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A SURVEY OF POLICIES AND PROCEDURES APPLICABLE TO THE EXPRESSION OF DIFFERING PROFESSIONAL OPINIONS

FOR COMMENT

Office of Management and Program Analysis
United States Nuclear Regulatory Commission

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I - INTRODUCTION

The objective of this paper is to identify and briefly describe policies and procedures that have been developed, utilized, or otherwise considered for handling differences of professional opinion by a variety of organizations, including the NRC. Most of this information was obtained through individual meetings and discussions with the individuals and the representatives of organizations listed in Section V. Many of these sources of information were selected because of their specific responsibilities in the area of public health and safety. Other contacts resulted from specific referrals by Congressional staffs, representatives of industrial organizations and industry associations, public interest organizations, and by employees of the NRC.

A. SCOPE

This initial survey of applicable policy and procedure is limited as follows:

- Applicable only to employees of the indicated organizations
- Applicable primarily to issues that relate to public health and safety and which arise in the normal decision making process
- Differences of professional opinion are limited to an employee's field(s) of expertise

The primary effect of these limitations is to exclude from this paper personnel-type and other basically unrelated issues so that attention may be focused upon the differences of professional opinion expressed by an organization's employees. Procedures for handling differences of opinion expressed by licensees or by contractors are also omitted from this paper. The subject of information provided to NRC by other than NRC employees is covered in a separate Commission paper (No. 78-308, dated June 9, 1978).

B. EMPLOYER AND EMPLOYEE - MUTUAL OBLIGATIONS

The primary emphasis of this paper is focused upon the characteristics and the details concerning procedures that have been developed by employers in their efforts to accommodate and to be responsive to the professional concerns of their employees. Such efforts by employers are clearly in consonance with the objectives and the details of the Guidelines to Professional Employment[1] that have now been adopted by at least 20 professional engineering and scientific societies. These endorsing societies are, for example, in full agreement that in order to make their maximum contribution, it is necessary for professional employees and employers to establish a climate conducive to the proper discharge of their mutual responsibilities and obligations.

It should be clear, therefore, that professional employees have certain obligations to their employers, i.e., that the establishment of an appropriate working environment requires a mutual effort. The following excerpts from these Guidelines to Professional Employment provide illustrative examples of such employee obligations.

- Essential and prerequisite to establishing such a climate (i.e., a climate conducive to the proper discharge of mutual responsibilities and obligations) are:

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[1] Guidelines to Professional Employment for Engineers and Scientists, First Edition, January 1, 1973.

1. Mutual loyalty, cooperation, fair treatment, ethical practices and respect as the basis for a sound relationship between the professional and his employer.

2. The professional employee must be loyal to the employer's objectives and contribute his creativity to those goals.

- The professional employee should be loyal to his employer. He should accept only those assignments for which he is qualified; should diligently, competently, and honestly complete his assignments; and he should contribute creative, resourceful ideas to his employer while making a positive contribution toward establishing a stimulating work atmosphere and maintaining a safe working environment.

- The professional employee should be responsible for the full and proper utilization of his time in the interest of his employer and the proper care of the employer's facilities.

The above examples have been selected to illustrate a few of the goals of the Guidelines that are primarily applicable to employees. It should also be realized that these Guidelines contain a large number of goals applicable primarily to the employer.

C. DEFINITIONS

- Difference of Professional Opinion

In the context of this paper a "differing professional opinion" denotes a professional opinion of one or more employees that:

1. concerns any substantive matter that may have potential impact on public health or safety, and

2. differs either in whole or in part from an existing organization policy or a proposed staff view that concerns the same or a closely related matter

- Whistleblower

A federal employee who discloses (outside his parent organization) examples of governmental waste, abuse, and corruption including malfeasance or misfeasance.[2]

- Peer Review

A review and evaluation of the potential merits of differing professional opinions expressed by an employee concerning any matter affecting public health and safety and conducted by a Peer Review Group established specifically for this purpose.

The review may be initiated either at the request of management or of the individual expressing the differing opinion.

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[2] The Whistleblowers: A Report on Federal Employees Who Disclose Acts of Governmental Waste, Abuse and Corruption - Senator Patrick J. Leahy, December 5, 1977 (Hereafter referred to as "The Leahy Report").

Members of the Peer Review organization should be selected on the basis of their objectivity and impartiality as well as their professional and technical qualifications. In general, managerial personnel should be included as members only if specifically requested by the originator of the differing view.[3,4]

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[3]Freedom of Professional Judgment Within the Nuclear Regulatory Commission: Proposed Procedures - a December 27, 1977 memorandum by Hogan and Hartson, Washington, D.C. (Hereafter referred to as the Hogan and Hartson Report), pp. 18, 19.

[4]Private Communication - Robert Vaughn, Professor of Law, American University and Author of "The Spoiled System."

II - PROCEDURAL STEPS AND OVERALL CRITERIA

This Section is concerned primarily with the description of a structure that has been developed for presenting the requisite elements of a method for dealing with differing professional opinions. The structure used for identifying and discussing these elements in a logical manner has been derived both from our review of the existing procedures of a variety of organizations and from selected literature dealing with procedural considerations of the problem. Within this structure, these elements have been determined to fall within two basic categories: (1) Procedural Steps and (2) Overall Criteria. The elements in both of these categories are identified and discussed in some detail in the following pages.

Each Procedural Step comprises a specific action (or series of actions) that must be carried out in order to achieve the predetermined objective of that element of the overall procedure. The specific objective of the first Procedural Step discussed below, for example, is simply to assure that management is informed of the existence (and the nature) of an employee's professional opinion that differs from the opinion that appears to be evolving as the "recommended" or the "majority" staff opinion. Typical examples of procedures for initiating the action(s) required by Procedural Step 1, i.e., the Open Door, Ombudsman, etc., are identified and discussed in Section III. In brief summary, the five Procedural Steps are:

1. Making Differences Known
2. Management Response
3. Alternatives if Dissatisfied With Management Response
4. Follow-up on Resolution
5. Follow-up Regarding Retaliation

Elements comprising the second category, i.e., the Overall Criteria, provide the means for judging the effectiveness (and perhaps the acceptability) of any mechanism that is proposed for handling differing professional opinions. The titles of these overall criteria are:

1. Recognition of the Need for Differing Views
2. Assured Freedom from Retaliation
3. Written and Publicized Procedures
4. Feedback to Originator
5. Accountability at all Stages
6. Inclusion in the Public Record of Certain Material
7. Afford Recognition to Originators of Significant Differing Opinions
8. Provide Resources for Developing Differing Professional Opinions
9. Resolution or Full Discussion

A. PROCEDURAL STEPS

This section describes five sequential, procedural steps that appear capable of being effectively employed in an overall organizational procedure for dealing with differing professional opinions. In Part III of this paper, actual and proposed examples, obtained from government and industry, are described for each of the following five steps:

Step 1: Making Differences Known

Employees must take the first step in order to make known their differences of opinion. (In a sense though, management must have already taken the prior step of having established alternative methods that encourage employees to express such views in situations which they believe to be not in the best interest of the organization or the accomplishment of its mission.)

In the normal day-to-day functioning of an organization, an employee would usually take this initial step by speaking directly with his or her immediate supervisor. This day-to-day working relationship may, if desired, be formalized by incorporation into an "open door" policy which can provide a broad based mechanism for employees to make their differences known at relatively low management levels.

A critical factor concerning this first Procedural Step is that a single communication channel (e.g., the "open door") is not sufficient--a second communication channel must also be available to each employee. This second, parallel channel makes it possible for management to learn of the differing view if, for any reason, the employee prefers not to use the first channel or is dissatisfied with the functional characteristics of that channel.

Step 2: Management Response

Management first must acknowledge receipt of the employee's differing opinion. Management must then make an initial determination of the level of effort to be expended in developing the differing point of view, or at least communicate back to the originator the reasons why the difference of opinion is not considered worthy of further development. For example, if the question has been previously considered or if other work is currently underway that directly pertains to the question, little additional effort probably should be expended at this time. Time limit goals are frequently set for management's response to the originator.

