
Differing Professional Views or Opinions

1990 Special Review Panel

U.S. Nuclear Regulatory Commission

Special Review Panel



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Manuscript Completed: March 1992
Date Published: April 1992

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U.S. Nuclear Regulatory Commission
Washington, DC 20555



ABSTRACT

In December 1989, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to evaluate the effectiveness of NRC Manual Chapter 4125, Differing Professional Views or Opinions, and NRC Manual Chapter 4126, Open Door Policy. In accordance with Section E of NRC Appendix 4125, the Panel was responsible for assessing "... the informal and formal processes for dealing with differing professional views or opinions, including the effectiveness of the processes, how well they are understood by employees, and the organizational climate for

having these views and opinions aired and properly decided." This report presents the Special Review Panel's evaluation of the NRC's current process for dealing with Differing Professional Views or Opinions. Provided in this report are the results of an employee opinion survey on the process; highlights and suggestions from interviews with individuals who had submitted a Differing Professional View or Opinion, as well as with agency managers directly involved with the Differing Professional Views or Opinions process; and proposed revisions to Manual Chapters 4125 and 4126.

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EXECUTIVE SUMMARY

A free and open discussion of differing professional views is essential to the development of sound regulatory policy and decisions. In recognition of that fact, since 1976 the U.S. Nuclear Regulatory Commission (NRC) has provided ways for employees to bring their differing professional views to the attention of the highest levels of management. In 1980, NRC Manual Chapter 4125 was published, outlining and describing the NRC's Differing Professional Opinion policy. In mid-1987, a Special Review Panel examined this policy. As a result of that Panel's findings and recommendations, published in NUREG-1290, modifications were made and the current Manual Chapter 4125, Differing Professional Views or Opinions, and Manual Chapter 4126, Open Door Policy, were approved September 30, 1988.

In accordance with Section E of Appendix 4125, a Special Review Panel is to periodically assess the effectiveness of the revised procedures. The first such panel was appointed by the Executive Director for Operations in December 1989. To examine the current policies and procedures, the Special Review Panel conducted an employee opinion survey, held interviews, and reviewed the processing of actual Differing Professional Views (DPVs) and Differing Professional Opinions (DPOs).

On the basis of its review, the Special Review Panel came to the conclusion that revisions to the policies have had a positive effect; however, there is still room for improvement.

One specific improvement noted was the inclusion of the less formal DPV process. While the DPV/DPO process is a continuum, a DPV requires less documentation and occurs at a lower level in the organization. The Panel believes this modification to the policy should continue. Additionally, the Panel identified several areas where further improvements are warranted.

The Panel's findings are as follows:

- **EFFECTIVENESS**

Although there is some indication that a greater number of agency employees believe the DPV/DPO process is effective, a number of minor changes and clarifications to Manual Chapter 4125 are warranted to reflect current experience and to further improve program effectiveness.

- **HOW WELL UNDERSTOOD**

Virtually all agency employees are aware of the DPV/DPO process; however, procedures for

addressing DPVs/DPOs are not being consistently followed.

- **ORGANIZATIONAL CLIMATE**

While there are some indications that the NRC organizational climate for considering differing professional viewpoints has improved, there are also indications that point to continuing deficiencies in the climate; therefore, continued efforts in this regard are needed.

- **OPEN DOOR POLICY**

A substantial number of NRC employees are not aware of the NRC's Open Door Policy.

Based on these findings, the Panel recommends that NRC:

- Continue to emphasize the importance of an effective and practical DPV/DPO policy and incorporate a number of clarifications and revisions to Manual Chapter 4125.
- Improve manager and employee understanding of the DPV/DPO policy and its proper implementation through several initiatives, including:
 - Providing training to staff and management officials on the DPV/DPO process;
 - Publishing a revised Manual Chapter 4125 that clarifies the DPV/DPO process and includes a flow chart diagramming the process;
 - Identifying the Director, Office of Personnel, to serve as a specific point of contact who can provide advice on the policy and its application to managers and employees;
 - Distributing a brochure to all employees that explains the process in simplified terms;
 - Distributing an all-employee announcement highlighting the important changes made to the policy as a result of this review and identifying the point of contact.
- Continue to implement actions to improve the organizational climate for submitting a differing professional viewpoint.
- Communicate to all employees additional information on the NRC Open Door Policy as one of a number of options for expressing professional views. In addition, the Special Review Panel was asked to

identify employees whose DPV/DPO made a significant contribution to the agency and public health and safety but were not adequately recognized for their contribution. At the time of the Panel's review, four of the DPVs/DPOs filed were not complete.

Therefore, the Panel concluded that consideration for recognition in those cases should be deferred. Three other DPVs/DPOs had been fully considered and resolved. The Panel concluded that special recognition was not warranted in those cases.

FOREWORD

In December 1989, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to evaluate the effectiveness of current NRC Manual Chapters 4125 and 4126. The Panel members were:

Paul E. Bird
Director, Office of Personnel.
Appointed as Panel Chairperson.

Clemens J. Heltemes, Jr.
Deputy Director,
Office of Nuclear Regulatory Research.

Peter C. Hearn
Senior Reactor Operations Engineer,
Vice President, Chapter 208,
National Treasury Employees Union.

John M. Montgomery
Deputy Regional Administrator,
Region IV.

Others who contributed extensively to this project include:

Maria Rucci Dolan who provided writing and editing support for the Commission report and the resulting NUREG document; and who managed the design, administration, and analysis of the employee opinion survey.

J. David Woodend who provided advice and guidance in the revisions of Manual Chapters 4125 and 4126.

Terry Brown who provided text processing support.

SPECIAL REVIEW PANEL REPORT

The United States Nuclear Regulatory Commission (NRC) is regularly faced with making difficult decisions—decisions that can have profound impacts on public health and safety and on our nation's nuclear energy program. As a result, in making important safety decisions the Commission must have at its disposal the best information available.

For the NRC to successfully meet its regulatory responsibilities, the agency must ensure that the decision-making process includes and considers all points of view in an organizational climate that promotes open discussion.

Background

The NRC's commitment to a free and open discussion of professional views is illustrated in the NRC Open Door Policy (first communicated to agency employees in 1976) and the NRC Differing Professional Opinion Policy (formally established in 1980). These policies permit employees at all levels to provide professional viewpoints on virtually all matters pertaining to the agency's mission.

In 1987, a Commission appointed panel conducted an extensive review of these policies. As a result of this Panel's findings and recommendations, the policies were separated and amended into Manual Chapter 4125, Differing Professional Views or Opinions, and Manual Chapter 4126, Open Door Policy, as approved September 30, 1988. Copies of Manual Chapters 4125 and 4126 are included as Appendices A and B, respectively.

In December 1989, the Executive Director for Operations appointed a Special Review Panel to assess the effectiveness of the revised procedures (Appendix C). Specifically, this panel was tasked to assess the informal and formal processes for dealing with Differing Professional Views and Opinions (DPVs/DPOs), including the effectiveness of the processes, how well they are understood by employees, and the organizational climate for having DPVs/DPOs aired and properly decided.

Panel Findings and Recommendations

After reviewing the status of the current DPV/DPO process and Open Door Policy, the Special Review Panel has concluded that recent revisions to the policies have had a positive effect. A recent survey of NRC employees (Appendix D) shows that a large majority of the NRC staff¹ are aware of the process and know where to obtain additional information if needed. However, there is still room for improvement. Some question remains as to whether or not the NRC organizational climate promotes open

discussion and free use of the DPV/DPO process. In addition, the process and procedures for addressing DPVs/DPOs are not being followed consistently. In this regard, the panel identified several areas where further improvements are warranted.

● EFFECTIVENESS

***FINDING:** Although there is some indication that a greater number of agency employees believe the DPV/DPO process is effective, a number of minor changes and clarifications to Manual Chapter 4125 are warranted to reflect current experience and to further improve program effectiveness.*

There has been a positive effect on employee perceptions of the DPV/DPO policy since the last revision. Specifically, 39% of those responding in the survey indicated that the current policy is effective. This compares to 27% who so responded in the previous employee survey. The Panel believes that this improvement is in part due to the addition of the less formal DPV for considering differing viewpoints. For example, the DPV process seems to be effective in improving communication and addressing issues that previously would have required EDO or Commission action as a DPO.

Yet the Panel was troubled by the fact that almost 60% of the survey respondents either did not know whether, or disagreed that, the policy provides an effective means of employee expression. Further, the Panel was not certain how to interpret the apparent low usage of the DPV/DPO process. On one hand, the few DPVs/DPOs actually filed may indicate that there is a high degree of consensus among the professional staff on the agency's direction and positions. Given the nature of the NRC's work and the number, complexity, and importance of the issues, the few DPVs/DPOs submitted could indicate that differing viewpoints are, for the most part, being addressed and satisfactorily resolved without using the DPV/DPO process.

On the other hand, the Panel had some indications (e.g., survey results, oral remarks, and the written comments from an individual involved with an ongoing issue) that the process is not frequently used, and thus is not highly effective because of the current organizational climate. Some staff members continue to fear reprisal and believe there is a culture within the NRC that does not want to expose any weakness or error in previous NRC decisions or positions. Negative perceptions about the DPV/DPO process seem to be widespread, and in some cases, appear deeply held. However, the Panel had little evidence or definitive basis to separate perception from reality, and therefore make an informed and independent judgment regarding why there are so few DPVs/DPOs. On balance,

¹For a copy of the survey results, contact the Office of Personnel.

the Panel believes that improvements have been made over the last two years and that the proper approach is to (a) continue to emphasize the importance of the DPV/DPO policy; (b) insist on its proper implementation; (c) ensure that DPVs/DPOs receive a thorough, independent, and competent review; (d) reward staff and management involved in identifying and reviewing difficult but sound issues; and (e) continue to periodically assess the effectiveness of the program, the organizational climate, and staff and management understanding of the policy's scope, implementation, and results, including the following:

RECOMMENDATION: *Continue to emphasize the importance of an effective and practical DPV/DPO policy and incorporate a number of clarifications and revisions to Manual Chapter 4125.*

- Permit confidentiality but not allow anonymous submissions. Anonymous submissions may be made through other established channels, such as the allegations program and the Office of the Inspector General.
- Strengthen the provision for the handling of issues of immediate safety concern.
- Have the Commission and EDO provide summaries of DPOs and their resulting dispositions in the Weekly Information Report.
- Give Office Directors, Regional Administrators, and Review Panels specific authority to request technical assistance from another Office/Region or from outside the agency to address a highly specialized issue.
- Specify that DPO reviews are to be conducted independently and to the extent possible should not involve individuals who have directly participated in the formulation of the agency's position that is at issue.

● HOW WELL UNDERSTOOD

FINDING: *Virtually all agency employees are aware of the DPV/DPO process; however, procedures for addressing DPVs/DPOs are not being consistently followed.*

The vast majority of NRC employees (95%) know about and are generally familiar with the DPV/DPO policy. Furthermore, 56% of survey respondents agree that the DPV/DPO process is understandable. However, additional efforts are needed to highlight the difference between a DPV and a DPO since 35% of the employees are not aware of the difference. The Panel was also troubled by the lack of consistent handling of the DPVs and DPOs.

In the Panel's judgment, possible causes of this lack of consistency include the following: (a) the current Manual Chapter is not as clear as it could be; (b) staff and management have not received training in this policy and process; (c) there is no specific point of contact to serve as an agency expert; and (d) there have been so few cases that there is no experience base to guide those involved.

