>One of the best ways to minimize the number of staff-hours associated with resolving differing views (and potentially minimize conflict) is to resolve the issues prior to reaching the NCP or DPO stage.</p> <p>The “NRC’s Principles of Good Regulation,” states in part, “Where several effective alternatives are available, the option which minimizes the use of resources should be adopted.”</p> <p>Using a facilitator, mediator, or ombudsman would likely result in an earlier understanding of the involved parties’ interests and allow for more creative resolutions and earlier negotiations.</p>
5	Evaluation phase to achieve up-front clarity	<p>Upon accepting a DPO, OE should coordinate an effort with the submitter and necessary subject matter experts (and/or use a Tiger Team described below) to quickly understand the following in order to advise the decision maker and to inform the review plan:</p> <p>1) Importance of prompt action on the issue,                  2) safety significance of the issue,                  3) complexity of the issue, and                  4) all areas of technical expertise needed to resolve each technical issue.</p>	DPO	<p>The DPO Management Directive states that the DPO will be processed, in part, according to items 1 through 3 listed in the recommendation plus consideration of the priority of other work activities affecting the availability of participants, which will be considered during the development of a review plan. This evaluation will form the basis for the recommended process flexibilities by establishing a priority, or level of importance, of the DPO.</p>
6	Tiger Team to perform evaluation	<p>Form a Tiger Team for each DPO from a list of highly qualified and highly respected individuals in each region/office to conduct a comprehensive evaluation of the issues, scope and any other important circumstances. The Tiger Team could also help figure out how to best resolve each technical issue and to potentially help facilitate the resolution process.</p> <p>According to Wikipedia- <a href="https://en.wikipedia.org/wiki/Tiger_team">https://en.wikipedia.org/wiki/Tiger_team</a>. A tiger team is a diversified group of experts brought together for a single project, need, or event. They are usually assigned to investigate, solve, build, or recommend possible solutions to unique situations or problems.</p>	DPO	<p>This recommendation addresses multiple categories of concerns from both management and staff and is expected to have a substantial positive impact on the effectiveness, including timeliness, and the efficiency of DPO processing. Many senior managers suggested utilizing a “Tiger Team,” “Surge Team,” or a “Nimble Team” to quickly achieve up-front clarity on the issues being raised so that the agency can prioritize its activities and apply the appropriate resources to resolve the issues in a timely manner. Utilizing highly qualified and highly respected individuals would also address many submitters’ concerns about the technical adequacy and objectivity of the reviews along with those reviews leading to unbiased outcomes.</p>

#	Key Words	Official Recommendation to address Area of Concern	NCP, DPO, or Both	Basis for Recommendation
7	Training – Interpersonal and Conflict Resolution	The agency should consider enhanced training in interpersonal skills and conflict resolution for individuals who are in a role that could be involved in NCPs and DPOs, especially for NCPs and DPOs that may include safety-related issues or that have high levels of interest among external stakeholders.	Both	Based on the 400+ concerns gathered from interviews and program documents, a root cause of many of the biggest problems associated with NCP and DPO is a lack of interpersonal skills, and a lack of conflict resolution techniques – which can lead to avoidance and decision making delays. In the interest of better serving our internal and external stakeholders with more timely decisions, we need to learn how to proactively resolve conflict quickly through more highly developed interpersonal skills.