The cycle involving Steps 1 and 2 may be repeated several times. It is not unusual for an employee to discuss a problem with his or her manager several times in the normal course of their work. Similarly, the employee may want to carry out such discussions through several higher levels of management.

Step 3: Alternatives if Dissatisfied with Management Response

If after management's "initial" response, an employee still feels that the issue is worth pursuing or that management has not clearly perceived the thrust or significance of the issue, some mechanism should be provided to assure that the opinion receives further consideration. Procedural alternatives at this stage provide either a final airing of the originator's opinion or result in an advisory opinion which may require management to further consider the expressed opinion.

Step 4: Follow-up on Resolution

There must be either a management or an independent follow-up to determine that prior steps have either resolved the issue or have provided adequate discussion and consideration of the issue. If the first three Procedural Steps are functioning properly, this follow-up or review should confirm that appropriate actions were taken at each step in conformance with the nine overall criteria described below. In addition, the follow-up should determine whether the differing opinion has become the prevailing view or was of such significance that the originator should be considered for public recognition and possibly a monetary award.

Step 5: Follow-up Regarding Retaliation

There must be regular monitoring of all phases of the process during and subsequent to the initial expression of the dissenting view to ensure that the employee is subjected to no retaliatory actions. If retaliatory actions are detected, sanctions must be enforced against the individuals responsible for such actions.

B. OVERALL CRITERIA

In order to provide an effective mechanism that has a high probability of actually being used by employees to express their differing opinions, a number of policy characteristics must be incorporated into the total system. The "Overall Criteria" identified here may be used not only to determine the acceptability of any proposed procedure(s) from a policy viewpoint but also to determine the potential effectiveness of one or more of the procedures proposed for handling differing professional opinions.

1. Recognition of the Need for Differing Views

Differing professional opinions must be promptly transmitted to appropriate management levels. In those areas which affect the health and safety of the public every responsible opinion is valuable and should not be either distorted or disregarded. The accumulated day-to-day expertise possessed by employees must be promptly and continually available to top-level management in order for management to effectively fulfill its mission.

2. Assured Freedom from Retaliation

Most simply stated, employees (whether non-managers or managers) will not utilize an organization's procedures to bring forth differing professional views or opinions if they expect any form of retaliation for either expression of the view or for having used the procedure(s). It is a fundamental requirement, therefore, that an organization establish and strictly enforce rigid sanctions against retaliatory actions. Employee confidence in the sincerity of an organization's efforts can be totally destroyed by the least hint that retaliatory actions are condoned.

3. Written and Publicized Procedures

All parties must be able to easily determine their responsibilities under the procedures and must also understand (in considerable detail) how the procedures will operate. In addition, the procedures must be both widely publicized when established and supplementary information concerning the procedures must be periodically disseminated to all employees.

4. Feedback to Originator

The originator of a differing professional view must not be ignored. Acknowledgement of the initial issue that he raised and subsequent provision of status reports concerning his views are required to instill confidence that the procedure is working.

5. Accountability at all Stages

Each individual involved in the processes associated with the handling of differing professional opinions must be accountable for his actions. This applies equally to the employees who may raise differing views and to managerial personnel who may respond to or make recommendations or decisions regarding such views. It is understandable that in the very early stages, an individual expressing a differing professsional view may desire anonymity. Should this view persist, and should the originator desire to pursue this issue, the individual expressing the differing opinion must agree to be accountable for defending his opinion. It must also be realized that accountability also implies traceability. At any stage of the process, for example, a reviewer must be able to clearly retrace the steps involved in the handling of any differing view and must be able to identify the recommendation(s) or decision(s) made at each stage and the individuals who made them. (Note that this does not require that every detail is placed on the public record but merely that a detailed, unambiguous record of each action taken is maintained in the organization's files.)

6. Inclusion in the Public Record of Certain Material

A large number of differing professional views are relatively easily resolved in the initial procedural steps. For issues that continue unresolved through several levels of management, details regarding the differing opinions and the manner in which these differences are reviewed, resolved or otherwise handled should be made a part of the public record.

7. Recognition for Originators of Significant Differing Views

Procedures for raising and resolving differing views can be very negative in the sense that they are designed to prevent undesirable actions by specifying the actions which are acceptable and by assigning responsibility for carrying out those actions. If a person raises an issue that is subsequently adopted by the agency, otherwise benefits the agency, or significantly improves public safety, then that individual should be rewarded both for his perceptiveness and as a means to encourage others to express their own views.

8. Provide Resources for Developing Differing Professional Opinions

Staff professionals should be assured of the availability of reasonable time and resources to document their professional views and to consult with personnel in other organizations as required. Such provisions would, of course, be subject to pre-existing assignments and schedules. In the simplest situation, this may only involve provision of secretarial assistance to prepare the dissenting opinion in a form suitable for submission to management. Documentation of opinions for the public record would, of course, require additional support.

9. Resolution or Full Discussion

Some differing views will concern items that can be readily resolved. That is, based on the differing view a decision can be changed, a new study can be initiated or, alternatively, the differing view can be determined to be without merit. Other differing views may not lend themselves to resolution. For

these, the procedures should provide a full and open discussion of the view with clear feedback regarding the reason(s) why there will be no change in the decision even though the view may have considerable merit.

III - EXAMPLES OF PROCEDURAL STEPS

For each of the procedural steps described in Section II A, this section provides specific examples of individual procedures that have been considered, used, or recommended by the industry or government organizations indicated. Each of these procedures is described in the same manner as it was presented to us by representatives of the organization indicated or as described in that organization's literature on the subject and provided by such representatives. No effort has been made to evaluate either the potential utility or the applicability of these procedural examples for further use by NRC.

EXAMPLES OF STEP 1 - MAKING DIFFERENCES KNOWN

The Dissent Channel - U. S. State Department

The Dissent Channel was initiated in 1971 upon the recommendation of the Secretary's Open Forum and is the responsibility of the Director of Policy Planning, U.S. State Department. The primary objective of the Dissent Channel is to bring to light those policy views and opinions which might not otherwise come to the attention of policy-makers. Former Secretary Kissinger's description seems even more appropriate - "the dissent channel has been established to encourage (professionals) within the department to give me and my successors the hard, blunt, and critical comments we seek."[5]

Detailed procedures have been established together with instructions for use of the Dissent Channel by any State Department employee, anywhere in

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[5] Statement by Secretary Kissinger before the House Select Committee on Intelligence on October 31, 1975.

the world.[6] Examples and specific instructions are provided to illustrate how an employee may utilize the Dissent Channel to transmit his views and opinions directly to the Secretary of State. Flexibility and "originator-choice" are key characteristics of the Channel. Expressed concerns need not be limited to subject matter falling within the responsibility of the originator's office but may equally well relate to policy proposed to be carried out in other functional areas or in other parts of the world. Moreover, it is not necessary that there be a head-on clash of views before the Channel is used, only a genuine expectation that normal operating procedures might not provide full and careful consideration of these views by key policy-makers. (emphasis added)

The spirit of the Dissent Channel is promotion of dialogue on policy issues. Users of the Channel are, therefore, encouraged to discuss the issues with supervisors. However, no clearance is required for the transmission of any message in the Dissent Channel. Prompt authorization for such messages being sent as telegrams or airgrams is obligatory. (It is understood that such authorization does not imply concurrence in the message content.) Since the chief purpose of the Dissent Channel is to encourage free expressions of views, any action which may be seen to penalize the originator for using the channel, or any efforts to stop or delay transmission of the message, should be reported directly to the Director of the Policy Staff. Dissent Channel messages are distributed initially only to the Secretary of State, the Executive Secretary of the Department, the Director of the Policy Planning Staff (who has responsibility for handling and response), and the Chairman of the Secretary's Open Forum. Additional distribution may be designated by the originator in the first paragraph of the message.