Among the inconsistencies identified to the Panel were the following: (a) a DPV was addressed to the EDO rather than to the Office Director; (b) DPV panels were convened that did not include a representative endorsed by the submitters; (c) a DPV was handled as if it were a DPO; (d) a DPV was reviewed by a specially constituted panel rather than the standing panel; (e) the time periods specified were exceeded and delays in resolution occurred; (f) DPO results were forwarded to the employee's direct supervisor rather than to the submitter; and (g) employee views labeled and requested to be handled as a DPV were in fact handled outside of the Manual Chapter process.

RECOMMENDATION: *Improve manager and employee understanding of the DPV/DPO policy and its proper implementation through several initiatives, including:*

- Providing training to staff and management officials on the DPV/DPO process.
- Publishing a revised Manual Chapter 4125 that clarifies the DPV/DPO process and includes a flow chart diagramming the process.
- Identifying the Director, Office of Personnel, to serve as a specific point of contact who can provide advice on the policy and its application to managers and employees.
- Distributing a brochure to all employees that explains the process in simplified terms.
- Distributing an all-employee announcement highlighting the important changes made to the policy as a result of this review and identifying the point of contact.

● ORGANIZATIONAL CLIMATE

FINDING: *While there are some indications that the NRC organizational climate for considering differing professional viewpoints has improved, there are also indications that point to continuing deficiencies in the climate; therefore, continued efforts in this regard are needed.*

While 28% of those who responded to the survey believe the current climate is favorable for expressing a differing viewpoint, a substantial number of respondents have no opinion (35%) or do not find it favorable (36%). However,

this appears to be an improvement in organizational climate. (The 1987 survey indicated that approximately 50% of the staff believed that filing a DPO could adversely affect their careers.)

Employees continue to be concerned that filing a DPV/DPO will be viewed negatively and, as a result, reprisal is likely to occur. As reported in the employee survey, fear of reprisal was the reason most noted for lack of policy effectiveness (19%). In addition, several individuals echoed this perception with comments such as "suicidal to your career," and "considered a troublemaker." The second most noted reason for lack of effectiveness (11%) is the perception that reviewers are predisposed to the outcome of a DPV/DPO.

The Panel believes that many of the negative perceptions associated with filing a DPV/DPO can be changed over time by enlightened and sensitive management and by proper implementation of the DPV/DPO policy. Top management endorsement and periodic emphasis are, of course, important, but perhaps more important is how issues raised by the staff are addressed and handled by line supervisors. With openness and a willingness to seriously understand and consider differing views, and a willingness to change, correct, and update decisions when justified, there will be little need for employees to use the DPV/DPO process.

Further, over time, and with continued positive experience with the DPV/DPO process, the negative perceptions should start to fade in the minds of most employees. Thus, success in obtaining feedback and input regarding a differing view depends on treating all professional views seriously and on the proper implementation of the DPV/DPO process.

RECOMMENDATION: *Continue to implement actions to improve the organizational climate for submitting a differing professional viewpoint.*

- Reinforce the importance of the DPV/DPO policy during conferences, office workshops, and staff meetings, and emphasize that DPVs/DPOs can contribute to the accomplishment of the agency's mission.
- Emphasize to supervisors that there is no negative connotation associated with one of their employees submitting a DPV/DPO, and note the importance of proper and timely processing of such views.
- Emphasize to all employees that there may be serious consequences to the public and the NRC for not correcting erroneous, outdated, or restricted positions.

- Encourage attendance at courses on Effective Listening, Effective Communication (group and/or interpersonal), and Conflict Resolution. During these courses, employees should be made aware of the importance of professional feedback and the various ways and means of providing it to ensure that the agency meets its regulatory mission.
- Continue to periodically review actual submittals to ensure that the process is working as intended, and that individuals raising important issues are suitably recognized and rewarded.

● OPEN DOOR POLICY

FINDING: *A substantial number of NRC employees are not aware of the NRC's Open Door Policy.*

The results of the employee survey indicate that 24% of the respondents are not aware of the NRC Open Door Policy, and approximately 45% of the respondents chose the option "no opinion" or "don't know" to answer the remaining questions regarding the Open Door Policy.

Those respondents in higher levels of management report the greatest familiarity with and understanding of the Open Door Policy. As reported in the survey results, only 2% of Assistant Directors or above are unaware of this policy with 88% somewhat or very familiar with it. On the other hand, 29% of non-supervisory employees are not aware of the policy and only 40% are somewhat or very familiar with it.

When compared to the responses given for the DPV/DPO process, the perception of the Open Door Policy as an effective means of expressing a professional view is slightly less (37% to 39%), but the climate is perceived more favorable (38% to 28%).

RECOMMENDATION: *Communicate to all employees additional information on the NRC Open Door Policy as one of a number of options for expressing professional views.*

- Issue an all-employee announcement explaining the NRC Open Door Policy as one of several avenues for providing NRC employees with a means for expressing a professional view. Other avenues should also be highlighted including (a) discussions with immediate supervisors, (b) discussions with higher level managers within the employee's Office, (c) inclusion of separate points of view in staff papers, and (d) as appropriate, discussions with other NRC Offices including the Office of the Inspector General or the Advisory Committee on Reactor Safeguards.
- Discuss during in-house courses, including managerial training, the Open Door Policy and other options available to agency employees for expressing professional views.

In addition, the Special Review Panel was asked to identify employees whose DPV/DPO made a significant contribution to the agency and public health and safety but were not adequately recognized for their contribution. At the time of the Panel's review, four of the DPVs/DPOs filed were not complete. Therefore, the Panel concluded that consideration for recognition in those cases should be deferred. Three other DPVs/DPOs had been fully considered and resolved. The Panel concluded that special recognition was not warranted in those cases.

Methodology

The Panel's findings and recommendations provided in this report are based primarily on four sources of information: (1) the results of an NRC employee survey addressing perceptions of the NRC's Differing Professional Views or Opinions Policy and Open Door Policy; (2) Panel interviews with Review Panel Chairpersons and submitters of DPVs/DPOs (Appendix E); (3) background documents on the DPV/DPO process and its use; and (4) personal knowledge and experience from Panel members' involvement in the process.

Employee Survey

To gather information from agency employees, the Panel used an agency survey. The specifics of the survey process are discussed below.

Basic demographic information, perceptions of the current DPV/DPO process, and perceptions of the Open Door Policy were identified as content areas to be included in the survey. For the purposes of this study, demographic information was collected on the respondent's current classification and the office or region in which the respondent works. The principal focus of the survey was to gather information on the effectiveness, understandability, and organizational climate of the DPV/DPO process and Open Door Policy.

After the draft questionnaire was developed, the Special Review Panel made modifications and approved the document.

The survey was distributed to all non-clerical employees in headquarters and all five regions (approximately 2500 NRC employees). Anonymity was guaranteed to all respondents.

A total of 1282 questionnaires were returned and tabulated by the Atlantic Research Corporation of Washington D.C. Frequencies and percentages for each question (along with cross classifications by demographic information and a brief narrative) are available from the Office of Personnel.

Panel Interviews

Prior to conducting the interviews, questions were drafted and later modified by the Special Review Panel. Specific questions were asked of Region and Office Review Panel Chairpersons, and similar questions were asked of DPV/DPO submitters. Interviews were designed to specifically address the experience and possible concerns of the individual.

Most interviews were conducted by telephone with all Panel members in attendance. (Note: one interview was conducted in person and two interviews were conducted with three members of the Panel.) A summary of these interviews is provided in Appendix E.

Background Documents and Guidelines

The Panel reviewed a number of documents on the DPV/DPO process, including the previous assessment and documentation regarding the use of the process. These documents provided input for assessing the degree to which the current policy is being properly implemented, the degree of improvement that has occurred since the last assessment, and the specific changes that could be made to improve the process.

APPENDIX A

Manual Chapter 4125
(as approved September 30, 1988)

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 4000 Personnel
Part : 4100 Federal

OP

CHAPTER 4125 DIFFERING PROFESSIONAL VIEWS OR OPINIONS

4125-01 COVERAGE

This chapter and its appendix cover NRC policy, objectives, procedures, responsibilities, and other basic requirements and definitions established to provide for the expression and resolution of differing professional views or opinions concerning matters related to the agency's mission.

Issues that do not qualify as differing professional views or opinions include those that are or could have been appropriately addressed under grievance procedures or under other personnel appeal procedures, or are otherwise specifically governed by law or government-wide regulation; issues that are subject to collective bargaining; issues involving allegations of wrongdoing that are more appropriately addressed by the Office of Inspector and Auditor or the Office of Investigations; issues that are deemed to be frivolous or otherwise not in accordance with the policy underlying these procedures; and issues raised by an employee that already have been considered, addressed or rejected pursuant to this chapter absent significant new information.

4125-02 POLICY AND OBJECTIVES

An informal as well as a formal process for considering the differing professional views of employees is established for issues directly related to the mission of the NRC. Issues raised through the informal process are reviewed within the Office or Region having responsibility for the issue. Although the informal process may appear to be structured, it is intended to be a vehicle for the prompt, non-confrontational consideration of issues by an impartial review panel, independent of an employee's direct supervisors, with a minimum of documentation. If the employee is not satisfied with the disposition of the issue through the informal process, he/she may file a Differing Professional Opinion (DPO) with the EDO if working in an office reporting to the EDO, or with the Commission if working in an office reporting to the Commission. If an issue is submitted directly to the EDO or Commission, it is first remanded to the appropriate Office for review through the informal process before action is taken through the formal process.

021 Policy. It is the policy of the Nuclear Regulatory Commission and the responsibility of all NRC supervisory and managerial personnel to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue

Approved: September 30, 1988

with proposed or established agency practices. Each differing professional view of an NRC employee will be evaluated on its own merit.

It is not only the right but the duty of all NRC employees, including managers, to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers NRC employees' differing professional views that relate to the agency's mission. This policy is intended to assure that all employees have the opportunity to express differing professional views in good faith, to have these views heard and considered by NRC management, and to be protected against retaliation in any form.

022 Objectives.

- a. To establish an informal process for expressing differing professional views and a formal process for expressing DPOs.
- b. To provide recognition to the originators of differing professional views or opinions if they contribute significantly to achieving the agency's mission.
- c. To provide for periodic assessment, as necessary, to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes.

4125-03 RESPONSIBILITIES AND AUTHORITIES

031 The Commission:

- a. Refers DPOs to the appropriate Office Director or Regional Administrator for review if they have not gone through the informal review process.
- b. Utilizes the appropriate qualified sources inside or outside the NRC to assist in reviewing the DPO.
- c. Determines the disposition of issues submitted to the Commission as DPOs. Such disposition includes rejection of matters which do not qualify as DPOs, as stated in 4125-01, or as defined in 041 of this chapter.
- d. Provides the originator or the manager who forwarded a DPO with a disposition and rationale for that disposition.
- e. To reduce the administrative burden and resource expenditures, maintains the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel.
- f. Periodically reviews and modifies as necessary the informal and formal processes for resolving differing professional views and opinions based on recommendations of the EDO and the DPO Special Review Panel.

Approved: September 30, 1988

032 The Executive Director for Operations (EDO):

- a. Refers DPOs to the appropriate Office Director or Regional Administrator for review if they have not gone through the informal review process.
- b. Utilizes the appropriate qualified sources inside or outside the NRC to assist in reviewing the DPO.
- c. Determines the disposition of issues submitted to the EDO as DPOs. Such disposition includes rejection of matters which do not qualify as a DPO, as stated in 4125-01, or as defined in 041 of this chapter.
- d. Provides the originator or the manager who forwarded a DPO with a disposition and a rationale for that disposition.
- e. To reduce the administrative burdens and resource expenditure, maintains only the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel.
- f. Periodically appoints members, as necessary, to a DPO Special Review Panel after consultation with the Chairman.
- g. Reviews the report of the DPO Special Review Panel and makes recommendations to the Commission as necessary.

