

DPO Case File for DPO-2014-003

The following pdf represents a collection of documents associated with the submittal and disposition of a differing professional opinion (DPO) from an NRC employee involving a November 20, 2014 revision to IMC 0305, "Operating Reactor Assessment Program."

Management Directive (MD) 10.159, "The NRC Differing Professional Opinions Program," dated May 16, 2004, describes the DPO Program.

<http://pbadupws.nrc.gov/docs/ML0417/ML041770431.pdf>

The DPO Program is a formal process that allows employees and NRC 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. The process also provides managers with an independent, three-person review of the issue (one person chosen by the employee). After a decision is issued to an employee, he or she may appeal the decision to the Executive Director for Operations (EDO).

Because the disposition of a DPO represents a multi-step process, readers should view the records as a collection. In other words, reading a document in isolation will not provide the correct context for how this issue was considered by the NRC.

The records in this collection have been reviewed and approved for public dissemination.

Document 1: DPO Submittal

Document 2: Memo from Office Manager Establishing DPO Panel

Document 3: DPO Panel Report

Document 4: DPO Decision

Document 1: DPO Submittal

DIFFERING PROFESSIONAL OPINION

1. DPO CASE NUMBER

DPO-2014-003

INSTRUCTIONS: Prepare this form legibly and submit three copies to the address provided in Block 14 below.

2. DATE RECEIVED

12/7/2014

3. NAME OF SUBMITTER

Raymond J. Powell

4. POSITION TITLE

Branch Chief

5. GRADE

GG-15

6. OFFICE/DIVISION/BRANCH/SECTION

RI/DRP/Technical Support and Assessment Branch

7. BUILDING

8. MAIL STOP

9. SUPERVISOR

Mike Scott

10. DESCRIBE THE PRESENT SITUATION, CONDITION, METHOD, ETC., WHICH YOU BELIEVE SHOULD BE CHANGED OR IMPROVED.
(Continue on Page 2 or 3 as necessary.)

Please see word document.

11. DESCRIBE YOUR DIFFERING OPINION IN ACCORDANCE WITH THE GUIDANCE PRESENTED IN NRC MANAGEMENT DIRECTIVE 10.159.
(Continue on Page 2 or 3 as necessary.)

Please see word document.

12. Check (a) or (b) as appropriate:

- ☒ a. Thorough discussions of the issue(s) raised in item 11 have taken place within my management chain; or
☐ b. The reasons why I cannot approach my immediate chain of command are:

SIGNATURE OF SUBMITTER

Raymond J. Powell

DATE

12-4-14

SIGNATURE OF CO-SUBMITTER (if any)

DATE

13. PROPOSED PANEL MEMBERS ARE (in priority order):

1. AnnMarie Stone, RIII, Branch Chief
2. Glenn Dentel, RI, Branch Chief
3. Art Burritt, RI, Branch Chief

14. Submit this form to:

Differing Professional Opinions Program Manager

Office of:

Mail Stop:

15. ACKNOWLEDGMENT

THANK YOU FOR YOUR DIFFERING PROFESSIONAL OPINION. It will be carefully considered by a panel of experts in accordance with the provisions of NRCMD 10.159, and you will be advised of any action taken. Your interest in improving NRC operations is appreciated.

SIGNATURE OF DIFFERING PROFESSIONAL OPINIONS PROGRAM MANAGER (DPOPM)

Margaret Ann Yon Renee Pedersen

PRE-CONDITIONS MET

☒ YES

☐ NO

DATE OF ACKNOWLEDGMENT

12/12/14

10. Describe the present situation, condition, method, etc., which you believe should be changed or improved.

On November 20, 2014, NRR, Division of Inspection and Regional Support (DIRS) issued a revision to IMC 0305, "Operating Reactor Assessment Program," which changed the definition of a repetitive degraded cornerstone. The new definition states:

"04.22 Repetitive Degraded Cornerstone. A cornerstone that is degraded (two open white inputs or one open yellow input in a single cornerstone) for more than five consecutive quarters with at least one of the quarters having: (1) three or more white inputs (the additional white input(s) can be from any cornerstone), or (2) one yellow and one white input (the additional white input can be from any cornerstone)."

Previously, the definition was "for more than four consecutive quarters."

11. Describe your differing opinion in accordance with the guidance presented in NRC management directive 10.159.

This change is an unnecessary relaxation in regulatory oversight and is contrary to Commission direction.

First, consider that:

IMC 0305 is now internally inconsistent and this change is contrary to Commission direction. As stated in IMC 0305 (section 11.04):

"When the assessment program was being developed, the Commission directed the staff to improve the timeliness of the NRC assessment program in order to enhance the ability to identify declining performance early. To support this objective, the NRC's supplemental inspections should be completed in a timely manner."