The Dissent Channel, therefore, assures that each of these messages will be seen by the Secretary of State, the Director of the Policy Planning Staff

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[6] U.S. State Department Notice, "Channels for In-House Dialogue and Creativity," dated January 19, 1977 - 2 FAM 101; 5 FAM 212.3; 11 FAM 243.

and others designated by the originator. It also provides the originator with a written response from the Director of the Policy Planning Staff within 30 days. Thus, while it may not always resolve issues in favor of the originator, the Dissent Channel does assure employees that their views are considered, individually, by top management of the State Department. As a matter of interest, usage of the Dissent Channel grew to about two messages per month by the end of 1971, its first year in being. During the fourth year, usage averaged over four messages per month and during 1977, Dissent Channel messages average about six per month.

The Critical Pathway - FDA

The so-called "Critical Pathway" was established by FDA to provide a special channel for communicating information concerning "critical problems" directly to the Commissioner. The basic objective is to assure that the Commissioner is promptly informed regarding any development within the agency that could potentially impact FDA's role in the regulatory environment. The Critical Problem Report System provides guidelines and procedures to be used by employees for submitting reports via this channel. In addition, this system assigns coordination responsibility for the overall program to a high-level FDA official. This communication channel was first used in June 1970 by Dr. John Néstor. The events which occured subsequent to Dr. Nestor's initial "Critical Problem Report" (e.g., Dr. Nestor's reassignment and other actions adversely affecting his professional career) are highlighted in "The Leahy Report"[7] to illustrate the failure of internal communications at the FDA. The Leahy Report further concludes that, in light of this and other agency failures to resolve major issues raised by its employees, the "Critical Pathways" system has proven to be an ineffective mechanism.

[7]The Leahy Report.

The Open Door Policy - International Business Machines Corp.

The following is a description of the Open Door Program as it is described by IBM management to all employees. Additional details, including procedural steps and answers to employee questions, are provided to employees during the frequent meetings conducted for this purpose by individual IBM managers:

"The Open Door Policy is deeply ingrained in IBM's history. This policy is a reflection of our belief in respect for the individual. It is also based on the principal that every person has a right to appeal the actions of those who are immediately over him or her in authority. It provides a procedure for assuring fair and individual treatment for every employee.

Should you have a problem which you believe the company can help solve, discuss it with your immediate manager or your location's personnel manager or, in the field, with the manager of your location. You will find that a frank talk with your manager is usually the easiest and most effective way to deal with the problem.

Second, if the matter is still not resolved, or is of such nature you prefer not to discuss it with your immediate manager or location personnel manager, you should go to your local general manager, regional manager, president or general manager of your division or subsidiary, whichever is appropriate.

Third, if you feel that you have not received a satisfactory answer, you may cover the matter with the Chairman of the Board by mail, or personally if that is appropriate to the resolution."

The Open Door Policy - NRC

Most simply stated, the NRC Open Door policy provides that all staff members are able and expected to make know their best professional judgment, whether or not it corresponds with the views of other staff or management, and that this can be done with the assurance of no recrimination or retribution. Toward this end, the Chairman has assured all employees that his office, the doors of any Commissioner's Office and the Office of Inspector and Auditor will be "open" to any employee who desires to so express his professional judgment. The Chairman has also emphasized that it is the responsibility of all levels of NRC management to provide this same "open door" access for all employees within their organization. To date, however, no agency-wide set of procedures has been developed to provide a uniform method for implementing this policy. The Open Door Policy represents an effort initiated by the Chairman and the Commissioners to assure each employee the opportunity to freely express his or her differing professional opinions, direct to any desired management level, without fear of reprisal or retribution.

Note that a more detailed discussion of NRC's Open Door Policy is provided in the Appendix to this paper.

Note: An evaluation of the usage rate of existing (non-NRC) Open Door procedures indicates that, in a technically oriented organization similar in size and organizational structure to the NRC, the average rate at which professional differences of opinion are expressed via this channel total approximately:

8 - 12	per year addressed to the Chief Executive Officer
50 - 60	per year addressed to upper levels of management (e.g., roughly equivalent to NRC Division Directors)

The Ombudsman

Stated quite simply, the ombudsman is an experienced individual of unquestioned integrity who is appointed by and responsible only to the Chief Executive Officer of his parent organization. Generally his primary, if not exclusive, responsibility is to examine the decisions, the methods of operation and the results of activities initiated in channels established for the expression of differing professional opinions. His additional responsibility involves being readily accessible to all employees to impartially hear their professional concerns and their complaints regarding any existing or planned actions of the organization.[8, 9]

- IBM relies heavily upon ombudsman to maintain smoothly functioning relationships between employees and management of all levels within the corporation. An IBM ombudsman, always an experienced and mature member of senior management, is designated by the Chairman of the Board and is assigned to each geographic location in which a significant number of IBM employees are located. Representatives of IBM have repeatedly assured us that the IBM ombudsman effectively perform a vitally important function and that the office is fully accepted and utilized by IBM employees at all levels. It is also emphasized that, with respect to employee-management relations and any related matters, the IBM ombudsman is recognized by employees at all levels at the resident representative of IBM's Chairman of the Board for matters of this type.

  The IBM ombudsman for the Washington, D.C. area is designated as IBM's Corporated Headquarters Resident Manager and he functions as ombudsman for approximately 10,000 IBM employees located in this general area.

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[8] Excerpt and paraphrase from "The Corporate Ombudsman," Isidore Silver, Harvard Business Review, May/June 1976.

[9] Dr. K. B. Clark, "The Role of the Individual in the Modern Enterprise," Proc. of 50th Annual Conf. of Industrial Relations Counselors, June 1976.

Ombudsman-related duties require approximately 50 percent of his time and this appears to be typical of the effort required of ombudsmen in U.S. industry.

- NRC Office Directors were recently asked to comment[10] regarding the possible establishment of an ombudsman "with the sole purpose of ensuring that staff views receive a proper hearing and that staff concerns are not jeopardized as a consequence of expressions of dissent and for establishing a procedure whereby staff can request to present their concerns before an open meeting of the Commission." The responses to this inquiry indicated general agreement (among NRC Office Directors) that creation of an (NRC) ombudsman would be a highly ineffective and inefficient method to employ to assure that dissenting professional opinions on matters affecting public safety are heard and that the careers of staff personnel involved would not be jeopardized.

The "Speak Up!" Program - IBM

This program provides a completely confidential communication channel for the submission of complaints, questions or comments on any company-related subject.[11] IBM provides self-mailer "Speak Up" forms at convenient locations in each IBM facility and employees are encouraged to use the system through the issue of recurring announcements of the advantages and effectiveness of the system. All Speak Up letters receive prompt, personal replies mailed directly to the employee's residence. Procedural steps assure the anonymity of each employee who uses the system.

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[10] Lee V. Gossick memo of September 15, 1977 - Subj: Review of Effectiveness of Procedures for Treating Dissenting Staff Views.

[11] Private communication, Mr. Charles McKittrick, Manager, IBM Washington, D.C. Office.

The total usage of this channel averages less than 10% of all employees per year. It is also evident that very little of this relates either to technical or professional issues. IBM representatives indicate that this results from an overwhelming preference by IBM employees for the Open Door procedures in handling such issues.

Skip-Level Procedure - HEW

An informal procedure exists for resolving differences of opinion expressed by a single HEW employee. The employee is required to send his written differing opinions (together with the report, paper or other expression of the position adopted by his supervisor) to the individual having final decision-making responsibility for the specific issue. (Most frequently this is, in fact, the manager to whom his supervisor reports.)[12]

The Normal Process - NRC

This channel is specified as one that should ordinarily be used when it appears that an employee's concern can be resolved at organizational levels below the Commission.[13] It is emphasized, however, that existence of this channel does not limit an employee's right to take advantage of NRC's Open Door Policy either at the outset or at any other stage. While it has been suggested that the Normal Process is inadequate,[14] the stated objective of this process is to "insure that employees understand that they may, without fear of retribution, bring to management attention any situation which, in their view, has not been satisfactorily addressed or resolved in the normal staff process as regards protection of the public."

