
**OFFICE OF
THE INSPECTOR GENERAL**

**U.S. NUCLEAR
REGULATORY COMMISSION**

REVIEW OF NRC'S DIFFERING
PROFESSIONAL VIEW/DIFFERING
PROFESSIONAL OPINION PROGRAM

OIG-00-A-07

September 20, 2000

AUDIT REPORT



September 20, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

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

SUBJECT: REVIEW OF NRC'S DIFFERING PROFESSIONAL
VIEW/DIFFERING PROFESSIONAL OPINION PROGRAM

Attached is the Office of the Inspector General's audit report titled, *Review of NRC's Differing Professional View/Differing Professional Opinion Program*. The report incorporates comments provided by your office, as appropriate, within the body of the report and includes them in their entirety in Appendix C.

This report reflects the results of our review of this important agency program that encourages employees to make known their best professional judgements even though they may differ from prevailing staff view or established agency practices. We found that long-standing weaknesses persist in the program which reduce its effectiveness. For example, the Differing Professional View (DPV) and Differing Professional Opinion (DPO) processes are not viewed as effective for resolving professional differences. This is caused by the inconsistent methods used by each of NRC's regional and headquarters offices to administer the program. We also found that DPVs and DPOs have not been resolved in a timely manner and significant time elapses before communicating the status of the issues to the filer. Finally, some agency staff have a strong perception that filing a DPV or DPO will harm their career. The report makes seven recommendations to improve the program.

Please provide your response to the report and information on actions taken or planned on each of the recommendations directed to your office within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup and reporting in accordance with the attached resolution procedures.

If you have any questions, please call me at 415-5915.

Attachments: As Stated

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EXECUTIVE SUMMARY

PURPOSE

The U.S. Nuclear Regulatory Commission (NRC) encourages employees to make known their best professional judgements even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. To foster this policy, and create an atmosphere for an exchange of views of a technical nature, the agency has in place the Differing Professional View (DPV) and Differing Professional Opinion (DPO) program, which is delineated in Management Directive (MD) 10.159 "Differing Professional Views or Opinions." The Office of the Inspector General (OIG) conducted this audit to determine whether the DPV and DPO processes (1) are viable tools to identify and resolve concerns; (2) are timely; and (3) result in retaliation to staff who use these processes.

BACKGROUND

In 1987, 1989 and 1994, agency staff conducted assessments to reexamine and improve the program. All three assessments found that staff perception has generally not improved because they fear reprisals and feel negative connotations are associated with using the DPV and DPO processes. The groups recommended strengthening the program by more effectively communicating information about the DPV and DPO processes to employees, and revising the methods used to address technical issues.

In addition to the assessments, in 1998 OIG conducted the *NRC Safety Culture and Climate Survey* that found that NRC is not fostering an atmosphere in which employees feel comfortable making their views known when they differ from the prevailing view.

FINDINGS

Significant, long-standing weaknesses persist in the DPV and DPO processes, which reduce program effectiveness. For example, the DPV and DPO processes are not viewed as effective for resolving professional differences. This is caused by the inconsistent methods used by each of NRC's regional and headquarters offices to administer the program.

DPVs and DPOs have not been resolved in a timely manner and significant time elapsed before communicating the status of the issues to the filer. Out of the seven offices we examined, one regional office met the DPV milestones suggested by the agency's program guidance. Timeliness was even more problematic for DPOs because they have only two milestones. Therefore, DPO issues can and have gone on for years without closure.

Agency staff have a strong perception that filing a DPV or a DPO will harm their career. NRC staff perceive many management actions as retaliation for filing a DPV or DPO.

RECOMMENDATIONS

This report makes seven recommendations to improve the DPV/DPO program.

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I. PURPOSE

The U.S. Nuclear Regulatory Commission (NRC) encourages employees to make known their best professional judgements even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. To foster this policy, and create an atmosphere for an exchange of views of a technical nature, the agency has in place the Differing Professional View (DPV) and Differing Professional Opinion (DPO) program, which is delineated in Management Directive (MD) 10.159 "Differing Professional Views or Opinions."⁽¹⁾

In 1987, 1989 and 1994, agency staff conducted assessments to reexamine and improve the program. All three assessments found that staff perception has generally not improved because they fear reprisals and feel negative connotations are associated with using the DPV and DPO processes. The groups recommended strengthening the program by more effectively communicating information about the DPV and DPO processes to employees, and revising the methods used to address technical issues. NRC took steps to implement several of the recommendations.

In addition to the assessments, the Office of the Inspector General (OIG) conducted a survey⁽²⁾ which indicated that 31 percent of NRC staff believed the process functioned properly, and 39 percent of staff expressed satisfaction with the process. This audit was prompted, in part, by the conclusions reached from the survey.

The objectives of this review were to determine whether the DPV and DPO processes (1) are viable tools to identify and resolve concerns, (2) are timely and, (3) result in retaliation to staff who use these processes. Appendix A contains additional information about the audit's objectives, scope, and methodology.

¹ Formerly NRC Manual Chapter 4125 which was first formulated in 1980.

² OIG, *NRC Safety Culture and Climate Survey*, June 1998.