**Table 5: Recommendations on change management, minor process changes, and process documentation**

#	Key Words	Official Recommendations	NCP, DPO, or Both	Basis for Recommendation
8	Guidance - MDs	OE should simplify and clarify Management Directive 10.158 (NCP) and Management Directive 10.159 (DPO). Each MD needs to: a) clarify the objectives of NCP and DPO, b) clarify timeliness expectations, c) be consistent throughout and be consistent with all other sources of guidance, d) eliminate duplication of information, e) clarify roles and responsibilities, authorities, expectations, etc., and f) incorporate any changes as the result of this initiative.	Both	Having clear, concise, accurate and consistent guidance is fundamental to operational effectiveness and efficiency.
9	Guidance – “Best Practice Guide”	Develop a “Best Practice Guide” to effectively resolve differing views, including doing so prior to entering NCP or DPO. This would include best practices such as having the decision maker meet with the submitter, adding “alternative views” to documents, etc. The Guide would also include role-specific best practices, samples of good submissions and summaries, and examples of circumstances that are either not appropriate for NCP or DPO or better handled in other ways including the Open Door policy.	Both	The issues and circumstances associated with each NCP and each DPO can vary greatly and can include varying degrees of conflict. Consequently, necessary and prudent actions taken to resolve one NCP may not apply to another, so mandating specific actions in a Management Directive for every issue or circumstance would not be appropriate. Therefore, a “Best Practice Guide” may be the best way to convey best practices for the different types of issues and circumstances.

#	Key Words	Official Recommendations	NCP, DPO, or Both	Basis for Recommendation
10	Training – process and expectations	Review the NCP and DPO iLearn training to make it consistent with the NCP and DPO Management Directives and include any other information, expectations, “calibrations,” etc., as the result of this initiative.	Both	Updating the NCP and DPO iLearn training to incorporate the recommendations of this initiative and making it consistent with their respective Management Directives is fundamental to having effective and efficient NCP and DPO processes.
11	Submitter Responsibilities,  Up front clarity	For each NCP and DPO, require the submitter to indicate High, Medium, or Low for each of the following:  1) Importance of prompt action on the issue, 2) safety significance of the issue, and 3) complexity of the issue.  Also require the submitter to list each area of technical expertise needed to resolve each technical issue.	Both	Both Management Directives state, “Ensure that the NCP [or DPO process] is executed effectively, efficiently, and timely, consistent with the (1) importance of prompt action on the issue, (2) safety significance of the issue, (3) complexity of the issue, and (4) priority of other work activities affecting the availability of participants.” Section A of the NCP form requires the submitter to address “Potential Impact on Mission” but having the submitter address the first three issues would add up-front clarity and better inform the OE PM and other stakeholders of the overall importance of the differing view.
12	Kick-off Meeting,  Review Plan,  Up front clarity,  Timeliness,  Facilitator	Upon completing the evaluation, OE, as the program/process owner, should conduct a kick-off meeting that includes the submitter, decision maker, technical reviewers, and any others who have already been identified as being needed. The objectives of the meeting are to present the evaluation and agree on how to proceed. This would include a discussion on roles and responsibilities, other expectations, appropriate process flexibilities, a plan to resolve and disposition the issue, milestones, target dates, available resources, etc.  This may be a good opportunity to use an NRC facilitator.	DPO	Having a kick-off meeting with the submitter, all the other participants, and the decision maker will address numerous concerns.  BPI Best Practice: Use the highest level Senior Executive willing to kick off the meeting by addressing the team, thanking the submitter and the other participants, emphasizing the importance of respectful and professional cooperation, reaching the right resolutions, etc. The OE PMs will provide the Senior Executive suggested talking points in advance of the meeting for their consideration.