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[12]Private Communication - John Kanak, Safety Manager, HEW.

[13]Lee V. Gossick's Dec. 7, 1976 memorandum, Sub: Resolution of Safety Concerns.

[14]Hogan and Hartson Report - pp. 3-5.

The description of this channel identifies the discrete steps that NRC employees should take to express their differing professional opinions in the course of the normal review process.

The Advisory Committee on Reactor Safeguards (ACRS) - NRC

The ACRS has emphasized that this Committee represents one of the several avenues available for NRC staff members to freely express their concerns to differing opinions regarding safety matters. Specifically, the ACRS has advised that:[15]

a. Any NRC staff member may telephone the ACRS Chairman or any member of ACRS and inform them privately of his or her concern. Assurance is given that such matters would receive the prompt attention of the ACRS.

b. NRC staff members may also inform either the ACRS Chairman, or any ACRS member of his or her concern by a letter, written anonymously if desired. Again, the ACRS would give prompt attention to such matters.

Unsatisfactory Condition Report - FAA

The Unsatisfactory Condition Report (UCR) system is designed to permit any FAA employee to advise FAA management of any unsafe condition.

[15]Testimony of Dr. Dade W. Moeller, Chairman, ACRS, in the March 4, 1976 hearings before the Joint Committee on Atomic Energy.

Preprinted five-part forms are readily available in all FAA offices. Instructions indicate the forms are not to be used for grievances, housekeeping matters, classified information, etc. An employee completes the report form and sends one copy to the Washington office responsible for the program area. Three copies are given to his immediate supervisor and the employee retains a copy. Each level of management is required to take appropriate action, to notify the originator within 10 days of receipt of the report, and to assure that there is a coordinated effort to resolve the problem. UCRs may provide the basis for subsequent awards to the employee. Appeals concerning any aspect of response to the UCR are made through the normal chain of command.

(Note: This system is primarily concerned with conditions having potential impact on public safety. Other FAA systems exist for reporting OSHA-type safety conditions relating to FAA employees.)

EXAMPLES OF STEP 2 - MANAGEMENT RESPONSE

Although the following examples were previously cited under Step 1 - Making Differences Known, they are equally applicable in illustrating Step 2 - Management Response processes. This derives primarily from the fact that each of these examples makes explicit provision for the direct feedback by management to the originator of the differing view.

The Dissent Channel - U.S. State Department

The written dissent channel procedures[16] specify that an acknowledgement of receipt of a message is sent to the drafter within one week after

[16]U.S. State Department Notice, op. cit.

arrival in the Office of the Director of the Policy Planning Staff. Then, a written response is prepared that includes an evaluation of the issue, how it was considered in light of other factors, and specific reasons why an alternative decision was made or other disposition of the issue. The goal is to provide the written response within 30 days of receipt with very complex issues requiring a response in 60 days.

Unsatisfactory Condition Report-FAA

The Unsatisfacotry Condition Report (UCR) instructions[17] require each level of management to evaluate and take appropriate action within 10 days of receipt. The final action office returns to the originator, down through the supervisory chain, one copy of the UCR with attachments describing the action taken. If the UCR requires more than 10 days to resolve, the originator must be notified.

Speak-Up! - IBM

Employees who use the Speak-Up system are assured anonymity and a prompt response. Messages are sent to a Speak-Up coordinator in corporate headquarters who deletes any reference to the sender, numerically codes the inquiry and assigns it to the individual in the corporation best qualified to prepare the response. This individual is responsible for delivering the completed response to the Speak-Up coordinator who then forwards the response to the sender's home address.

[17]FAA Order 1800, 6A, April 17, 1968, reprinted February 20, 1975.

EXAMPLES OF STEP 3 - ALTERNATIVES IF DISSATISFIED WITH MANAGEMENT RESPONSE

The Ombudsman and the Open Door - IBM, NRC

Each of these programs was described in Procedural Step 1 as a mechanism that could be utilized by employees to initially make known their differences of professional opinion. These programs were developed, however, to make it possible to deal with a broad range of considerations and activities associated with differing professional opinions. Typical examples include: making the difference known, initial discussion and review of the proposed alternatives, inclusion in the (public) record, and final resolution, as applicable. Therefore, and in light of the various other channels available for expressing the initial difference, these programs also provide effective alternatives for an employee who is dissatisfied with the initial response of management to his initially stated differing opinion.

Peer Review

If an employee is dissatisfied with the initial response by management, he or she may be afforded the opportunity to present the differing opinions to a peer review group that has been specifically selected for that purpose.

Such collegial review groups - which may include outside consultants - are commonplace in technical and professional decisionmaking and their use should be encouraged in instances of important safety issues on which differing professional judgments have been expressed.[18,19,20]

- Peer Review Among Professionals in the Same Activity Area-HEW

  Differences of professional opinion between two or more professionals working in the same area of technical activity are routinely submitted to a Peer Review Panel for resolution. This panel consists, generally, of a selected number of professionals who normally work in the area in which the difference of opinion has occurred. Issues that remain unresolved by the Peer Panel are included in the record that is submitted to the next higher level of HEW management.[21]

  Peer Review Between Major Departments and/or Field Offices-HEW

  Differences of professional opinion occurring between major departments of HEW, between HEW Field Offices or between Field Offices and

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[18]The Hogan and Hartson Report, pp. 18, 19.

[19]J. A. Powers October 3, 1977 Memorandum to L. Scott.

[20]H. T. Peterson, Jr., September 26, 1977 Memorandum to R. G. Smith.

[21]Private Communication - Mr. Edward Bauer, HEW Deputy Director for Safety Surveillance.

major departments are generally submitted to a Technical Coach Committee. This Committee functions essentially in the same manner as a Peer Review Panel. The Committee consists of a selected cross section of qualified HEW employees and each Committee is specifically appointed for each such occasion by senior HEW management.

- Peer Review Procedure-FDA

The Peer Review procedure was previously used for the resolution of differing professional opinions within FDA. This procedure was superseded by the "Critical Pathway" process (see Section III, Examples of Step 1) when FDA employees declined to participate in the Peer Reviews. This reportedly resulted from employee fear of management reprisal or retribution for speaking out during the conduct of Peer Reviews.[22]

Air Traffic Controllers Committee - FAA

In 1963, FAA established an air traffic Controllers' Opinions/Procedures Committee (COPCOM) to encourage controller participation in the development of air traffic control procedures. COPCOM provides for direct communication between controllers and the concerned Washington office without prior screening or review by intermediate levels of supervision. Non-supervisory air traffic controllers are selected as COPCOM members by the Regional Air Traffic Division Chiefs. The group conducts annual regional workshops and a national workshop for two weeks in the fall. Only the chairpersons of regional groups attend the national workshop. In addition, a one week workshop review meeting is held annually to review headquarters staffing of the previous workshop's recommendations.

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[22]Personal Communication - Dr. John Nestor, FDA

Skip-Level Interview - IBM

This procedure effectively provides employees with a "mini Open Door" that may be used at any time to express a differing professional opinion or to solicit management advice at a management level one level higher than that of their own supervisor. Such contacts may be made informally and may be done with or without notification of the employees own supervisor. Thus, if dissatisfied with his supervisor's response to the expression of a differing professional opinion, the employee is free to discuss the matter at the next higher managerial level prior to deciding whether to make formal use of the IBM Open Door Policy or to take other action.[23]

This procedure also provides that all managers within IBM shall, on several occasions during each year and with no routine or advance notice, meet with employees in organizations two levels below their own. The objective is to meet informally with employees, to determine whether employees have concerns in any area of their work or personal affairs, to make arrangements for resolving such concerns as appropriate, and to follow-up on the status of employees who may have previously expressed differing professional opinions.[24]

Inter-Assembly Council - NIH

Each of the eleven National Institutes of Health (NIH) Institutes has its own Assembly of Scientists, independent of NIH management. In most cases, membership in the appropriate Assembly is automatic when scientists (GS-11 and above) first begin work in an institute. Each Assembly elects representatives to the Inter-Assembly Council. Individual assemblies and the Inter-Assembly Council comprise a potential source of peer pressure for resolution of a variety of issues. Over the past few years, however, only administrative

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[23]Private Communications - Mr. Roy Brown, IBM Corporate Headquarters Resident General Manager, Washington, D.C., and Mr. Charles McKittrick, General Manager IBM, Washington, D.C. Office.

