

AUDIT REPORT

Audit of NRC's Non-Concurrence Process

OIG-11-A-02 October 7, 2010



All publicly available OIG reports (including this report) are accessible through
NRC's Web site at:

<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/>



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

October 7, 2010

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

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

SUBJECT: AUDIT OF NRC'S NON-CONCURRENCE PROCESS
(OIG-11-A-02)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of NRC's Non-Concurrence Process*.

The report presents the results of the subject audit. Agency comments provided at the September 10, 2010, exit conference have been incorporated, as appropriate, into this report. The formal comments provided by your office on September 28, 2010, are presented in their entirety in Appendix C to this report. Appendix D contains OIG's response to the formal comments.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG follow up as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Sherri Miotla, Team Leader, Nuclear Materials & Waste Safety Team, at 415-5914.

Attachment: As stated

Electronic Distribution

Edwin M. Hackett, Executive Director, Advisory Committee
on Reactor Safeguards

E. Roy Hawkens, Chief Administrative Judge, Atomic Safety
and Licensing Board Panel

Stephen G. Burns, General Counsel

Brooke D. Poole, Director, Office of Commission Appellate Adjudication

James E. Dyer, Chief Financial Officer

Hubert T. Bell, Inspector General

Margaret M. Doane, Director, Office of International Programs

Rebecca L. Schmidt, Director, Office of Congressional Affairs

Eliot B. Brenner, Director, Office of Public Affairs

Annette Vietti-Cook, Secretary of the Commission

R. William Borchardt, Executive Director for Operations

Michael F. Weber, Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs, OEDO

Darren B. Ash, Deputy Executive Director
for Corporate Management, OEDO

Martin J. Virgilio, Deputy Executive Director for Reactor
and Preparedness Programs, OEDO

Nader L. Mamish, Assistant for Operations, OEDO

Kathryn O. Greene, Director, Office of Administration

Patrick D. Howard, Director, Computer Security Office

Roy P. Zimmerman, Director, Office of Enforcement

Charles L. Miller, Director, Office of Federal and State Materials
and Environmental Management Programs

Cheryl L. McCrary, Director, Office of Investigations

Thomas M. Boyce, Director, Office of Information Services

James F. McDermott, Director, Office of Human Resources

Michael R. Johnson, Director, Office of New Reactors

Catherine Haney, Director, Office of Nuclear Material Safety
and Safeguards

Eric J. Leeds, Director, Office of Nuclear Reactor Regulation

Brian W. Sheron, Director, Office of Nuclear Regulatory Research

Corenthis B. Kelley, Director, Office of Small Business and Civil Rights

James T. Wiggins, Director, Office of Nuclear Security
and Incident Response

Marc L. Dapas, Acting Regional Administrator, Region I

Luis A. Reyes, Regional Administrator, Region II

Mark A. Satorius, Regional Administrator, Region III

Elmo E. Collins, Jr., Regional Administrator, Region IV

EXECUTIVE SUMMARY

BACKGROUND

The non-concurrence process is part of the agency's Differing Views Program, and is managed by the Office of Enforcement. The Nuclear Regulatory Commission's (NRC) implementation of an agencywide non-concurrence process supports the agency's goal of promoting an open collaborative work environment, which values collaborative decisionmaking, diverse views, unbiased evaluations, and honest feedback on how decisions are made. The non-concurrence process was developed to promote discussion and consideration of differing views on draft documents, provide a non-concurrence option for individuals with concerns who had a role in creating or reviewing draft documents, and provide a uniform approach for processing non-concurrences.

The Executive Director for Operations issued draft Management Directive (MD) and Handbook 10.158, "NRC Non-Concurrence Process," via Yellow Announcement, on November 29, 2006. The Yellow Announcement directed staff to follow the requirements in the interim directive and handbook, which were to supersede any existing office-level non-concurrence procedures. At the time of its 2006 issuance, MD 10.158 was expected to remain in interim status for approximately 1 year in order to gain operating experience to make informed revisions to the directive before its finalization. Finalization of MD 10.158 was further prolonged after the initial 1-year period in order to gain additional operating experience. Currently, MD 10.158 remains in interim status and is scheduled to be finalized in June 2013.

PURPOSE

The objective of this audit was to determine if the agency's non-concurrence process is operating as intended.¹

¹ The original objective of this audit, as noted in the Office of the Inspector General's (OIG) fiscal year 2010 *Annual Plan*, was to assess the effectiveness of how NRC dispositions issues objected to through the non-concurrence process. The objective was revised during fieldwork to widen the scope of the audit to perform a more comprehensive assessment of the non-concurrence process.

RESULTS IN BRIEF

The agency's non-concurrence process is a valuable tool in facilitating discussion of differing views between staff and management and is generally implemented as it was intended. However, OIG identified opportunities for improvement within the non-concurrence process in the following two areas:

- ❖ Agency guidance and training.
- ❖ Capture and review of operating experience.

Agency Guidance and Training on Non-Concurrence Process Can Be Improved

Although the agency provides guidance and training on the non-concurrence process, the guidance is incomplete and the training is limited. Providing properly implemented guidance and training that effectively communicate policies, objectives, responsibilities, authorities, requirements, and information to employees are essential human capital practices that help to ensure employees have the knowledge and skills to perform their job and accomplish the agency mission. However, agency guidance on the non-concurrence process is imprecise and remains in prolonged interim status. Training on the agency's non-concurrence process is not provided in a medium that is routinely available to all staff when they need it. Without precise guidance and timely training, the non-concurrence process will continue to be inconsistently implemented and staff will perceive the process as ineffective and inefficient. Furthermore, some staff are hesitant to raise differing views through the agency's non-concurrence process.

Non-Concurrence Operating Experience Is Not Routinely or Comprehensively Captured or Reviewed

MD 10.158 was implemented as interim guidance in November 2006 with the intention that the agency gain operating experience in order to make informed revisions to the directive prior to its final issuance. According to management, a prolonged interim status would allow operating experience to be gained, which, in turn, would be used to make informed revisions to the management directive. Program management best practices include strategies for routinely reviewing and capturing operating experience.