This change does not encourage more timely supplemental inspections, and it allows for less timely supplemental inspections by delaying the consideration of additional oversight consequences for an additional quarter. I believe the Commission should have been informed of this change and given the opportunity to hear dissenting views.

NRR has articulated two primary reasons for this change, both of which I would like to place in a different context. Specifically:

1. We want to minimize action matrix deviations.

I agree and support this objective. However, a review of the NRR deviation database shows that there have been 22 approved deviations since the inception of the ROP.

Several of the 22 were renewals of existing deviations which are counted individually and several of the other deviations involved increased oversight of specific technical issues which would no longer be considered deviations due to subsequent changes to IMC 0305. There are only two deviations that are related in some aspect to the definition of a repetitive degraded cornerstone. Per the NRR database:

- "January 2013 (Perry) - On January 11, 2013, the EDO approved a deviation from the ROP Action Matrix to maintain Perry in the Degraded Cornerstone Column (Column 3) and not move it to the Repetitive Degraded Cornerstone Column (Column 4). Perry entered Column 3 in the second quarter of 2011 because of a White inspection finding and a White Performance Indicator (PI) in the Occupational Radiation Safety Cornerstone. The NRC conducted an Inspection Procedure (IP) 95002, "Supplemental Inspection for One Degraded Cornerstone or Any Three White Inputs in a Strategic Performance Area," in November 2012. The inspection team found that the licensee did not successfully address all of the inspection procedure objectives. Because the performance issues were not successfully addressed and the resultant findings, IMC 0305 specified that Perry should transition from Column 3 to Column 4 of the Action Matrix because of a repetitive degraded cornerstone. However, there have been no additional recent indications of significant performance problems in areas other than the Occupational Radiation Safety Cornerstone, so the regulatory actions specified for Column 3 of the Action Matrix are more appropriate at this time. The NRC will conduct a follow-up 95002 inspection in the May-July 2013 timeframe. This deviation will be closed if the follow-up 95002 inspection determines the white findings can be closed."
- "September 2010 (Browns Ferry 1, 2, and 3) - On September 29, 2010, the EDO approved a deviation from the ROP Action Matrix to allow Browns Ferry, Units 1, 2, and 3, to remain in Column 3 (Degraded Cornerstone Column) of the ROP Action Matrix in the fourth quarter of 2010 to provide additional time for the NRC to perform an IP 95002 supplemental inspection and follow-up assessment. The deviation was necessary because of high site activity level and regional inspection workload when the licensee informed the NRC that it was ready for the supplemental inspection. An initial interpretation of IMC 0305, "Operating Reactor Assessment Program," regarding the definition of a repetitive degraded cornerstone also contributed to the need for the deviation. IMC 0305 will be clarified to avoid further misinterpretation. The staff intends to close the deviation by the end of the fourth quarter of 2010 after it completes the IP 95002 supplemental inspection and determines the appropriate applicable Action Matrix column and response."

Perry does not appear to be applicable as the 95002 inspection was completed in four quarters, but licensee performance did not merit closing the associated performance issues. A generic change to IMC 0305 would not be appropriate as this was clearly a very special set of circumstances. The Browns Ferry text notes that "misinterpretation" of IMC 0305 was a contributing cause for the deviation. For purposes of discussion, let

us assume the change in the definition of repetitive degraded cornerstone would have prevented that deviation. In the 15 years of the ROP there have been 4 quarters of assessment per year at approximately 100 reactor sites. One deviation in 6000 assessment quarters (a 1.67×10^{-4} occurrence) is not a generic problem nor a compelling reason to make a change to something as fundamental as a column definition.

2. It is a challenge for regions to schedule, staff, and complete supplemental inspections in four quarters.

Historical performance, as demonstrated by the rare need for an action matrix deviation, does not support this assertion.

However, there have been instances where licensees have been slow to declare inspection "readiness." I do not believe that a licensee's slow declaration should be a concern as regional management would certainly know when the fourth quarter ends and, under the previous definition of repetitive degraded cornerstone, that is when the licensee would be subject to potential adverse consequences. As such, slow or not, the "readiness" declaration should be anticipated and planned for.

A second contributor to the perceived scheduling challenges would be associated with the timeliness of final SDP determinations. I understand that there are efforts in progress to enhance SDP timeliness which, if successful, would significantly alleviate this contributor and make the November 20, 2014 change to IMC 0305 even less necessary. Until the efforts to enhance SDP timeliness are completed, I attempted to address this contributor by a compromise solution discussed below.

Proposed compromise solution

Until the issue of prolonged significance determinations is addressed by the Agency, I proposed allowing a fifth quarter without a deviation in instances where the final significance determination is not issued until the third or fourth quarter that the finding would count as an action matrix input. I am not entirely convinced that even this is necessary as a licensee would have been well aware of the performance issue undergoing regulatory significance review and therefore would not be waiting on a final determination before completing root causes, corrective actions, etc., to address the issue. None the less, this is a way to at least temporarily address some of the perceived concerns associated with completing a supplemental inspection in four quarters.