[24]Ibid.

problems have been brought before the Assemblies. Since most NIH scientists are working on their own research projects rather than an overall NIH program, there are essentially no differences of professional opinion with regard to proposed agency positions.

Open Forum Journal - State Department

The elected Chairman of the Open Forum organization prepares a quarterly, classified journal that is widely distributed to State Department offices. An independent editorial board provides oversight over journal content. All articles are conceived and written by employees. Usually, there is a surfeit of articles submitted for publication in the journal. Printing costs are paid for by the Department of State.

Open Forum Luncheon Meetings with Guest Speaker - State Department

Although not a part of any dissent procedure per se, this activity does comprise an effective forum for the expression of views that may not be officially popular. These luncheon meetings include an invited guest speaker and a question and answer period. Arrangements are made by the Chairman of the Secretary's Open Forum and guest speakers are chosen to provide insight and stimulate discussion on policy matters. All sessions are "off the record" and usually are open only to employees of the foreign affairs agencies. Guest speakers are neither paid nor are travel expenses reimbursed. Depending upon the speaker's subject, question and answer periods can be quite active. The Open Forum Chairman believes that this activity provides headquarters employees with an effective opportunity for the discussion of differing views outside of management channels.

EXAMPLES OF STEP 4 - FOLLOW-UP ON RESOLUTION

Only the following two examples were found that relate to follow-up actions for determining whether issues raised were resolved to the satisfaction of the originator. Follow-up requires both a record of issues raised and

specific action by the person(s) designated to monitor the resolution. Note that resolution is, in many cases, simply a full discussion of the issues and perhaps insertion of the divergent views "on the record."

The Dissent Channel - U. S. State Department

The Chairman of the Open Forum receives a copy of all incoming messages and clears all responses. He thus verifies that the response is both timely and that it fully addresses the issue.

Air Traffic Controllers' Committee - FAA

Eight members of the prior year's national workshop meet for one week each year to review FAA's staffing of the prior national workshop's recommendations. Since members of the review meeting have attended the prior national meeting, they have a full understanding of the recommendations and the requirements for their adequate implementation.

EXAMPLES OF STEP 5 - FOLLOW-UP ON RETALIATION

None of the reference sources listed in Part V of this paper could identify any set of procedures that contain specific follow-up actions that would assure employee freedom from retaliation. However, all sources that had either represented employees or investigated cases involving dissenting views state that this procedural step is the most important.

Recommended Protective Procedures - Hogan and Hartson

The Washington, D.C. law firm of Hogan and Hartson has recommended the adoption of procedures such as the following to assure that employees

who raise differing views will be protected and will not be subject to retaliation.[25]

1. A definition of actions that constitute retaliation. This would be broadly defined to include retaliation, coercion and suppression.

2. A requirement that management provide written explanations of actions which employees allege are retaliatory. (This is based on a Food and Drug Administration report[26] recommending that involuntary transfers be documented.) The documentation should include a written statement by the person ordering the transfer or other personnel-type action, should specify in detail the reasons for such action, and should contain a certification that the statement is both accurate and complete.

3. Establishment of basic evidentiary rules for proof of retaliation. Since proof of retaliatory action is often possible only by circumstantial evidence, two evidentiary rules are suggested:

   - That management be bound by the explanations given for the challenged action and thus prevented from raising explanations after the fact.

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[25]The Hogan and Hartson Report, pp. 21-32.

[26]Investigation of Allegations Relating to the Bureau of Drugs, Food and Drug Administration, Review Panel on New Drug Regulation, April 1977, p. 750.

- That an examiner's finding that reasons given for management's action are incorrect be construed as placing the burden on management to prove that the challenged action was in no way based on retaliatory motives.

4. A review by a disinterested outside examiner or review board of alleged retaliatory actions as an alternative to agency grievance procedures. This review would be available only to employees who have previously used the overall procedure to express a bona fide, nonfrivolous difference of professional judgment. Also, it would be binding on an agency - not advisory.

5. Disciplinary sanctions against employees who initiate retaliatory actions. Sanctions could be triggered by a finding of retaliation by the disinterested review.

IV - ADDITIONAL CONSIDERATIONS

The following considerations, although not specifically incorporated in the programs and procedures summarized in this report, appear to be clearly deserving of management attention.

A. "ON THE RECORD"

Statutory Requirement - FDA

21 CFR 10.70 requires that all significant decisions, on any matter under the laws administered by the Commissioner, be documented in detail in the administrative file. Of special interest are the following:

> 10.70 (b) (2) Such file shall contain the recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.
>
> (b) (2) (i) Such recommendations and decisions shall reveal any significant controversies or differences of opinion and their resolution.
>
> (b) (2) (ii) Any agency employee working on a matter and, consistent with the prompt completion of his other assignments, any agency employee who has worked on a matter shall have the opportunity to record his views on that matter in a written memorandum, which shall be included in the file.

- Concept Expressed by Chairman Hendrie

Chairman Hendrie discussed the following with NRC's senior staff as the preferred method for dealing comfortably and routinely with differing professional opinions. He suggested that, when an NRC employee's professional opinion differs from the position that will go forward as the recommended position (branch level or higher) a statement of the employee's differing views should be attached to the recommended position. Those additional remarks (i.e., the differing point of view) would then go on up the line.[27]

- Recommended for Consideration by Hogan and Hartson[28]

This firm has recommended that NRC consider a procedure that provides for placing differing professional judgments in the public record whenever the differences have been presented to more than one level of (NRC) management. The point is made that it is neither necessary nor desirable to make a part of the record every differing view expressed during "hashing out" an issue. The primary purpose of the written expression of differing professional opinion is to assure accountability, to expedite the resolution of such views and to preserve such differing opinions for placement in the public record as appropriate.

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[27]Chairman Hendrie's September 16, 1977, remarks to the senior staff promulgated by NRC Announcement No. 171 of Nov. 9, 1977.

[28]The Hogan and Hartson Report, pp. 6, 17, 18.

It is recommended that inclusion in the public record be mandatory for those differences of opinion that have gone "up the chain of command" beyond the immediate supervisor of the originating employee. However, when the expressed differing opinion is "preliminary" or remains otherwise "tentative," inclusion in the public record should be left to the discretion of the originating employee.

B. ACTIONS OUTSIDE AGENCY PROCEDURES

If and when an employee believes that he or she is still dissatisfied and that existing mechanisms within the organization have been exhausted, he or she must decide between either taking the issue "outside" or dropping it altogether. In general, employees make this decision with little or no reliable advice, guidance or counseling from informed personnel within their organization. Past experience indicates that employees deciding to pursue their concerns "outside" may take such issues to another government agency, to the Congress, or to the media.

There does exist one final alternative to "going public" that is readily available to all NRC employees. This channel involves only the ACRS and was referred to by Dr. Dade Moeller, Chairman ACRS, in his December 13, 1976, testimony before the Senate Committee on Government Operations, as follows:

> "If, in the final analysis, an NRC staff member believes that his or her views cannot be adequately expressed within the NRC system, there exists an alternate channel for presenting such concerns directly to the ACRS. In such situations, provisions of the Federal Advisory Committee Act provide that any member of the NRC staff may appear before the ACRS, not as an NRC employee but as a member of the public, and may present oral or written statements for consideration by the Committee." (emphasis added)

C. INAPPROPRIATE USE OF CHANNELS FOR EXPRESSING DIFFERING OPINIONS

A frequently expressed concern regarding procedures established for communicating differing professional opinions is that such procedures may be intentionally misused. This concern centers on employees attempting to use the dissent procedures to redress personnel problems that should properly be dealt with in other personnel or grievance procedures.