However, because the non-concurrence process was implemented by design without a requirement to conduct regular program reviews, operating experience is not being formally captured or reviewed. As a result, it would be difficult for program management to perform a comprehensive assessment of the non-concurrence process and determine what revisions are needed to improve MD 10.158. Furthermore, the agency's knowledge management initiative is negatively impacted when Forms 757, "Non-Concurrence Process," which are key decisionmaking documents, are inconsistently tracked, profiled, and retained.

RECOMMENDATIONS

This report makes eight recommendations to improve the guidance and training pertaining to and oversight of the non-concurrence process. A consolidated list of these recommendations appears in Section IV of this report.

AGENCY COMMENTS

On August 26, 2010, OIG issued its discussion draft report to the Executive Director for Operations. OIG subsequently met with NRC management during a September 10, 2010, exit conference at which time the staff provided informal comments. OIG incorporated these comments, as appropriate, in a final draft report that was forwarded to the agency for review on September 21, 2010. On September 28, 2010, the Executive Director for Operations provided formal comments to this report in which the agency stated general agreement with the audit report and provided information on planned and ongoing activities pertaining to improvement of the non-concurrence process. The agency's formal comments are presented in their entirety in Appendix C of this report. OIG's analysis of the agency's formal comments is located in Appendix D of this report.

ABBREVIATIONS AND ACRONYMS

ADAMS	Agencywide Documents Access and Management System
MD	management directive
NCP	non-concurrence process
NRC	Nuclear Regulatory Commission
OIG	Office of the Inspector General

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

ABBREVIATIONS AND ACRONYMSiv

I. BACKGROUND 1

II. PURPOSE 4

III. FINDINGS 5

 A. Agency Guidance and Training on Non-Concurrence
 Process Can Be Improved..... 5

 B. Non-Concurrence Operating Experience Is Not Routinely or
 Comprehensively Captured or Reviewed 14

IV. CONSOLIDATED LIST OF RECOMMENDATIONS 17

V. AGENCY COMMENTS..... 18

APPENDIXES

A. SCOPE AND METHODOLOGY 19

B. NRC FORM 757, “NON-CONCURRENCE PROCESS” 21

C. FORMAL AGENCY COMMENTS..... 25

D. OIG ANALYSIS OF AGENCY COMMENTS 28

I. BACKGROUND

The non-concurrence process is part of the agency's Differing Views Program, and is managed by the Office of Enforcement. The Nuclear Regulatory Commission's (NRC) implementation of an agencywide non-concurrence process supports the agency's goal of promoting an open, collaborative work environment, which values collaborative decisionmaking, diverse views, unbiased evaluations, and honest feedback on how decisions are made.

The non-concurrence process was developed to complement other processes for raising differing views, such as the Open Door Policy² and the Differing Professional Opinions Program.³ More specifically, the non-concurrence process was developed to promote discussion and consideration of differing views on draft documents, provide a non-concurrence option for individuals with concerns who had a role in creating or reviewing draft documents, and provide a uniform approach for processing non-concurrences.

As part of the agency's Differing Views Program, the non-concurrence process does not have a separate budget or staff allotted to its operation. Rather, the fiscal year 2010 budget is \$3,000 for the entire Differing Views Program, and 1.5 full-time equivalents are designated to collectively support the Differing Professional Opinions Program and the non-concurrence process.

The Executive Director for Operations issued draft Management Directive (MD) and Handbook 10.158, "NRC Non-Concurrence Process," via Yellow Announcement, on November 29, 2006. The Yellow Announcement directed staff to follow the requirements in the interim directive and handbook, which were to supersede any existing office-level non-concurrence procedures. At the time of its 2006 issuance, MD 10.158 was expected to remain in interim status for approximately 1 year in order to gain operating experience to make informed revisions to the directive before its finalization. Finalization of MD 10.158 was further prolonged after the initial 1-year period in order to gain additional operating

²The NRC has an Open Door Policy that supports and allows any employee to initiate a meeting with an NRC manager or supervisor, including a Commissioner or the Chairman of the NRC, to discuss any matter of concern to the employee.

³The Differing Professional Opinions Program is a formal process that allows all employees and contractors to have their differing views on established, mission-related issues considered by the highest level managers in their organizations (i.e., office directors and regional administrators).

experience. Currently, MD 10.158 remains in interim status and is scheduled to be finalized in June 2013.

There are five specific conditions that apply to use the non-concurrence process:

1. The non-concurrence process applies only to draft documents undergoing the review and concurrence process.
2. The non-concurrence process may be used by headquarters and regional employees, with the exception of contractors and members of boards and advisory committees that report to the Commission.
3. The non-concurrence process can be used only by employees who had an official role, as tasked by their supervisor or document sponsor, in contributing to or reviewing the draft document.
4. Use of the non-concurrence process should be viewed as “business as usual” and not impact the normal document concurrence process.
5. The non-concurrence process does not allow for separate timeliness goals for documents involving non-concurrences; rather, the goal is to process documents in accordance with their normal schedules.

The non-concurrence process is a three-part procedure involving the non-concurring individual,⁴ the document sponsor,⁵ and the document signer,⁶ each of whom has a specific role and set of responsibilities. The process can be described as follows:

⁴ The non-concurring individual initiates the non-concurrence process by completing and filing NRC Form 757, “Non-Concurrence Process.” See Appendix B for a copy of the form.

⁵ The document sponsor is defined by MD 10.158 as the team leader or manager responsible for originating and controlling changes to a document in the concurrence process. The document sponsor is assumed to have control over changes to a document and is given significant responsibilities for implementing the non-concurrence.

⁶ The document signer is the individual who is charged with reviewing the non-concurrence and determining what, if any, action should be taken to address the concern raised in the non-concurrence. The document signer either signs the document indicating agreement with the proposed actions or returns the document to the document sponsor for additional action.