II. BACKGROUND

The agency encourages employees to discuss their differing technical and policy viewpoints with their managers as the first step to resolving issues. If the issue cannot be resolved, a written statement (DPV)⁽³⁾ may be submitted, which must include specific information as outlined in MD 10.159. If the employee is not satisfied with the disposition of the issue through the informal DPV process, the employee may file a formal DPO. All issues must go through the DPV process before becoming a DPO.

The DPV process contains specific milestones to encourage timely resolution of an issue through the management chain within regional or headquarters offices.⁽⁴⁾ Once NRC staff provide a written differing viewpoint, the regional administrator or office director submits it to an ad hoc review panel within 5 calendar days. The panel is appointed in writing by the regional administrator or office director and is established on a case-by-case basis in each regional and headquarters office to review each DPV. To the extent possible, DPV panels should not involve individuals who have directly participated in the formulation of the agency's position that is at issue.

The panel includes a chairperson and one member appointed by management who is technically qualified in the subject area being reviewed. A third panel member is chosen by the chairperson from a list proposed by the DPV submitter. The panel then reviews the DPV within 7 days to ensure there is enough information to conduct a review.

The MD states that the panel should not take more than 30 days to make a recommendation to the regional administrator or office director. The regional administrator or office director should review the recommendation and provide a decision to the DPV submitter within 7 calendar days after receipt of panel recommendations. Following the milestones set forth, the DPV process should be completed in 49 days.

If extenuating circumstances cause a delay in concluding the DPV process, the regional administrator or office director should inform the submitter. If the review and disposition of the DPV does not occur within 60 days of DPV receipt, the regional administrator or office director should communicate the reason for the delay to the Deputy Executive Director for Management Services (DEDM) if the

³ Prior to 1987, only the DPO process was in place. NRC implemented the DPV process based on a recommendation of a special review panel.

⁴ See Appendix D for a flowchart of the DPV and DPO program.

DPV filer's office reports to the Executive Director for Operations (EDO), or to the Chairman if the office reports to the Commission.

If the submitter is not satisfied with the disposition of the DPV, he or she files a DPO to the EDO or the Commission. This process also requires a written statement and selection of a panel that follow the same criteria outlined under the DPV process. However, under this process there are only two milestones, that the (1) ad hoc review panel consider the DPO and provide the findings and recommended course of action, normally within 30 calendar days, and the (2) EDO or Commission provides a decision to the submitter within 30 calendar days after receipt of all solicited views requested. Once the EDO or Commission makes a decision and communicates it to the submitter, the matter is considered closed unless significant new information surfaces.

III. FINDINGS

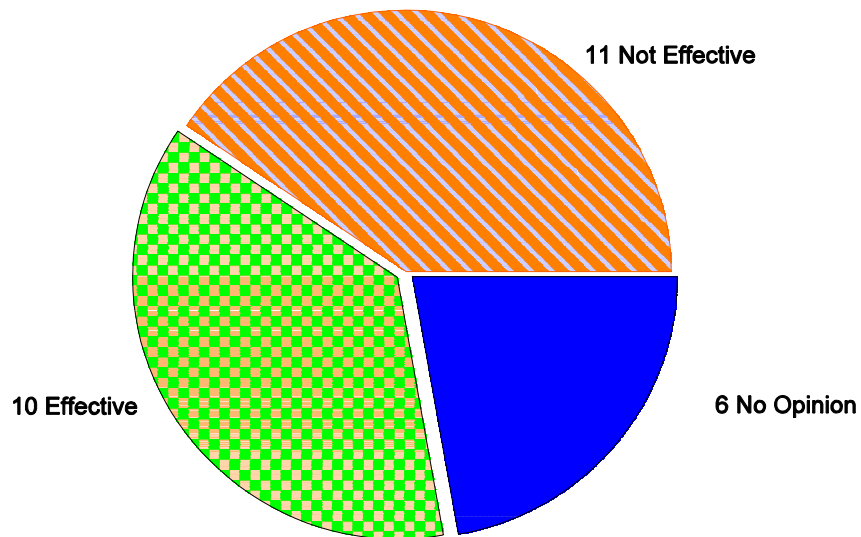
Significant, long-standing weaknesses persist in the DPV and DPO processes, which reduce program effectiveness. Specifically, this audit disclosed that staff do not view the program as effective; the DPV and DPO processes are not timely; and staff perceive retaliation as a consequence of filing a DPV or DPO. Improvements in these areas should enhance overall program performance.

A. THE DPV AND DPO PROCESSES ARE NOT VIEWED AS EFFECTIVE

NRC officials have created the opportunity for employees to express differing views and opinions on policy and technical issues. However, the success of these efforts has been diminished because a significant number of staff that were interviewed do not view the processes as effective, as can be seen in the following chart.