033 Directors of AEOD, NMSS, NRR, RES, OSP and Regional Administrators:

- a. Annually appoint a Standing Review Panel for differing professional views within their respective Offices or Regions.
- b. Refer all differing professional views and opinions received to the Office or Region Standing Review Panel for detailed review.
- c. Determine the disposition of issues submitted as differing professional views. Such disposition includes rejection of matters which do not qualify as differing professional views as stated in 4125-01, or as defined in 042 of this chapter.
- d. Provide the EDO or Commission (through the EDO) a statement of views on the disposition of referred DPO statements.
- e. Provide the originator or the manager who forwarded a differing professional view with a disposition and a rationale for that disposition and include a summary of the issue and its disposition in the Weekly Information Report.
- f. To reduce the administrative burden and resource expenditure, maintain only the minimum documentation necessary to preserve an accurate record of the informal proceedings until such time as an assessment is completed by the DPO Special Review Panel.

034 Office or Region Standing Review Panel:

- a. Reviews all signed or unsigned written statements of differing professional views or opinions for issues within the Office's or Region's areas of responsibility.
- b. Reviews those DPOs that have not gone through the informal review process.
- c. Determines whether sufficient documentation was provided by the submitter of a differing professional view or opinion to undertake a detailed review.
- d. Makes recommendations to the Office Director or Regional Administrator on the disposition of issues reviewed.

035 The Director, Office of Personnel:

- a. Retains all completed case files of formal proceedings until such time as an assessment is completed by the DPO Special Review Panel.
- b. Ensures all DPOs and their dispositions are disseminated and/or made available to the public in accordance with the provisions of the Freedom of Information Act.
- c. Includes a summary of the issue and its disposition in the Weekly Information Report.
- d. Administratively assists the DPO Special Review Panel.

036 Managers and Supervisors:

- a. Advise and assist employees in administratively preparing adequate written statements of differing professional views or opinions.
- b. In consultation with their managers, determine the amount of the originator's work time and administrative support to be provided in response to the originator's request for assistance.
- c. When requested, maintain the confidentiality of the originator of a differing professional view or opinion.

037 All Employees make known their best professional judgments on any matter relating to the mission of the agency by submitting a signed or unsigned statement of differing professional view or opinion when appropriate.

038 DPO Special Review Panel:

- a. Periodically assesses, as necessary, the informal and formal processes for dealing with differing professional views and opinions, including the effectiveness of the processes, how well they are

understood by employees, and the organizational climate for having these views or opinions aired and properly decided.

- b. Based on this assessment, prepares a report to the EDO that identifies appropriate actions to assure the proper functioning of this activity.
- c. Reviews differing professional views and opinions submitted since the last review to identify employees whose differing professional views or opinions made significant contributions to the agency or to public health and safety but had not been properly or adequately recognized for this contribution.

4125-04 DEFINITIONS

041 Differing Professional Opinion. Definition is the same as for a differing professional view, except that a differing professional opinion is submitted directly to the EDO or the Commission (depending on the source of the DPO) either initially, or, after an Office/Regional decision on a previously submitted differing professional view.

042 Differing Professional View. A conscientious expression of professional judgment which, on any matter directly related to NRC's mission of licensing and regulating nuclear facilities and materials, differs from the prevailing staff view, disagrees with a management decision or policy position, or takes issue with a proposed or an established agency practice. A differing professional view may be submitted in a written statement (signed or unsigned) to an Office Director or Regional Administrator, depending on the issue(s) raised, and may involve technical, legal or policy issues.

043 Retaliation. Retaliation consists of injurious actions taken against an employee because of the expression or support of a differing professional view or opinion.

4125-05 BASIC REQUIREMENTS

051 Applicability. Procedures for the expression and resolution of differing professional views or opinions apply to all NRC employees including supervisors and managers. The procedures supplement other stated rights, duties, and safeguards applicable to all Federal employees who make their views known either within or outside their agencies, including:

- a. the independent right of free speech provided by the First Amendment to the U.S. Constitution.
- b. the right of government employees to petition the Congress (5 USC 7102).
- c. the rights of employees to communicate directly with the Congress as outlined in the Code of Ethics for Government Service (10 CFR 0.735 - Annex A).

Approved: September 30, 1988

- d. provisions of the 1978 Civil Service Reform Act dealing with prohibited personnel practices and the regulations of the Merit System Protection Board.

052 Appendix 4125. This appendix provides procedures for the expression and disposition of differing professional views and opinions.

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PROCEDURES FOR THE EXPRESSION AND DISPOSITION
OF DIFFERING PROFESSIONAL VIEWS AND OPINIONSA. Introduction

In the free and open discussion of work matters, professional differences of opinion are common. Employees normally try, and are encouraged, to resolve their concerns through discussions with their co-workers and immediate supervisors. In some cases, such discussions may lead to the submission of a suggestion as part of the NRC Suggestion Program (Chapter NRC-4154).

Such differences of opinion, developed in the free and open discussion of work matters, become differing professional views or opinions only when the originators bring them to NRC management attention in accordance with these procedures.

In these cases, informal discussions may not resolve the matters and an employee may be convinced that the agency and the public would be better served if another opinion prevailed. To further pursue such matters using these procedures, an employee should submit a written statement (signed or unsigned) of differing professional view or opinion in accordance with these procedures. An employee may not use these procedures without submitting a written statement. With the submission of a written statement to the EDO or Commission (formal process), the employee's differing view becomes a differing professional opinion (DPO).

In addition to the procedures contained in this Manual Chapter, individual employees are permitted to document their differing professional views and attach them to proposed staff position or other documents, to be forwarded with the position as it moves through the management approval chain. Individual employees are strongly encouraged to discuss their differing professional views within the chain of authority, especially with their immediate supervisors, as a first step in resolving differing professional views. No record keeping or documentation of this discussion is required.

B. Informal Process for Expressing Differing Professional Views

1. A Standing Review Panel (panel) will be permanently established in each Region, AEOD, NMSS, NRR, RES, and OSP to promptly review differing professional views and propose a disposition, propose a procedure to gain prompt disposition, or propose a rejection of the differing professional view. The panel will document its review findings and make recommendations to the Regional Administrator or Office Director, as appropriate.
2. The panels, formally appointed in writing for one year by the Regional Administrator or Office Director, should be chaired by the Deputy Regional Administrator, Deputy Office Director, or equivalent official. Each panel will include the Chair (and alternate) and one other member (and alternate) appointed by management. Additionally, the individual employee submitting a differing professional view may

propose a list of qualified members who are willing to serve on the panel. The submitter may consult with the exclusive bargaining unit representative to select individuals who would be willing to serve. The third panel member (and alternate) will be chosen by management from the proposed list. The panels are encouraged to solicit the views of experts knowledgeable of the issue(s) raised, if appropriate.

3. The informal review process is initiated by a written statement, (signed or unsigned) that is submitted to the Regional Administrator or Office Director who will then forward it to the panel within five calendar days.
4. The signed or unsigned written statement while being brief, must in all cases include the following:
 - a. a summary of the originator's perception of the prevailing staff view, existing management decision or stated position, or the proposed or established agency practice.
 - b. a description of the originator's views and how they differ from any items discussed in a. above.
 - c. a statement of the originator's assessment of the resulting consequences if the differing professional view is not adopted by the agency.
5. If an employee wishes to have his or her views considered as a differing professional view but desires confidentiality, the employee may submit an unsigned statement of differing professional view to a manager who would be willing to forward it to the appropriate official. Disposition of the differing professional view will then be completed in accordance with these procedures. To protect the employee's confidentiality in such cases, however, it may not be possible to provide the acknowledgement of receipt of the statement or the reports on disposition directly to the originator. In such cases, the manager who forwarded the differing professional view shall relay to the originator both the acknowledgement of receipt and all reports received by that manager concerning its disposition or resolution.
6. The panel should normally review the differing professional view within seven calendar days of receipt to determine if enough information has been supplied to undertake a detailed review of the issue. The panel should informally contact the employee or the manager who forwarded the differing professional view if additional information is needed.
7. Once the panel has received the necessary information to begin a review, the panel should normally take no more than 30 calendar

days to make a recommendation to the Regional Administrator or Office Director.

8. The Regional Administrator or Office Director should review the panel recommendation and provide the concerned employee or the manager who forwarded the differing professional view with a disposition and rationale of that disposition of the issue. Normally, this should occur within seven calendar days after receipt of the panel's recommendation. A summary of the issue and its disposition will be included in the Weekly Information Report. Other dissemination, as appropriate, should be made by Regions/Offices to advise interested employees of the outcome.
9. Extenuating circumstances may cause delays in concluding the informal process. Notice of delays should be communicated to the submitter, or in the event of an unsigned statement, communicated to the manager who forwarded the differing professional view. Offices and Regions are expected to expedite the disposition of differing professional views. If the review and office-level disposition of the differing professional view does not occur within 60 calendar days from the date of receipt by the Office Director or Regional Administrator, the reason for delay should be reported to the EDO or Commission, as appropriate.
10. Those involved in the informal review process shall give priority handling to issues involving potential immediate or significant health and safety concerns. This includes calling such issues to the immediate attention of higher management.
11. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. These records should be maintained and available only within the Region or Office.
12. Certain types of issues are excluded from this process and may be rejected by the Office Director or Regional Administrator on that basis. These include those issues that do not qualify as a differing professional view as stated in 4125-01, or as defined in 042 of this chapter.
13. If the informal process does not result in a satisfactory or a timely disposition of an issue, individual employees may pursue these issues by filing a formal DPO.

C. Formal Process for Expressing Differing Professional Opinions

1. The formal review process is initiated by a written statement (signed or unsigned) that is submitted to the EDO or Commission. Employees in offices reporting to the EDO shall submit their DPO to the EDO. Employees in offices reporting to the Chairman or Commission shall submit their DPO to the Commission.

2. For guidance on written statements and the desire for confidentiality of differing professional opinion, refer to Section B, items 4 and 5. DPO submittals must also include any informal process disposition of the issue.
3. If the EDO or Commission receives a DPO that has not gone through the informal review process, the EDO or Commission shall forward it within five calendar days to the appropriate Office Director or Regional Administrator. Offices and Regions will then operate under the provisions of Section B.
4. If, after the Office or Region review, the originator is satisfied that the matter is settled, a copy of the disposition will be sent to the EDO or Commission (as appropriate). The case file will be retained in the Office or Region. If the matter is not settled to the satisfaction of the originator at the Office or Region level, the Office Director or Regional Administrator will return the case file with his/her statement of views to the EDO or Commission (as appropriate) for a final decision.
5. The EDO or Commission has the option to use other qualified sources inside and outside the NRC to assist in reviewing the issue.
6. The EDO or Commission (as appropriate) should review the views of the Office Director or Regional Administrator, Standing Review Panel and any other source whose review was solicited. The EDO or Commission (as appropriate) will provide the concerned employee with a disposition and rationale of that disposition of the issue. Normally, this should occur within 30 calendar days after receipt of all solicited views requested by the EDO or Commission.
7. Extenuating circumstances may cause the EDO or Commission to delay in making a final decision. Notice of delays should be communicated to the submitter, or in the event of an unsigned statement, to the manager who forwarded the DPO.
8. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. All completed DPO case files will be sent by the EDO and Commission to the Office of Personnel, which will include a summary of the issue and its disposition in the Weekly Information Report; and which will make the file or portions of the file available to the public in accordance with the provisions of the Freedom of Information Act.
9. Those involved in the formal review process shall give priority handling to issues involving immediate or significant health and safety concerns.
10. Certain types of issues are excluded from this process and may be rejected by the EDO or Commission on that basis. These include those issues that do not qualify as a DPO as stated in 4125-01 or as defined in 041 of this chapter.