Part one: The non-concurring individual initiates a non-concurrence documenting his or her concerns on Form 757. The non-concurring individual then forwards Form 757 to his or her supervisor for review and comment. Form 757 is then forwarded to the document sponsor for review.

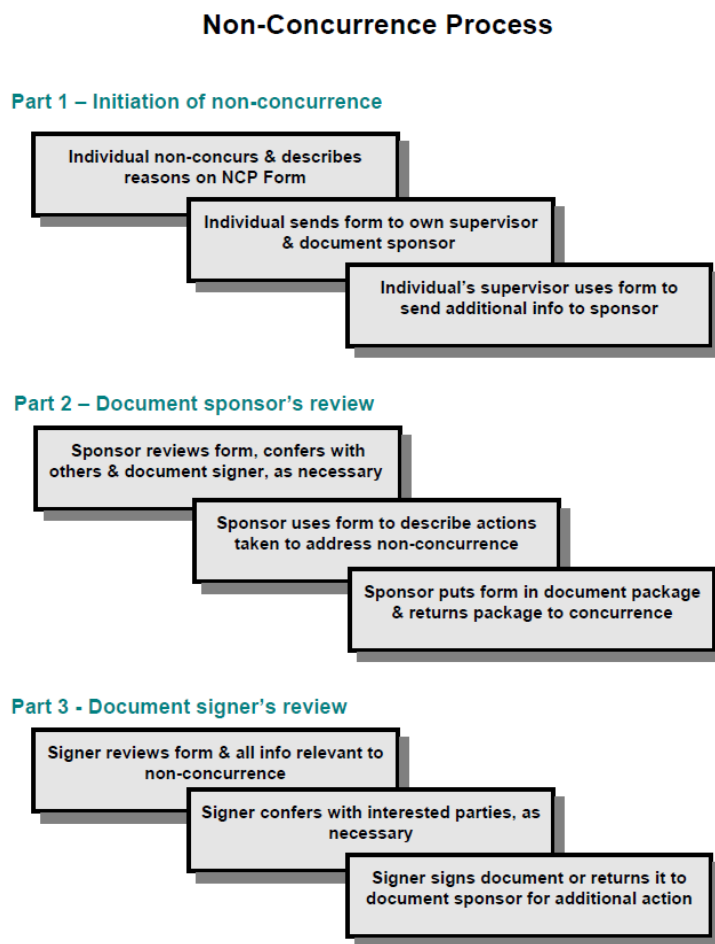
Part two: The document sponsor reviews Form 757 and consults with involved staff and the document signer. The document sponsor then documents the agency's actions taken to address the non-concurrence on Form 757. The document sponsor puts Form 757 in the document's concurrence package and returns the document to the concurrence process.

Part three: The document signer reviews the document package, including Form 757, and confers with involved staff. Then the document signer either signs the document or returns it to the document sponsor for additional action.

Following the document signer's determination on the non-concurrence, Form 757 is to be entered into the Agencywide Documents Access and Management System (ADAMS)⁷ as an official agency record. The non-concurring individual is consulted to determine whether Form 757 is to be designated and entered into ADAMS as public or non-public.

⁷ ADAMS is an electronic recordkeeping system that is used to maintain public and non-public official agency records.

Figure 1⁸



Source: MD 10.158, Appendix A

II. PURPOSE

The audit objective was to determine if the agency's non-concurrence process is operating as intended. Appendix A contains information on the audit scope and methodology.

⁸ The non-concurrence process is also referred to as "NCP."

III. FINDINGS

The agency's non-concurrence process is a valuable tool in facilitating discussion of differing views between staff and management and is generally implemented as it was intended. However, the Office of the Inspector General (OIG) identified opportunities for improvement within the non-concurrence process in the following two areas:

- ❖ Agency guidance and training.
- ❖ Capture and review of operating experience.

A. Agency Guidance and Training on Non-Concurrence Process Can Be Improved

Although the agency provides guidance and training on the non-concurrence process, the guidance is incomplete and the training is limited. Providing properly implemented guidance and training that effectively communicate policies, objectives, responsibilities, authorities, requirements, and information to employees are essential human capital practices that help to ensure employees have the knowledge and skills to perform their job and accomplish the agency mission. However, agency guidance on the non-concurrence process is imprecise and remains in prolonged interim status. Training on the agency's non-concurrence process is not provided in a medium that is routinely available to all staff when they need it. Without precise guidance and timely training, the non-concurrence process will continue to be inconsistently implemented and staff will perceive the process as ineffective and inefficient. Furthermore, some staff are hesitant to raise differing views through the agency's non-concurrence process.

Key Human Capital Practices

Agency and industry best practices state that providing properly implemented and effective guidance and training are key human capital practices. Providing timely guidance that effectively communicates policies, objectives, responsibilities, authorities, requirements, and information to employees is essential in ensuring staff have the knowledge and skills to perform their job. Furthermore, an Office of Management and Budget memorandum addressing *Agency Good Guidance Practices*

indicates that established standards for the initiation, development, and issuance of guidance documents helps to raise their quality and transparency.

Providing training to staff is also critical to effective workforce planning and ensuring employees are equipped to perform their jobs in accordance with the agency's mission. Training best practices promote the notion that people get the right skills, at the right time, and in the right way. Furthermore, to be effective, training must be easily transferred back to the workplace. This is achieved through the timing of the training, the quality of the content, and the quality and appropriateness of the delivery method.

Non-Concurrence Process Guidance

Agency guidance on the non-concurrence process, which includes MD 10.158 and the Office of Enforcement Differing Views Web site,⁹ can be improved. OIG identified areas for improvement, in part, through conducting extensive interviews with staff and managers who had direct experience using or being party to the agency's non-concurrence process.¹⁰ Interviews revealed inadequacies with non-concurrence process guidance in the following areas:

- Rights, roles, and responsibilities.
- Purpose of implementation.
- Processing instructions.

