

NNSA/EM SUPPLEMENTAL DIRECTIVE

SD G 442.2

Approved: 6-25-12

**DIFFERING PROFESSIONAL OPINIONS (DPO)
PROCESS**

NATIONAL NUCLEAR SECURITY ADMINISTRATION

and

OFFICE OF ENVIRONMENTAL MANAGEMENT

AVAILABLE ONLINE AT:
<http://nnsa.energy.gov/>

INITIATED BY:
NNSA Office of Nuclear Safety & Health

DIFFERING PROFESSIONAL OPINIONS PROCESS (DPO)

1. PURPOSE.

This guidance document describes the process used jointly by the National Nuclear Security Administration (NNSA) and Office of Environmental Management (EM) offices that have DPO-related responsibilities under DOE Order 442.2, Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health, in executing their responsibilities consistent with the requirements of the Order. The process includes provisions for the responsible staff to provide DPO-related support to the Under Secretary for Nuclear Security (NA-1), and/or Final Decision Managers (FDMs) as assigned by the Under Secretary on a case-by-case basis. Requirements and other provisions of the Order are not reproduced here, unless needed for proper flow of information.

2. CANCELLATION.

- a. NA-1 SD 442.1-1, *NNSA Differing Professional Opinions Manual for Technical Issues Involving Environment, Approved May 8, 2007.*
- b. CDNS M 442.1-1, *NA-2.1/3.6 Joint Process for Executing NNSA Differing Professional Opinion Manager Functions, Approved 01/11/2011.*

3. APPLICABILITY.

This process applies to the Federal staff it designates within the NNSA Office of the Associate Administrator for Safety and Health (NA-SH-1), and the Department of Energy (DOE) Chief of Nuclear Safety (CNS) who executes DPO-related responsibilities for EM. The CNS is also designated as the Central Technical Authority (CTA) for EM (EM-CTA) by the Deputy Secretary of Energy.

4. SUMMARY.

DOE O 442.2 assigns DPO responsibilities to the Deputy Secretary; the Under Secretaries; the Secretarial Officers (SOs); and the Chief, Health, Safety and Security Officer (HSS). The Under Secretaries (or the Deputy Secretary where there is no Under Secretary) are responsible for assigning Final Decision Managers (FDM) who are qualified to DOE-STD-1175 as Senior Technical Safety Managers, and for assigning the DPO Managers (DPOM). The DPOMs are identified in DOE-wide and/or Under Secretaries memoranda and reflected in the DOE DPO web page <http://www.hss.doe.gov/nuclearsafety/qa/dpo.html> on as-needed basis, and the FDMs are assigned on a case-by-case basis.

The Deputy Secretary and Under Secretaries are also responsible for making decisions regarding appeals of DPO Final Decisions. The manager who performs as the FDM for a given DPO could be a Secretarial Officer or one of a variety of other senior managers, such as the CTA, NA-SH-1, the Chief of Defense Nuclear Safety (CDNS), etc. These

responsibilities may be further delegated as appropriate. This document identifies specific positions within NNSA and EM and describes their responsibilities, as well as those of the DPOM and the FDM related to the execution of the DPO Order, irrespective of the specific positions or organizations.

5. RESPONSIBILITIES.

The usage of the term “Site Office” is generic in this document and refers to any field office in NNSA or EM. The responsibilities listed below are only those that are specific to the listed positions. The same individuals may be assigned additional responsibilities as either a DPOM or an FDM as described in the DPO process discussed below.

a. Site Office Managers

- (1) Ensure that the Contractor Requirements Document of DOE O 442.2 is included in contracts for all life cycle stages of NNSA and EM sites or facilities.
- (2) Establish a DPO process that is consistent with DOE O442.2 for use by NNSA and EM Federal and contractor personnel under their authority.

b. NNSA Associate Administrator for Safety and Health (NA-SH-1)