EFFECTIVENESS of PROGRAM

Opinion of DPV/DPO Submitters



We interviewed 27 staff who had experience with the processes. Eleven of the 21 who offered an opinion did not believe the program was effective based on their experience. Six of those interviewed had no opinion. OIG realizes that these views are subjective, but the following information illustrates why the DPV process is not viewed as effective:

- The MD states that to assist submitters in preparing written DPV or DPO statements, an employee's direct supervisor, in consultation with other management officials, will determine the amount of an employee's work time that is to be provided in response to the employee's request for assistance. However, a supervisor denied a regional employee time to write a DPV so he did not submit an issue, even though he felt strongly about it.
- The MD states that the regional administrator or office director should review the panel's recommendations and provide the employee or manager who submitted the DPV with a decision and rationale for that decision, normally within 7 calendar days after receipt of the panel's recommendations. However, one office director received the panel recommendations, then waited seven months to communicate his decision to the submitter.
- The MD states that completion dates are to be established for follow up items. If the schedule cannot be met, the reason for the delay and a revised schedule for completion of the action(s) should be communicated to the submitter, and reported to the cognizant Chairman or DEDM. Although a DPV panel ruled against a technical issue regarding one NRC program, it found flaws in the program's process and offered recommendations for improvement. The office director agreed with the recommendations, but when it was sent to the appropriate division for action, the division director ignored the remedial action. The submitter told us the agency has not taken the recommended corrective action and there does not appear to be any plans to do so.

Additionally, interviews revealed that only 9 out of 27 employees believed their issues were directly addressed. Eighteen filers stated they would use the program again for reasons such as conviction that the issue is important or to ensure the issue is given complete consideration. Three submitters stated they would never use the program again.

Panel Composition

Filers also told us that the processes are ineffective due to the subjectivity of the DPV and DPO panels. For example, some filers believe that:

- Panels do not review all of the issues identified, and issues therefore remain unresolved despite the closure of the DPV or DPO.
- Panels are automatically biased because the MD stipulates that two of three panel members are to be chosen by NRC management; in addition, the panel chair is a manager.
- Panels are not independent because they are composed of staff who were involved in the original issue. Specifically,
 - ▶ One staff member whose DPO has been open for about 9 years expressed the strong opinion that the process is ineffective because it is not timely. For example, his DPV was held by the office director instead of being addressed. He resubmitted his issue as a DPO when a related event occurred, even though his DPV was never closed. The staff members on the panel were involved in the original issue.
 - ▶ A former employee stated that the process is not effective because it does not provide assurance that the “hard questions” will be answered. He filed a DPO because he believed the agency’s position on an issue was based on incorrect information. He questioned the panel independence because one panel member, assigned to check calculations associated with the issue in question, was essentially tasked to check the accuracy of his own work on the original calculations. Although the DPO closed six years ago, the method for implementing the resolution has not yet been reached.

This former staff member also believes that DPOs are career damaging. He stated he would still be working at the NRC if he had not filed a DPO. He also stated that while his issue was open, his supervisor told him that he should not be surprised by his performance evaluation, which he took as a threat. He stated that he left the agency due to the hostile work environment resulting from his filing the DPO. OIG views this as a matter to be resolved by NRC management.

Program Inconsistencies

OIG found that the agency is not (a) consistent in the administrative handling of DPVs or DPOs; (b) ensuring issues are resolved in a timely manner; or (c) ensuring that follow up actions are implemented.

Inconsistencies in the MD led to inconsistencies in the administrative handling of DPVs at the regional and headquarters offices. For example, the MD handbook states that the submitter should be provided with a decision and a rationale for that decision, but does not state that the decision needs to be in writing. However, the exhibit of the handbook indicates that the decision must be in writing.

OIG found that some regional administrators may communicate the disposition of a DPV in writing or verbally, while other regional administrators provide both written and verbal communication to the submitter. These differences may be attributable to the lack of consistency between the main text of the handbook and its exhibit. Further, there is no set format to present panel findings and recommendations, and DPV file records and tracking systems vary among the regional and headquarters offices. Additionally, even though the DPO process is more formal, each DPO is also handled differently. Consequentially, staff perception of the importance placed on their issue was affected by these significant processing differences.

The MD assigns responsibility to the regional administrators and office directors to maintain a record of DPVs processed under their authority. With regard to DPOs, the MD assigns responsibility to (1) the Director, Office of Human Resources to monitor the number of DPO submittals being processed in the agency, and to transmit all completed DPO case files to the Chief Information Officer (CIO); and (2) the CIO to maintain all completed DPOs. DPO records should contain, at a minimum, the DPV and DPO submitted by the filer, associated panel reports and decision memoranda.

OIG reviewed the DPV files for the past five years at each regional and headquarters office. Two regional and one headquarters offices kept a record of the number of DPVs filed. One headquarters office could not account for any DPV files prior to 1998. Moreover, none of the regional or headquarters offices consistently kept the same information in each DPV file and the files did not contain sufficient documentation to determine whether each milestone for the process was being met. Additionally, each region handled DPVs regarding agency policy differently. Policy changes can only be made at headquarters, yet some DPVs involving policy were not sent directly to headquarters.

OIG also analyzed five years (1995 to present) of DPO files in the CIO's File Center. The Human Resources office provided the OIG with a list of closed DPOs. The accompanying memo stated that "extensive research" had been conducted by CIO personnel to compile the list. The list only covered the period from 1987 to 1998. The list did not include DPOs that closed without going through the entire process. Additionally, the DPO list included one DPO that had been anonymously filed, even though the MD does not allow for anonymous submissions. Only completed DPO files are to be maintained at the CIO's File Center, yet one DPO listed was not yet closed. OIG determined that there is no accurate listing of DPOs maintained by the agency.

Each of the agency's regional and headquarters offices are tasked some responsibility for maintenance and reporting of DPVs and DPOs. However, accountability for ensuring this is being done is lacking. For example, CIO staff could not identify in advance which files were in hard copy and which were in microfiche. Files provided were incomplete, and when OIG requested specific files be retrieved from microfiche, we were referred back to the EDO's office to obtain several of the files because the EDO's office does not consistently send resolved DPO files to the CIO's office after completion.