Cumulative effects of ROP changes

To this point I have discussed the change to the Repetitive Degraded Cornerstone definition in isolation. The ROP has recently been the subject of multiple reviews and as documented in publicly available documents such as ROP Independent Review, issues such as the column 3 entry criteria may well be changed. I very much disagree with metering out these changes one at a time. This change, extending the period of time a licensee can spend in column 3 without

additional consequence, might well be viewed differently by the Agency if it was combined with a change to make entry into the column more difficult (more risk significant). I am unaware of any plan to comprehensively assess the total impact of all the changes currently "on the table" with respect to IMC 0305. The failure to take a comprehensive look and assess the total impact is a significant regulatory vulnerability that may well transition us from an unnecessary relaxation in oversight to an unacceptable relaxation of oversight.

In the event that the review of this DPO does not result in a retraction of this change, I ask that it be suspended until the totality of the near-term changes to IMC 0305 can be reviewed, with an opportunity for Commission review.

Management discussions of my concern

I have discussed my concerns with:

- Director, Office of Nuclear Reactor Regulation
- Acting Regional Administrator, Region I
- Director, Division of Reactor Projects, Region I
- Director, Division of Inspection and Regional Support, NRR

Summary

In summary, when I lay out the facts as I understand them: (1) this isn't addressing a significant action matrix deviation issue; (2) there are more moderate ways to address inspection scheduling concerns; (3) the Commission had an interest in more timely supplemental inspections; and (4) increasingly deteriorative changes to IMC 0305 are being made one at a time, beginning with the November 20, 2014 change to IMC 0305, I disagree with this unnecessary relaxation of regulatory oversight which is contrary to Commission direction.


**Document 2: Memo From Office Manager
Establishing DPO**



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

January 7, 2015

MEMORANDUM TO: Troy W. Pruett - Chair
John J. McHale - Member
AnnMarie Stone - Member

FROM: William M. Dean, Director
Office of Nuclear Reactor Regulation 

SUBJECT: AD HOC REVIEW PANEL - DIFFERING PROFESSIONAL
OPINION INVOLVING A CHANGE IN THE DEFINITION OF A
REPETITIVE DEGRADED CORNERSTONE - (DPO-2014-003)

In accordance with Management Directive (MD) 10.159, The NRC Differing Professional Opinions Program, I am appointing you as members of a Differing Professional Opinion (DPO) Ad Hoc Review Panel (DPO Panel) to review a DPO that was forwarded to me to disposition.

The DPO (Enclosure 1) raises concerns that the revision made to IMC 0305 that changed the definition of a repetitive degraded cornerstone is an unnecessary relaxation in regulatory oversight and is contrary to Commission direction.

I have designated Troy Pruett chairman of this DPO Panel and John McHale as a DPO Panel member. AnneMarie Stone was proposed by the DPO submitter and serves as the third member of the DPO Panel. In accordance with the guidance included in MD 10.159 and consistent with the DPO Program objectives, I task the DPO Panel to do the following:

- ☐ Review the DPO submittal to determine if sufficient information has been provided to undertake a detailed review of the issue.
- ☐ Meet with the submitter, as soon as practicable, to ensure that the DPO Panel understands the submitter's concerns and scope of the issues. (Normally within 7 days.)
- ☐ Promptly after the meeting, document the DPO Panel's understanding of the submitter's concerns, provide the Statement of Concerns (SOC) to the submitter, and request that the submitter review and provide comments, if necessary. (Normally within 7 days.)
- ☐ Maintain the scope of the review to not exceed those issues as defined in the original written DPO and confirmed in the SOC.
- ☐ Consult with me as necessary to discuss schedule-related issues, the need for technical support (if necessary), or the need for administrative support for the DPO Panel's activities.

CONTACT: Trent L. Wertz, NRR
301-415-1568

- ☐ Perform a detailed review of the issues and conduct any record reviews, interviews, and discussions you deem necessary for a complete, objective, independent, and impartial review. The DPO Panel should re-interview individuals as necessary to clarify information during the review. In particular, the DPO Panel should have periodic discussions with the submitter to provide the submitter the opportunity to further clarify the submitter's views and to facilitate the exchange of information.
- ☐ Provide monthly status updates on your activities via email to Renée Pedersen, Differing Views Program Manager (DVPM) about the last day of the month. This information will be reflected in the Milestones and Timeliness Goals for this DPO. Please provide a copy of email status updates to the submitter and to me.
- ☐ Issue a DPO Panel report, including conclusions and recommendations to me regarding the disposition of the issues presented in the DPO. The report should be a collaborative product and include all DPO Panel member's concurrence. Follow the specific processing instructions for DPO documents.
- ☐ Consult me as soon as you believe that a schedule extension is necessary to disposition the DPO.
- ☐ Recommend whether the DPO submitter should be recognized if the submitter's actions result in significant contributions to the mission of the agency.