- (1) Maintains and updates this document.
- (2) Maintains a file of all NNSA headquarters DPOs consistent with the records disposition schedule of the National Archives and Records Administration found at <http://www.archives.gov>.
- (3) In cases where the evolution of the differing opinion has involved significant interactions with NA-SH-1, the EM-CTA, or their staff members, the DPOM roles that may have been pre-assigned to these organizations may need to switch within or between NNSA and EM. These determinations are made on a case-by-case basis after negotiations between NA-SH-1 and EM-CTA.

c. Central Technical Authority for Environmental Management (EM-CTA)

- (1) In cases where the evolution of the differing opinion has involved significant interactions with NA-SH, the EM-CTA, or their staff members, the DPOM roles that may have been pre-assigned to these organizations may need to switch within or between NNSA and EM. These determinations are made on a case-by-case basis after negotiations between NA-SH-1 and EM-CTA.

- (2) Maintains a file of all EM headquarters DPOs consistent with the records disposition schedule of the National Archives and Records Administration found at <http://www.archives.gov>.

d. DPOM. The DPOM responsibilities listed below are generic. DPOM process-specific responsibilities are discussed under the DPO process description.

- (1) Acts as ombudsmen for the DPO submitter and ensures that the views of all persons involved in the process are respected.
- (2) Assigns a staff lead, as necessary and appropriate, to act on his behalf and/or perform necessary staff work to support his role in the DPO process. The staff lead may, at the discretion of the DPOM, perform all or a portion of the DPOM responsibilities associated with the DPO case.
- (3) Tracks progress of DPO cases and sends reminder memos for actions that are more than 5 working days behind schedule.
- (4) Processes DPO submittals, obtains their resolution, and drafts the Final Decision Memorandum.

Note: The Final Decision adjudicates the difference of opinion. The FDM may direct actions to be taken to address the situation covered by the DPO. The Final Decision Memorandum documents the decision, assigns any directed actions, and provides the bases for the Final Decision.

- (5) Processes DPO appeals, obtains their resolution, and drafts the Appeal Decision Memorandum.
- (6) Tracks follow-up actions for the DPO to completion and keeps interested DOE parties informed about progress. Reports on actions to the assigned FDM.
- (7) Provides complete DPO documentation to the relevant NA-SH or EM administrative support for inclusion in the DPO case file.
- (8) Supports HSS Office of Independent Oversight requests for documentation from the DPO records.
- (9) Recommends to the FDM work stoppage or curtailment as necessary to ensure that a facility or activity is in a safe condition until DPO issues are resolved.
- (10) Meets with employees who are not satisfied with DPO decisions within 10 working days of the request to meet, and attempts to resolve issues before the Final Decision is appealed.

6. PROCESSING A DPO

- a. Receiving and Logging. In no more than 10 working days after the receipt of a potential DPO:
- (1) The DPOM provides a copy of the submittal to the assigned administrative support personnel and obtains a DPO Control Number
 - (a) Control Numbers are in the format NNSA/EM-DPO-YYYY-# (i.e., either NNSA or EM), where YYYY is the calendar year and # is the sequential number of the DPO.
 - (b) The DPOM asks the administrative support to:
 - 1 Open a DPO case file (i.e. a document management “ticket”) and provides the ticket reference to the DPOM; and,
 - 2 Store the initial submittal and related correspondence in the case file.
 - (2) The DPOM creates an Electronic DPO Tracking Form by saving a copy of the form provided in Attachment 1 using as a filename the control number and the name of the staff lead (e.g. NNSA-DPO-2011-1_nichols.pdf)
- b. Screening. Once the submittal is logged, the DPOM screens the submittal using the criteria and actions specified in Attachment 2 of DOE O 442.2.
- (1) The DPOM annotates all actions taken on the electronic tracking form, explaining briefly in the comments sections.
 - (2) If a submittal seems to be within scope but is not acceptable as submitted because of missing information or other problems:
 - (a) The DPOM informs the submitter (in writing) of what is needed to produce an acceptable submittal and that the DPO will need to be resubmitted with the necessary information before further processing.
 - 1 This action closes the screening process for the initial submittal and terminates the 10-day clock for the screening process.
 - 2 The DPOM provides the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.