#	Key Words	Official Recommendations	NCP, DPO, or Both	Basis for Recommendation
13	NCP kick-out clarification  OE coordination	<p>Require an NCP document signer to coordinate with the Director of the Office of Enforcement when the document signer plans to sign the subject document prior to completing the NCP evaluation.</p> <p>Currently, Section IV. B of the Handbook to MD 10.158, NRC Non-Concurrence Process, allows the document signer to sign the “NCP’d” document prior to completing the NCP evaluation if there is a “compelling reason.”</p>	NCP	<p>Clearly, the regional and program offices have the authority to make timely technical decisions. However, “how well” the overall NCP process serves the needs of all of those involved in or affected by the process is owned by the process owner.</p> <p>Therefore, coordination with the Director of the Office of Enforcement should be required when there are compelling reasons to issue a document prior to formally completing the evaluation of the NCP.</p>
14	NCP & DPO New Process Maps	<p>Upon approval of this project’s recommendations, develop a swim-lane process map for NCP and for DPO, incorporate the approved recommendations from this initiative, execute the new processes as pilots, refine as needed, and then institutionalize the processes in the respective Management Directives.</p>	Both	<p>A swim-lane process map is a highly effective tool for quickly learning processes such as NCP and DPO. Swim-lane process maps show all of the process steps in sequence along with the responsible role for each step. For individuals who have not been involved in the NCP or DPO process, a swim-lane process map would allow them to easily see the overall process, what their specific responsibilities are, where they fit into the overall process, who they interact with, where those interactions occur, and all other roles involved in the process along with the responsibilities of each other role. Process maps are standard depictions for organizations that perform at high levels of operational effectiveness and efficiency.</p>
15	Communications Plan	<p>Develop a communications plan to roll out the new NCP and DPO processes resulting from this project.</p>	Both	<p>A Communications Plan is essential for a smooth transition from the current state to an improved future state.</p>
16	Reduce others’ Administrative Burden	<p>During the course of processing NCPs and DPOs, OE should continue to identify any opportunities to reduce the administrative burden on the technical organizations. For example, consider using OE’s Administrative Assistants to perform the ADAMS-related activities.</p>	Both	<p>As the owner of the NCP and DPO programs and processes, OE should continue to see if it can better serve its stakeholders by centralizing any administrative tasks from the technical organizations (except for items that the individual offices can do more efficiently and where consistency among orgs is not important).</p>

#	Key Words	Official Recommendations	NCP, DPO, or Both	Basis for Recommendation
17	Screening and Alternative Solutions	<p>a) OE should become familiar with the other NRC programs and processes that resolve issues to the extent that it can redirect NCP and DPO issues to other, more appropriate, programs and processes for resolution.</p> <p>b) During the screening process for NCPs, OE should also confirm that the subject document contains the regulatory decision being questioned (instead of just being referenced).</p>	Both	<p>a) Interviewees stated that issues have been allowed into OE's DVP that should have been redirected to other programs (although it is not known how many times this has already occurred or may occur). This one-time investment of hours by OE's PMs along with the necessary interactions with the other programs' PMs would likely result in a variety of tangible and intangible benefits.</p> <p>b) It is highly ineffective and inefficient to initiate an NCP process, for example, when the issue ends up having to be processed as a DPO.</p>
18	Post-disposition transparency	Place all NCP and DPO follow-up actions on an internal web page along with a regularly updated status. Track which NCPs and DPOs made a positive difference.	Both	In the interest of transparency, accountability, and keeping interested parties informed, OE should post all NCP and DPO follow-up actions and their status on an internal web page.
19	RACI	<p>Once the NCP and DPO recommendations associated with this project have been approved, collaborate with all stakeholder groups to agree on the types of information required by each stakeholder group, the timing of that information, who is responsible for informing each stakeholder group, and the method by which that information is to be communicated.</p> <p>BPI Best Practice: Develop a RACI chart to show who is <b>R</b>esponsible, <b>A</b>ccountable, <b>C</b>onsulted, and <b>I</b>nformed for each process step.</p>	Both	A lack of communications has been cited to occur throughout the NCP and DPO processes to the detriment of both the effectiveness and efficiency of both processes. A lack of early communications can cause missed opportunities to take advantage of more efficient alternate solutions to resolve differing views and can lead to a prolonged lack of issue clarity, which can further cause expending excessive resources on issues outside of the actual differing views. A lack of post-submittal communication can contribute to further misunderstandings and a failure to resolve the submitter's actual differing views.
20	Performance data	Collect data regarding the number of hours expended for each NCP and DPO. This could be accomplished by issuing a feedback questionnaire to applicable individuals upon closure of a case.	Both	This would yield level-of-effort performance data. A LinkVisum best practice is to collect quantitative data.

