

MANUAL

DOE M 442.1-1

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DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY AND HEALTH



U.S. DEPARTMENT OF ENERGY
Office of Health, Safety and Security

AVAILABLE ONLINE AT:
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INITIATED BY:
Office of Nuclear Safety and Environment

**DIFFERING PROFESSIONAL OPINIONS MANUAL
FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, AND HEALTH**

1. PURPOSE.

This Manual establishes a Department of Energy (DOE) Differing Professional Opinion (DPO) process to encourage and facilitate dialogue and resolution on DPOs from employees¹ for technical issues involving environment, safety, and health (ES&H). This process supplements DOE P 442.1, *Differing Professional Opinions*, dated 11-16-06. It is not intended to circumvent other avenues for resolving technical disagreements but rather to supplement existing processes. In particular, this process supplements the DOE Employee Concerns Program established in [DOE O 442.1A, Department of Energy Employee Concerns Program](#), by providing a specific process for assessing and addressing technical issues related to ES&H.

The process in this Manual is limited to addressing DPOs on technical issues related to ES&H for DOE facilities and activities.

The Department recognizes that it takes courage to step outside current opinion and raise an issue and it is committed to ensuring that DPOs can be raised without fear of retaliation and are resolved in a timely and effective manner. Unless the disclosure is specifically prohibited by law, employees are encouraged to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical issues, particularly those related to ES&H. Specific whistleblower protection is provided for Federal employees in 5 United States Code (U.S.C.) § 2302, *Prohibited Personnel Practice* and for DOE contractors in [10 CFR Part 708, DOE Contractor Employee Protection Programs](#), and in Section 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5821 which provides DOE and DOE contractor whistleblower protection.

This process may highlight ES&H concerns, which may require DOE or contractor managers to stop or curtail work operations as authorized to place the facility or activity in a safe condition until the DPO issue has been resolved.

2. CANCELLATIONS. None.

3. APPLICABILITY.

- a. DOE Elements. Except for the exclusions in paragraph 3c, this Manual applies to all Departmental elements and DOE Federal employees with respect to DPOs on technical issues relating to ES&H. (Go to <http://www.directives.doe.gov> for the current listing of Departmental elements. The list automatically includes all

¹For the purposes of this Manual, the term “employees” is defined consistent with DOE O 442.1A as any person working for DOE, including NNSA or a DOE contractor or subcontractor, on a DOE project.

Departmental elements created after the Order is issued). This Manual automatically applies to Departmental elements created after it is issued.

The Administrator of the National Nuclear Security Administration (NNSA) will ensure that NNSA employees comply with their respective responsibilities under this Manual. Nothing in this Manual will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

- b. Contractors. The CRD (Attachment 1) sets forth requirements that are to be applied to contractors with responsibility for the design, construction, management, operation, decontamination, decommissioning, or the demolition of DOE sites or facilities. Contractor compliance with the CRD will be required to the extent set forth in their contract.
- c. Exclusions. The provisions of this Manual do not apply to—
 - (1) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, pursuant to Executive Order 12344, provided in 42 U.S.C. Sec. 2511.
 - (2) Activities of the Bonneville Power Administration (BPA) in accordance with Secretarial delegation Order Number 00-033.00A to the BPA Administrator and Chief Executive Officer, dated 9-27-02.
 - (3) Administrative, contract, or personnel related issues except to the extent that they are directly related to technical issues regarding ES&H.
 - (4) Concerns submitted anonymously or with requests for confidentiality.

4. REQUIREMENTS.

See Attachment 2, "Differing Professional Opinion Process," and its subparagraphs for the DPO Process. The DPO Process in Attachment 2 includes both requirements and guidance. The verbs "must" and "should" are used throughout the attached process to denote requirements and guidance. "Must" is used for requirements. "Should" is used for guidance.

5. RESPONSIBILITIES.

- a. For nuclear safety issues—Central Technical Authorities (CTAs).
 - (1) Within 10 working days of acceptance of the DPO, assign a Secretarial Officer; a Deputy Administrator (for NNSA facilities and activities); the Chief of Defense Nuclear Safety (CDNS); the Chief of Nuclear Safety (CNS); a field office manager (FOM), or other appropriate senior

manager to be responsible for the Final Decision on a DPO. Where practicable, the individual assigned responsibility for the Final Decision should be at a level above or independent from the manager who made the contested decision.