⁹ The Office of Enforcement Differing Views Web site was replaced with the Open, Collaborative Work Environment Web site in July 2010; however, fieldwork for this audit was completed in June 2010, prior to implementation of the new Web site.

¹⁰ OIG conducted interviews with each identified and available staff member who either filed a non-concurrence or were party to a non-concurrence by serving as a document sponsor or document signer. A total of 43 individuals were interviewed, including 17 non-concurring individuals, 14 document sponsors, and 12 document signers. Of the 17 non-concurring individuals interviewed, 12 percent (2) were grade GG-13, 23 percent (4) were grade GG-14, 53 percent (9) were grade GG-15, and 12 percent (2) were Senior Level Service or Senior Executive Service.

Interview results revealed that 70 percent¹¹ of filers,¹² document sponsors, and document signers did not understand their respective rights, roles, and responsibilities in relation to the non-concurrence process as compared to that described in MD 10.158. For example:

- Some filers were unaware of their right to ask to be removed from concurrence, while some document sponsors and document signers were unaware of the right of filers to be removed from concurrence.
- Several document sponsors, who were central in facilitating the non-concurrence process, incorrectly identified their role and performed duties outside of the responsibilities designated in MD 10.158. Multiple document sponsors incorrectly initiated and submitted Forms 757 on behalf of filers. Additionally, some document sponsors incorrectly made the determination whether to designate Form 757 as public or non-public in ADAMS.
- Some document signers were unaware of their responsibility that in signing Form 757, they were certifying they had reviewed Form 757 to ensure that the concerns raised by the filer were adequately addressed and the form was correctly completed.

Interview results showed that 51 percent¹³ of filers, document sponsors, and document signers exhibited a misunderstanding of the purpose and expectations for implementing the non-concurrence process. Specifically, OIG identified a disconnect between the filers and document signers regarding what constitutes successful use of the non-concurrence process. For example:

- Some filers defined success in implementing the non-concurrence process as occurring if their differing view was raised and considered by management.
- Some document signers felt that success in implementing the non-concurrence process was simply that a differing view was raised.

¹¹ 70 percent of non-concurring individuals, document sponsors, and document signers equates to 30 of a total of 43 individuals interviewed. This includes 14 filers, 12 document sponsors, and 4 document signers.

¹² The term "filer" refers to the non-concurring individual who filed a Form 757. For consistency, the remainder of this report will use the term "filer" when referring to a non-concurring individual.

¹³ 51 percent of filers, document sponsors, and document signers equates to 22 of a total of 43 individuals interviewed. This includes 11 filers, 3 document sponsors, and 8 document signers.

Interview results revealed that 74 percent¹⁴ of filers, document sponsors, and document signers felt that the processing instructions contained in the non-concurrence guidance were incomplete with regard to dispositioning non-concurrences, noting:

- MD 10.158 does not provide detailed guidance, examples, or expectations for addressing concerns raised by the filer on Form 757.
- MD 10.158 does not provide specific guidance or set clear expectations on providing feedback to the filer on the status of their non-concurrence. This was also a staff concern in the OIG-sponsored *2009 NRC Safety Culture and Climate Survey*,¹⁵ where only 50 percent of the respondents provided a positive response to the statement, “My supervisor adequately explains the resolution of differing views that were raised.”
- MD 10.158 does not provide specific guidance pertaining to the timeliness of processing non-concurrences. Filers and document signers noted that such a guideline would be helpful in ensuring that an appropriate amount of time is allotted to submit and review a non-concurrence. Filers and document sponsors recognized that such a guideline would provide an appropriate balance between allotting sufficient time for the filer to submit a non-concurrence without unduly compromising project milestones.

Figures 2 and 3 summarize the results of the interviews conducted by OIG. Figure 2 illustrates the three identified areas of concern, noting the cumulative percentage of key personnel who experienced each concern. Figure 3 illustrates the three identified areas of concern as experienced by the corresponding percentage of filers, document sponsors, and document signers.

¹⁴ 74 percent of filers, document sponsors, and document signers equates to 32 of a total of 43 individuals interviewed. This includes 15 filers, 10 document sponsors, and 7 document signers.

¹⁵ The OIG-sponsored Safety Culture and Climate Survey assessed NRC's current safety culture and climate and compared it to benchmarks established by prior Safety Culture and Climate surveys conducted in 1998, 2002, and 2006.