The EDO periodically appoints a special review group to assess (1) the program, including its effectiveness; (2) how well it is understood by employees; (3) the organizational climate for having such views aired and properly decided; and (4) all DPVs and DPOs completed since the previous assessment to identify employees who have made significant contributions to the agency but have not been adequately recognized for this contribution. However, if NRC does not track DPOs or the DPVs processed in its regional and headquarters offices, there is no accurate accounting of the total number of DPVs and DPOs submitted. Without an effective tracking system, it is questionable how the agency can accurately evaluate the program. Furthermore, the last report issued was by the 1994 special review group. The agency is missing an opportunity to show support for the program, initiate positive changes and recognize contributions in a timely fashion.

Conclusions

We recognize that the DPV/DPO program is very important because it allows the staff to raise safety significant issues. The staff has a professional obligation to inform management of safety risks they believe would affect the health and safety of the public. This sense of obligation was very evident during the DPV and DPO staff interviews. However, the program's effectiveness is diminished because (1) many of the staff we interviewed do not view it as useful for resolving professional differences; (2) there are too many inconsistencies in the MD and in the application of the processes; (3) the absence of a tracking system leads to a lack of accountability to ensure the program is working; and (4) the agency does not conduct regular management reviews to determine whether the program is working as intended.

RECOMMENDATIONS

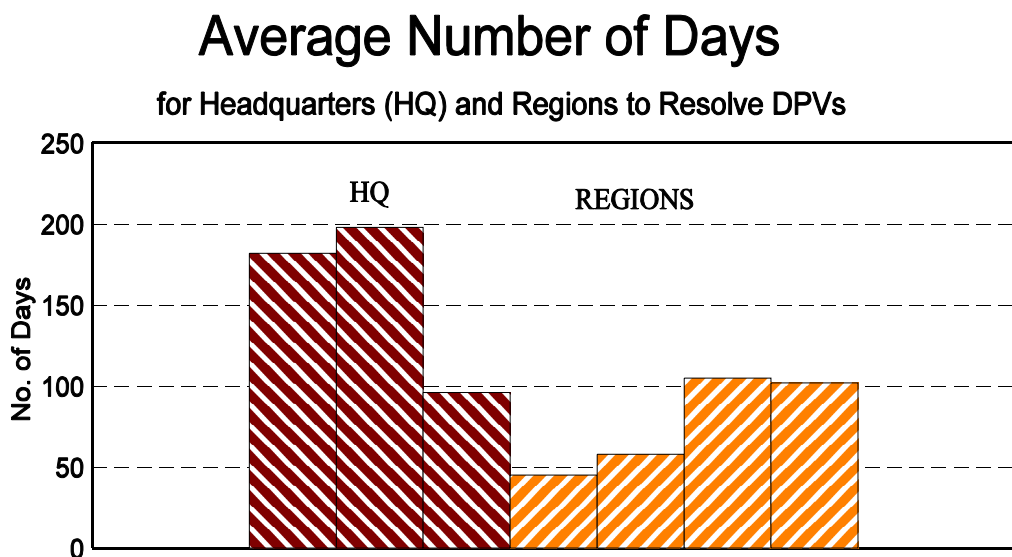
OIG recommends that the Executive Director for Operations:

1. Revise the Management Directive to include, (a) standardized procedures for managing the DPV process, (b) EDO oversight to ensure DPV milestones are met, (c) a mechanism for the EDO to track all DPVs and DPOs processed in the agency, and (d) tracking of resolutions and follow up actions of the DPVs and DPOs.
2. Convene a special review group to assess program operations at regularly scheduled intervals.

B. THE DPV AND DPO PROCESSES ARE NOT TIMELY

The objective of the MD is to ensure the full consideration and prompt disposition of DPVs and DPOs by affording an independent, impartial review by qualified personnel. However, prompt disposition cannot be advocated if DPV timeframes are not viewed as a priority. This has resulted in issues not being resolved in a timely manner, and significant time elapsing in communicating the status of the DPV and DPO to the filer.

Guidelines for the DPV process suggest that decisions on issues should take no more than 49 days. Out of the four regional offices and three headquarters offices we examined, one regional office met the DPV milestones. As the bar chart illustrates, the timeframes to resolve DPVs averaged from 45 to 198 days for the last five years of closed DPVs. Comparing DPV total processing time for each region to headquarters offices reveals that timeframes are adhered to more closely in the regions.



Many of the individual DPV milestones were not met on a consistent basis in either the regional or headquarters offices. When OIG reviewed DPV timeliness in the headquarters offices, only 11 percent of the panel reports were delivered to the office director in the 30-day timeframe. Eighty-one percent of headquarters files did not include an explanation as to why the reports were not timely.

In prior years, the DPO program had milestones to ensure issues were processed in a timely manner. Currently the DPO process contains only two, that the (1) ad hoc review panel consider the DPO and provide the findings and recommended course of action, normally within 30 calendar days, and the (2) EDO or Commission provides a decision to the submitter within 30 calendar days after receipt of all solicited views requested. These milestones are not sufficient for ensuring that actions are completed in a timely manner.