11. Once a final decision is rendered on a DPO by the EDO or Commission (as appropriate) and communicated to the concerned employee if known, or to the manager who forwarded the DPO if unknown, the matter is considered to be closed and normally will not again be addressed absent significant new information.

D. Resources to Assist Originators of Differing Professional Views or Opinions

To assist originators in preparing adequate written statements of differing professional views or opinions, NRC management will allow a reasonable amount of the originator's work time and provide administrative support. If called to testify before a Licensing Board or an Appeal Board, the employee may receive, upon request, assistance from the legal staff in preparing testimony or other documents to be filed with the Board. Such assistance will be solely for the purpose of facilitating the filing of the necessary documents and will not constitute legal representation of the employee by the legal staff. The originator's immediate supervisor, in consultation with his or her manager, will determine the amount of the originator's work time and administrative support to be provided in response to the originator's request for assistance.

E. DPO Special Review Panel

A DPO Special Review Panel (Review Panel) will periodically assess, as necessary, the informal and formal processes for dealing with differing professional views or opinions, including the effectiveness of the processes, how well they are understood by employees, and the organizational climate for having these views or opinions aired and properly decided. Members of the Review Panel will be appointed by the EDO after consultation with the Chairman.

The Review Panel will prepare a report based on this assessment which will be submitted to the EDO for consideration. The report will also be distributed to all employees. The EDO will forward the report with any comments or recommended changes to the Commission for approval.

In addition, the Review Panel will review differing professional views and opinions on any matter relating to the agency's mission submitted since the last review to identify employees whose differing professional views or opinions made significant contributions to the agency or to public health and safety but have not been adequately recognized for this contribution. When award recommendations have not been made, they may be made by the Review Panel in accordance with provisions of NRC's Incentive Awards Program (Chapter NRC-4154). Recommendations for awards will be included in the Review Panel's report.

F. Use of Procedures for Differing Professional Views or Opinions

These procedures were developed to assure NRC employees are able to freely express their differing views or opinions as defined in 041 and 042 of this chapter and to underscore management's intention to address these concerns in a timely, responsible manner. These procedures should

be used by all NRC employees with integrity and in accordance with the stated procedures.

G. Prevention of Retaliation Against Individuals Who Express or Support Differing Professional Views or Opinions

Any NRC employee who retaliates against another employee for submitting or supporting a differing professional view or opinion is subject to disciplinary action in accordance with Chapter NRC-4171, "Discipline, Adverse Actions and Separations." This applies to retaliatory actions as defined in this Manual Chapter and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code, as amended by the Civil Service Reform Act of 1978.

Employees who allege that retaliatory actions have been taken because of their submission or support of a differing professional view or opinion may seek redress through the negotiated grievance procedure or through the grievance procedure described in Chapter NRC-4157, "Employee Grievances."

APPENDIX B

Manual Chapter 4126
(as approved September 30, 1988)

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 4000 Personnel
Part : 4100 Federal

OP

CHAPTER 4126 OPEN DOOR POLICY

4126-01 COVERAGE

This chapter and its appendix cover NRC policy, objectives, procedures, and responsibilities related to the expression of views directly to agency managers at all levels through the Open Door policy. It applies to all agency employees, including agency managers and supervisors.

4126-02 POLICY AND OBJECTIVES

021 Policy. The NRC strongly encourages all of its employees to foster an atmosphere in the agency in which they may openly and freely communicate their views on critical issues, particularly those related to public health and safety. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum in which concerns and alternative views can be considered and addressed in an efficient and timely manner, much to the benefit of the agency and the public.

Individual NRC employees are expected to communicate their views and concerns with their immediate supervisors on a regular, ongoing basis. On occasion, however, employees may wish to initiate communications with other agency supervisors or managers about any work-related issue or concern. These supervisors or managers should consider and address those concerns and provide an appropriate response if possible.

022 Objectives.

- a. To provide NRC employees with a channel for communicating concerns or issues directly to all levels of responsible agency officials.
- b. To protect employees who use the Open Door policy from retaliation in any form because of their proper use of this policy.

4126-03 RESPONSIBILITIES AND AUTHORITIES

031 The Director, Office of Personnel (OP), requires all of the Headquarters and Regional personnel offices to include an overview of the Open Door policy in the orientation for new employees.

Approved: September 30, 1988

032 Managers and supervisors:

- a. Should, to the extent practicable, consider and address those issues and concerns brought to them, work to resolve an employee's concerns, answer any questions, and honor any request for confidentiality.
- b. Should not take or initiate any retaliatory action against any employee solely because that employee utilized or supported another employee who utilized the Open Door policy. However, this does not preclude supervisors from initiating, pursuing, or continuing to pursue unrelated personnel actions affecting employees who have used the Open Door policy.

033 All employees:

- a. Are expected to communicate their views and concerns to their immediate supervisor on a regular basis.
- b. May request a meeting with any agency manager or supervisor under the Open Door policy to air or attempt to resolve any issue or concern.

4126-04 DEFINITIONS

041 Manager/supervisor. An employee who directs the work of an organization, is held accountable for specific line or staff programs or activities, or whose primary duties are managerial or supervisory.

042 Open Door. The availability of all levels of NRC management to meet with employees to discuss and attempt to resolve issues and concerns.

043 Retaliation. Retaliation consists of any injurious actions taken against the employee because of the employee's expression or support of a concern.

4126-05 BASIC REQUIREMENTS

051 Applicability. These procedures for the expression and resolution of employee concerns are for the use of all NRC employees including managers and supervisors.

052 Appendix 4126. This appendix provides guidance for the expression of concerns under the Open Door policy.

Approved: September 30, 1988

An NRC employee may also appear before the ACRS or ACNW or a subcommittee as deemed appropriate by the committee. The ACRS or ACNW will assure that issues raised under the Open Door policy are forwarded to the responsible NRC office director for information and/or action, as appropriate.

C. Use of the Open Door Policy

The Open Door policy was adopted to foster an atmosphere of open and free communication within the agency and underscore management's intention to consider and address those issues and concerns brought to them. The Open Door policy should be used by all NRC employees with integrity and for the stated purposes.

D. Prevention of Retaliation Against Any Employee for Expressing or Supporting Those Who Express Concerns Under the Open Door Policy

Any NRC employee who retaliates against another employee for expressing or supporting those expressing concerns under Open Door policy is subject to disciplinary action in accordance with NRC Manual Chapter 4171 (Discipline, Adverse Actions and Separations). This applies to retaliatory actions and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code.

Employees who allege that retaliatory actions have been taken because of their expression or support of a concern under the Open Door policy may seek redress through other channels, such as the negotiated grievance procedure or through the formal grievance procedure described in NRC Manual Chapter 4157 (Employee Grievances).

Approved: September 30, 1988

GUIDANCE FOR THE EXPRESSION OF CONCERNS USING THE OPEN DOOR POLICY

A. Open Door

Any employee may initiate a meeting with an NRC manager or supervisor, including a Commissioner of the Chairman of NRC, to discuss any matter of concern to the employee. An employee may request an Open Door meeting directly with the selected manager or supervisor without the approval of intermediate management.

An employee's request for confidentiality will normally be honored by the manager or supervisor contacted under the Open Door policy except when the manager contacted is an NRC Commissioner. Each Commissioner is legally required to inform all other Commissioners of any information believed to be related to the responsibility or the function of the Commission. (This requirement for mandatory information sharing applies only to the Commissioners and does not extend to others within NRC.) Subject to this constraint, an employee's request for confidentiality made in connection with communications under the Open Door policy will normally be honored by the NRC manager unless (1) as a practical matter it is impossible to convey the substance of the information without making known the identity of the employee, (2) disclosure of the employee's identity is essential for determination of the accuracy and reliability of the information, or (3) the employee's identity is required to be released by law.

Managers and supervisors contacted will work to resolve an employee's concerns, to answer any questions, and to honor a request for confidentiality. Honoring a request for confidentiality may, however, limit a manager's or supervisor's ability to provide assistance or advice and counsel on matters of concern to the employee.

Managers and supervisors should also advise employees of other channels to be used for the resolution of concerns such as NRC Manual Chapters 4125 (Differing Professional Views or Opinions), 4156 (Appeals from Adverse Actions), and 4157 (Employee Grievances). If the contacted manager or supervisor believes that others should be notified of issues raised in these Open Door discussions, he/she should notify the responsible offices (e.g., the Office of Inspector and Auditor).

B. Advisory Committees

If the issue raised under the Open Door policy relates to a potential safety issue within the purview of the Advisory Committee on Reactor Safeguards (ACRS) or the Advisory Committee on Nuclear Waste (ACNW), an NRC employee may communicate orally or in writing directly with the Chairman or any member of the appropriate committee. Such communication may include a request for confidentiality.

Approved: September 30, 1988

APPENDIX C

Special Review Panel Charter



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DEC 20 1989

MEMORANDUM FOR: Paul E. Bird, Director
Office of Personnel

FROM: James M. Taylor
Executive Director
for Operations

SUBJECT: DIFFERING PROFESSIONAL VIEWS OR OPINIONS
SPECIAL REVIEW PANEL

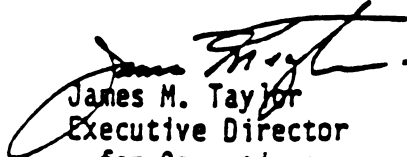
SECY memorandum dated June 21, 1988, subject, COMLZ-88-24/24A - COMSECY-88-4, DIFFERING PROFESSIONAL OPINIONS, states: "A review of the effectiveness of the new (DPO) procedures should be conducted after they have been in effect for one year." Similarly, POLICY ISSUE (Negative Consent), SECY-88-216, dated July 26, 1988, subject, COMLZ-88-24/24A - COMSECY-88-4, DIFFERING PROFESSIONAL OPINIONS, states: "After the manual chapters (MC 4125 and MC 4126) have been published and in effect for one year, a Differing Professional Opinions (DPO) Special Review Panel will be convened to review the effectiveness of the new procedures." Since NRC Manual Chapters 4125, Differing Professional Views or Opinions, and 4126, Open Door Policy, were implemented on September 30, 1988, it is time to appoint a new Special Review Panel to review the effectiveness of the new procedures. In order to conduct such a review, I am designating you as chairman of the Panel as called for in Manual Chapter 4125. The Panel should include the following members:

Management Member
Regional Member
Union Member

Clemens J. Heltemes
John M. Montgomery
(To be determined)

In accordance with Section E of NRC Appendix 4125, the Panel should assess the informal and formal processes for dealing with differing professional views or opinions, including the effectiveness of the processes, how well they are understood by employees, and the organizational climate for having these views or opinions aired and properly decided. The provisions of MC 4126, Open Door Policy, should also be addressed in this assessment. In addition, the Review Panel will review differing professional views and opinions on any matter relating to the agency's mission submitted since the last review to identify employees whose differing professional views or opinions made significant contributions to the agency or to public health and safety but have not been adequately recognized for this contribution.

The results of the Panel's evaluation should be submitted to me in the form of a report, including proposed revisions to the Manual Chapters, if any, and award recommendations, if any, by March 16, 1990, unless an extension of time is necessary.