- (2) Approve any extensions of the review period for DPOs beyond the initial 30 calendar day extension.
- (3) Make decisions on any appeals to DPO Final Decisions.
- (4) Stop or curtail work as necessary to ensure that a facility or activity is in a safe condition until DPO issues have been resolved.
- (5) Provide annual notice to all employees of the availability of the process and encourage its use where appropriate.

b. For issues other than nuclear safety—Under Secretaries (Deputy Secretary where there is no Under Secretary).

- (1) Within 10 working days of acceptance of the DPO, assign a Secretarial Officer, Deputy Administrator (for NNSA facilities and activities), CDNS, CDS, FOM, or other senior manager to be responsible for the Final Decision on a DPO. Where practicable, the individual assigned responsibility for the Final Decision should be at a level above or independent from the manager who made the contested decision.
- (2) Approve any extensions of the review period for DPOs beyond the initial 30 calendar day extension.
- (3) Make decisions on any appeals to DPO Final Decisions.
- (4) Stop or curtail work as necessary to ensure that a facility or activity is in a safe condition until DPO issues have been resolved.
- (5) Provide annual notice to all employees of the availability of the process and encourage its use where appropriate.

c. Under Secretary of Energy for Nuclear Security/NNSA Administrator (in addition to the responsibilities listed for the Under Secretaries) assigns a DPO manager (DPOM) for NNSA.

d. Chief, Health, Safety and Security Officer, Office of Health, Safety and Security (HS).

- (1) Assigns an HS DPOM for offices other than NNSA.
- (2) Maintains the DPO Policy and Manual.

- (3) Performs a sample review of DPOs biennially from the list provided by the DPOMs.
 - (4) From the review, assesses the success of the DPO Process and the follow-up actions.
 - (5) Provides to the Deputy Secretary and each of the Under Secretaries a report on the findings of the assessment, including any pertinent recommendations to address findings or deficiencies.
- e. Secretarial Officer, Deputy Administrator, CDNS, CNS, FOM or Other Senior Manager Assigned Responsibility for Final Decision on a DPO (hereinafter referred to as the assigned Final Decision Manager).
- (1) Within 10 working days of being assigned a DPO, appoints an ad hoc panel of independent experts to review the DPO issue and provide recommendations and assigns the chair for the panel.
 - (2) Provides technical assistance and/or support to the ad hoc panels, when needed.
 - (3) Reviews reports from ad hoc panels.
 - (4) Makes and documents the Final Decision within 10 working days of receiving an ad hoc panel report, including the appropriate actions to take on assigned DPOs, including the bases for the Final Decision.
 - (5) Sends copies of the Final Decision to submitter, the submitter's management, the appropriate DPOM (or both DPOMs), ad hoc panel members, and any individuals or organizations tasked with followup actions or implementation.
 - (6) Approves extensions to review periods for up to 30 calendar days and requests additional extensions from the CTA or Under Secretary (Deputy Secretary where there is no Under Secretary) when needed.
 - (7) Maintains records on DPOs until decisions have been documented then sends records to the appropriate DPOM (or both DPOMs) for record keeping and followup.
 - (8) 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.
 - (9) Where authorized, stops or curtails work as necessary to ensure that facilities and/or activities are in a safe condition until DPO issues have

been resolved; where not authorized, informs the appropriate management level that work may need to be stopped or curtailed.

- (10) Notifies contracting officers of contracts affected by the requirements of this directive that the CRD will be included in the affected contracts.
- f. General Counsel or NNSA General Counsel assigns a member to the ad hoc panel to review legal issues of the DPO if requested by the assigned Final Decision Manager. Field counsel may also be used when requested by the Final Decision Manager and approved by the General Counsel or NNSA General Counsel.
- g. Differing Professional Opinion Managers.
- (1) Act as ombudsmen for the DPO submitter and ensure that the views of all persons involved in the process are respected.
 - (2) Work with the submitter to craft the DPO to fit within the process where appropriate.
 - (3) Screen DPO submittal within 10 working days of receipt to verify that it meets the DPO Process criteria and that sufficient information has been provided to initiate the review.
 - (a) Accept DPO submittals within the scope of the DPO Process and with sufficient information to initiate the review.
 - (b) Return submittals outside the scope of the DPO Process or with insufficient information to the submitters with an explanation of why it is being returned.
 - (c) Refer issues submitted anonymously or with requests for confidentiality to the Employee Concerns Program.
 - (d) Refer issues related to wrongdoing to the Office of Inspector General.
 - (4) Concurrent with the acceptance of a DPO, assign a DPO control number, open a file, send an acknowledgement to the submitter, and initiate a memorandum from the appropriate CTA or Under Secretary (or Deputy Secretary where there is no Under Secretary) assigning responsibility for the DPO to the Final Decision Manager.
 - (5) Where possible, request 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 provide it to the assigned Final Decision Manager, as well as to the ad hoc panel.