Figure 2 - Cumulative Interview Results

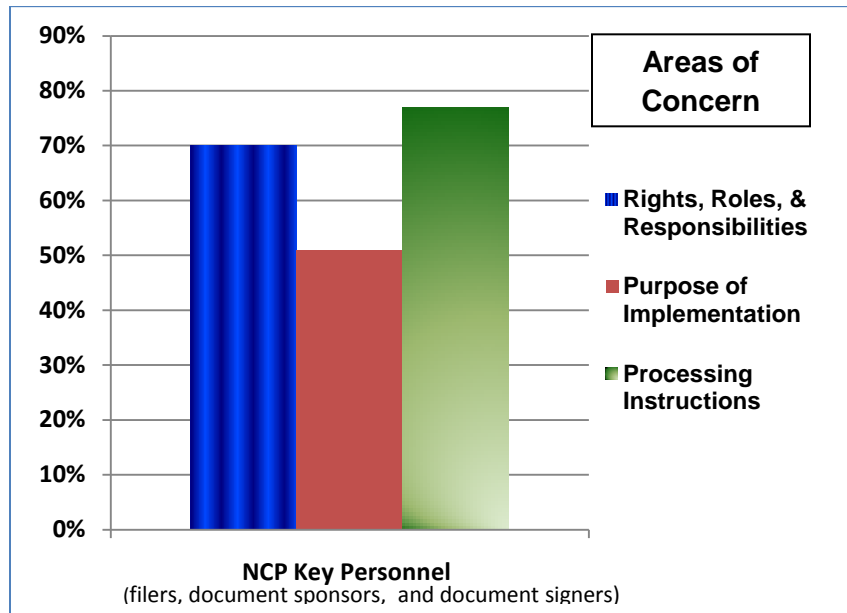
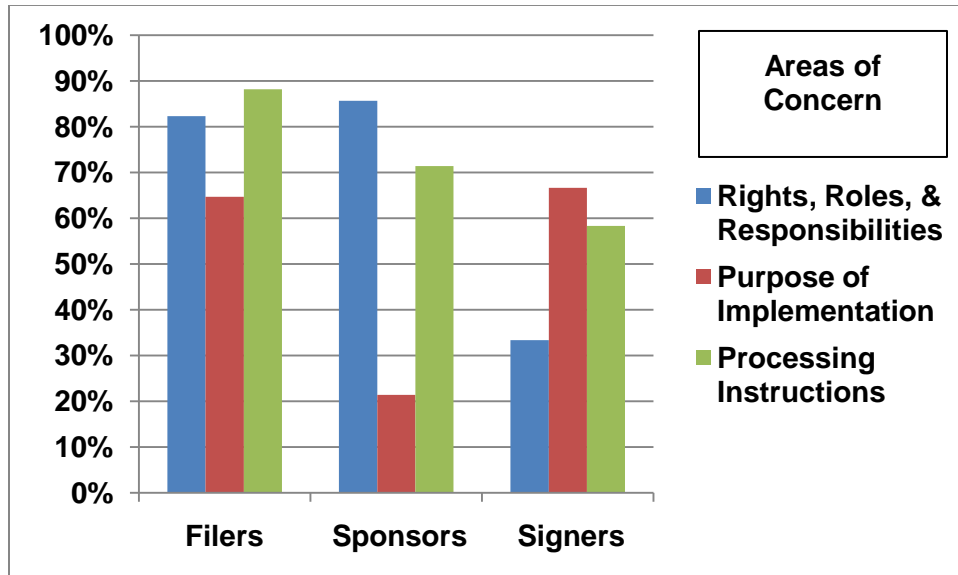


Figure 3 - Interview Results by Key Personnel



A detailed analysis of agency guidance pertaining to the non-concurrence process revealed instances of contradictory and outdated information. For example:

- Informs¹⁶ and the Office of Enforcement Differing Views Web site reference different versions of Form 757, each with distinct processing instructions. A subsequent analysis of submitted Forms 757 revealed several inconsistencies and inaccuracies in how the forms were completed.
- OIG identified outdated guidance on the Office of Enforcement Differing Views Web site. For example, some of the Differing Views Office Liaisons¹⁷ listed on the Office of Enforcement Differing Views Web site are no longer employed at the agency or have since relinquished the role of liaison. Subsequently, staff were confused as to who was the designated liaison for their office. Moreover, some staff were altogether unaware of the existence of the liaison resource.

Non-Concurrence Process Guidance Is Imprecise

Agency guidance on the non-concurrence process is imprecise and remains in prolonged interim status. For example, MD 10.158:

- Does not provide specific information on dispositioning concerns raised by the filer on Form 757, nor does it address the need to provide feedback to the filer on the status of the non-concurrence.
- Does not provide detailed information on what constitutes reasonable timeliness expectations for submitting and responding to a non-concurrence.
- Provides unclear instructions pertaining to the completion and processing of Forms 757 as well as the roles and responsibilities of key non-concurrence process personnel.
- Does not address the liaison's role in the non-concurrence process.

¹⁶ Informs is an office automation application that provides staff access to several Governmentwide and agency-specific forms. The Informs application allows employees to complete and store forms electronically.

¹⁷ Differing Views Office Liaisons serve as a resource for staff who seek information about various ways to raise differing views, including the Open Door Policy, the non-concurrence process, and the Differing Professional Opinion Program. Differing Views Office Liaisons are to be available to respond to employee questions and initiatives in their organizations.

- Has been in interim status since its implementation in November 2006 and is not scheduled to be finalized until June 2013, nearly 7 years after its implementation.

Non-Concurrence Process Training Is Limited

Agency training on the non-concurrence process is limited. Non-concurrence process training is generally reserved for *Leadership Potential Program*¹⁸ candidates and small staff assemblies on a request-only basis.¹⁹ Training on the non-concurrence process is not offered to new hires during the new employee orientation, and it has not been routinely offered to all Differing Views Office Liaisons. Although limited training opportunities are provided and non-concurrence process program management is available to offer counsel on an individual basis, employees need to be provided with a general introduction to the non-concurrence process.

Training Is Not Provided When Needed in a Usable Format

Agency training on the non-concurrence process is not provided in a medium that is routinely available to all staff when they need it. Formal training is currently offered only to select staff in a seminar-style format that does not lend itself to widespread, timely dissemination among staff and managers. Specifically, training is not delivered in accordance with recognized best practices that state training is most effective when the timing and delivery method is appropriate and aligned with the needs of the target audience.

Negative Implications on Agency Non-Concurrence Process

Without precise guidance and on-demand training,²⁰ the non-concurrence process will continue to be inconsistently implemented and staff will perceive the process as ineffective and inefficient. Additionally, some individuals who have filed a non-concurrence have become disenfranchised and ultimately felt the non-concurrence process to be

¹⁸ The Leadership Potential Program emphasizes the core competencies related to supervising people. In addition, it covers the policies and procedures that leaders in the NRC environment need to understand. Employees with relatively little supervisory background gain broad training and opportunities to experience and test their interest in leadership.

¹⁹ The non-concurrence process is also briefly mentioned in the "NRC: What It Is and What It Does" course.

²⁰ The term "on-demand training" refers to on-line, interactive training that is available at any time from any location.

disadvantageous, stating that their performance evaluations were lowered because they filed a non-concurrence. In a followup measure, the audit team reviewed all available performance appraisals for identified filers for the time periods immediately preceding and following submittal of a non-concurrence. OIG substantiated that in three instances, the filer received a lower score for the rating period immediately following submittal of a non-concurrence. However, there was no indication in the appraisals that lower ratings were associated with the filing of a non-concurrence. These instances support some agency staff's belief that there is a negative stigma attached to the non-concurrence process. Without improvement, the negative stigma may become more widespread and staff will be reluctant to use the non-concurrence process.