Disposition of this DPO should be considered an important and time sensitive activity. The timeliness goal included in the MD for issuing a DPO Decision is 120 calendar days from the day the DPO is accepted for review. The timeliness goal for issuing this DPO Decision is April 10, 2015.

Process Milestones and Timeliness Goals for this DPO are included as Enclosure 2. The timeframes for completing process milestones are identified strictly as goals—a way of working towards reaching the DPO timeliness goal of 120 calendar days. The timeliness goal identified for your DPO task is 70 calendar days.

Although timeliness is an important DPO Program objective, the DPO Program also sets out to ensure that issues receive a thorough and independent review. The overall timeliness goal should be based on the significance and complexity of the issues and the priority of other agency work. Therefore, if you determine that your activity will result in the need for an extension beyond the overall 120-day timeliness goal, please send me an email with the reason for the extension request and a new completion date. I will subsequently forward this request to the DVPM who will forward it to the EDO for approval.

Please ensure that all DPO-related activities are charged to Activity Code ZG0007.

Because this process is not routine, the DVPM will be meeting and communicating with all parties during the process to ensure that everyone understands the process, goals, and responsibilities. The DVPM will be subsequently sending you information intended to aid you in implementing the DPO process.

An important aspect of our internal safety culture includes respect for differing views. As such, you should exercise discretion and treat this matter sensitively. Documents should be distributed on an as-needed basis. In an effort to preserve privacy, minimize the effect on the work unit, and keep the focus on the issues, you should simply refer to the employee as the DPO submitter. Avoid conversations that could be perceived as "hallway talk" on the issue. We need to do everything that we can in order to create an organizational climate that does not chill employees from raising dissenting views.

As a final administrative note, please ensure that all correspondence associated with this case include the DPO number in the subject line, be profiled in accordance with ADAMS template OE-011, be identified as non-public and declared an official agency record *when the correspondence is issued*. Please email the ADAMS accession number for the record to DPOPM.Resource@nrc.gov and the record will be filed in the applicable DPO case file folder (DPO-2014-001) in the ADAMS Main Library. Following this process will ensure that a complete agency record is generated for the disposition of this DPO. If the submitter requests that the documents included in the DPO Case File be made public when the process is complete, you will be provided specific guidance to support a releasability review.

I appreciate your willingness to serve and your dedication to completing an independent and objective review of this DPO. Successful resolution of the issues is important for NRC and its stakeholders. If you have any questions, you may contact me, Trent Wertz, NRR OCWE Champion, or Renée Pedersen, DVPM, at (301) 415-2742 or email Renee.Pedersen@nrc.gov.

I look forward to receiving your independent review results and recommendations.

Enclosures:

1. DPO-2014-003
2. Milestones and Timeliness Goals

cc w/o Enclosure:

Submitter
DVPM

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I look forward to receiving your independent review results and recommendations.

Enclosures:

1. DPO-2014-003
2. Milestones and Timeliness Goals

cc w/o Enclosure:

Submitter
DVPM

ADAMS Accession No. ML15006A284

OFFICE	NRR
NAME	WDean
DATE	01/07/15

OFFICIAL RECORD COPY

Document 3: DPO Panel Report



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION IV
1600 E. LAMAR BLVD
ARLINGTON, TX 76011-4511

May 5, 2015

MEMORANDUM TO: William M. Dean, Director
Office of Nuclear Reactor Regulation

FROM: Troy W. Pruett, DPO Panel Chair **/RA/**
John J. McHale, DPO Panel Member **/RA/**
Ann Marie Stone, DPO Panel Member **/RA/**

SUBJECT: DIFFERING PROFESSIONAL OPINION PANEL REPORT ON
THE CHANGE IN THE DEFINITION OF A REPETITIVE
DEGRADED CORNERSTONE (DPO-2014-003)

In a memorandum dated January 7, 2015, you appointed us as members of a Differing Professional Opinion (DPO) Ad Hoc Review Panel (Panel) to review a DPO regarding a change in the definition of a repetitive degraded cornerstone. Specifically, the change involved delaying entry into Column 4 of the Action Matrix by one quarter. The Panel reviewed the DPO in accordance with Management Directive 10.159, "The NRC Differing Professional Opinions Program." The Panel's report is enclosed for your consideration.