# Attachment A - PROJECT CHARTER

## Differing Views Program Improvement Project

**Overall Objective:** To better serve its internal and external stakeholders, the Differing Views Program Improvement Project seeks to identify improvements to increase the effectiveness and the efficiency of the Agency's Non-Concurrence Process (NCP) and Differing Professional Opinion (DPO) Program.

**Problem Statement:** In support of its Mission, and as part of its decisionmaking process, the NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal through various mechanisms. Two of these mechanisms are the NCP and the DPO Program. Feedback from internal and external stakeholder of the NCP and DPO Program indicates opportunities for improvement.

**Project Description:** This project will deliver a set of practical recommendations to Senior Management designed to increase the effectiveness and efficiency of the NCP and the DPO Program. This will be accomplished through analysis of existing information combined with information obtained through recurring communications with former program participants, affected line management, the NCP and DPO Program Manager and Program Owner, external counterparts, and other stakeholders as needed. Instead of a dedicated working group, this project will engage the sponsor, project consultants, and others as necessary to produce consensus driven decisions and recommendations.

**Project Sponsor:** Anne Boland, NCP and DPO Program Owner, and Paul Peduzzi, Co-Sponsor.

**Project Lead:** John Harrison, Performance Improvement Specialist.

**Project Consultants:**

Paul Peduzzi, Deputy Director, Office of Enforcement.

Dave Solorio, Chief, OE Concerns Resolution Branch.

Gladys Figueroa and Ian Gifford, OE NCP and DPO Program Managers.

Catherine Thompson and Diane Sieracki, OE Safety Culture & FEVS subject matter experts.

Lisamarie Jarriel, Agency Allegation Advisor. Lisa will be engaged on an as-needed basis.

Jason Lising, OCHCO staff lead for NRC safety culture.

Tom Hiltz, Department of Energy, National Nuclear Security Administration's DPO contact.

**Other Key Stakeholders:** (See the Stakeholder Listing for more detail)

NCP and DPO submitters, process participants, their line management, OEDO, and the Commission; other agency's differing views program managers and subject matter experts; licensees; other public stakeholders; and NTEU.

**Included in scope:**

1. A review and analysis of all pertinent information, both existing and developed during the course of this project, associated with the Agency's NCP and DPO Program.
2. Developing a set of consensus-based recommendations, designed to increase the effectiveness and efficiency of the NCP and DPO Program.

**Not Included in Scope:**

1. OCHCO's Open Door Policy.
2. Issues related to employee behaviors and leadership models.
3. Implementing the recommendations developed during this project.

**Project Schedule:** Deliver official recommendations by 08/31/2018. See the Project Plan for details.

**Key Deliverables:**

1. Project Roles and Responsibilities.
2. Project Plan and Schedule.
3. Recommendations to increase the effectiveness and efficiency of the NCP and DPO Program.

## **Attachment B - NCP and DPO Effectiveness & Efficiency Differing Views Program Improvement Project**

**Background:** To better serve its internal and external stakeholders<sup>2</sup>, the U.S. Nuclear Regulatory Commission's (NRC's) Differing Views Program Improvement Project seeks to identify improvements to increase the level of effectiveness and efficiency of the Non-Concurrence Process<sup>3</sup> (NCP) and the Differing Professional Opinion (DPO) Programs. Management Directive 10.158, "NRC Non-Concurrence Process," dated March 14, 2014, and Management Directive 10.159, "NRC Differing Professional Opinion Program," dated August 11, 2015, discuss the programs.

**Purpose:** Program documents do not explicitly define the terms "effectiveness" and "efficiency," as they apply to the NCP and DPO Programs. Therefore, the purpose of this paper is to help achieve greater understanding, and closer alignment, on the precise meaning of these terms with regard to the NCP and DPO Programs. Early alignment on the desired outcomes for improvements is an essential precursor to virtually all subsequent project activities.