- (6) Track followup actions for the DPO to completion and keep interested DOE parties informed about progress. Report actions to the assigned Final Decision Manager.
 - (7) Maintain DPO records for at least 75 years from the date of submittal.
 - (8) Track progress of DPOs and send reminder memos for actions that are more than 5 working days behind schedule.
 - (9) If a DPO involves a situation where work may need to be stopped or curtailed to ensure that the facility or activity is in a safe condition until the matter is resolved, inform the manager at the appropriate level authorized to stop or curtail the work.
 - (10) Biennially submit to the Office of Independent Oversight in the Office of Health, Safety and Security, a list of—
 - (a) DPO actions initiated over the past two years,
 - (b) A list of DPOs for which follow-up actions were completed over the past two years,
 - (c) A list of DPOs with follow-up actions items still outstanding, and
 - (d) The name of the assigned manager for each of the DPOs listed.
 - (11) Support Office of Independent Oversight requests for documentation from the DPO records.
- h. Ad Hoc Panel Chairperson.
- (1) Schedule and lead ad hoc panel meetings and phone calls.
 - (2) Assume responsibility for forwarding written documents from the ad hoc panel as required.
 - (3) Ensure the positions of all members of the ad hoc panel are represented in the final report including any dissenting opinions.
 - (4) Request additional technical assistance through the assigned Final Decision Manager if necessary.
- i. Ad Hoc Panels.
- (1) Review DPOs to determine whether enough information has been supplied to undertake a detailed review of the issue.

- (2) Within 10 working days of assignment, schedule and conduct meetings with the submitter to discuss the scope of the issues.
- (3) Establish a schedule of milestones for the disposition of the DPO.
- (4) Conduct detailed reviews of the issues being brought forward and/or conduct any record reviews or interviews or hold any discussions deemed necessary to provide a complete, objective, independent, and impartial review.
- (5) Ensure reviews are conducted in an independent fashion to the extent possible.
- (6) Provide a written report, including recommendations and any dissenting opinions, to the assigned Final Decision Manager regarding the disposition of the issues presented in the DPO with copies to the appropriate DPOM (or DPOMs) within 30 days of assignment of the DPO (unless an extension is approved).

j. Employees/Submitters.

- (1) First seek resolution of the issue through available processes (e.g., discussions with first-line supervisors or through local DPO or review and comment processes), but when needed use this DPO Process to ensure any significant technical ES&H issue for a DOE facility or activity is properly addressed.
- (2) Submit DPOs to the applicable DPOM when believed to be necessary to raise problems on technical issues related to ES&H. Submittals should include all information indicated in Attachment 2 of this Manual including attached reference documents where practicable and appropriate.
- (3) Meet with ad hoc panels and DOE managers as requested and provide information as known to support a thorough review of the concern.
- (4) File appeals with the appropriate CTA or Under Secretary (or Deputy Secretary where there is no Under Secretary) as necessary with copies to the appropriate DPOM and to the assigned Final Decision Manager.

k. All DOE Managers.

- (1) Encourage employees to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical

issues related to ES&H, unless the disclosure is specifically prohibited by law.

- (2) Ensure that the views of all persons involved in the process are respected.
 - (3) Protect employees from retaliation in any form for reporting DPOs.
 - (4) Report to the appropriate DPOM when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementation actions.
6. CONTACT. Questions concerning this Manual should be addressed to the Office of Nuclear and Facility Safety Policy at 301-903-2867.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE M 442.1-1, *DIFFERING PROFESSIONAL OPINION MANUAL FOR TECHNICAL*
ISSUES INVOLVING ENVIRONMENT, SAFETY, OR HEALTH

1. FLOWDOWN REQUIREMENTS. Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this Contractor Requirements Document (CRD). The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements and the safe performance of work.

2. SUPPORT THE DPO PROCESS. The Department of Energy (DOE) has established a Differing Professional Opinion (DPO) process in DOE M 442.1-1 to facilitate dialogue and resolution on DPOs from employees¹ for technical issues involving environment, safety, and health (ES&H). In support of the effective implementation of the DOE DPO Process, contractors and subcontractors are required to –
 - a. Assist DOE as requested in the resolution of DPOs;
 - b. Ensure that contractor and subcontractor employees are advised at least annually that they have the right to report concerns on technical issues relating to ES&H through the DPO Process;
 - c. Encourage their employees to raise technical issues related to ES&H, use the DPO Process when appropriate, and provide them reasonable time and resources to use the DPO Process;
 - d. Protect their employees from retaliation in any form for reporting DPOs; and
 - e. Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementation actions.