James M. Taylor
Executive Director
for Operations

cc: E. Jordan, AEOD
C. Heltemes, AEOD
R. Martin, RIV
J. Montgomery, RIV
J. Thomas, NTEU

APPENDIX D

Survey Questionnaire



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

FEB 27 1990

MEMORANDUM FOR: NRC Professional Staff

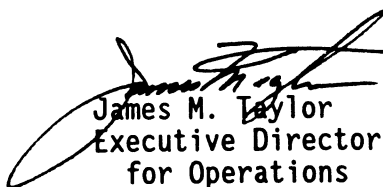
FROM: James M. Taylor
Executive Director for Operations

SUBJECT: EVALUATION OF THE NRC POLICIES FOR EXPRESSING A DIFFERING
VIEWPOINT (MC-4125/MC-4126)

The purpose of the attached questionnaire is to obtain your views about the effectiveness of NRC's Differing Professional Views or Opinions and Open Door Policies (MC-4125/MC-4126). The results of this questionnaire will be used to evaluate the current processes.

This questionnaire has been endorsed by both NRC management and the National Treasury Employee's Union (NTEU). Your responses are anonymous, and no information will be available as to who did or did not respond to the questionnaire. Your completed questionnaire will be available only to those individuals directly responsible for tabulating the responses.

Your views on this subject are very important to ensure that these policies remain a valuable and viable technique for expressing professional opinions. Please fold, staple, and return your completed questionnaire to Mail Stop W-316, Office of Personnel. Completed questionnaires must be returned by March 12, 1990.


James M. Taylor
Executive Director
for Operations

Attachments:
As stated

WE ARE ATTEMPTING TO DETERMINE THE DEGREE TO WHICH THE NRC STAFF FEELS FREE TO COMMUNICATE THEIR PROFESSIONAL VIEWPOINTS AND WHETHER THERE IS GENERAL KNOWLEDGE ABOUT THE INFORMAL AND FORMAL MEANS TO ASSURE THAT SENIOR MANAGEMENT KNOWS ABOUT AND CONSIDERS A DIFFERING PROFESSIONAL VIEWPOINT ASSOCIATED WITH TECHNICAL, LEGAL OR POLICY ISSUES.

THIS SECTION OF THE QUESTIONNAIRE ADDRESSES YOUR OPINIONS REGARDING THE NRC POLICY FOR EXPRESSING A DIFFERING PROFESSIONAL VIEW (DPV) OR DIFFERING PROFESSIONAL OPINION (DPO).

PLEASE CIRCLE THE LETTER OF THE ANSWER THAT BEST DESCRIBES YOUR RESPONSE.

1. I am currently classified
 - a. In a non-supervisory role.
 - b. As a Section Chief or other first line supervisor.
 - c. As a Branch Chief.
 - d. As an Assistant Director or higher.

2. Where do you work?
 - a. Commissioner's Office or Commission Level Staff Office (ACRS, ASLBP, ASLAP, OGC, SECY, IG, GPA, LSS)
 - b. EDO Staff Office (OEDO, OC, ADM, OP, OSDBU/CR, OE, CONS, OI, IRM)
 - c. AEOD
 - d. NRR
 - e. NMSS
 - f. RES
 - g. Region I
 - h. Region II
 - i. Region III
 - j. Region IV
 - k. Region V

3. How familiar are you with the goals and objectives of the NRC's Differing Professional View (DPV) or Differing Professional Opinion (DPO) policy?
 - a. Very familiar
 - b. Somewhat familiar
 - c. Limited familiarity, but know where to obtain the information
 - d. I am not aware of this NRC policy.

4. The NRC process for submitting a DPV/DPO is understandable.
- a. Strongly Agree
 - b. Agree
 - c. No Opinion
 - d. Disagree
 - e. Strongly Disagree
5. How familiar are you with the difference between the process for submitting a DPV and a DPO?
- a. Very familiar
 - b. Somewhat familiar
 - c. Limited familiarity, but know where to obtain the information
 - d. I am not aware of the difference.
6. In your opinion, does the DPV/DPO process provide an effective means for NRC employees to express differing professional views or opinions?
- a. Yes
 - b. No
 - c. Don't know
- 6a. If you answered no to Question 6, was it because you felt:
- a. The process is cumbersome or would take too long.
 - b. You would be viewed negatively by your peers.
 - c. You would be concerned about reprisal.
 - d. The reviewers are predisposed to the outcome.
 - e. Other (please explain): _____
7. Overall, the organizational climate for using the DPV/DPO process at the NRC is favorable.
- a. Strongly Agree
 - b. Agree
 - c. No Opinion
 - d. Disagree
 - e. Strongly Disagree

THIS SECTION OF THE QUESTIONNAIRE ADDRESSES YOUR OPINIONS REGARDING THE NRC OPEN DOOR POLICY.

AGAIN, PLEASE CIRCLE THE LETTER OF THE ANSWER THAT BEST DESCRIBES YOUR RESPONSE.

8. How familiar are you with the goals and objectives of the NRC Open Door Policy?
- a. Very familiar
 - b. Some familiarity
 - c. Limited familiarity, but know where to obtain the information
 - d. I am not aware of this policy at the NRC.
9. Appropriate use of the NRC Open Door Policy is clear.
- a. Strongly Agree
 - b. Agree
 - c. No Opinion
 - d. Disagree
 - e. Strongly Disagree
10. In your opinion, does the Open Door Policy provide an effective means for NRC employees to express themselves professionally on matters of importance?
- a. Yes
 - b. No
 - c. Don't know
11. Overall, the organizational climate for using the Open Door Policy at the NRC is favorable.
- a. Strongly Agree
 - b. Agree
 - c. No Opinion
 - d. Disagree
 - e. Strongly Disagree

PLEASE FOLD, STAPLE, AND RETURN YOUR COMPLETED QUESTIONNAIRE TO MAIL STOP W-316, OFFICE OF PERSONNEL. COMPLETED QUESTIONNAIRES MUST BE RETURNED BY MARCH 12, 1990.

APPENDIX E

Interview Questions and Results

INTERVIEW QUESTIONS AND RESULTS

A. Interviews With Region and Office Review Panel Chairpersons

Purpose and Scope

To assess the overall effectiveness of the Differing Professional Views (DPV) and Differing Professional Opinions (DPO) process, the Panel interviewed the nine Office and Region Standing Review Panel Chairpersons to ascertain the level of DPV/DPO activity since the last revision of Manual Chapter 4125. The interviews were designed to gain insights on how well the process was working, how it could be improved, and to determine if any individuals using the DPV/DPO process were given recognition.

The Special Review Panel identified a total of seven DPV/DPO submittals which have been received since the last Special Review Panel meeting. Of these, one submittal involved an investigatory matter and another was submitted late in the Panel's proceedings; therefore, interviews were not conducted with the submitters of these two submittals. Three of the seven submittals are still under review and were not considered for awards by the Special Review Panel.

In summary, the status of the seven submittals is as follows: one was submitted anonymously and was considered using the DPV process, two were considered on the basis of the DPV process, two were considered as DPVs and are now being addressed as DPOs, one is being handled directly as a DPO and was not reviewed as a DPV, and one is currently being considered as a DPV.

Prior to the interviews, the Panel unanimously agreed that it was not in the Panel's charter to get involved with the substance of, nor intervene in, the processing of any of the individual DPVs or DPOs discussed.

The questions asked during each interview were as follows:

1. Have any DPVs been brought to your attention since September 30, 1988? If so, how many?
2. How many, if any, were not resolved as DPVs and, therefore, were or are being processed as DPOs?
3. How easy was the process to use?
4. Did the procedures allow the issue to be handled in a timely and effective manner?

5. What suggestions or comments do you have to make the DPV/DPO program more effective or better understood?
6. Did the Office give any recognition to any individuals using the DPV/DPO process?

Summary of Responses

1. Have any DPVs been brought to your attention since September 30, 1988? If so, how many?

Five of the nine representatives reported no DPV activity since September 30, 1988. Three stated that they had one DPV brought to their attention, and one representative stated that two were brought to his attention.

2. How many, if any, were not resolved as DPVs and, therefore, were or are being processed as DPOs.

Seven representatives reported no DPO activity. Two representatives reported unresolved DPVs that were being addressed as DPOs. (An additional DPO was not addressed as a DPV.)

3. How easy was the process to use?

Five representatives had no comment in response to this question as they had little or no experience using the process. The other four representatives stated that they believed the process worked well.

4. Did the procedures allow the issue to be handled in a timely and effective manner?

Five of the nine representatives had no comment because they did not have first hand experience with the procedures. The remaining four said that the procedures allowed the issue to be handled in a timely and effective manner. One representative further added that the new procedures were much better than the old. Nevertheless, one representative commented that his organization was unable to stay within the prescribed time frames due to scheduling difficulties.

5. What suggestions or comments do you have to make the DPV/DPO program more effective or better understood?

Four of the representatives did not offer any suggestions or comments to make the DPV/DPO program more effective or better understood. Three representatives said that it was a good process; two specifically mentioned the informal process as being

a good feature. One representative pointed out that the difference between a DPV and a DPO is unclear.

6. Did the Office give any recognition to any individuals using the DPV/DPO process?

All nine representatives responded that no special recognition was given to individuals using the DPV/DPO process because either there were no DPVs/DPOs filed or because specific recognition was not considered appropriate in the cases in which they participated.

B. Interviews With Individuals Who Filed DPVs Or DPOs

Purpose and Scope

To assess the overall effectiveness of the DPV/DPO process, the Panel interviewed submitters of DPVs/DPOs. There was one submittal that the Panel was unable to pursue because it was submitted anonymously. Additionally, of the remaining submitters, one individual declined to be interviewed; two submittals involved the same individual; and, one submittal had not yet been processed. Thus, a total of three individuals were interviewed.

Prior to the interviews, once again the Panel agreed that it was not in the Panel's charter to get involved with the substance of, nor intervene in the processing of, any of the individual DPVs or DPOs discussed.

The questions asked during each interview were as follows:

1. How did you first come to know of and later become involved with the DPV/DPO process?
2. Did the procedures allow the issue to be handled in a timely/effective manner?
3. How easy/difficult was it to find this information?
4. Once you found it, how easy was the chapter to understand?
5. Do you believe the informal DPV process has been helpful in considering a differing opinion?
6. What suggestions or comments do you have to improve the DPV/DPO program?
7. Prior to participating in the process, what was your view of the organizational climate for submitting a DPO?

And now, after going through it, how would you describe the organizational climate of the agency?

8. Is there anything else you would like to discuss with the Panel?

Summary of Responses

1. How did you first come to know of and later become involved with the DPV/DPO process?

One interviewee stated that he was not initially aware of the DPV/DPO option. After attempts to resolve the issue with appropriate management, he was advised to utilize the DPV/DPO option rather than to communicate directly to the Commissioners, which he had considered doing. This individual commented that such an important option should be better publicized. Another interviewee became aware of the Open Door and DPO policy in the early 1980s. He was working at a plant and aired some concerns that were addressed through the DPO process. He eventually provided testimony to Congress about the issue. He feels that use of the DPO option hurt his career and that others did not use the DPO policy because it would hurt their careers. The third interviewee did not respond to this question.

2. Did the procedures allow the issue to be handled in a timely/effective manner?

One interviewee said the process was not carried out in a timely or effective manner. This submitter also commented that DPO procedures were not followed and the DPO Review Panel did not fully address the issues raised. Another stated that although the paperwork may be considered accomplished in a timely manner, the implementation of the actions committed to in order to correct the conditions expressed in the DPV have not been accomplished in a timely manner. The third interviewee stated that the DPV process effectively addressed his concerns in a timely and effective manner.

3. How easy/difficult was it to find this information?

One interviewee stated that guidance was readily available. Another stated that it was easy to find the Manual Chapter. The third interviewee did not answer the question.