The MD states that the exhibit of the handbook provides a quick-reference guide for processing DPVs and DPOs. However, OIG found that the exhibit does not accurately reflect the guidance set forth in the handbook. Specifically, the first DPO milestone is only contained in the exhibit, and is not reflected in the text of the handbook.

Over the last five years, DPO processing has averaged approximately 200 days. This statistic does not include one DPO that has been ongoing for 6 years and is not yet closed. If this DPO were to have closed by July 2000⁽⁵⁾, the average time to complete DPOs would rise to almost 700 days. A former employee's DPO, which took 5 years to be completed, is also not included in the DPO timeliness average. The DPO panel issued its findings to the EDO in 1991, yet the decision was not transmitted to the submitter until 1994, three years later. If this case was included in the assessment of timeliness, the average number of days to process DPOs would rise to over 900.

OIG asked DPV and DPO filers for their opinions on the timeliness of the process. Twelve filers responded that they thought their DPV or DPO was processed in a timely manner, while 8 filers did not believe that it was conducted as timely as they thought it would be when they initially filed their issue. Seven filers did not have an opinion on the timeliness of their DPV or DPO.

The MD states that the submitter should be notified if there is to be a delay, and requires that the DEDM or Chairman be notified if review and disposition of the DPV does not occur within 60 days. Additionally, the DPO guidelines call for

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This date was arbitrarily chosen in order to calculate an approximate number of days to process this DPO which to date has not been closed.

the EDO or Commission to notify the submitter of delays and communicate the expected timeframe for considering the issue. However, only 5 out of 27 filers said that they were notified of delays.

Conclusions

With regard to timeliness, only one region met the milestones established in the agency's program guidance. Timeliness was even more problematic for completing DPOs because there are just two milestones. Therefore, DPO issues can continue for years without closure and in some instances do.

RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

3. Revise the Management Directive to reflect additional DPO milestones and schedules similar in concept to those contained in the DPV process, and ensure information is consistent in all publications for the DPV/DPO process.
4. Require DPV status updates to ensure that regional administrators and office directors provide (1) effective oversight and (2) required documentation of missed milestones.

C. RETALIATION IS PERCEIVED AS A CONSEQUENCE OF FILING A DPV OR DPO

Results from the 1998 OIG *NRC Safety Culture and Climate Survey* indicated that the DPV and DPO processes were not fostering an atmosphere in which employees feel comfortable or encouraged to make their best professional judgements known when they differ from the prevailing view. This atmosphere still exists.

The MD states that one of its objectives is to protect employees from retaliation in any form for expressing a differing viewpoint. It also states that any NRC employee who retaliates against another employee for submitting or supporting a DPV or DPO is subject to disciplinary action in accordance with MD 10.99 "Discipline, Adverse Actions, and Separations."

We interviewed a total of 59 employees, including one former employee, involved in the DPV and DPO processes, such as filers, panel members, panel chairs, and senior officials, to obtain different experiences and opinions about the program. Eighteen staff presented 30 instances of perceived retaliation or chilling effect to their careers based on their personal experience, with some of the individuals relating more than one instance.

In all 30 instances, a strong perception exists that filing a DPV or DPO will be harmful to a career at NRC and possibly subject the employee to retaliation. To identify how widespread the belief is, OIG asked the 27 submitters whether they believe retaliation occurs due to submitting a DPV or DPO. Over 50 percent (16) stated that some form of retaliation occurs after filing a DPV or DPO.

The following table illustrates the various types of retaliation or chilling effect that staff perceive is associated with the DPV/DPO program.

INSTANCES OF PERCEIVED RETALIATION OR CHILLING EFFECT RESULTING FROM FILING A DPV or DPO	
ISSUES	Number of Instances Identified by NRC Staff
Removed from area of expertise after filing a DPV	2
Filing resulted in an investigation or allegation of wrongdoing of staff who raised the issue	3
Filer required to report to individual who was the subject of the DPV	1
Panel (1) did not address all issues, or exact issue in DPV/DPO, or (2) addressed issue, but management did not ensure recommendations were carried out	6
DPV affected performance appraisal or career	4
DPV decision not received on a timely basis	2
Review panel not independent	1
Staff who filed DPV were denied extra training opportunities	1
Hostile work environment - staff were denied job opportunities that existed before filed	2
Did not write about issue to become a DPV. Management elevated issue to DPV status	1
DPV never resolved - panel never established to hear issues	2
Management denied submitter time to write DPV	1
No support by management; on own after filing DPV	2
Name released to public after filing DPV or DPO	1
Lower management not receptive to staff filing DPV	1
Total number of instances identified by NRC staff	30

Additionally, filers told us that employees who are close to retirement are more willing to take the risk of filing a DPV or DPO and disagreeing with management's position. One submitter, who has worked at the NRC for many years, stated that while he was not afraid of retaliation, he recently counseled a newer NRC employee not to file a DPV because it would harm his career.

Filers believe they will not obtain an impartial hearing because they are often questioning agency positions. OIG found there is a chilling affect when managers who supervise staff filing DPVs or DPOs are also in charge of the panels. For example, one DPV panel was comprised of staff who reported directly to a Director who disagreed with the DPV submitter's position. The DPV panel did not agree with the submitter's opinion, yet the subsequent DPO panel, composed of staff not reporting to that Director, reversed the DPV decision.