3. SUBMITTING DPOS. Contractors and subcontractors who believe that they have knowledge of a significant technical issue regarding ES&H of a DOE facility or activity that is not being properly addressed should raise the issue to ensure it is properly considered in a timely manner. Before using the DPO Process to address an issue they should first attempt to resolve the issue through other available processes (e.g., discussions with the DOE line managers, existing complaint or resolution processes, review and comment processes, and/or local DPO Processes). If they have attempted to use available processes to address a technical issue related to ES&H satisfactorily, but they believe that the current position could have a significant negative impact on protection of the ES&H of employees or members of the public then they may initiate a

¹ For the purposes of the DPO Process “employee” is defined as any person working for DOE, including NNSA or a DOE contractor or subcontractor on a DOE project.

DPO. Contractors and subcontractors who submit DPOs assume the role of the “submitter” in the DPO Process with the following responsibilities:

- a. Submit DPOs to the applicable DOE DPO Manager (DPOM). Submittals should include all information indicated in the DPO Process defined in Section 2 to Attachment 2 to DOE M 442.1-1 including attached reference documents where practicable and appropriate.
- b. Meet with ad hoc panels and DOE managers as requested and provide information as known to support a thorough review of the concern.
- c. File appeals with the appropriate DOE Under Secretary (or Deputy Secretary where there is no Under Secretary) as necessary no later than 21 working days after the Final Decision is issued, with copies to the appropriate DPOM and to the DOE assigned Final Decision Manager.

DIFFERING PROFESSIONAL OPINION PROCESS

Employees who believe that they have knowledge of a significant technical issue regarding environment, safety, and health (ES&H) of a Department of Energy (DOE) facility or activity that is not being properly addressed should raise the issue to ensure it is properly considered in a timely manner.

1. FIRST, USE AVAILABLE PROCESSES.

- a. Before initiating the Differing Professional Opinion (DPO) process, the employee should first attempt to resolve the issue through available processes (e.g., discussions with the first-line supervisors or other managers, review and comment processes, and/or local DPO Processes). Where applicable, DOE field and contractors processes should be used to process issues before invoking the process in this manual. In the free and open exchange of technical issues, differences of opinion are common and generally not part of the DPO Process. In addition, there may be multiple solutions to a technical issue, which would serve to adequately protect ES&H.
- b. If the employee has attempted to use available processes to satisfactorily address a technical issue related to ES&H and the employee believes that the current position could have a significant negative impact on protection of the ES&H of employees or members of the public then the employee should initiate a DPO.

2. PREPARE AND SUBMIT A DPO.

The employee (hereinafter referred to as the submitter) must prepare a written document with the following information: ¹

- a. What is the issue? A summary of the prevailing staff view, the existing management decision or stated position, or the proposed or established Department practice involving the technical issues.
- b. What is your recommended action? A description of the submitter's views and how they differ from any issues discussed in item a.
- c. What could happen if there is no change in position? If possible, the submitter should include an assessment of the consequences if the submitter's position is not adopted by the Department. This section should include a sound technical basis for the concern. The consequences discussed should be in terms of effects

¹ See Appendix A for an example of an acceptable format for DPO submissions and Appendix B for the simplified steps of the DPO Process. These items correspond to the questions in the Sample DPO Submittal Form in Appendix A.

to worker safety or health, or protection of the public or environment from DOE facilities or activities.

- d. Which recognized technical experts would you recommend to be included on the ad hoc panel to review the DPO? The submitter may recommend up to three technical experts in the area of the DPO as potential ad hoc panel members or a statement that names of recommended technical experts will not be provided.²
 - e. What should panel members read to help them resolve the issue? The submitter should include a list of the relevant documents that support the DPO or should be read for a thorough independent review (e.g., sections of safety bases documents, assessments, reports). The submitter should either provide a copy of the documents or provide enough information to enable a reader to obtain them easily.³
 - f. What else have you tried to resolve this issue and what were the results? The submitter should include a discussion of the available processes (review and comments, discussions with technical personnel and management, local DPO Processes, etc.) used to resolve the issue before initiating this DPO and what the outcome was if known.
 - g. In order to determine which DPOM should handle the DPO, indicate whether the DPO involves:
 - (1) Only NNSA facilities and/or activities,
 - (2) Only non-NNSA facilities and/or activities, or
 - (3) Both NNSA and non-NNSA facilities and/or activities.
3. SUBMIT THE DPO.
- a. DPOs for National Nuclear Security Administration (NNSA) facilities and activities should be submitted to the NNSA DPOM.
 - b. DPOs for facilities and activities other than NNSA should be submitted to the Office of Health, Safety and Security DPOM.