4. Once you found it, how easy was the chapter to understand?

One interviewee stated that it was not all that easy to understand. Another stated that the guidance is easy to understand, but was not sure that the requirements for the written DPV statement were

necessary. The third interviewee stated that he had a problem differentiating between a DPV and a DPO; the rest was easily understood and applied.

5. Do you believe the informal DPV process has been helpful in considering a differing opinion?

One interviewee stated that the informal DPV process is easier to use and more helpful; however, he felt DPV/DPO submitters must still deal with the same people who made the original decisions with which the DPV takes issue, particularly in the Regions. The other two stated that the informal DPV process is somewhat helpful, but the difference between a DPV and a DPO is still unclear.

6. What suggestions or comments do you have to improve the DPV/DPO program?

One interviewee stated that the DPV/DPO process should be a very low key process. He felt that the review process should be kept out of the Regions if possible because in the Regions the people involved with the original agency decisions are the same people who will review and contribute to the decision on the DPV. This interviewee also stated that management should not only process the DPV paperwork but take timely action to implement the actions resulting from the DPV. Another interviewee stated that the agency's organizational culture makes managers reluctant to recognize or admit mistakes and thus, there is a predisposition on the part of the agency to find in favor of the established agency position. He felt that such an organizational culture puts the careers of DPV/DPO submitters at great risk and that in order for the DPO process to work, this must change. The third interviewee had no comments or suggestions.

7. Prior to participating in the process, what was your view of the organizational climate for submitting a DPO?

One interviewee stated that filing a DPV/DPO is very detrimental to one's career. It is like "cutting your own throat." The younger employees and the employees who believe that they may have a bright future in the agency see the consequences of filing a DPV/DPO and will not file one. Another stated that filing a DPV/DPO is not in an employee's best interest, and that SES bonuses are geared to reward "good troops" not "boat rockers." The third interviewee stated that others advised him that the

organizational climate is such that filing a DPV/DPO was a great career risk. However, the interviewee stated that he does not believe this to be true.

And now, after going through it, how would you describe the organizational climate of the agency?

One interviewee indicated he has suffered as a result of a prior experience with the DPO process which included an attempt to remove him from his position. With regard to a more recent submittal, the interviewee believes the organization and climate has improved but believes that his prospects within the Agency are now very limited due to the first submittal. The other two interviewees made no additional comment with regard to this part of this question.

8. Is there anything else you would like to discuss with the Panel?

One interviewee stated that the agency should take steps to eliminate the stigma which results from filing a DPV/DPO. He stated that even the word "DPO" has a bad connotation. The interviewee indicated that he is not sure how to improve the situation but suggested that it is probably "human nature" for managers not to want DPVs/DPOs filed within their organizations.

Another interviewee was unclear about the various alternatives. He believed that there is a broad perception in NRC that filing a DPO is a last resort and that the range of options between normal employee/management communications and the DPV/DPO process had not been clearly communicated. The interviewee believed it is important that each employee understand all available means for communicating a differing viewpoint.

The third interviewee stated that he was never informed of the right of a DPV/DPO submitter to recommend a member to sit on the DPV Review Panel. In addition, in this case the DPV Review Panel relied heavily on input from individuals who were involved in developing the NRC policies which the DPV called into question. Thus, the review process was not considered independent from the original decision. And finally, the submitter felt that a very important and substantive part of this DPV was ignored. This DPV/DPO continues under review and a final decision on its disposition has not yet been made.

APPENDIX F

Proposed Manual Chapter 4125

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 4000 Personnel
Part : 4100 Federal

OP

CHAPTER 4125 DIFFERING PROFESSIONAL VIEWS OR OPINIONS

4125-01 COVERAGE

This chapter and its appendix cover NRC policy, objectives, procedures, responsibilities, and other basic requirements and definitions established to provide for the expression and resolution of differing professional views or opinions concerning matters related to the agency's mission.

Issues that do not qualify as differing professional views or opinions include issues that are or could have been appropriately addressed under grievance procedures, personnel appeal procedures, or governed by law or government-wide regulation; issues that are subject to collective bargaining; issues involving allegations of wrongdoing that are appropriately addressed by the Office of the Inspector General; issues submitted anonymously which, if safety significant, are appropriately addressed under NRC's Allegation Program; issues that are deemed to be frivolous or otherwise not in accordance with the policy underlying these procedures; and issues raised by an employee that already have been considered, addressed, or rejected pursuant to this chapter absent significant new information.

(SECTION G OF THE APPENDIX PROVIDES A QUICK-REFERENCE GUIDE FOR PROCESSING DIFFERING PROFESSIONAL VIEWS AND OPINIONS.)

4125-02 POLICY AND OBJECTIVES

An informal as well as a formal process for considering the differing professional viewpoints of employees is established for issues directly related to the mission of the NRC. Issues raised through the informal process are called Differing Professional Views (DPVs). Responsibility for ensuring review of the DPV and making and communicating a decision on the issue rests within the Office or Region of the submitter. As necessary, this Office or Region utilizes expertise elsewhere in the Agency to assess or resolve the issue. Although the informal process may appear to be structured, it is intended to be a vehicle for the prompt, non-confrontational consideration of issues by an impartial review panel, independent of an employee's direct supervisors, with a minimum of documentation.

If the employee is not satisfied with the disposition of the issue through the informal process, the employee may file a Differing Professional Opinion (DPO) with the EDO if working in a Region or an Office reporting to the EDO, or with the Commission if working in an Office reporting to the Commission. If an issue is submitted directly to the EDO or Commission prior to consideration as a DPV, it is immediately forwarded to the submitter's Office or Region for review as a DPV through the informal process before action is considered through the formal DPO process.

The objective of this policy is to assure the full consideration and prompt disposition of DPVs/DPOs. Thus, the focus is an independent, impartial review by qualified personnel. This policy can offer confidentiality, but not anonymity.

021 Policy. It is the policy of the Nuclear Regulatory Commission and the responsibility of all NRC supervisory and managerial personnel to maintain a working environment that encourages employees to make known their best professional judgments 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. Each DPV/DPO will be evaluated on its own merits.

It is not only the right but the duty of all NRC employees, including managers, to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers DPVs/DPOs. This policy is intended to assure that all employees have the opportunity to express DPVs/DPOs in good faith, to have these views heard and considered by NRC management, and have protection from retaliation in any form for expressing a differing viewpoint.

022 Objectives:

- a. To establish an informal process for expressing Differing Professional Views (DPVs) and a formal process for expressing Differing Professional Opinions (DPOs).
- b. To recognize submitters of DPVs/DPOs when they have contributed significantly to the mission of the agency.
- c. To provide for periodic assessment, as necessary, to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes.

4125-03 RESPONSIBILITIES AND AUTHORITIES

031 The Commission:

- a. Notifies the Director, Office of Personnel, that a DPO has been received.
- b. Determines the disposition of DPOs submitted by employees in Offices reporting directly to the Commission and informs the DPO submitter of the final disposition and rationale.
- c. Forwards to the EDO DPO submittals from Offices reporting directly to the EDO.
- d. Forwards submittals that have not gone through the DPV process to the submitter's Office Director for processing as a DPV.

- e. Forwards anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager.
- f. Takes action, as appropriate, on matters that appear to be of immediate health or safety significance.
- g. Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO.
- h. Provides a summary of the issue and its disposition in the Weekly Information Report.
- i. Maintains the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel.
- j. Periodically reviews and modifies the DPV/DPO process based on recommendations from the EDO and the Special Review Panel on Differing Professional Views or Opinions.

032 The Executive Director for Operations (EDO):

- a. Notifies the Director, Office of Personnel, that a DPO has been received.
- b. Determines the disposition of DPOs submitted by employees in Offices reporting directly to the EDO and informs the DPO submitter of the final disposition and rationale.
- c. Forwards to the Commission DPO submittals from Offices reporting directly to the Commission.
- d. Forwards submittals that have not gone through the DPV process to the submitter's Office Director or Regional Administrator to be processed as a DPV.
- e. Forwards anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager.
- f. Takes action, as appropriate, on matters that appear to be of immediate health or safety significance.
- g. Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO.
- h. Provides a summary of the issue and its disposition in the Weekly Information Report.

- i. Maintains the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel.
- j. Periodically appoints members to a Special Review Panel to review the effectiveness of the DPV/DPO process.
- k. Reviews the Special Review Panel's report and makes recommendations to the Commission, as necessary.

033 Office Directors and Regional Administrators:

- a. Determine the disposition of DPVs submitted from employees within their Office or Region and inform the DPV submitter of the decision and its rationale.
- b. Forward anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager.
- c. Regional Administrators and Office Directors in AEOD, NMSS, NRR, and RES appoint and maintain a Standing DPV Review Panel. All other Office Directors appoint DPV Review Panels when a DPV is submitted by an employee assigned to their Office.
- d. Refer all DPVs to the appointed DPV Review Panel for detailed review, except for matters that appear to be of immediate health or safety significance.
- e. Take action on and advise the EDO or Commission of submittals that appear to be of immediate health or safety significance.
- f. Utilize technical assistance from other NRC Offices/Regions or from outside the agency, as necessary, to address a highly specialized issue. If assistance from outside the agency is required, Federal Advisory Committee Act (FACA) requirements must be considered.
- g. Provide a summary of the issue and its disposition in the Weekly Information Report.
- h. Maintain the minimum documentation necessary to preserve an accurate record of the DPV proceedings.
- i. When an employee chooses to continue the issue through the formal DPO process, a copy of the DPV records should be provided to the EDO or Commission, as appropriate.

034 Office or Region Review Panel:

- a. Reviews DPVs and makes recommendations to the Office Director or Regional Administrator.
- b. Determines whether sufficient documentation was provided by the DPV submitter for the Panel to undertake a detailed review.
- c. Requests technical assistance through the submitter's Office Director or Regional Administrator, if necessary.

035 The Director, Office of Personnel:

- a. Monitors the number of DPO submittals being processed in the agency.
- b. Retains all completed DPO case files of formal proceedings until such time as an assessment is completed by a Special Review Panel.
- c. Ensures that appropriate parts of DPOs and their dispositions are disseminated and/or made available to the public in accordance with the provisions of the Freedom of Information Act.
- d. Provides administrative support to the Commission, EDO, Office Directors, Regional Administrators, and the Special Review Panel in carrying out their responsibilities for DPV/DPO processing.

036 Managers and Supervisors:

- a. Upon receipt of a DPV/DPO, submit the incoming correspondence to the Office Director or Regional Administrator for further processing.
- b. Advise and assist employees in administratively preparing DPVs/DPOs.
- c. Determine the amount of work time and administrative support to be provided in response to a DPV/DPO submitter's request for assistance.
- d. When mutually agreeable, maintain the confidentiality of the DPV/DPO submitter by filing and discussing the DPV/DPO on behalf of the employee.

- 037 All Employees make known their best professional judgments on any matter relating to the mission of the agency by submitting a DPV/DPO when appropriate.

038 Special Review Panel:

- a. Periodically assesses, as requested by the EDO, the DPV/DPO process including the effectiveness of the process, how well it is understood by employees, and the organizational climate for having these views aired and properly decided.
- b. Based on this assessment, prepares a report to the EDO that recommends appropriate actions to assure the proper functioning of the DPV/DPO process.
- c. Identifies and recognizes employees and managers who have made significant contributions to the agency or to public health and safety but were not adequately recognized for their contributions.

4125-04 DEFINITIONS

041 Differing Professional View. A conscientious expression of a professional judgment that differs from the prevailing staff view, disagrees with a management decision or policy position, or takes issue with a proposed or an established agency practice involving technical, legal, or policy issues. A Differing Professional View (DPV) is to be submitted in writing to the employee's supervisor, line management official, Office Director or Regional Administrator.