- 3 The DPOM records “Returned for additional information” in the Screening Blank on the chronology section of the electronic tracking form and provides the form to the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.
 - (b) If the submitter chooses to resubmit, the DPOM works with the submitter to produce an acceptable package. If additional information is subsequently provided and the submittal is accepted:
 - 1 The original control number and tracking form is used for the revised submittal;
 - 2 The submittal date on the electronic form is updated to show date when adequate information was provided, resetting the 10 day clock for initial actions; and
 - 3 The comments section on the electronic form is updated to show the date of the original submittal and rejection.
 - (3) If the submittal is completely outside of the scope of the DPO process, the DPOM returns the submittal to the submitter with a written explanation of why the submittal is being returned and, if appropriate, suggests other ways to address the issue (e.g. the Employee Concerns Program).
 - (a) This action closes the screening process for the initial submittal and terminates the 10-day clock for the screening process.
 - (b) The DPOM provides the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.
 - (c) The DPOM records “Outside of Scope” in the Screening Blank on the chronology section of the electronic tracking form and provides the form to the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.
 - (4) If part of a submittal is out-of-scope, the control number initially assigned is used to track the part of the submittal that is within scope.
 - (a) The DPOM informs the submitter in writing the reason that the part of the submittal that was excluded is outside of scope, and enters appropriate comments on the electronic tracking form.
 - (b) The DPOM provides the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.
 - (c) The DPOM records “Partially outside of Scope” in the Screening Blank on the chronology section of the electronic tracking form

and provides the form to the relevant EM or NNSA administrative support with a copy of the response for inclusion in the case file.

- (5) After screening the submittal, the DPOM updates the electronic tracking form as described above and provides an electronic copy of the form, along with copies of all correspondence regarding the submittal including emails, to the administrative support for inclusion in the DPO case file.

NOTE 1: The electronic copy of the tracking form now becomes the controlled record of the processing of the DPO. The DPOM ensures that it is saved as part of the case file in the Ticket. The DPOM makes all updates on the status of the DPO case on the record copy of the form in the ticket folder.

NOTE 2: Although not required by DOE O 442.2, NNSA and EM assign control numbers and retain related correspondence for submittals that are rejected in whole or in part.

c. Technical Review.

- (1) Immediately upon accepting a DPO for review, the DPOM:
 - (a) Updates the electronic tracking form (if necessary) to show the date of acceptance;
 - (b) Provides a copy of the DPO to the NNSA/EM line manager(s) responsible for any affected decision and ask for supporting information if possible;
 - (c) Immediately informs the US and requests the assignment of a FDM for the DPO. The Order allows a period of 15 working days from accepting the DPO for the US to assign a FDM;
 - (d) Informs the FDM of the issues involved and the schedule for their resolution; and,
 - (e) Submits a written request to the NNSA/EM line manager who is responsible for an affected decision, asking the line manager to develop and submit the basis for his or her position on the issue. An appropriate format for the requested information is the format suggested for the DPO submitter in DOE O 442.2, but adjusted to support the line manager's position. For example, the question listed as item 3 of Step 1 of Preparing and Submitting a DPO in Attachment 2 of DOE O 442.2 should be answered to address what could happen if the DPO submitter's position is adopted.