² The submitter may consult with the exclusive bargaining unit representative or the DPOM, if appropriate, to nominate knowledgeable individuals who may be technically competent and willing to serve as panel members.

³ Copyrighted documents that are generally available to the public such as consensus codes and standards should not be attached, nor should published DOE directives or technical standards which are available through the DOE web pages. For such documents, the submitter must include complete references of specific sections with a brief statement regarding the relevance of the document to the issue being raised. Copies of other documents may be provided in electronic or paper format.

- c. DPOs that involve both NNSA and non-NNSA activities should be submitted to both DPOMs and the DPOMs will work with management to determine whether one or two reviews should be performed.
- d. DPOs may also enter the DPO Process through issues submitted to the Employee Concerns Process and forwarded to the appropriate DPOM. In such cases, the DPOM must contact the submitter for any additional information required to accept and review the issue consistent with this process.

4. SCREEN AND ACCEPT THE DPO

- a. The DPOM must screen the submission to ensure that it meets the criteria for the DPO Process.⁴ Issues that are not generally within the scope of the DPO Process and that will not be reviewed according to this process include the following:
 - (1) issues that are administrative in nature (such as procedures for review and comment or Price-Anderson enforcement procedures),
 - (2) personnel issues (such as performance elements, evaluations and ratings or work assignments by management),
 - (3) issues that relate to contracts not relating to technical ES&H issues (such as fees or contract negotiations),
 - (4) issues related to collective bargaining,
 - (5) issues that should be addressed through the grievance process or personnel appeal procedures,
 - (6) issues that relate to wrongdoing (the DPOM must refer these to the Office of Inspector General),
 - (7) issues submitted anonymously or for which confidentiality is requested, and
 - (8) issues that have been considered and already addressed under this process unless significant new information is available.

⁴ An example of an issue that would not be included in this process would be an employee who could not perform a task because of a back problem. Although this issue is related to the health of employees, it is not related to a technical issue and should be handled as a personnel issue. An example of an issue that could be addressed through the DPO Process would be an operation that could result in an interaction of chemicals that would result in a chlorine release and exposure to workers that has not been properly addressed in safety analysis and/or design.

- b. If the DPOM determines that the issue is outside the scope of the DPO Process, the DPOM must inform the submitter and, if appropriate, suggest the appropriate process for submittal.
- c. If part of the DPO is outside the scope of the DPO Process, the DPOM must discuss the issue with the submitter to determine whether certain aspects of the DPO should be addressed by the DPO Process. If so, the DPOMs must work with the submitter to craft a submission that addresses only the limited aspects appropriate for the DPO Process.⁵
- d. If the DPO is appropriately covered by the DPO Process, the DPOM will verify that sufficient information has been provided to initiate the review. If not, the DPOM will return the submittal to the submitter with documentation identifying the additional information needed. Examples of insufficient information include (1) missing name, email, or phone number and (2) an unclear statement of the issue such that the Under Secretary would not be able to determine to which office the DPO should be assigned.
- e. If the issue is within the scope of the DPO Process and sufficient information has been provided to initiate the review, it will be accepted. The intent of this review is to identify information that is needed to be able to understand the issue and initiate the review. The DPOM should not use the acceptance process to slow down or stop the review. The review should proceed as soon as enough information has been provided to understand the issue.
- f. In cases where imminent danger is involved the acceptance process should proceed in parallel with forwarding the available information to management to initiate a review and take any necessary actions to protect individuals and property. The DPOM may need to contact management for immediate action even before the DPO is formally submitted.
- g. The acceptance review must be completed by the DPOM within 10 working days of receipt of the DPO.
- h. Concurrent with the acceptance of a DPO, the DPOM must—
 - (1) assign a DPO control number;
 - (2) open a file;

⁵ An example of such an issue might be a claim of retribution regarding an employee who complained to management about substandard components. The review of the substandard components could progress through the DPO Process, while the retribution issue should be addressed through alternate processes.