The situation where this may arise generally occurs when an employee:

1. Anticipates a problem in another area and raises a dissent-type issue to camouflage or delay the original problem.

2. Perceives the dissent procedure as a possibly less risky or otherwise more suitable procedure for his or her particular complaint.

3. Desires to raise a self-serving issue that may not be within the jurisdiction of his own organization.

It is not evident that any procedure established for dealing with differences of opinion can be set up to differentiate between genuine and non-genuine instances of differences of professional opinion. More important, it is not clear whether such a deficiency would detract from the effectiveness of the procedures.

Sources at State Department, IBM, and attorneys experienced in this area indicate that two factors tend to ameliorate the improper use of dissent procedures. First, professional staff members who desire to express a differing professional opinion are usually unwilling to pursue frivolous issues. Second, there must be incorporated in any such procedures a mechanism that will both determine which of the

issues are frivolous (and therefore need not receive a comprehensive response) as well as identify which issues would be more effectively handled in other systems.

D. LIMITATIONS IMPOSED BY EX PARTE COMMUNICATIONS BAR (NRC)

If an NRC staff member desires to express a differing professional opinion concerning a substantive issue which is involved in a matter pending before a Licensing Board or an Appeal Board or the Commission, such opinion cannot be communicated direct to the Commissioners other than through the formal record of the proceedings because of the limitations imposed by the Commission's Ex Parte regulation.[29] In such circumstances, and assuming that such differing opinions cannot be satisfactorily resolved at the EDO level,[30] it appears that there exists only two methods that may be used by the employee to assure further and timely consideration of the issue.

1. Submission of the differing professional view, together with the necessary documentation, to the ACRS.

2. Submission of the differing professional opinion direct to the Chairman of either the Licensing Board, the Appeal Board, or the Commission for inclusion in the formal record of the proceeding. Assistance of NRC staff counsel would be available to assist the NRC employee in such action.

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[29] 10 CFR 2.780

[30] On May 4, 1978, the Nuclear Regulatory Commission adopted an agency-wide policy regarding staff notification of Licensing and Appeal Boards and the Commission of new information which is considered by the staff to be relevant and material to one or more licensing proceedings. See Lee V. Gossick May 12, 1978 memorandum, Subject: NRC Policy on Notification to Licensing Boards of Relevant and Material New Information.

The inherent limitations imposed by these considerations upon any NRC policy in this area (including the Open Door) are obvious.

V - REFERENCE SOURCES

Organizations and Individuals

American Association for the Advancement of Science (AAAS)

- Ms. Rosemary Chalk

American Association of University Professors

- Johnathan Knight

American Chemical Society

- Mr. Earl Klenfelter

Department of State

- Mr. Doug Kinney, current Chairman of the Secretary's Open Forum
- Mr. Neil Boyer, past Chairman of the Secretary's Open Forum

Environmental Protection Agency

- Dr. James Martin, Assistant Director, Office of Management and Planning

Food & Drug Administration

- Dr. John O. Nestor
- Mr. John McCutchen, Associate Director, Office of Plans & Evaluation
- Mr. Owens, Chief Operational Planning Branch

Federal Aviation Administration (FAA)

- Mr. Joe Noonan, Chief, Union/Management Relations Division
- Mr. George McCord, Safety Engineer

Institute of Electrical and Electronics Engineers (IEEE)

- Mr. Leo Fanning

National Institutes of Health

- Dr. DeWitt Stetten, Deputy Director for Science
- Dr. David Klein, President, Interassembly Council
- Dr. Edward Korn, Past President, Interassembly Council

National Society of Professional Engineers (NSPE)

- Mr. Milton Lunch
- Mr. Nick Wright

International Business Machines Corporation (IBM)

- Mr. Roy Brown, Corporate Headquarters
  Resident General Manager, Washington, D.C.
- Mr. Charles McKittrick, General Manager, Washington, D.C.
- Mr. Jack Quinn, Corporate Vice-President & General Mgr.
  Yorktown Heights, New York

Institute for Policy Studies - Government Accountability Project

- Ms. Margie Bernard, Staff Member

Congress Watch

- Mr. Andy Feinstein, Staff Member

Office of Management and Budget

- Mr. Peter Petkas, Director, Project Management Staff
- Mr. Howard Messner, Director, Task Force on Civil Service Reform

Representative Lance Lalor, Texas State Legislature, Re Draft Bill for Protection of "Squealers"

Staff of Representative Morris Udall and Staff of Subcommittee on Energy and the Environment

- Mr. Henry R. Myers, Special Consultant on Nuclear Energy Matters
- Ms. Andrea Dravo, Subcommittee staff
- Ms. Jennifer Fain

Staff of Senator Patrick J. Leahy

- Mr. David Julyan
- Mr. Robert Paquin

Prof. Robert G. Vaughn - Professor of Law, American University

Prof. Wilber Cohen - Dean of School of Education, University of Michigan; former Secretary of HEW

Mr. A. Ernest Fitzgerald, USAF

Union of Concerned Scientists

- Mr. Robert Pollard, Staff Member

Hogan & Hartson Law Firm

- Mr. Peter Raven-Hansen
- Mr. Elliot Mincberg

ACRS

- Mr. Robert L. Wright, Staff Engineer

Department of HEW

- Mr. John Kanak, Safety Manager
- Mr. Ed Baer, Deputy Director,
  Safety Surveillance

NRC Employees

- Roger Mattson, NRR
- Thomas McTiernan, OIA
- Thomas Engelhardt, ELD

The following organizations were contacted; however, they had no comment on their experience in this area.

Department of Labor
Occupational Safety and Health Administration
Equal Employment Opportunity Commission
Department of Energy
Civil Service Commission
District of Columbia Government
U.S. Geological Survey
National Bureau of Standards

Publications

The Whistleblowers: A Report on Federal Employees Who Disclose Acts of Governmental Waste, Abuse, and Corruption

- Senator Patrick J. Leahy, in support of S. 2232, "Federal Disclosure and Accountability Act of 1977," December 5, 1977

Nuclear Regulatory Commission's Safety and Licensing Procedures

- Hearing before the Committee on Government Operations, U.S. Senate, December 13, 1976

Investigation of Charges Relating to Nuclear Reactor Safety

- Hearings before the Joint Committee on Atomic Energy, Congress of the United States, Volume 1 and 2, February 18, 23, 24, March 2, 4, 1976

Allegations Concerning Lax Security in the Domestic Nuclear Industry

- Oversight Hearings before the Subcommittee on Energy and the Environment, July 29, 1977

A Whistleblower's Guide to the Federal Bureaucracy

- Mark Byter, Government Accountability Project, Institute for Policy Studies October 10, 1977

Senate Report on S. 1210 (1975), "Federal Employee Disclosure Act of 1975"

- Senator Edward Kennedy

Investigation of Allegations Relating to the Bureau of Drugs, Food and Drug Administration

- Review Panel on New Drug Regulation April 1977

Final Report

- Review Panel on New Drug Regulation, May 1977

Testimony of Marcus A. Rowden, Chairman and Ben C. Rusche, Director, Office of Nuclear Reactor Regulation, NRC before the Senate Committee on Government Operations, December 13, 1976

Dissent - The Dynamics of Democracy

- George S. Swope, AMACOM, 1972

Scientific Freedom and Responsibility

- John T. Edsall, Science, May 16, 1975

1977 Annual Report, Committee on Scientific Freedom and Responsibility, American Association for the Advancement of Science

APPENDIX

EXISTING NRC POLICIES AND PROCEDURES

Currently there are at least three parallel channels available to NRC employees, agency-wide, for the expression of differing professional views. In addition, certain NRC Offices have developed supplementary procedures and instructions in this area that are structured to "fit" with other functional activities carried out within their individual organizations. While this relatively large number of channels does now exist, there is no indication that the policies and procedures (agency-wide and office-specific) are adequate either in content or in detail to provide for effectively dealing with the differing professional opinions expressed by NRC employees. Potential weaknesses in NRC's existing system may be inferred by comparing the functional description of the NRC system outlined below in Section B with the discussion and examples of the procedural steps identified in Parts II and III of the basic paper.