The Panel concluded that the November 20, 2014, revision to Inspection Manual Chapter (IMC) 0305, "Operating Reactor Assessment Program," which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters," is a slight relaxation in regulatory oversight. The Panel did not believe the change needs to be rescinded. The Panel concluded the change did not require prior notification to or approval from the Commission before the revision was implemented. Finally, the Panel concluded that making multiple changes one at a time to the reactor oversight program (ROP) guiding documents could lead to unintended consequences. The Panel believes the multiple changes to the ROP; in particular IMC 0305, should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

The Panel agreed on several recommendations for your consideration. The recommendations include assessing the potential unintended consequences of changing from 4 to 5 quarters, developing a technical bases document to capture the reasons for decisions that change the reactor oversight process, establishing basic thresholds for when a change would be viewed as "substantive" and for the method and content of communications to the Commission, and developing guidelines for a process to evaluate aggregate/cumulative effects of changes to the ROP.

Please do not hesitate to contact us if you have any questions regarding the enclosed report.

Enclosure: DPO Panel Report

cc: R. Powell P. Holahan, Director, OE R. Pedersen, DPOPM

MEMORANDUM TO: William M. Dean, Director
Office of Nuclear Reactor Regulation

FROM: Troy W. Pruett, DPO Panel Chair
John J. McHale, DPO Panel Member
Ann Marie Stone, DPO Panel Member

SUBJECT: DIFFERING PROFESSIONAL OPINION PANEL REPORT ON
THE CHANGE IN THE DEFINITION OF A REPETITIVE
DEGRADED CORNERSTONE (DPO-2014-003)

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Please do not hesitate to contact us if you have any questions regarding the enclosed report.

Enclosure:
DPO Panel Report

cc: R. Powell P. Holahan, Director, OE R. Pedersen, DPOPM

ML15125A201

<input checked="" type="checkbox"/> SUNSI Review By: TWP		ADAMS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Publicly Available <input checked="" type="checkbox"/> Non-Publicly Available		<input type="checkbox"/> Non-Sensitive <input checked="" type="checkbox"/> Sensitive		Keyword: MD 3.4 Non- Public A.7
OFFICE	DPO/PC	DPO/PM	DPO/PM					
NAME	TWPruett	JJMcHale	AMStone					
SIGNATURE	/RA/	/RA/	/RA/					
DATE	05/05/15	05/01/05	05/01/15					

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**Differing Professional Opinion (DPO)
on Changing the Definition of a Repetitive
Degraded Cornerstone
(DPO-2014-003)**

DPO Panel Report

/RA/

Troy W. Pruett, Panel Chair

Date: May 5, 2015

Enclosure

Introduction

Differing Professional Opinion (DPO-2014-003) was received on December 7, 2014. The concerns in the DPO involved the November 20, 2014, revision to Inspection Manual Chapter (IMC) 0305, "Operating Reactor Assessment Program," which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters." The memorandum from the Director, Office of Nuclear Reactor Regulation, establishing the DPO Panel was issued on January 7, 2015. The memorandum tasked the Panel to conduct a review of the issues, maintain the scope within those identified by the original written DPO, provide monthly status reports, and issue a report. The Panel met with the submitter on January 22, 2015, and established a concise statement of the submitter's concerns (See below). The submitter approved the statement of concerns on January 29, 2015. During the course of the Panel's review, the Panel interviewed the DPO submitter, conducted NRC document reviews, and interviewed members of the staff.

Statement of Concerns

Based on a review of the DPO package and an initial interview with the submitter, the following concerns were identified by the Panel:

1. The November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters," is an unnecessary relaxation in regulatory oversight and is without a valid basis.
2. The November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters," should have resulted in a notification to the Commission before the revision was implemented.
3. Multiple changes to the Reactor Oversight Process and IMC 0305 have occurred and more changes are being considered. Making multiple changes one at a time could lead to unintended consequences. The multiple changes to the ROP and IMC 0305 should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

The submitter suggested a compromise solution to allow five consecutive quarters without a deviation when the agency issues final significance determinations in the third or fourth quarter that the finding would count in the Action Matrix.

Evaluation of Concerns

Concern 1:

The November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters," is an unnecessary relaxation in regulatory oversight and is without a valid basis.

Conclusions and Discussion:

The Panel determined that the change from more than 4 quarters to more than 5 quarters is a minimal relaxation in regulatory oversight since the 1 quarter delay could result in a later start by the agency to implement additional oversight activities. The Panel does not believe the change from 4 quarters to 5 quarters needs to be rescinded or modified. During the review of the change package, the Panel noted two situations that may not have been fully considered. These examples warrant further review by the Division of Inspection and Regional Support (DIRS) and revisions to IMC 0305 guidance if necessary.

In February and March 2015, the Panel interviewed several individuals involved with the revision of IMC 0305 which incorporated a change to the definition of a repetitive degraded cornerstone. In addition, the Panel reviewed the documented history of the repetitive degraded cornerstone definition. With respect to the bases for the change, the Panel performed a detailed review of the history of the definition and supporting sections of IMC 0305.