- (3) send an acknowledgement of the acceptance of the DPO for action to the submitter;
 - (4) initiate a memorandum for the appropriate CTA or Under Secretary's signature (Deputy Secretary where there is no Under Secretary) to assign the DPO to the Final Decision Manager, as appropriate; and
 - (5) request supporting documentation from the DOE or contractor manager who made the decision or established the position that is being contested by the submitter in the DPO and provide that information to the assigned Final Decision Manager, as well as to the ad hoc panel.
 - i. The CTA or Under Secretary (or Deputy Secretary where there is no Under Secretary) must assign the DPO to a Final Decision Manager within 10 working days of acceptance of the DPO.
 - j. If the DPO covers issues that are already undergoing staff review or inspection activity, the DPOM must refer the DPO back to the submitter and communicate the submitter's issues to the senior manager overseeing the staff's review or the inspection activity to ensure that the submitter's issues are taken into consideration.
5. APPOINT AN AD HOC PANEL.
 - a. Within 10 working days of receipt of the file from the DPOM, the assigned Final Decision Manager must appoint an ad hoc panel of experts to conduct a thorough review of the DPO.
 - b. The assigned Final Decision Manager must send a copy of the memorandum assigning the panel members to the appropriate DPOM (or both DPOMs) and the submitter of the DPO.
 - c. No one in a position of authority over the submitter should be appointed to the ad hoc review panel. In addition, to the extent possible, the ad hoc panel should not involve individuals who have directly participated in the formulation of the DOE position that is at issue or have a direct and personal or financial interest in the outcome. If it is desirable for a person from outside DOE to serve as a member of the DPO ad hoc review panel or as a consultant to the panel, the requirements of the Federal Advisory Committee Act must be met.
 - d. The ad hoc panel may consist of as few as one person (provided that one person meets all of the criteria for the panel) or as many persons as determined to be appropriate by the manager convening the panel. The panel must include the following individuals:

- a management-appointed chairperson,
 - a person who is technically knowledgeable in the subject area being reviewed (this may also be the chairperson), and
 - a panel member chosen by the General Counsel if the subject involves a legal issue.⁶
- e. The assigned manager must also consider including a panel member from the recommended list of technical experts provided by the submitter.
6. AD HOC PANEL REVIEW. The ad hoc panel must do the following:
- a. Review the DPO to determine whether enough information has been supplied to undertake a detailed review of the issue and request any additional information needed from the submitter or from DOE or contractor management.
 - b. Schedule and conduct a meeting with the submitter to discuss the scope of the issue within 10 calendar days from the date of the memorandum that establishes the ad hoc panel. The scope should remain fully focused on and should not exceed the issues as defined in the original written DPO.
 - c. Establish a schedule of milestones for the disposition of the DPO.
 - d. Request technical assistance through the ad hoc panel chair and the assigned Final Decision Manager if necessary.
 - e. Conduct a detailed review of the issues being brought forward and/or conduct any record reviews or interviews or hold any discussions the panel deems necessary to provide a complete, objective, independent, and impartial review.
 - f. Conduct an independent review to the maximum extent possible. The review should include periodic discussions with the submitter to provide the submitter the opportunity to further clarify his or her views and to facilitate the exchange of information.
 - g. Provide a written report, including recommendations and any dissenting opinions, to the assigned Final Decision Manager regarding the disposition of the issues presented in the DPO with a copy to the appropriate DPOM (or both DPOMs).

⁶If the panel includes a member assigned by the General Counsel, that member's involvement in the panel will be limited to the legal issues in the differing professional opinion (DPO). Because the DPO Process is directed to technical, not legal, issues, the participation of a member of the General Counsel's office is not normally expected. Local counsel may also be used when requested by the assigned Final Decision Manager and approved by the General Counsel or NNSA General Counsel.

- e. If DOE management determines that the recommended actions will not be implemented or that alternate actions will be implemented, the DPOM will be informed and those decisions will be tracked and recorded through the DPO Process.

9. SUBMITTER'S REVIEW OF THE FINAL DECISION.

- a. A submitter who is not satisfied with the Final Decision and continues to believe that a significant technical issue related to ES&H is not being properly addressed, must contact the DPOM within 5 working days of receiving the Final Decision to request a meeting and discussion with the assigned Final Decision Manager or his/her designee. That meeting must be held within 10 working days of the request.
- b. As a result of the meeting, the assigned Final Decision Manager may decide to change his/her decision. If so, that revised decision must be issued, filed, and distributed consistent with the Final Decision, including copies to any individuals or organizations tasked with new followup actions or implementation as a result of the change. In addition, any followup actions that are being retracted must be documented and the documentation sent to the individuals or organizations tasked with the original followup actions or implementation. Consideration must be made for any followup actions that may have been partially or fully completed during the interim.
- c. Alternatively, as a result of the meeting, the individual responsible for submitting the DPO may decide that he/she is satisfied with the results of the review and no further actions are needed. In that case, the submitter should send a memorandum to the appropriate DPOM (or DPOMs) with a copy to the assigned Final Decision Manager closing the issue.
- d. If following the meeting the submitter continues to believe that the Final Decision does not adequately resolve the issue the submitter should initiate an appeal to the DPO decision.