A - Examples of Criticism of NRC Policy and Procedures

Recently there has been significant criticism, both from within and outside the organization, regarding the inadequacy and ineffectiveness of existing NRC policy and procedure in this area. Prior to examining the functional description of NRC's existing, multi-channel system, it may be informative to review the following typical examples of pertinent criticism that originated outside of NRC:

- "Apart from Chairman Hendrie's statement (concerning the inclusion of additional remarks in the SER[1]) the existing (NRC) procedures for the 'resolution of a safety concerns' remain ambiguous, slow moving, and unsatisfactory from the viewpoint of (NRC) staff, and of some (NRC) supervisory personnel as well."[2]

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[1] Excerpts from Chairman Hendrie's Sept. 16, 1977 remarks to the senior staff. (NRC Announcement 171, Nov. 9, 1977.)

[2] The Hogan and Hartson Report - p. 4.

- "The "open door," as it has been implemented and enforced by the Nuclear Regulatory Commission (NRC), reveals some shortcomings of such a policy. The NRC maintains the open door policy among its various offices. It is an informal mechanism, without written guidelines, that has been enforced agency-wide. Responsibility for implementation and enforcement has been delegated to the different NRC offices. Developments in the past several years have forced the NRC to re-examine its informal procedure, and to acknowledge the existence of problems with employee-management relations. Since enforcement of the open door was left to the Office Directors, the program's success depended on their commitment. Some Directors proved more favorable than others, and this fact caused problems in several NRC Offices."[3]

- "Mr. Lee V. Gossick's memo of December 7, 1976[4] established a chain-of-command procedure for 'the resolution of safety concerns.' That procedure was implemented to varying degrees of Directors throughout the NRC, but was never formalized in detail as an agency-wide policy or a portion of the NRC Manual."[5]

- "I want to impress on Mr. Gossick and his Staff that we consider it his duty to keep us fully informed, not only of the Commission's majority views but of significant dissent. Had it not been the practice of the NRC and the AEC to suppress dissent, I do not believe the nuclear enterprise would be in its present tenuous state."[6]

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[3]The Leahy Report - Chapter 2.

[4]Lee V. Gossick Dec. 7, 1976 memo, Subj: Resolution of Safety Concerns.

[5]The Hogan and Harson Report - p. 3.

[6]Comment by Mr. Tsongas, July 29, 1977 Oversight Hearing before the Subcommittee on Energy and the Environment of the Committee on Interiors and Insular Affairs.

- "In theory, the open door should provide (NRC) staff the opportunity to voice their minority views at the Commission level. Unfortunately the open door has not always proved successful in handling NRR employee dissent. Debate and discussion throughout the (licensing) review are considered essential in the formation of a common staff position. In the controversial area of nuclear power, there are no easy answers and a degree of discretionary judgment is necessarily involved in licensing decisions. On any specific safety question, this judgment usually reflects the majority opinion. Minority opinions, though they may have been voiced (during the review) are overriden."[7]

[7]The Leahy Report - p. 41.

B - The Existing NRC Agency-Wide System

As previously mentioned, there currently exist three parallel channels available agency-wide to all NRC employees for their use in expressing differences of professional opinion. After briefly describing each of these channels, the functional steps that have been defined for each channel are summarized under the same headings as those applying to the procedural steps discussed in Parts II and III, of the basic paper. (See Table 1.)

The three channels are:

1. - Normal Process

This channel has been identified as one that should ordinarily be used when it appears that an employee's concerns can be resolved at organizational levels below the Commission.[8] It is emphasized, however, that the existence of this channel in no way limits an employee's right to take advantage of the Open Door Policy either at the outset or at any other stage. The stated purpose of this Normal Process is to "insure that employees understand that they may, without fear of retribution, bring to management attention any situation which in their view has not been satisfactorily addressed or resolved in the normal staff process as regards protection of the public."[9]

This channel identifies the basic steps that NRC employees should take to express their differing professional opinions in the course of the normal review process. This channel is identified in the following table as "Normal Process - Assumes Resolution Within Office."

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[8]Lee V. Gossick Dec. 7, 1976 memo, Subj: Resolution of Safety Concerns.

[9]Ibid.

2. - The Open Door Policy

The Open Door Policy represents an effort initiated by the Chairman and the Commissioners to assure each employee of the opportunity to freely express his or her differing professional opinions, direct to any desired management level, without fear of reprisal or retribution.

All NRC employees have been informed of the principles and the objectives of the policy as stated by Chairmen Anders[10] and Rowden.[11] Moreover, the Executive Director for Operations has summarized the basic principles of NRC's Open Door Policy in recent correspondence with NRC Office Directors.[12] More recently this policy was treated in greater detail by Chairman Hendrie[13] during his September 16, 1977 meeting with members of the senior staff.

Most simply stated, the Open Door Policy provides that all staff members are expected and encouraged to make known their best professional judgment, whether or not it corresponds with the views of other staff or management, and that this may be done with the assurance of neither recrimination nor retribution. Toward this end, the Chairman has assured all employees that his office, the doors of any Commissioner's

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[10] Chairman Anders' February 10, 1976 memo to Lee V. Gossick, forwarded to all NRC employees by EDO Announcement No. 209 of Feb. 11, 1976.

[11] Chairman Rowden's Nov. 2, 1976 memorandum to Lee V. Gossick forwarded to all NRC employees by EDO Announcement No. 333 of Nov. 3, 1976.

[12] Lee V. Gossick's Dec. 7, 1976 memo, Subject: Resolution of Safety Concerns.

[13] Chairman Hendrie's Sept. 16, 1977 comments to the senior staff, forwarded to all NRC employees by EDO Announcment No. 171 of Nov. 9, 1977.

office and those of the Office of Inspector and Auditor are "open" to any employee who desires to so express his professional judgment. The Chairman has also emphasized that it is the responsibility of all levels of NRC management to provide this same "open door" access for employees within their organization. To date, however, no agency-wide set of specific procedures has been developed to provide a uniform method for implementing this policy.

3. - The ACRS

The ACRS has repeatedly emphasized that this advisory committee comprises one of the several avenues available for NRC staff members to freely express their concerns and differing opinions regarding safety matters. Specifically, the ACRS has advised that:[14]

a - Any NRC staff member may telephone the Chairman, ACRS or any member of ACRS and inform them privately of their concern. Assurance is given that such matters would receive the prompt attention of the ACRS.

b - NRC staff members may also inform either the Chairman, ACRS or any member regarding his concern by a letter, written anonymously if desired. Again, the ACRS would give prompt attention to such matters.

Since 1976, it has been the practice for the ACRS to ask the NRC Staff at meetings if there are dissenting opinions among staff members on any safety issues reviewed during the licensing action.[15]

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[14] Testimony of Dr. Dade W. Moeller, Chairman, ACRS, in the March 4, 1976, hearings before the JCAE.

[15] Ref. (1) above and private communications from R. L. Wright, Staff Engineer, ACRS, of December 27, 1977.