**Effectiveness:** As stated in the NRC's 2018 – 2022 Strategic Plan, "effectiveness" is "The degree to which the outcome of an activity, process, or program contributes to achieving the agency's strategic goals, objectives, or strategies." Each of the management directives for these programs indicates that the intended outcome of the NCP and DPO Programs is to improve the agency's decisionmaking process. This implies that the effectiveness of the NCP and DPO Programs is the degree to which the NCP and DPO Programs improve the agency's decisionmaking process.

The primary way that both programs are intended to improve the agency's decisionmaking process is by formally capturing and then fully considering new or additional information that may not have already been included during the decisionmaking process. This directly supports the statement in the NRC's Principles of Good Regulation<sup>4</sup> that "Final decisions must be based on objective, unbiased assessments of *all information* [emphasis added], and must be documented with reasons explicitly stated."

Another important consideration is that the NCP and DPO Programs are voluntarily initiated. Therefore, these programs may not be fully effective at providing new or additional information if the staff is either unaware of these programs or choose not to use them. Therefore, increasing the effectiveness of the NCP and DPO Programs may also include increasing the staff's awareness and understanding of these programs.

The NCP and DPO Programs also include processes that directly involve or indirectly affect various internal and external stakeholders. Therefore, this project will also seek to identify improvements that will result in these programs better serving their stakeholders.

**Efficiency:** As stated in the NRC's 2018 – 2022 Strategic Plan, "efficiency" is "The degree to which the resources needed to produce an outcome can be minimized without reducing the outcome's effectiveness." This concept is not straightforward for the NCP and DPO Programs because, ideally,

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<sup>2</sup> For this project, "stakeholder" is applied in its broadest sense. It includes all those involved in, affected by, or otherwise interested in, the NCP and DPO Programs and their processes.

<sup>3</sup> Depending on the context, the NCP is sometimes referred to as a program.

<sup>4</sup> <https://www.nrc.gov/about-nrc/values.html>

the desired outcome is a fully informed and properly documented decision, and being able to achieve that outcome by using equally effective methods other than an NCP or DPO may be more efficient. This is consistent with the “Efficiency” section of the “NRC’s Principles of Good Regulation,” which it states, in part, “Where several effective alternatives are available, the option which minimizes the use of resources should be adopted.” This is also consistent with the first objective in the NCP and DPO management directives, which is to “Promote early discussion and consideration of differing views,” presumably to reduce the need to enter into a more resource-intensive NCP or DPO.

Therefore, this project will seek to identify improvements in two different areas of efficiency. The first is related to the process by which the NRC seeks to use alternative, less resource-intensive solutions, thereby reducing the need to engage the NCP or DPO processes. The second area of efficiency is related to using the NCP or DPO processes if other less resource-intensive solutions are either not available or ineffective.

**Other Considerations:** In addition to the general areas of effectiveness and efficiency described above, this project will also seek to identify improvements related to the following specific objectives included in the management directives for either the NCP or the DPO Program, or both:

- Ensure that the NCP and DPO processes are executed effectively, efficiently, and in a timely manner, consistent with the (1) importance of prompt action on the issue, (2) safety significance of the issue, (3) complexity of the issue, and (4) priority of other work activities affecting the availability of participants.
- Provide that a DPO is subjected to a thorough and impartial review by an independent review panel of employees who are knowledgeable in the DPO subject area.
- Recognize employees directly involved in an NCP or DPO when the outcome results in a valuable contribution to the agency.

**Conclusion:** To have a highly effective and efficient Differing Views Program, it is first necessary to identify, and then achieve close alignment on, precisely all of the areas in which that program is to be improved and made more effective and efficient. That is the primary purpose of this paper. To that end, if staff members are aware of any other areas not already addressed in this paper in which they expect or desire the NCP and DPO Programs to be more effective or efficient, they should make those known during this stage of the project. Staff insights into this matter are greatly appreciated.