10. FILING A DPO APPEAL.

- a. The submitter may file an appeal to a Final Decision on a DPO no later than 21 working days after the Final Decision is issued.
 - (1) For nuclear safety issues, the appeal must be addressed and sent to the appropriate CTA with a copy to the appropriate DPOM (or DPOMs) and the assigned Final Decision Manager.
 - (2) For other than nuclear safety issues, the appeal must be addressed and sent to the appropriate Under Secretary (Deputy Secretary where there is no Under Secretary) with a copy to the appropriate DPOM (or DPOMs) and the assigned Final Decision Manager.

- (3) The DPO appeal must include an explanation of why the submitter still believes that the decision is inadequate or insufficient to ensure protection of ES&H.
 - (4) The DPO appeal must also include the DPO tracking number.
 - b. Upon receiving an appeal, the DPOM must forward a copy of the file on the DPO to the appropriate CTA or Under Secretary (Deputy Secretary where there is no Under Secretary) including the supporting information and a copy of the Final Decision.
- 11. APPEAL DECISION.
 - a. An Appeal Decision must be issued by the CTA or Under Secretary (Deputy Secretary where there is no Under Secretary), as appropriate, no later than 60 calendar days after receipt of the appeal.
 - b. The official making the Appeal Decision may reconvene the panel, choose and use a new panel, or make the decision without benefit of a panel.
 - c. Copies of the Appeal Decision, along with any reports, must be provided to the assigned Final Decision Manager for the DPO, the appropriate DPOM (or DPOMs), and individuals or organizations tasked with followup or implementation actions.
 - d. Upon issuance of the decision to the submitter, the DPO Process will be concluded and the matter will be considered closed.
- 12. RECORDKEEPING REQUIREMENTS. The assigned Final Decision Manager must retain the records for a DPO until the DPO Final Decision has been issued at which time the assigned Final Decision Manager must forward the complete case file to the appropriate DPOM (or both DPOMs) for record keeping. The DPOM must retain the file for a minimum of 75 years.
- 13. WITHDRAWING A DPO. The submitter may withdraw the DPO (or appeal) at any time before the issuance of a Final Decision (or Appeal Decision). To initiate a withdrawal, the submitter must file a written request to the appropriate DPOM (or DPOMs), who will forward copies to the assigned Final Decision Manager (and CTA or Under Secretary/Deputy Secretary for an appeal). The DPOM must send an acknowledgment letter to the submitter indicating the date on which the withdrawal took effect. Withdrawal does not preclude the assigned Final Decision Manager (or the Under Secretary or Deputy Secretary for an appeal) or other assigned Departmental representatives, from pursuing the issue, but the continued pursuit of the issue will no longer be subject to DPO Process rules and/or time frame requirements. If DOE decides not to pursue a withdrawn DPO, the DPOM will enter a memorandum in the file documenting the basis for the decision not to pursue the issue.

14. TRACKING AND FOLLOWUP ACTIONS.

- a. The DPOM must assign a control number to track each DPO. That number must be included on all correspondence on that DPO, including the confirmation the DPOM sends to the submitter of the DPO to inform that person that the DPO has been received and is being processed. This control number will be used to track the DPO throughout the process, as well as any appeal that may arise. All parties must provide a copy of any official correspondence on that DPO (including e-mail where appropriate) to the appropriate DPOM (or DPOMs).
- b. The DPOM must track each DPO to conclusion and send reminder e-mails to individuals who are 5 working days behind schedule.
- c. The DPOM must record any followup actions identified by the decisions resulting from the DPO Process.
- d. The assigned Final Decision Manager is responsible for ensuring that these actions are assigned to the proper authority and entered on local tracking systems with scheduled completion dates.
- e. In establishing completion dates, consideration must be given to the safety significance of the issue, the age of the issue, and the priority of other work in the office. If the schedule for the followup items is not met, the reason for the delay and a revised schedule for completion of the actions must be communicated to the submitter and to the applicable CTA or Under Secretary (or in cases where there is no assigned Under Secretary, to the Deputy Secretary).