Table 1. Existing NRC Agency-Wide Systems

PROCEDURAL STEPS (See Parts II & III of Basic Paper)	1. "NORMAL PROCESS"* (Assumes Resolution Within Office)	2. THE NRC "OPEN DOOR"	3. THE ACRS[2]
1 - Make Differences Known	Discuss concerns with immediate supervisor, or with another level of supervision within the Office as desired	Contact Chairman, any Commissioner or OIA[3,5] Duty to promptly inform appropriate management levels[4,5]	Inform ACRS Chairman or any member, either by telephone, letter or in person regarding any concern re safety matters
2 - Management Response	Not specifically discussed	Committed to free and open communications[1]	ACRS assures that "prompt attention" would be given to any such matters. Also see Note 1.
3 - Procedural Alternatives if Dissatisfied With Response	a - Present concerns, orally or in writing, to Office Director b - Bring matter to the attention of any of the following, orally or in writing: 1 - The EDO 2 - Director OIA 3 - Chairman, NRC 4 - Any of the NRC Commissioners	See note*	No provision specified
4 - Follow-Up on Resolution	No provision specified	No provision specified	No provision specified
5 - Follow-Up on Retaliation	No provision specified	No follow-up but stated assurance against retaliation[3,4,5]	No provision specified

Note: References indicated in the above Table are provided on the following page.

References Indicated in Table 1

* - Note that NRC employees are free at all times to utilize either or both the "Open Door" and "The ACRS" Channels with regard to differences of professional opinion that concern matters affecting public health and safety.

1 - Lee V. Gossick's Memorandum of December 7, 1976, Subject: Resolution of Safety Concerns.

2 - Testimony of Dr. Dade W. Moeller, Chairman ACRS, during the March 4, 1976, hearings before the Joint Committee on Atomic Energy.

3 - Chairman Anders' Feb. 10, 1976, memorandum to Lee V. Gossick describing the "Open Door Policy," copies forwarded to all NRC employees by EDO Announcment No. 209 on Feb 11, 1976.

4 - Chairman Rowden's Nov. 2, 1976, memorandum to Lee V. Gossick discussing NRC's Regulatory Mission and encouraging the free expression of NRC staff viewpoints; copies forwarded to all NRC employees by EDO Announcment No. 333 of Nov. 3, 1976.

5 - Lee V. Gossick's Dec. 7, 1976, memorandum to NRC Office Directors; Subject: Resolution of Safety Concerns.

C - Additional Comments on the Existing NRC Agency-Wide System

- Recent ACRS Recommendation

A recent ACRS recommendation would make it possible for any member of the NRC staff to make known to the ACRS and the public his or her alternate position regarding any safety-related issue.[16] The ACRS has recommended that, in order to improve the flow of safety-related concern to that Committee, all Safety Evaluation Reports (SERs) list those safety issues on which major reservations have been expressed by NRC staff members, together with a detailed description of the opposing views, the final resolution, and the data and evaluations supporting that resolution. (This recommended procedure was discussed with the NRC staff in March 1976. Since that time, and until such a procedure is implemented, it has been the practice for the ACRS to ask the NRC staff at meetings whether there are any differing opinions among staff members on any safety issues reviewed during the licensing action.)[17]

- Comments by Chairman Hendrie[18]

In his recent meetings with the senior staff, Chairman Hendrie made the following pertinent comments (paraphrased here):

> If the written statement of a differing point of view is attached to the proposed staff position, those additional remarks will go on up the line. If it is a product which would flow naturally to a Safety Evaluation Report, the additional remarks (i.e., the differing point of view) will appear in the Safety Evaluation Report and will be in the Docket File, totally available in the public sense.

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[16] Testimony of Dr. Dade W. Moeller, Chairman, ACRS, in the December 13, 1976 hearings before the Senate Committee on Government Operations.

[17] Footnote 16 above and related memo of December 27, 1977 to Dr. H. J. Watters, PLA, from R. L. Wright, ACRS.

[18] Excerpt from Chairman Hendrie's September 16, 1977 remarks to the senior staff. (NRC Anouncement No. 171 - November 9, 1977.)

D - Additional Procedures Currently Effective Within Individual NRC Offices

The open door policy, the so-called normal procedure discussed in the EDO's December 7, 1976 memo and the opportunity to appear before the ACRS are procedures available to all NRC employees. Three individual offices (NRR, RES, and Region III of IE) have established additional procedures for their employees' use in raising differing professional views. (Note that in response to the EDO's September 15, 1977 request, most offices suggested a need for additional procedures in this area. These recommendations are not included in this description of existing office level procedures.)

These additional "office-specific" procedures, currently effective within NRR, RES, and Region III of the Office of Inspection and Enforcement, are briefly described below. The procedures are then categorized in accordance with the framework and the Procedural Steps developed in Parts II and III of the basic paper.

- Office of Nuclear Reactor Regulation

  NRR Office Letter No. 11 issued November 3, 1976 established policy and procedures for the use of NRR employees in resolving technical issues that may arise during the review and evaluation of reactor operating experience and the evaluation of reactor license applications. The Office Letter states that the usual informal interaction and discussions among staff members and management should continue to take place and that normally, this will lead to development of a staff position acceptable to all concerned. It is conceded, however, that situations will occasionally arise in which a knowledgeable staff member may not agree with the staff position that is developed through this informal, interactive procedure.

In the event of such a situation, the staff member should continue to pursue resolution of the issue through further discussions with successively higher levels of NRR management. At the Division Director's level, the staff member prepares a memorandum clearly describing the issue for the Division Director and sends a copy to the Director, NRR. The Division Director, in consultation with the Director, NRR, will make a final decision on the issue and the staff member will be informed in writing of that decision and its basis.

After completion of these steps, the staff member's memorandum and any subsequent written statement, together with the Division Director's decision and basis therefor, will be sent to the ACRS and placed in the Public Document Room. As appropriate, this material will also be provided to Licensing Boards and to all parties to proceedings in which the technical issue is involved.

- Office of Nuclear Regulatory Research

Research Review Groups (RRG) were first established within NRC about 1974 shortly after Reactor Safety Research was separated from Reactor Development Research. Currently there are 63 Research Review Groups (generally one for each program area). On the average, each RRG has 5-10 members consisting of the RES program manager, other RES personnel knowledgeable in the area, a representative from the Office of Standards Development, and outside consultants, as necessary.

The purpose of such groups is to maintain communication within NRC over the course of research programs and to serve as an information exchange with outside members. The groups provide program managers with differing views and guidance useful in

managing individual programs. Depending upon program activity, these groups may meet as frequently as every three months.

- Office of Inspection and Enforcement, Region III

  The Region III Office developed a formal procedure for handling dissenting staff views in December 1976. The procedure is described in Region III Manual Chapter 0985. In order to express a differing professional opinion, an employee must prepare an appropriate memorandum and submit it to his or her immediate supervisor. Within five working days the supervisor must submit a written response. This process can be continued up to the level of the Regional Director. If the employee is dissatisfied or considers the matter not resolved at this point, the Regional Director is required to present the issue to IE Headquarters.

The following table summarizes the manner in which these individual office procedures "fit" within the framework developed in Section II.

Procedural Step 1 - Make Differences Known to Management

NRR	- Usual informal interactions beginning with immediate supervisor and continuing through successively higher management levels.
RES	- Research Review Groups (RRG) provide a forum for discussing concerns about specific research projects and related issues.
IE Region III	- Specific forms, together with directions for their use, are provided in Region III per IE Manual Chapter 0985.

Procedural Step 2 - Management Response

NRR - In person discussion with managerial personnel.

RES - Project manager, as head of RRG, responds to all concerns raised.

IE Region III - Management must respond within five working days to issue raised per IE Manual Chapter 0985.

Procedural Step 3 - Procedural Alternatives if Dissatisfied With Management Response

NRR - Prepare written memo to Division Director. Written response is provided by Division Director in consultation with Director, NRR. Both documents given to ACRS, licensing boards and Public Document Room.

Procedural Step 4 - Followup on Resolution of the Issue

IE Region III - Each branch required to establish a tracking system to monitor progress in resolving items of concern raised under Manual Chapter 0985.

Procedural Step 5 - Followup on Retaliatory Actions

IE Region III - No procedure, but specific mention made that discrimination against a user of the system or coercion against using the system will result in disciplinary action.