042 Differing Professional Opinion. A DPV becomes a Differing Professional Opinion (DPO) after it has been processed and decided and the submitter requests that the matter be considered further by the EDO or Commission.

043 Confidential Submittal. A DPV/DPO that is submitted by an employee through an NRC manager who knows that the submitter is an agency employee. Anonymous submittals will not be considered under the provisions of this policy.

044 Retaliation. Retaliation consists of injurious actions taken against an employee because of the expression or support of a DPV/DPO.

4125-05 BASIC REQUIREMENTS

051 Applicability. Procedures for the expression and resolution of DPVs/DPOs apply to all NRC employees including supervisors and managers. The policy supplements other stated rights, duties, and safeguards applicable to all Federal employees who make their views known either within or outside their agencies, including:

- a. the independent right of free speech provided by the First Amendment to the U.S. Constitution.

- b. the right of government employees to petition the Congress (5 USC 7102).
- c. the rights of employees to communicate directly with the Congress as outlined in the Code of Ethics for Government Service (10 CFR 0.735 - Annex A).
- d. provisions of the 1978 Civil Service Reform Act dealing with prohibited personnel practices and the regulations of the Merit System Protection Board.

052 Appendix 4125. This appendix provides procedures for the expression and disposition of DPVs/DPOs.

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PROCEDURES FOR THE EXPRESSION AND DISPOSITION OF DIFFERING PROFESSIONAL VIEWS AND OPINIONS

A. Introduction

In the free and open discussion of agency issues, professional differences of opinion are common. Employees normally try, and are encouraged, to resolve their concerns through discussions with their co-workers and immediate supervisor.

Individual employees are permitted to document their differing professional viewpoints and attach them to proposed staff positions or other documents, to be forwarded with the position as it moves through the management approval chain. Individual employees are strongly encouraged to discuss their differing professional viewpoints within the chain of command, especially with their immediate supervisor, as a first step towards resolution of the issue. No record keeping or documentation of this discussion is required.

Such differences of opinion, developed in the free and open discussion of work matters, become a Differing Professional View (DPV) or a Differing Professional Opinion (DPO) only when the employee brings them to management's attention in accordance with these procedures.

In these cases, informal discussions may not resolve the matter and an employee may be convinced that the agency and the public would be better served if another opinion prevailed. To further pursue such matters using these procedures, an employee must submit a written statement in accordance with this Manual Chapter. An employee may not use these procedures without submitting a written statement.

B. Informal Process for Expressing Differing Professional Views

1. The DPV process is initiated by a written statement submitted either through the management chain or directly to the Regional Administrator or Office Director who will then forward it to a DPV Review Panel within five calendar days. Individuals who are contemplating the submittal of a DPV and officials who receive a DPV are encouraged to contact the Director, Office of Personnel, for guidance on the process.
2. The written statement, while being brief, shall in all cases include the following:
 - a. a summary of the prevailing staff view, existing management decision or stated position, or the proposed or established agency practice.
 - b. a description of the submitter's views and how they differ from any items discussed in a. above.

- c. an assessment of the consequences should the submitter's position not be adopted by the agency.
3. If an employee wishes to have a differing view considered as a DPV but desires confidentiality, the employee may submit an unsigned DPV to an NRC manager who agrees to forward it to the appropriate official. Disposition of the DPV will then be completed in accordance with these procedures. To protect the employee's confidentiality in such cases, it may not be possible to provide acknowledgment of receipt of the statement or disposition directly to the submitter. In such cases, the manager who forwarded the DPV shall relay to the originator both the acknowledgment of receipt and all reports received by that manager concerning its disposition or resolution.
4. Anonymously submitted DPVs are not covered by the provisions of this Chapter. Anonymous submissions will be referred to the Office of Investigations, the Office of the Inspector General, or the appropriate Allegation Program Manager.
5. A Standing Review Panel (panel) is to be established and maintained in each Region, AEOD, NMSS, NRR, and RES to review DPVs. Directors of Offices other than those listed above should appoint DPV Review Panels only when a DPV has been submitted from their Office. The panels are appointed in writing by the Regional Administrator or Office Director, and should be chaired by the Deputy Regional Administrator, Deputy Office Director, or equivalent official. Each panel will include a Chairperson and one other member appointed by management. The submitter may consult with the exclusive bargaining unit representative to nominate qualified individuals who would be willing to serve as the third panel member. A third panel member will be chosen by the Chairperson from a list proposed by the employee submitting the DPV.
6. The panel should normally review the DPV within seven calendar days of receipt to determine if enough information has been supplied to undertake a detailed review of the issue. The panel should informally contact the employee or the manager who forwarded the DPV if additional information is needed.
7. Those involved in the informal review process shall give priority handling to issues involving potential immediate or significant health and safety concerns. This includes calling such issues to the immediate attention of higher management.
8. Once the panel has received the necessary information to begin a review, the panel should normally take no more than 30 calendar days to make a recommendation to the Regional Administrator or Office Director.

9. 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, this should occur within seven calendar days after receipt of the panel's recommendations. A summary of the issue and its disposition should be included in the Weekly Information Report to advise interested employees of the outcome.
10. Extenuating circumstances may cause delays in concluding the DPV process. Notice of delays should be communicated to the submitter, or in the event of a confidential statement, communicated to the manager who forwarded the DPV. If the review and disposition of the DPV does not occur within 60 calendar days from the date of receipt by the Office Director or Regional Administrator, the reason for delay should be reported to the EDO or Commission, as appropriate.
11. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. These records should be maintained and available only within the Region or Office. If the matter is not settled to the satisfaction of the submitter and the submitter requests in writing that the issue be further reviewed under formal DPO procedures, the Office Director or Regional Administrator will forward the case file along with a statement of views on the unresolved issue(s) to the EDO or Commission, as appropriate, for consideration as a formal DPO.
12. Certain types of issues are excluded from this process and may be rejected by the Office Director or Regional Administrator. These include those issues that do not qualify as a DPV as stated in 4125-01.

C. Formal Process for Expressing Differing Professional Opinions

1. The formal DPO review process may be initiated by an employee, after the DPV process has been completed, by submitting a written statement to the EDO or Commission, as appropriate. Employees in Offices reporting to the EDO shall submit their DPO to the EDO. Employees in Offices reporting to the Chairman or Commission shall submit their DPO to the Commission.
2. Written DPO submissions shall meet the same criteria established for the submission of a DPV.
3. If the EDO or Commission receives a DPO that has not been considered through the DPV process, the EDO or Commission shall forward it within five calendar days to the appropriate Office Director or Regional Administrator for processing as a DPV. Offices and Regions will then operate under the provisions of Section B of this Appendix.

review the decision of the Office Director or Regional Administrator as well as the Review Panel's recommendations and any other source who has reviewed the issue.

5. The EDO or Commission may utilize qualified sources inside and outside the NRC to assist in reviewing the DPO.
6. The EDO or Commission (as appropriate) will provide the submitter with a decision and rationale for that decision. Normally, this should occur within 30 calendar days after receipt of all solicited views requested by the EDO or Commission. Extenuating circumstances may cause the EDO or Commission to delay in making a final decision. In such cases, the submitter should be advised of the time frame for considering the issue.
7. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. All completed DPO case files will be sent by the EDO and Commission to the Office of Personnel, which will make the file or appropriate portions of the file available to the public in accordance with the provisions of the Freedom of Information Act.
8. Any NRC employee or manager involved in the DPO process shall give immediate priority attention to issues involving significant health and safety concerns. This includes advising the Office Director, Regional Administrator, or as appropriate the EDO or Commission, of any immediate safety concerns.
9. Certain types of issues are excluded from this process and may be rejected by the EDO or Commission. Issues that do not qualify as a DPO are stated in 4125-01.
10. After a decision on a DPO is made by the EDO or Commission and communicated to the submitter (or to the manager who forwarded the DPO), the matter is considered closed and will not be considered further absent significant new information.

D. Resources to Assist Originators of Differing Professional Views or Opinions

To assist submitters in preparing adequate written DPVs/DPOs statements, the submitter's immediate supervisor, in consultation with their manager, will determine the amount of the employee's work time and administrative support to be provided in response to the employee's request for assistance. If called to testify before a Licensing Board or an Appeal Board, the employee may receive, upon request, assistance from the legal staff to prepare testimony or other documents to be filed with the Board. Such assistance will be solely for the purpose of facilitating the filing of the necessary documents and will not constitute legal representation of the employee by the legal staff.

E. Special Review Panel

A Special Review Panel should periodically assess the DPV/DPO process including its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided. Members of the Special Review Panel will be appointed by the EDO after consultation with the Chairman.

The Special Review Panel will prepare a report based on this assessment that will be submitted to the EDO for consideration. The report or its Executive Summary will also be distributed to all employees. The EDO will forward the report with any comments or recommended Manual Chapter changes to the Commission for approval.

In addition, the Special Review Panel will review DPVs/DPOs completed since the last review to identify employees who have made significant contributions to the agency or to public health and safety but have not been adequately recognized for this contribution. When award recommendations have not been made, they may be made by the Special Review Panel in accordance with provisions of NRC's Incentive Awards Program (Chapter NRC-4154). Recommendations for awards will be included in the Special Review Panel's report.

F. Prevention of Retaliation Against Individuals Who Express or Support Differing Professional Views or Opinions

Any NRC employee who retaliates against another employee for submitting or supporting a DPV/DPO is subject to disciplinary action in accordance with Chapter NRC-4171, "Discipline, Adverse Actions and Separations." This applies to retaliatory actions as defined in this Manual Chapter and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code, as amended by the Civil Service Reform Act of 1978.

Employees who allege that retaliatory actions have been taken because of their submittal or support of a DPV/DPO may seek redress through the negotiated grievance procedure or through the grievance procedure described in Chapter NRC-4157, "Employee Grievances."

G. DPV/DPO Processing Flow Chart

Steps in processing a DPV/DPO.

1. Employee writes a Differing Professional View (DPV).
2. The DPV should be submitted directly or through line management, to the employee's Office Director/Regional Administrator. If submitted to another NRC organization it is forwarded to the employee's Office Director/Regional Administrator for processing through the informal DPV process. The employee's Office Director/Regional Administrator acknowledges receipt and forwards the submittal to the DPV Review Panel for action. (AEOD, NRR, NMSS, RES, and Regions have standing panels; other Offices appoint an ad hoc review panel to review the submittal.) The Office Director or Regional Administrator appoints the panel chairperson and another panel member. The submitter may provide a list of qualified individuals to the panel chairperson who selects one of them to serve as the third member of the DPV Review Panel.
3. The DPV Review Panel considers the DPV and provides the submitter's Office Director/Regional Administrator a report of findings and a recommended course of action.
4. The Office Director/Regional Administrator considers the DPV Review Panel's report, makes a decision on the DPV; provides a written decision to the submitter; and, includes a summary of the issue and its disposition in the NRC Weekly Information Report. The DPV file is retained in the Office/Region.
5. Based on the Office Director's report, the submitter may consider the matter closed.
6. If the submitter does not consider the matter closed, a written DPO statement expressing continuing concerns may be submitted to the Commission or EDO, as appropriate.
7. Upon receipt of a formal DPO, the Commission/EDO contacts the submitter's Office Director/Regional Administrator to obtain all records that may aid in the formal DPO review process.