15. PROTECTION FROM RETALIATION FOR FILING A DPO.

- a. As stated in DOE P 442.1, it is DOE policy to protect employees from retaliation in any form for filing DPOs.
- b. Additional protection is provided by the following:
 - (1) 5 U.S.C. § 2302 contains specific language prohibiting individuals from taking adverse personnel action with respect to any Federal employee or applicant for employment because of disclosure of information which the employee reasonably believes evidences a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific change to public health and safety if the disclosure is not specifically prohibited by law or by Executive Order in the interest of national defense or the conduct of foreign affairs.

- (2) Sec. 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5851, provides DOE and DOE contractor or employees specific whistleblower protection.
 - (3) 10 CFR Part 708 provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety (among other things).
- c. Reprisals against contractor employees may also lead to the imposition of penalties under 10 CFR Part 820 or 10 CFR 851.

SAMPLE DIFFERING PROFESSIONAL OPINION SUBMITTAL FORM

| Differing Professional Opinion (DPO) Submittal |
|--|
| Respond to the questions below or attach responses. Attach copies of references. Submit the completed form to the DPO manager (DPOM). See DOE M 442.1-1 for instructions. |
| TO BE ENTERED BY DPOM DPO Title: DPO tracking number: |
| Do you believe this issue involves a risk of imminent danger that would warrant an immediate stop work or a shutdown? <input type="checkbox"/> YES or <input type="checkbox"/> NO |
| 1. What is the issue? |
| 2. What is your recommended action? |
| 3. What could happen if there is no change in position? (Note: Include a sound technical basis for the issue.) |
| 4. Which recognized technical experts would you recommend to be included on the ad hoc panel to review the DPO? |
| 5. What should the ad hoc panel members read to help them resolve the issue? |

SAMPLE DIFFERING PROFESSIONAL OPINION SUBMITTAL FORM (continued)

| | | |
|---|-----------------|---------------|
| 6. What else have you tried to resolve the issue (review and comments, discussions with technical personnel and management, local DPO Processes, etc.) and what were the results? | | |
| 7. This DPO involves (check the applicable box)— <input type="checkbox"/> NNSA facilities and/or activities. <input type="checkbox"/> Non-NNSA facilities and/or activities. <input type="checkbox"/> Both NNSA and non-NNSA facilities and/or activities. | | |
| Name: | Date: | Organization: |
| Position or Relationship to DOE: <input type="checkbox"/> DOE employee <input type="checkbox"/> DOE contractor <input type="checkbox"/> DOE subcontractor | | |
| Phone number: | E-mail address: | |
| Complete mailing address: | | |
| Best way to contact you for additional information: | | |
| Signature: | | |

SIMPLIFIED STEPS OF A DIFFERING PROFESSIONAL OPINION (DPO) PROCESS

| RESPONSIBLE PARTY | ACTION | TIME FRAME |
|---|--|--|
| DPO Submitter | Submit proposed DPO to DPO Manager (DPOM). | As needed |
| DPOM | Perform acceptance review. | Within 10 working days |
| CTA, Under Secretary, or Deputy Secretary, as appropriate | Assign DPO to appropriate Final Decision Manager. | Within 10 working days |
| Assigned Final Decision Manager | Appoint Ad Hoc Panel and designate chair. | Within 10 working days |
| Ad Hoc Panel | Review DPO and provide recommendations in a report to the assigned Final Decision Manager. | Within 30 calendar days (unless extension is approved) |
| Assigned Final Decision Manager | Review Ad Hoc Panel Report and send Final Decision to DPO submitter with copy to DPOM. | Within 10 working days |

SIMPLIFIED STEPS OF A DPO APPEAL

| RESPONSIBLE PARTY | ACTION | TIME FRAME |
|---|---|---|
| DPO Submitter | Contact DPOM to request a meeting and discussion with the assigned Final Decision Manager. | Within 5 days after receiving the DPO Final Decision. |
| Assigned Final Decision Manager | Meet with DPO submitter and discuss the Final Decision. | Within 10 days of the DPOM receiving the request for a meeting. |
| DPO Submitter | Initiate an appeal by sending a letter to the CTA (for nuclear safety issues) or the Under Secretary (for other than nuclear safety issues) or to the Deputy Secretary where there is no Under Secretary. | Within 21 working days after the Final Decision. |
| CTA or Under Secretary (Deputy Secretary where there is no Under Secretary) | Review DPO and supporting information and issue Appeal Decision. | Within 60 calendar days after receipt of the appeal. |