For the most recent change, DIRS staff provided a document entitled, "Repetitive Degraded Cornerstone Definition Revision." The justification for the change focused primarily on three points: (1) no technical bases for the use of 4 quarters existed; (2) the appropriateness of changing Action Matrix Columns when inspection of previous issues had not been completed within 4 quarters; and (3) previous changes involving the definition of repetitive degraded cornerstone did not obtain prior Commission approval.

During the review of the change package, the Panel noted two examples that may not have been fully considered. The following examples warrant further review by the DIRS.

Example 1: The change focused on "held open" findings/violations and may not have considered the impact from the identification of additional issues. The following table depicts a licensee with a Yellow Finding in the Mitigating Systems cornerstone for quarters 1-4. At the end of the 4th quarter, the inspection was complete and the Finding timed-out on the last day of the quarter. During the 4th quarter, two additional White Inputs impact the same cornerstone. Since the inputs are in the same cornerstone, the licensee would remain in Column 3 since the situation does not meet the definition of multiple degraded cornerstone because the Mitigating System cornerstone is the only cornerstone impacted. This is shown below:

Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6
Y - MS	Y-MS	Y-MS	Y-MS (closed)		
			W-MS	W-MS	W-MS
			PI-W-MS	PI-W-MS	

Under the previous definition of repetitive degraded cornerstone, the Mitigating System cornerstone would be considered "repetitive" at the end of the 4th quarter and meet the requirements for entry into Column 4. Specifically, the cornerstone was degraded due to the Yellow Finding and "repetitive" due to the additional White input. In this scenario, under the previous definition, the Region would plan for an IP 95003 inspection.

Using the revised definition of being degraded for 5 completed quarters, a decision on transition to Column 4 would be delayed until the beginning of quarter 6, thus delaying the decision on whether to perform IP 95002 on the new inputs resulting in a degraded cornerstone or an IP 95003 inspection on the three inputs (Yellow and two Whites). It is not clear whether this potential delay in assessment and inspection was considered since the decision paper focused on held open items, not newly identified items.

Example 2: The change may have extended the number of quarters assessed for inputs into the action matrix to beyond what has previously existed. The following table illustrates the extension:

Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6
Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
White					

The Panel asked several of the staff to determine which Action Matrix Column a licensee would be assigned. The majority of staff indicated the licensee would be in the repetitive degraded cornerstone; even though the White input had been closed for more than 4 quarters. The definition of an assessment period is a period that contains four full consecutive quarters. The revision to IMC 0305 appears to have introduced an additional quarter into the agency's assessment of licensee performance.

The DPO submitter suggested a compromise solution to allow five consecutive quarters without a deviation when the agency issues final significance determinations in the third or fourth quarter that the finding would count in the Action Matrix. The Panel determined that the compromise solution did not need to be initiated. The Panel interviewed several staff from regional and headquarters offices regarding the regulatory impact from delaying supplemental inspection activities one additional quarter. The Panel recognized that NRC inspection activities likely assessed immediate corrective actions before completion of the supplemental inspection activity to ensure plant safety. The Panel believed the licensee needed to utilize their resources to review the underlying performance concerns and assess the effectiveness of corrective actions in a manner that is commensurate with the safety significance of the issues; and not be driven by NRC timeliness measures. Additionally, the Panel believed having multiple criteria for assessing adverse inputs added unnecessary complexity to the Action Matrix.

Concern 2:

The November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from "... more than four consecutive quarters" to "...more than five consecutive quarters," should have resulted in a notification to the Commission before the revision was implemented.

Conclusions and Discussion:

The Panel determined that the program office staff exercised judgment consistent with past practice in determining the degree of Commission involvement in the most recent change to the repetitive degraded cornerstone definition. The Commission was informed by the CY 2013 self-assessment paper in very general terms that changes were being considered. The changes appear to be within the latitude granted previously by the Commission in the SRM associated

with the 2004 Agency Action Review Meeting (AARM) dated May 27, 2004, for the staff to be responsive to the need for changes and to exercise judgment in determining when Commission approval was required for substantive changes. Nevertheless, the development of guidance defining the types of “substantive” IMC 0305 changes that may require prior Commission involvement would be helpful.

The panel interviewed several staff members and inquired about the existence of guidance regarding thresholds for involving the Commission in ROP changes. Responses indicated that no specific guidance is available, but rather the decision whether or not to involve the Commission was based on judgment and the issue’s effect on information that was originally presented to the Commission during ROP development. Decisions related to more complex matters would typically be vetted among program office and regional stakeholders, including senior managers. In general, there was consensus that significant changes to information contained in previous Commission papers or Staff Requirements Memoranda would involve informing the Commission or seeking Commission approval.