A couple of submitters stated that after filing a DPV they were moved from their area of expertise to a different staff position. They believed this action was in retaliation for filing the DPV. One submitter received an award after filing his DPV, based on a Commissioner's recommendation. His impression was that he did not have support from his manager because it was presented to him "behind closed doors."

A former employee mentioned earlier in this report related that after filing a DPO, the work atmosphere became hostile. He even detected hostility from a few of the Commissioners. He asserted that if he had not filed a DPO he would still be working at the NRC today.

Suggestions for eliminating the fear of retaliation or a hostile work environment were garnered in interviews with DPV and DPO submitters. An entire list of their suggestions is included in Appendix E.

CONCLUSIONS

OIG identified a number of management actions that the staff perceive as retaliation or had a chilling effect to their career after filing a DPV or DPO. As a result, NRC faces a challenge to change a long standing belief that filing a DPV or DPO will harm the filer's career.

RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

5. Revise the Management Directive to ensure, to the extent possible, that the ad hoc panel composition is made up of staff not in a position of authority over the submitter.
6. Educate staff and managers to assure that actions are not perceived as retaliatory.
7. Present awards for issues that result in a significant contribution to the agency's mission.

IV. OIG COMMENTS ON THE AGENCY'S RESPONSE

On September 11, 2000, the Executive Director for Operations (EDO) responded to our draft report and noted general agreement with our recommendations. (See Appendix C)

The EDO suggested that OIG's recommendation regarding revisions to the management directive (MD) be deferred until recent changes to the document can be tested. OIG believes our recommendations should not be deferred, and should be implemented in a manner so that all changes can be tested simultaneously.

The EDO also indicated that the December 1999 revisions to the MD respond to Recommendation 4. OIG believes that status updates are needed throughout the process, as well as the required summary and disposition of the issue when DPVs are closed. We have modified the recommendation to reflect the need for the EDO to ensure that managers provide the required exception reports.

We have incorporated additional editorial suggestions to this report where appropriate.

OBJECTIVES, SCOPE, AND METHODOLOGY

This review focused on NRC's Differing Professional View (DPV) and Differing Professional Opinion (DPO) Program. Our objectives were to determine whether the DPV and DPO processes (1) are viable tools to identify and resolve concerns; (2) are timely; and (3) result in retaliation to staff who use the program. Our review evaluated the DPV and DPO processes to assess if the program functions as defined and whether this program is a constructive method for resolving safety concerns.

To accomplish our objectives, we reviewed Management Directive (MD) 10.159, "Differing Professional Views or Opinions," as well as MD 8.8, "Management of Allegations." We reviewed the 1987, 1990 and 1994 Special Review Panel Reports to acquire prior history of the program and to determine if suggested improvements from those reports had been implemented. We examined DPV and DPO files for the previous five years from regional and headquarters offices, as well as the Chief Information Officer (CIO) File Center to determine the completeness of the files and timeliness in resolving issues.

We interviewed senior management officials, including personnel from the Office of the Executive Director for Operations, regional administrators, and four regional counsel to obtain an understanding of the program and to learn how it is viewed by management. We conducted interviews with NRC staff to obtain specific viewpoints and opinions with DPV filers, DPO filers, panel members, Directors whose staff had filed a DPV or DPO, and a former employee who had filed a DPO. We met with staff from the Office of Human Resources to determine the extent of its involvement with the program. Additionally, we spoke with an industry group and a public interest group to obtain their opinion of the process.

We evaluated perceived retaliation issues brought to our attention during personal interviews with DPV and DPO submitters. We examined timeframes for the DPV and DPO program, and assessed strengths and weaknesses of the regional and headquarters offices. We also reviewed management controls used to administer the program. We conducted our audit from February 2000 through May 2000 in accordance with generally accepted Government auditing standards.

ABBREVIATIONS AND ACRONYMS

CIO	Chief Information Officer
DEDM	Deputy Executive Director for Management Services
DPO	Differing Professional Opinion
DPV	Differing Professional View
EDO	Executive Director for Operations
HQ	Headquarters
MD	Management Directive
NRC	U.S. Nuclear Regulatory Commission
OD	Office Director
OIG	Office of the Inspector General
RA	Regional Administrator

AGENCY RESPONSE TO DRAFT REPORT

September 11, 2000

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

FROM: William D. Travers **/RA/**
Executive Director for Operations

SUBJECT: DRAFT AUDIT REPORT -- REVIEW OF NRC'S DIFFERING
PROFESSIONAL VIEW/DIFFERING PROFESSIONAL OPINION
PROGRAM

This is in response to your memorandum to me dated August 18, 2000, subject as above, in which you request comments on the draft Office of the Inspector General audit report titled, *Review of NRC's Differing Professional View/Differing Professional Opinion Program*.

Comments are attached.