Recommendations

OIG recommends that the Executive Director for Operations:

1. Define management's expectations regarding the non-concurrence process and clearly communicate them to staff.
2. Revise MD 10.158 to include detailed guidance on:
 - a. Dispositioning of non-concurrences to include a feedback mechanism on the status of the non-concurrence.
 - b. Timeliness expectations.
 - c. Completion and processing of Form 757.
 - d. Roles and responsibilities of key non-concurrence process personnel.
 - e. The availability of the Differing Views Office Liaisons.
3. Finalize MD 10.158 by the end of 2011.
4. Make non-concurrence process training available in an on-demand format to all staff and managers.

5. Routinely update the Office of Enforcement Open Collaborative Work Environment Contact Web page to reflect current Differing Views Office Liaison assignments.

B. Non-Concurrence Operating Experience Is Not Routinely or Comprehensively Captured or Reviewed

MD 10.158 was implemented as interim guidance in November 2006 with the intention that the agency gain operating experience in order to make informed revisions to the directive prior to its final issuance. According to management, a prolonged interim status would allow operating experience to be gained, which, in turn, would be used to make informed revisions to the management directive. Program management best practices include strategies for routinely reviewing and capturing operating experience. However, because the non-concurrence process was implemented by design without a requirement to conduct regular program reviews, operating experience is not being formally captured or reviewed. As a result, it would be difficult for program management to perform a comprehensive assessment of the non-concurrence process and determine what revisions are needed to improve MD 10.158. Furthermore, the agency's knowledge management initiative is negatively impacted when Forms 757, which are key decisionmaking documents, are inconsistently tracked, profiled, and retained.

Program Management Best Practices

Program management best practices include strategies for routinely reviewing and capturing operating experience. These best practices advocate proactive oversight and the establishment of internal controls that require the conduct of regular program reviews designed to assess program performance. Such reviews allow for timely and systematic collection and analysis of operating experience to facilitate identification of lessons learned. These lessons learned should, in turn, be used to make program revisions to enhance program performance.

Operating Experience Is Not Routinely or Comprehensively Captured or Reviewed

Non-concurrence process operating experience is not routinely captured or reviewed. Program management has not routinely tracked and assessed Forms 757. Although Form 757 was revised in March 2009 to provide additional processing instructions, including an instruction to provide a copy to the program manager, this is not routinely occurring. Forms 757 filed prior to March 2009 were not required to be forwarded to

the program manager for collection and review. Moreover, program management stated that prior to implementing the aforementioned instruction, the only way they became aware of a non-concurrence was if a party to the non-concurrence informed them of the action or if they performed an ADAMS search. Consequently, program management does not have a comprehensive record of all non-concurrences filed since the inception of the non-concurrence process.

Forms 757 are not tracked by the Office of Enforcement; therefore, OIG conducted subsequent searches in ADAMS for evidence of non-concurrences.²¹ These searches confirmed inconsistency in how Forms 757 were profiled and placed in ADAMS. The audit team found that not all Forms 757 are profiled in ADAMS in accordance with the MD 10.158 instruction to use NRC template 006.²² Specifically, the audit team used NRC template 006 criteria to search ADAMS and found only seven Forms 757 that were profiled using the required template. The audit team conducted an additional ADAMS search using different search parameters related to non-concurrence and found several more Forms 757. Moreover, while conducting fieldwork, the audit team learned of additional Forms 757 that did not appear in any previous ADAMS searches. These instances confirm the difficulty of establishing the exact number of non-concurrences filed to date by conducting an ADAMS search.

Lack of Routine Management Oversight

The non-concurrence process operating experience is not captured or reviewed because the process was not designed to include such a requirement. Particularly, the non-concurrence process was implemented without a requirement for regular program performance reviews or routine oversight. As such, there is no timely and systematic collection and review of operating experience or documentation of lessons learned.

²¹ Auditors conducted several searches of ADAMS throughout the audit. At the time of this report, auditors identified a total of 20 Forms 757 filed between March 2007 and March 2010. However, it is plausible that additional non-concurrences exist that OIG did not find.

²² NRC template 006 is an ADAMS profiling tool used specifically for records associated with the agency's non-concurrence process.

Management Unable To Perform Comprehensive Assessment of the Non-Concurrence Process

Without capturing and reviewing operating experience, management will be unable to perform a comprehensive assessment of the non-concurrence process. Subsequently, it will be difficult for program management to make informed decisions on how to revise MD 10.158 to improve the non-concurrence process.

Recommendations

OIG recommends that the Executive Director for Operations:

6. Identify and track all Forms 757 submitted to date and store them in a central repository.
7. Develop a formalized system to promote consistent and routine capture and review of submitted Forms 757.
8. Perform regularly scheduled comprehensive assessments of the non-concurrence process.

Summary and Conclusion

The non-concurrence process is a valuable tool in facilitating discussion of differing views between staff and management. NRC has been proactive in promoting the non-concurrence process through various outreach activities, including recognizing certain individuals who have filed non-concurrences with "NRC Team Player"²³ awards. By enhancing agency guidance and training on the non-concurrence process, as well as requiring routine review and capture of all non-concurrence process operating experience, the Office of Enforcement can further improve this valuable agency program.

²³ The NRC Team Player award is a new award established by the agency to recognize and show appreciation for individuals who have supported an open collaborative work environment.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Define management's expectations regarding the non-concurrence process and clearly communicate them to staff.
2. Revise MD 10.158 to include detailed guidance on:
 - a. Dispositioning of non-concurrences to include a feedback mechanism on the status of the non-concurrence.
 - b. Timeliness expectations.
 - c. Completion and processing of Form 757.
 - d. Roles and responsibilities of key non-concurrence process personnel.
 - e. The availability of the Differing Views Office Liaisons.
3. Finalize MD 10.158 by the end of 2011.
4. Make non-concurrence process training available in an on-demand format to all staff and managers.
5. Routinely update the Office of Enforcement Open Collaborative Work Environment Contact Web page to reflect current Differing Views Office Liaison assignments.
6. Identify and track all Forms 757 submitted to date and store them in a central repository.
7. Develop a formalized system to promote consistent and routine capture and review of submitted Forms 757.
8. Perform regularly scheduled comprehensive assessments of the non-concurrence process.