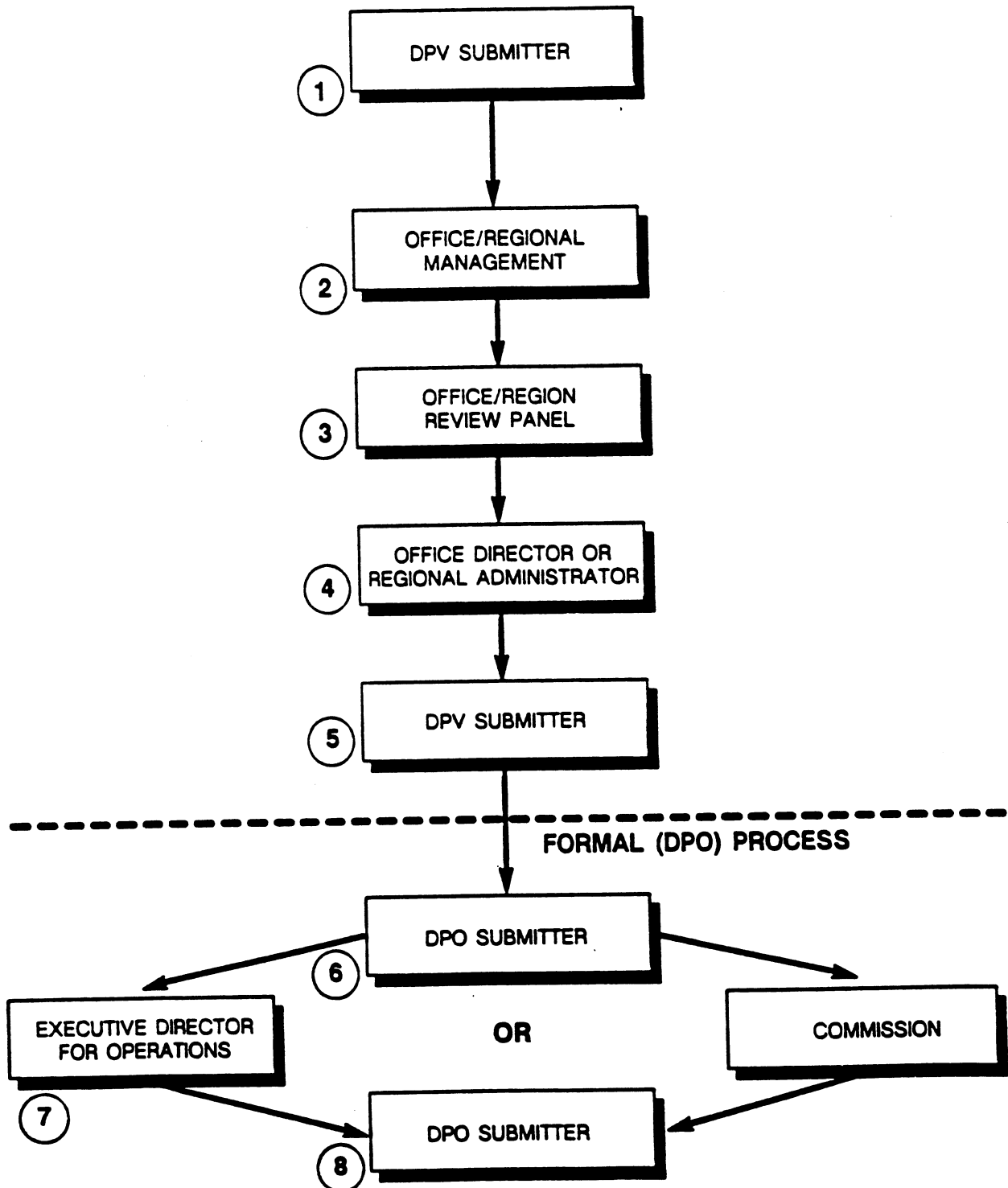
When the Commission/EDO has completed its review, a written decision is provided to the submitter and the case file is forwarded to the Office of Personnel.

8. Upon receipt of a decision from the EDO or Commission, the DPO process is concluded.

G.

DIFFERING PROFESSIONAL VIEWS OR OPINIONS

INFORMAL (DPV) PROCESS



APPENDIX G

Proposed Manual Chapter 4126

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 4000 Personnel
Part : 4100 Federal

OP

CHAPTER 4126 OPEN DOOR POLICY

4126-01 COVERAGE

This chapter and its appendix cover NRC policy, objectives, procedures, and responsibilities related to the expression of views directly to agency managers at all levels through the Open Door policy. It applies to all agency employees, including agency managers and supervisors.

4126-02 POLICY AND OBJECTIVES

021 Policy. The NRC strongly encourages all of its employees to foster an atmosphere in the agency in which they may openly and freely communicate their views on critical issues, particularly those related to public health and safety. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum in which concerns and alternative views can be considered and addressed in an efficient and timely manner, much to the benefit of the agency and the public.

Individual NRC employees are expected to communicate their views and concerns with their immediate supervisors on a regular, ongoing basis. On occasion, however, employees may wish to initiate communications with other agency supervisors or managers about any work-related issue or concern. These supervisors or managers should consider and address those concerns and provide an appropriate response if possible.

022 Objectives.

- a. To provide NRC employees with a channel for communicating concerns or issues directly to all levels of responsible agency officials.
- b. To protect employees who use the Open Door policy from retaliation in any form because of their proper use of this policy.

4126-03 RESPONSIBILITIES AND AUTHORITIES

031 The Director, Office of Personnel (OP), requires all of the Headquarters and Regional personnel offices to include an overview of the Open Door policy in the orientation for new employees.

032 Managers and supervisors:

- a. Should, to the extent practicable, consider and address those issues and concerns brought to them, work to resolve an employee's concerns, answer any questions, and honor any request for confidentiality.
- b. Should not take or initiate any retaliatory action against any employee solely because that employee utilized or supported another employee who utilized the Open Door policy. However, this does not preclude supervisors from initiating, pursuing, or continuing to pursue unrelated personnel actions affecting employees who have used the Open Door policy.

033 All employees:

- a. Are expected to communicate their views and concerns to their immediate supervisor on a regular basis.
- b. May request a meeting with any agency manager or supervisor under the Open Door policy to air or attempt to resolve any issue or concern.

4126-04 DEFINITIONS

041 Manager/supervisor. An employee who directs the work of an organization, is held accountable for specific line or staff programs or activities, or whose primary duties are managerial or supervisory.

042 Open Door. The availability of all levels of NRC management to meet with employees to discuss and attempt to resolve issues and concerns.

043 Retaliation. Retaliation consists of any injurious actions taken against the employee because of the employee's expression or support of a concern.

4126-05 BASIC REQUIREMENTS

051 Applicability. These procedures for the expression and resolution of employee concerns are for the use of all NRC employees including managers and supervisors.

052 Appendix 4126. This appendix provides guidance for the expression of concerns under the Open Door policy.

GUIDANCE FOR THE EXPRESSION OF CONCERNS USING THE OPEN DOOR POLICY

A. Open Door

Any employee may initiate a meeting with an NRC manager or supervisor, including a Commissioner of the Chairman of NRC, to discuss any matter of concern to the employee. An employee may request an Open Door meeting directly with the selected manager or supervisor without the approval of intermediate management.

An employee's request for confidentiality will normally be honored by the manager or supervisor contacted under the Open Door policy except when the manager contacted is an NRC Commissioner. Each Commissioner is legally required to inform all other Commissioners of any information believed to be related to the responsibility or the function of the Commission. (This requirement for mandatory information sharing applies only to the Commissioners and does not extend to others within NRC.) Subject to this constraint, an employee's request for confidentiality made in connection with communications under the Open Door policy will normally be honored by the NRC manager unless (1) as a practical matter it is impossible to convey the substance of the information without making known the identity of the employee, (2) disclosure of the employee's identity is essential for determination of the accuracy and reliability of the information, or (3) the employee's identity is required to be released by law.

Managers and supervisors contacted will work to resolve an employee's concerns, to answer any questions, and to honor a request for confidentiality. Honoring a request for confidentiality may, however, limit a manager's or supervisor's ability to provide assistance or advice and counsel on matters of concern to the employee.

Managers and supervisors should also advise employees of other channels to be used for the resolution of concerns such as NRC Manual Chapters 4125 (Differing Professional Views or Opinions), 4156 (Appeals from Adverse Actions), and 4157 (Employee Grievances). If the contacted manager or supervisor believes that others should be notified of issues raised in these Open Door discussions, he/she should notify the responsible offices (e.g., the Office of the Inspector General).

B. Advisory Committees

If the issue raised under the Open Door policy relates to a potential safety issue within the purview of the Advisory Committee on Reactor Safeguards (ACRS) or the Advisory Committee on Nuclear Waste (ACNW), an NRC employee may communicate orally or in writing directly with the Chairman or any member of the appropriate committee. Such communication may include a request for confidentiality.

An NRC employee may also appear before the ACRS or ACNW or a subcommittee as deemed appropriate by the committee. The ACRS or ACNW will assure that issues raised under the Open Door policy are forwarded to the responsible NRC office director for information and/or action, as appropriate.

C. Use of the Open Door Policy

The Open Door policy was adopted to foster an atmosphere of open and free communication within the agency and underscore management's intention to consider and address those issues and concerns brought to them. The Open Door policy should be used by all NRC employees with integrity and for the stated purposes.

D. Prevention of Retaliation Against Any Employee for Expressing or Supporting Those Who Express Concerns Under the Open Door Policy

Any NRC employee who retaliates against another employee for expressing or supporting those expressing concerns under Open Door policy is subject to disciplinary action in accordance with NRC Manual Chapter 4171 (Discipline, Adverse Actions and Separations). This applies to retaliatory actions and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code.

Employees who allege that retaliatory actions have been taken because of their expression or support of a concern under the Open Door policy may seek redress through other channels, such as the negotiated grievance procedure or through the formal grievance procedure described in NRC Manual Chapter 4157 (Employee Grievances).

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC, Add Vol.,
Supp., Rev., and Addendum Num-
bers, if any.)

NUREG-1414

2. TITLE AND SUBTITLE

Differing Professional Views or Opinions

1990 Special Review Panel

3. DATE REPORT PUBLISHED

MONTH

YEAR

April

1992

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

Special Review Panel

6. TYPE OF REPORT

Special Review Panel Report

7. PERIOD COVERED (Inclusive Dates)

10/1/88 - 5/1/90

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U. S. Nuclear Regulatory Commission, and mailing address; if contractor, provide name and mailing address.)

U.S. Nuclear Regulatory Commission
Washington, DC 20555

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U. S. Nuclear Regulatory Commission, and mailing address.)

Same as 8. above.

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

In December 1989, the Executive Director Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to evaluate the effectiveness of NRC Manual Chapter 4125, Differing Professional Views or Opinions, and NRC Manual Chapter 4126, Open Door Policy. In accordance with Section E of NRC Appendix 4125, the Panel was responsible for assessing "... the informal and formal processes for dealing with differing professional views or opinions, including the effectiveness of the processes, how well they are understood by employees, and the organizational climate for having these views and opinions aired and properly decided." This report presents the Special Review Panel's evaluation of the NRC's current process for dealing with Differing Professional Views or Opinions. Provided in this report are the results of an employee opinion survey on the process; highlights and suggestions from interviews with individuals who had submitted a Differing Professional View or Opinion, as well as with agency managers directly involved with the Differing Professional Views or Opinions process; and proposed revisions to Manual Chapters 4125 and 4126.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

differing professional opinions
differing professional views
review panel

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

Unclassified

(This Report)

Unclassified

15. NUMBER OF PAGES

16. PRICE

THIS DOCUMENT WAS PRINTED USING RECYCLED PAPER

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555**

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

SPECIAL FOURTH-CLASS RATE
POSTAGE AND FEES PAID
USNRC
PERMIT NO. G-67

APRIL 1992

DIFFERING PROFESSIONAL VIEWS OR OPINIONS

6141-000001