Attachment: As stated

Comments on Inspector General Draft Audit Report -- Review of NRC's Differing Professional View/Differing Professional Opinion Program

General Comments:

- The draft OIG report speaks in several places of “resolving” DPVs or DPOs. The 1987 Special Review Panel noted that using the term “resolution” could mean different things to submitters and reviewers, leading to different expectations about what would constitute successful closure of a DPV or DPO. Accordingly, subsequent revisions of the Management Directive used instead of “resolution” the term “disposition” to characterize DPV or DPO outcomes. It is understandable that, in the minds of some submitters, successful resolution could mean not only that their views have been fully aired, reviewed, and provided to decision-makers, but also that their views have prevailed. Nevertheless, the DPV/DPO process is about disclosure, not about consensus. The criteria of its success should be the accuracy, completeness, and timeliness of the disclosure process, not the satisfaction of submitters –or managers either, for that matter –with the outcome. We have indicated on the attached pages occurrences of the use of the term “resolve” or variations thereof, and suggest replacement with variations of the term “dispose” or “disposition”.
- The draft report also notes that the 1987, 1989, and 1994 special reviews indicate that staff perceptions of the DPO/DPV process have generally not improved over time. It may be worth noting that the 1994 review found indications that employee satisfaction was higher among employees who had actually used the process rather than among those who had not.

Comments on Specific Recommendations:

Recommendation 1: Revise the Management Directive to include, (a) standardized procedures for managing the DPV process, (b) EDO oversight to ensure DPV milestones are met, (c) a mechanism for the EDO to track all DPVs and DPOs processed in the agency, and (d) tracking of resolutions and follow up actions of the DPVs and DPOs.

Response: Agree in part.

Management Directive 10.159 was reissued December 15, 1999, with a number of revisions strengthening procedures, oversight, and tracking of DPVs and followup actions resulting from the disposition of DPVs. While some further revisions may be desirable, we would defer further revisions until we have more experience with the effect of these revisions.

Recommendation 2: Convene a special review group every three years to assess program operations.

Response: Agree in part.

We agree that a special review group assessment of the program is appropriate. The Management Directive calls for periodic special review, without specifying the periodicity. We believe this is a prudent approach. The timing of the review is better guided by events and developments such as the revisions noted above, the pace of submissions, the potential impact of significant program changes (e.g., the revision of the reactor oversight process) rather than a fixed calendar date.

The Director, HR, will provide me with a recommendation regarding the nature, scope, and timing of the next special review panel within 60 days of the issuance of the final OIG report.

Recommendation 3: Revise the Management Directive to reflect additional DPO milestone and schedule concepts similar to those contained in the DPV process, and ensure information is consistent in all publications for the DPV/DPO process.

Response: Agree.

These issues will be addressed in the next revision of the Management Directive. As noted in response to Recommendation 1, we would defer the next revision of the Management Directive until we have some sense of the effect of the revisions just issued, and possibly, in line with our response to Recommendation 2, until the conclusion of the next special review.

Recommendation 4: Revise the Management Directive to require regional administrators and office directors (a) provide the EDO with status updates of DPVs; (b) ensure the milestones are met; and (c) take corrective action for missed milestones.

Response: Agree.

The recent revisions to the Management Directive respond to this recommendation. They require office directors and regional administrators to provide exception reports when DPV or followup action milestones are missed. The Management Directive also requires them to submit a summary report of the DPV issue and its disposition. If experience with these latest revisions indicates that additional reporting mechanisms are needed, we will incorporate them in the next revision of the Management Directive.

Recommendation 5: Revise the Management Directive to ensure, to the extent possible, that the ad hoc panel composition is made up of staff not in a position of authority over the submitter.

Response: Agree.

This issue will be addressed in the next revision of the Management Directive, as discussed in the response to Recommendation 3.

Recommendation 6: Educate staff and managers to ensure, to the extent possible, that actions are not perceived as retaliatory.

Response: Agree.