- (f) The DPOM drafts and sends an acknowledgement of the DPO to the submitter using the template that is included as Attachment 2 to this document.
 - (2) Within 25 working days of receiving an acceptable DPO, the DPOM, in consultation with the FDM, appoints an Ad Hoc Panel of independent experts and assigns a chair for the panel.
 - (a) Suitable experts are obtained by soliciting senior technical personnel to participate in the process.
 - (b) The panel membership includes at least one member with qualifications that meet the applicable DOE Functional Area Qualification Standard for expertise directly related to the issue in dispute, where an applicable qualification standard exists.
 - (c) The Ad Hoc Panel reviews the DPO issue and provides recommendations to the FDM within 65 days of accepting the DPO.
 - (3) The DPOM works with the Ad Hoc Panel Chair to establish the schedule for their review and manages the Ad Hoc panel on behalf of the FDM. The work performed by the Ad Hoc Panel is managed by the Panel Chair.
 - (4) Where necessary, the DPOM requests available supporting documentation from the DOE or contractor manager who made the decision or established the position that is being contested by the employee in the DPO and provides it to the FDM as well as to the Ad Hoc Panel.
 - (5) The DPOM arranges or provides technical assistance and/or support to the Ad Hoc Panel as needed.
 - (6) If a schedule other than the standard schedule of the Order will be used, the DPOM must approve the alternate schedule and send copies of the alternate schedule to the submitter, the FDM, the DOE line manager responsible for the position/decision that is the subject of the DPO, and the ad hoc panel chair and members. The DPOM must also file a copy of the alternate schedule and the approval in the DPO file. Unlike the schedule for the DPO process, the appeal process follows a fixed schedule.
- d. Final Decision
- (1) When the Ad Hoc Panel has completed their report, the DPOM provides a copy of the report to the FDM and facilitates discussions regarding the report as needed.

- (2) Once the FDM has made a decision, the DPOM drafts a Final Decision memorandum for FDM signature within 15 days of receipt of Ad Hoc Panel's report.
- (3) The DPOM then provides the signed copy to the administrative support and requests that copies be distributed to NNSA/EM stakeholders as appropriate.

Note 1: In most cases, stakeholders include the DPO submitter, the submitter's management, the line manager responsible for affected decisions, Ad Hoc Panel members, Site Office Managers, NA-10, EM-1, the affected CTA and the US, and any individuals or organizations tasked with follow-up actions or implementation.

Note 2: US concurrence is required for the FDM to issue a decision that deviates from the recommendation of the Ad Hoc Panel.

7. PROCESSING DPO APPEALS.

The appeal process for a DPO is in two parts. The submitter or the line manager considering an appeal must first request to meet with the FDM within 10 working days of receiving the final decision. The meeting with the FDM must be scheduled by the DPOM within 15 working days of the request. Subsequent to the meeting, the submitter or line manager who is still not satisfied may write a letter to the US appealing the final decision within 35 days after issuance of the final decision.

- a. Upon receiving an initial request to appeal the decision, the DPOM:
 - (1) Requests a meeting and discussion between the Final Decision Manager and with employees who are not satisfied with DPO decisions within 15 working days of the request to meet, and attempts to resolve issues before the Final Decision is appealed.
 - (2) Provides copies of any documentation related to the appeal to the administrative support as appropriate for inclusion in the DPO case file;
 - (a) Updates the Comments in the DPO Tracking Form to note the appeal;
 - (b) If actions in step a) above are not successful to obviate the need for an appeal, arranges a meeting between submitter or affected line manager and the FDM within 10 working days of a request for an appeal; and,
 - (c) Attends and documents the meeting between submitter or affected line manager and the FDM;

- b. Upon receiving a letter to the US appealing the decision, the DPOM:
 - (1) Prepares and delivers a background briefing on the issue for the US;
 - (2) Facilitates the US's review of the appeal;
 - (3) Drafts the US's Appeal Decision letter per the US's direction; and,
 - (4) Updates the Comments in the DPO Tracking form to note the outcome of the appeal.
- c. Once the Appeal Decision is signed, the DPOM provides a copy and the updated tracking form to the administrative support, and distributes the decision letter to NNSA/EM stakeholders.

