

## DIFFERING VIEW

Some subject matter experts (SMEs), including the Agency 2.206 Petition Coordinator and the Senior Attorney assigned to the working group, expressed concerns about implementing the Expert Evaluation Team's recommendations for the petition review process under Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for action under this subpart." The SMEs felt that the Expert Evaluation Team recommended unnecessary changes considering the 10 CFR 2.206 process was updated in March 2019. Furthermore, the SMEs pointed out that the Office of the Inspector General (OIG) had audited the 10 CFR 2.206 process in 2017, and the 2019 update to Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," was responsive to the two OIG recommendations (i.e., perform periodic formal process assessments and clarify petition acceptance criteria). For the applied 10 CFR 2.206 process, assessments of process effectiveness occur every 3 years, and experience-based changes (such as enhanced communication with petitioners) are implemented in real time and are noted to be considered for future MD 8.11 updates. The SMEs stated that making experience-based process changes is a more conscientious approach than reactive process changes and will better ensure that the 2.206 process is as effective as it can be.

In the February 2020 OIG event inquiry, the OIG discussed the 10 CFR 2.206 process and concluded that the Indian Point petition review board (PRB) "did not accurately communicate its analytical work performed." The SMEs clarified that the PRB did not follow the 2000 MD 8.11 process of documenting the analytic work performed during the petition review process in a Director's Decision. The SMEs question why a single PRB straying from the 2000 MD 8.11 process, when 200+ other PRBs didn't, would prompt a change to the 2019 process. The SMEs further stated that the Expert Evaluation Team was only given 2 months to understand how the 2000 MD 8.11 process was applied, how the revised process addressed issues with the 2000 version of the process, and how the revised process should be enhanced. The SMEs noted that the Expert Evaluation Team did not attend any PRB meetings when responding to the OIG event inquiry in April 2020 and did not discuss the revised 2019 process with current SMEs. This led the SMEs to question how the Expert Evaluation Team was able to recommend four process changes less than 2 months after issuance of the OIG event inquiry. Additionally, the staff notes that the 2019 update of MD 8.11 was used for a very short time before the Expert Evaluation Team made its recommendations. Therefore, the recommended changes are not being driven by experience or data but rather by the Expert Evaluation Team's consideration of a single petition evaluated under a previous version of the MD. Making some of the recommended changes to the language of MD 8.11 will decrease efficiency and the staff's flexibility in processing petitions, likely leading to additional criticism from petitioners.

These SMEs found that the Expert Evaluation Team's Recommendation 1, provides no different process oversight than what is already in practice—only a different structure, which the SMEs do not feel is an improvement. The SMEs also clarified that Recommendations 3 and 4 are already part of the process (if proper process oversight is being practiced). Finally, with respect to Recommendation 2, the SMEs observed that the Desktop Guide already included suggestions to ensure PRB diversity of technical perspectives in 3 places, and they concluded that adding that language to MD 8.11 in a future update may be reasonable.

Overall, the SMEs concluded that the U.S. Nuclear Regulatory Commission is pursuing unneeded process changes and choosing to bypass the experience based periodic assessment of the 10 CFR 2.206 process. The result may be an overly prescriptive process with unforeseen problems.

Enclosure