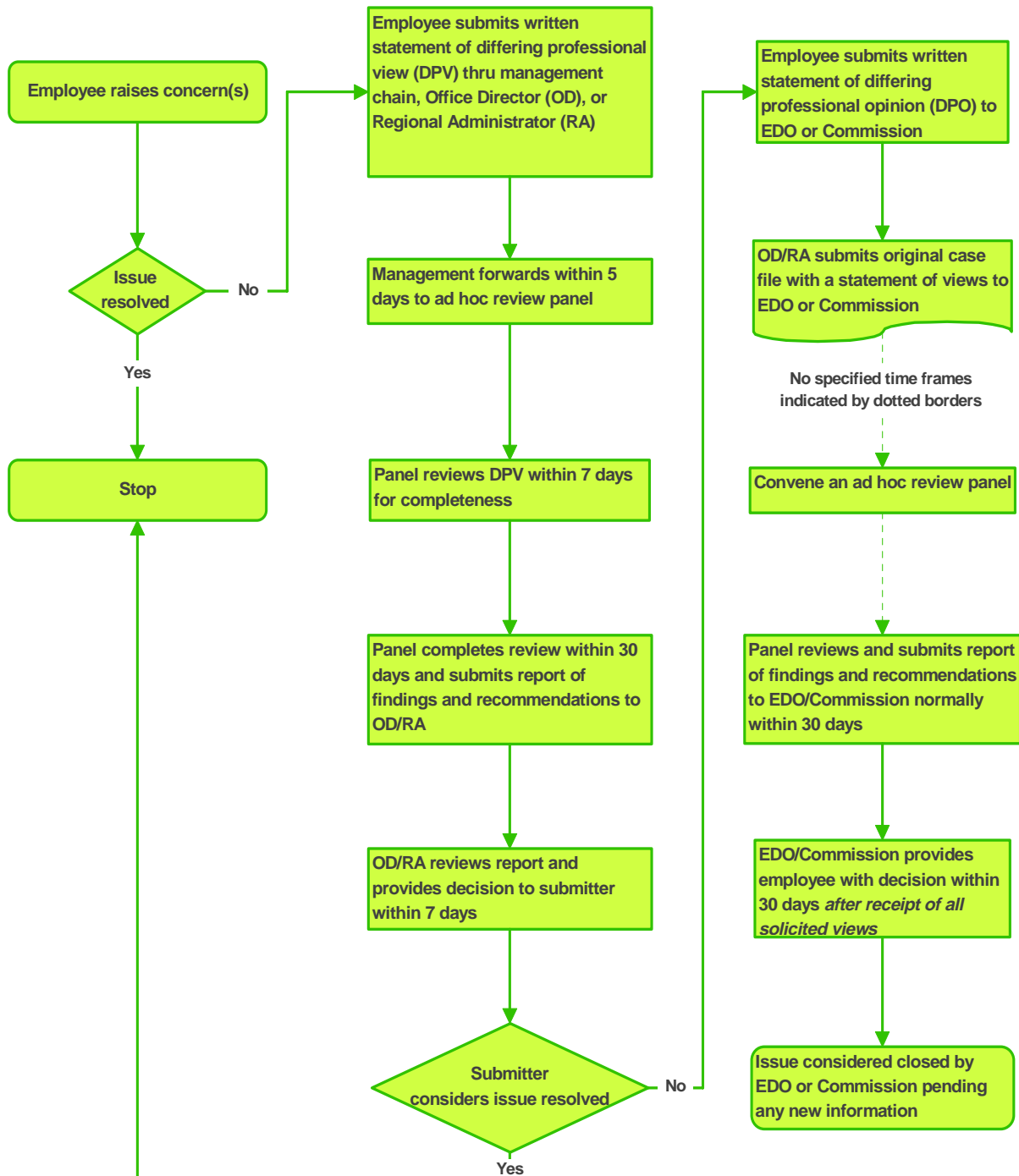
The Director, HR, will recommend a communications plan to achieve this objective within 60 days of issuance of the final report.

Recommendation 7: Publicize awards for outstanding issues benefitting the agency

Response: Agree

We have a number of vehicles for publicizing awards for DPO or DPV filers whose initiatives have resulted in benefits to the agency: the annual awards ceremony, all hands meetings, office and region level staff meetings, the NR&C newsletter, to name a few. We will ask award submitters to include in the request a plan to publicize the award, and incorporate this feature in the next revision of the Management Directive.

FLOWCHART OF THE DPV AND DPO PROGRAM



SUGGESTIONS FOR MANAGEMENT CONSIDERATION

Staff offered the following suggestions as possible solutions for alleviating staff perceptions of retaliation and for improving the program.

- Annual or periodic mandatory training to educate staff on the process.
- Present awards publicly for DPV/DPOs that result in a significant contribution to the agency's mission.
- EDO/Commission should make public announcements to endorse the program.
- Reinforcement of positive aspects of DPV/DPO process by all agency officials/managers.
- Ombudsman as liaison between staff and management.
- Panel should be made up of staff not from the filer's office to increase independence and objectivity.
- Staff associated with issue should not be formulating the response.
- There should be the same number of technical staff as managers on panel.
- All members of the panels should be technically competent in the issue area under review.
- Consider a peer review process instead of a panel.
- Allow use of an outside agency to help ensure independence and competency.
- Managers should not have a vote unless they possess technical competency of the issue being considered.
- Frequent communication regarding issue status between:
 1. Panel and submitter; and
 2. Management and submitter.
- Specify deadlines for DPO to ensure timely completion.

- Management Directive (MD) should give guidance on how to structure DPV reports for uniformity.
- MD needs to address whether submitter should receive a copy of panel report.
- Post DPV to web site without names to:
 1. Help others who want to file; and
 2. Avoid DPV duplication.
- Management should ensure that panel recommendations are implemented.
- Panel meets with the submitter and discusses the rationale for their decision.
- A process that initiates discussion of an issue before using the process (i.e., the non-concurrence policy instituted by one of the Regions.)
- Mandatory briefing with submitters to resolve differences before processing a DPV.

CONSOLIDATED LIST OF RECOMMENDATIONS

To correct weaknesses identified in this report, OIG recommends that the Executive Director for Operations:

1. Revise the Management Directive to include, (a) standardized procedures for managing the DPV process, (b) EDO oversight to ensure DPV milestones are met, (c) a mechanism for the EDO to track all DPVs and DPOs processed in the agency, and (d) tracking of resolutions and follow up actions of the DPVs and DPOs.
2. Convene a special review group to assess program operations at regularly scheduled intervals.
3. Revise the Management Directive to reflect additional DPO milestones and schedules similar in concept to those contained in the DPV process, and ensure information is consistent in all publications for the DPV/DPO process.
4. Require DPV status updates to ensure that regional administrators and office directors provide (1) effective oversight and (2) required documentation of missed milestones.
5. Revise the Management Directive to ensure, to the extent possible, that the ad hoc panel composition is made up of staff not in a position of authority over the submitter.
6. Educate staff and managers to assure that actions are not perceived as retaliatory.
7. Present awards for issues that result in a significant contribution to the agency's mission.

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