In this specific instance, program office management considered if specific Commission engagement would be warranted for the proposed adjustment to the repetitive degraded cornerstone definition. After considering the scope of the change, the staff did not deem the change to be significant enough to require prior Commission notification or approval. DIRS management indicated the decision to not seek Commission involvement was discussed with senior management. The primary rationale for making this determination was the view that the change was more administrative in nature and designed to alleviate the need for potential action matrix deviations rather than a fundamental change to the column definition. Since the adverse inputs (number of white and/or yellow inputs) to trigger entry into the repetitive degraded cornerstone column were not changed, the program office did not believe the adjustment affecting timing (five versus four quarters) of the supplemental inspection activities was a substantive change.

The majority of program office interviewees indicated this type of change was deemed to be within the scope of management control allowed to maintain program efficiency. In addition, the program office staff indicated that the Commission would typically be informed of changes of this nature in the annual program self-assessment SECY paper. Specifically related to the change being reviewed by the panel; in SECY-14-0047 (ROP self-assessment for CY2013) the staff informed the Commission that in response to an action matrix deviation involving the Perry plant, “The staff generated a feedback form to consider revising the definition of “repetitive degraded cornerstone.”” SECY-14-007 also informed the Commission that in response to the ROP independent review recommendation (directed by SECY-12-0081), “To clarify expectations for the timing of supplemental inspections for the Multiple/Repetitive Degraded Cornerstone column (Column 4) of the Action Matrix... the staff has identified several options to address supplemental inspection timeliness as part of the enhancement project.” In contrast, the staff indicated that more substantial changes to an action matrix column definition would be the subject of a Commission paper to seek prior approval for the change. As an example, a SECY paper is currently being developed to change the definition of a degraded cornerstone which impacts entry into Column 3.

The panel reviewed portions of the IMC 0305 change history for insights into the degree of Commission involvement in past changes. From its inception through 2011, the ROP definition for repetitive degraded cornerstone was based on a period of “five or more consecutive

quarters.” Clarifying information related to performance indicators or inspection findings was added during this time frame. Commission direction was not sought for most of these adjustments, and only a high level description of changes was provided in the annual ROP self-assessment SECY. For example, in SECY-03-0062 (ROP self-assessment for CY2002) the staff noted, “The latest revision of IMC 0305... added guidance for removing plants from the multiple/repetitive degraded cornerstone column of the Action Matrix,” and that the staff would, “Monitor the effectiveness of this recent change and make adjustments to the guidance as necessary.”

Two other past changes were identified where the Commission was specifically involved. In 2007, guidance was sought on whether a senior licensee official should be required to meet with the Commission after entering Column 4. This change did not affect the definition of the Action Matrix column, but rather was associated with Commission briefing protocol. In 2009, SECY-09-0002, “Revision to Reactor Oversight Process Implementation Guidance,” described the change to the repetitive degraded cornerstone column changing the number of required inputs from “two white inputs or one yellow input” to “(1) three or more white inputs, or (2) one yellow and one white input.” This change constituted a more substantial change to the column definition since the adverse inputs were being altered. The paper also reiterated the 5 quarter requirement for a repetitive degraded cornerstone. Although SECY-09-0002 was informational in nature and did not request explicit Commission approval for the change, it was provided to the Commission prior to issuance of the corresponding IMC 0305 revision. Furthermore, SECY-09-0002 stated, “While routine updates to IMC 0305 may not involve changes in Commission Policy, some are of interest to the Commission,” and described the repetitive degraded cornerstone definition change as, “Consistent with Commission Policy on the need to accommodate future changes to the ROP as set forth in SECY-99-007 and as endorsed by the June 18, 1999, staff requirements memorandum.”

In 2011, the repetitive degraded cornerstone definition was changed to establish a time frame of more than four consecutive quarters instead of the previous five or more consecutive quarters. This change was made to address misinterpretations that occurred in 2010 and was viewed a semantic change to the timeframe rather than a fundamental redefinition of the timeframe of interest. The annual self-assessment paper for CY2011 (SECY 2012-055) did not describe any details of this change, but rather contained a general statement that, “The staff issued a revision to IMC 0305 to improve its usability, incorporate stakeholder feedback and lessons learned from implementation issues.”

In the SRM associated with the 2004 Agency Action Review Meeting (AARM) dated May 27, 2004, the Commission commented that, “When deviations occur, the staff should evaluate the causes for the deviations and identify changes to ROP, as appropriate, that may obviate the need for them in the future. This should be done as part of the staff’s ROP self-assessment to ensure the ROP meets the Agency’s performance goals. **Substantive** [emphasis added] changes should be provided to the Commission for approval prior to incorporation into the ROP.” This Commission direction appears to allow the staff some flexibility in resolving ROP issues, while requiring the exercise of judgment in determining which issues are “substantive” and would require Commission approval for proposed changes.