V. AGENCY COMMENTS

On August 26, 2010, OIG issued its discussion draft report to the Executive Director for Operations. OIG subsequently met with NRC management during a September 10, 2010, exit conference at which time the staff provided informal comments. OIG incorporated the comments, as appropriate, in a final draft report that was forwarded to the agency for review on September 21, 2010. On September 28, 2010, the Executive Director for Operations provided formal comments to this report in which the agency stated general agreement with the audit report and provided information on planned and ongoing activities pertaining to improvement of the non-concurrence process. The agency's formal comments are presented in their entirety in Appendix C of this report. OIG's analysis of the agency's formal comments is located in Appendix D of this report.

SCOPE AND METHODOLOGY

The audit objective was to determine if the agency's non-concurrence process is operating as intended. The audit focused on reviewing the implementation and oversight of the non-concurrence process through documentation review and meeting with those individuals who have participated in the non-concurrence process.

OIG reviewed relevant Federal Government best practices pertaining to program management including the Office of Management and Budget-endorsed *Agency Good Guidance Practices* in addition to private industry's recognized best program management practices. OIG also reviewed agency guidance, including MDs 1.1, *NRC Management Directives System*, and 10.158, *NRC Non-Concurrence Process*. Additionally, OIG considered pertinent internal agency communications documents including memoranda and Yellow Announcements pertaining to the implementation of the non-concurrence process. Lastly, OIG reviewed a previously issued OIG audit report addressing issues related to agency-sponsored differing views programs.²⁴

OIG interviewed management officials in the Office of the Executive Director for Operations, Office of Enforcement, Office of the General Counsel, and Office of Administration to obtain their insight into the implementation and oversight of the non-concurrence process. Additional interviews were conducted with 43 staff members and managers from headquarters and the regions who have filed, sponsored, reviewed, or otherwise participated in the non-concurrence process.

OIG also conducted record reviews during the course of the audit. Specifically, the audit team reviewed Forms 757 identified in ADAMS to determine (1) whether the forms were completed in accordance with MD 10.158, and (2) the consistency and accuracy by which the forms were completed and profiled. Auditors analyzed the results to determine whether the Office of Enforcement is appropriately and consistently

²⁴ OIG Report 00-A-07, *Review of NRC's Differing Professional View/Differing Professional Opinion Program*.

overseeing the implementation of the non-concurrence process. The audit team also reviewed performance evaluations to determine if any individual may have suffered negative repercussions after submitting a non-concurrence.

We conducted this performance audit at NRC headquarters from February 2010 through June 2010 in accordance with generally accepted Government auditing standards. Those standards require that the audit is planned and performed with the objective of obtaining sufficient, appropriate evidence to provide a reasonable basis for any findings and conclusions based on the stated audit objective. OIG believes that the evidence obtained provides a reasonable basis for the report findings and conclusions based on the audit objective. Internal controls related to the audit objective were reviewed and analyzed. Throughout the audit, auditors were aware of the possibility or existence of fraud, waste, or misuse in the program. The audit work was conducted by Sherri Miotla, Team Leader; Jaclyn Storch, Audit Manager; Cathy Colleli, Audit Manager; Yvette Mabry, Senior Auditor; and Joseph Capuano, Auditor.

NRC FORM 757 NRC MD 10.158 (3-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT		ADAMS ACCESSION NO.	
SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR (THIS SECTION SHOULD ONLY BE COMPLETED IF SUPERVISOR IS DIFFERENT THAN DOCUMENT SPONSOR.)			
NAME			
TITLE		PHONE NO.	
ORGANIZATION			
COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER			
<input type="checkbox"/> I HAVE NO COMMENTS			
<input type="checkbox"/> I HAVE THE FOLLOWING COMMENTS			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE		DATE	
<i>SUBMIT THIS PAGE TO DOCUMENT SPONSOR</i>			

NRC FORM 757 <small>NRC MD 10.158 (3-2009)</small>		U.S. NUCLEAR REGULATORY COMMISSION	
<h2 style="margin: 0;">NON-CONCURRENCE PROCESS</h2>			
TITLE OF DOCUMENT		ADAMS ACCESSION NO.	
SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR			
NAME			
TITLE		PHONE NO.	
ORGANIZATION			
ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE (This section should be revised, as necessary, to reflect the final outcome of the non-concurrence process, including a complete discussion of how individual concerns were addressed.)			
<input type="checkbox"/> CONTINUED IN SECTION D			
SIGNATURE - DOCUMENT SPONSOR	DATE	SIGNATURE - DOCUMENT SIGNER	DATE
NON-CONCURRING INDIVIDUAL (To be completed by document sponsor when process is complete, i.e., after document is signed):			
<input type="checkbox"/> CONCURS		<input type="checkbox"/> WANTS NCP FORM PUBLIC	
<input type="checkbox"/> NON-CONCURS		<input type="checkbox"/> WANTS NCP FORM NON-PUBLIC	
<input type="checkbox"/> WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)			

NRC FORM 757 NRC MD 10.158 (3-2009)		U.S. NUCLEAR REGULATORY COMMISSION	
NON-CONCURRENCE PROCESS			
TITLE OF DOCUMENT		ADAMS ACCESSION NO.	
SECTION D: CONTINUATION PAGE			
CONTINUATION OF SECTION	<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C

FORMAL AGENCY COMMENTS



UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D.C. 20555-0001

September 28, 2010

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

FROM: *f* R. W. Borchardt *R. W. Borchardt*
 Executive Director for Operations

SUBJECT: FORMAL COMMENTS ON DRAFT REPORT: "AUDIT OF NRC'S
 NON-CONCURRENCE PROCESS"

This memorandum is in response to your September 21, 2010, email transmitting the Office of the Inspector General's (OIG) Draft Audit Report, "Audit of NRC's Non-Concurrence Process." I appreciate the time spent by the OIG staff in observing and evaluating the NRC's Non-Concurrence Process and the OIG's recommendations for improving the process.