8. TRACKING DPOS.

The DPOM tracks the progress of DPOs as they are being processed. The DPOM also tracks and reports on follow-up actions necessary to comply with the final decision.

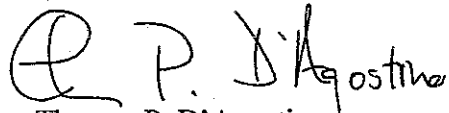
- a. The DPOM tracks the progress of DPO processing using the chronology section of the electronic tracking form. The DPOM sends electronic memos to responsible individuals for actions that are more than 5 days overdue.
- b. If corrective actions or an implementation period is needed following a Final Decision, the DPOM works with the line manager responsible for taking the actions to obtain a table of milestones and dates.
 - (1) The DPOM provides this table to the administrative support for inclusion in the case file.
 - (2) The DPOM makes updates as milestones are reached.
 - (3) The DPOM reports progress to the FDM.
- c. Once all actions associated with the DPO are complete, the DPOM:
 - (1) Inserts the date that follow-up actions were completed into the field provided on the DPO Tracking Form;
 - (2) Prints and signs a paper copy of the electronic tracking form; and,
 - (3) Provides the signed copy to the administrative support to be scanned in as an image for inclusion in the case file.

9. REFERENCES.

- a. Title XXXII of P.L. 106-65, National Nuclear Security Administration Act, as amended, which established a separately organized agency within the Department of Energy, or successor document.
- b. DOE O 442.2, *Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health*, July 29, 2011, or successor document.
- c. NA-1 SD 411.1-1C, *NNSA Safety Management Functions, Responsibilities and Authorities Manual*, or successor document.

10. CONTACT. Questions concerning this procedure should be addressed to the NNSA Office of the Associate Administrator for Safety and Health (NA-SH-1) at 202-586-8216, or to the EM-CTA at 202-586-0799.

BY ORDER OF THE UNDER SECRETARY FOR NUCLEAR SECURITY:



Thomas P. D'Agostino
Under Secretary for Nuclear Security

Attachments:

1. Electronic Professional Differing Opinion Form
2. Sample Memorandum

ATTACHMENT 1: ELECTRONIC PROFESSIONAL DIFFERING OPINION FORM

An electronic form is attached to the PDF version of this document. It is available by selecting the Attachments tab in Adobe Acrobat. Please open that form in Acrobat and save it using the menu item File->SaveAs to save a copy to use to track your DPO. Name the file using the assigned DPO Control Number and the name of the lead (e.g. NNSA-DPO-2007-2_Russo.pdf).

ATTACHMENT 2: SAMPLE MEMORANDUM

MEMORANDUM FOR [enter Submitter's Name, Position, and organization]

FROM: [Name of DPOM]

DIFFERING PROFESSIONAL OPINION MANAGER

NATIONAL NUCLEAR SECURITY ADMINISTRATION/OFFICE
OF ENVIROMENTAL MANAGEMENT

SUBJECT: Confirmation of Acceptance of Differing Professional Opinion

REFERENCE: Memorandum dated [enter the date of the DPO memo]

This is to inform you that the subject submittal has been accepted for review under the DOE Differing Professional Opinion (DPO) program. The control number for this case is NNSA/EM-DPO-XXXX-X. Initially, the Final Decision Manager (FDM) for this decision is [enter name as assigned by the US], however, the function of the FDM may be re-delegated at a future date.

Within 10 working days of the submittal of an acceptable DPO, the NNSA/EM process requires the appointment of an Ad Hoc Panel to evaluate the DPO. The Ad Hoc Panel then has 65 working days from the date of DPO acceptance to review the DPO and provide a recommendation to the FDM. [enter name of staff lead] is the staff lead on this case and will coordinate any requests for additional information that the panelists may have. Please feel free to contact [him/her] at [phone number] or [email]@nnsa/EM.doe.gov if you have any questions.