The NRC is committed to establishing and maintaining an open, collaborative work environment (OCWE) that encourages all employees and contractors to promptly raise concerns without fear of retaliation and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission. In addition to informal discussions, which should be sufficient to resolve most issues, individuals have various mechanisms for expressing and having their concerns heard by decision makers. The Non-Concurrence Process (NCP) was specifically developed to complement other agency policies and practices for airing differing views, such as the "Open Door Policy" described in Management Directive (MD) 10.160, and the "Differing Professional Opinions (DPO) Program" described in MD 10.159. Consequently, the staff is committed to providing a NCP that is clear, easy to implement, and accepted and welcomed by all staff and managers.

The NRC staff has carefully reviewed the two findings and the eight specific recommendations presented in the draft report.

The staff agrees that opportunities exist for improvement in the two areas of agency guidance and training, and capture and review of operating experience.

The staff also believes that an additional opportunity for improvement exists by focusing on the area of continual improvement in our OCWE and our internal safety culture. The staff appreciates the insights that we have gathered from this audit as well as those from the Internal Safety Culture Task Force (ISCTF),¹ the latest OIG Safety Culture and Climate Survey, the subsequent focus group report, and the problem identification and corrective action report.

CONTACT: Renee M. Pedersen, OE
 301-415-2742

¹ See SECY-09-0068, "Report of the Task Force on Internal Safety Culture."

S. Dingbaum

-2-

These insights reinforce our understanding that opportunities for improvement must focus on both process issues and behavioral issues. The staff is currently involved in numerous activities designed to strengthen our programs and processes, and influence attitudes and behaviors to support and continuously improve NRC's internal safety culture.²

The staff is in general agreement with the recommendations provided in the draft report. Regarding management's expectations of the non-concurrence process, the staff will continue to emphasize and further aggressively pursue our commitment to the welcoming of diverse views and the acceptability and value of using the NCP. The staff will communicate this clearly to staff through multiple communication tools, which will include EDO Updates, all supervisor meetings, senior leadership meetings, and Yellow Announcements.

The staff has recognized that the guidance in MD 10.158 needs to be improved. In addition to improving the guidance, the staff also recognizes that procedural awareness, adherence, and attention to detail in implementing the guidance can be improved. Staff confusion on the process and responsibilities can be reduced if procedural compliance is emphasized.

The staff agrees that MD 10.158 should be finalized before the current schedule of 2013. Due to the small number of non-concurrences that occurred in the first few years since its 2006 issuance, a decision was made to gain additional experience before finalizing the guidance. The 2013 date was established as part of an ISCTF recommendation to conduct a broader review of OCWE (including the NCP and the DPO Program) after the next OIG survey. The staff recognizes the benefit of being more responsive to employee feedback and is already in the process of revising the DPO MD. Given the existing workload and resource limitations, finalizing MD 10.158 by the end of 2011 may be difficult to complete. It will be completed in 2012.

Although information on the NCP (overview, slide show, FAQs) is currently available to all employees at any time by accessing the NCP web page from the OCWE web site, training could be enhanced by providing a more interactive, on-line training tool. The staff also recognizes that training on the NCP can be improved in other areas, such as new employee general awareness and supervisory training focused on behaviors. The staff is currently working to include the NCP in the Virtual Orientation Center and is evaluating options for behavior-based training such as "Safely Speaking," and "The Speed of Trust."

Updates have already been made and steps are being taken to ensure that Differing Views Office Liaisons are appropriately trained and the staff has already taken steps to create a central repository in the Agencywide Documents Access and Management System Main Library for NCP Forms.

The staff recognizes that comprehensive assessments can and will help to identify process improvements.

In addition, because the NCP is not a routine process, the staff recognizes the value of providing greater oversight during the process to help participants successfully implement the NCP. The staff is sensitive to employees' perceptions on using the NCP and successful

² See SECY-10-0009, "Internal Safety Culture Update."

S. Dingbaum

-3-

implementation can improve perceptions of the NCP. The staff plans to revise the guidance to include oversight and coaching during the process by the Differing Views Program Manager.

Again, I appreciate your efforts to improve our NCP and for the opportunity for us to comment on your draft report. In addition, staff review concluded that the draft report does not contain any sensitive unclassified information.

OIG ANALYSIS OF AGENCY COMMENTS

OIG recognizes the agency's efforts to promote and improve the non-concurrence process, which is a valuable staff tool to raise and address differing views on draft documents. Additionally, OIG understands the explanation provided for initially delaying the finalization of MD 10.158 until 2013. However, OIG maintains that because MD 10.158 has been in draft for nearly 4 years, it is imperative that it be revised and finalized by the end of calendar year 2011. This will ensure that identified inadequacies and inconsistencies in the current guidance will be corrected expeditiously, and the implementation and use of the process will be better understood throughout the agency. Finalization of MD 10.158 will also improve the validity of the non-concurrence process as some staff may perceive that MD 10.158's prolonged interim status indicates a lack of management receptivity to the non-concurrence process.

OIG recognizes the agency's efforts to provide improved training on the non-concurrence process through a variety of media, including online training and classroom-based courses. OIG maintains that this training should focus on explaining the rights, roles and responsibilities, purpose and implementation, and processing instructions associated with the non-concurrence process. Providing "behavior-based training" may be useful; however, audit work confirmed that a significant number of staff specifically identified the need for clarification on the aforementioned aspects of the non-concurrence process. Providing training that specifically addresses rights, roles and responsibilities, purpose and implementation, and processing instructions would be most responsive to self-identified staff needs and be of greatest benefit to the non-concurrence process.