In conclusion, it appears that the program office staff exercised judgment consistent with past practice in determining the degree of Commission involvement in the most recent change to the repetitive degraded cornerstone definition. Nevertheless, the development of guidance defining

the types of “substantive” IMC 0305 changes that may require prior Commission involvement would be helpful.

Concern 3

Statement of concern:

Multiple changes to the Reactor Oversight Process and IMC 0305 have occurred and more changes are being considered. Making multiple changes one at a time could lead to unintended consequences. The multiple changes to the ROP and IMC 0305 should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

Conclusions and Discussion:

The Panel determined that no formal process exists for considering aggregate impacts of multiple/successive ROP changes. Under current practice, proposed changes are typically considered as individual items. There is no formal process for historical reviews in order to assess potential aggregate effects.

During the review of previous Action Matrix column definition changes described above under Concern 2, it became evident that there have been ongoing challenges with interpreting column definitions, particularly with respect to the repetitive degraded cornerstone. Despite the evolution of the definition over the years (approximately 6 changes from 2001-2014), some degree of confusion still seems to exist in applying the repetitive degraded cornerstone definition and its relationship to the assessment period definition of “four full consecutive calendar quarters.” The panel believes some process to track aggregate changes and provide bases information would be beneficial to reduce potential confusion among ROP implementers and other stakeholders.

The panel concluded that the potential for unintended consequences and confusion in implementing the ROP as a result of aggregate changes is a concern.

Conclusions Regarding DPO-2014-003

The panel concludes the November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from “... more than four consecutive quarters” to “...more than five consecutive quarters,” is a slight relaxation in regulatory oversight. The Panel did not believe the change needs to be rescinded.

The panel concludes the November 20, 2014, revision to IMC 0305 which changed the definition of repetitive degraded cornerstone from “... more than four consecutive quarters” to “...more than five consecutive quarters,” did not require prior notification to or approval from the Commission before the revision was implemented.

The panel concludes that making multiple changes one at a time to ROP guiding documents could lead to unintended consequences. The panel agrees the multiple changes to the ROP and IMC 0305 should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

Recommendations Regarding DPO-2014-003

Based on the Panel's review, the following recommendations are provided for consideration by the Office of Nuclear Reactor Regulation:

1. Assess the potential unintended consequences of changing from 4 to 5 quarters (See examples described in response to Concern 1).
2. Although impractical to create a set of guidelines for what constitutes a substantive change and/or when and how to engage the Commission for every ROP change scenario, it may be useful to create a document for major items, such as the Action Matrix column definitions. The program office should consider establishing some basic thresholds for when a change would be viewed as "substantive" and for the method and content of communications to the Commission (e.g.; level of detail, coverage in "stand-alone" or annual ROP self-assessment SECY, information transmitted by Commissioner Assistants note, etc.). These guidelines could be captured in an appropriate bases document for the ROP.
3. When proposing changes to the Action Matrix that are vetted through regional and headquarters senior management, consider documenting the details of the rationale for key aspects of the decision on the path forward, including Commission involvement considerations. These decisions could then be captured in ROP technical basis documents to provide a historical context to staff pursuing later changes.
4. Implement guidelines for a process to evaluate aggregate/cumulative effects of changes to the ROP. The results of aggregate impact reviews should be captured in an ROP technical basis document.


Document 4: DPO Decision



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

June 11, 2015

MEMORANDUM TO: Raymond J. Powell, Chief
Technical Support and Assessment Branch
Division of Reactor Projects
Region I

FROM: William M. Dean, Director
Office of Nuclear Reactor Regulation 

SUBJECT: DIFFERING PROFESSIONAL OPINION INVOLVING A CHANGE
IN THE DEFINITION OF A REPETITIVE DEGRADED
CORNERSTONE - (DPO-2014-003)

On December 7, 2014, in accordance with Management Directive 10.159, "The NRC Differing Professional Opinions Program," you submitted a differing professional opinion (DPO) involving a change in the definition of a repetitive degraded cornerstone (DPO-2014-003). Specifically, your DPO raises concerns that the revision made to IMC 0305 that changed the definition of a repetitive degraded cornerstone is an unnecessary relaxation in regulatory oversight and is contrary to Commission direction. The purpose of this memorandum is to respond to your DPO.

On January 7, 2015, I established a DPO Ad Hoc Review Panel (the Panel) and tasked them to meet with you, review your DPO submittal, and issue a DPO report, including conclusions and recommendations to me regarding the disposition of the issues presented in your DPO. The Panel initially met with you on January 22, 2015, to establish a concise statement of your concerns. On May 5, 2015, after reviewing the applicable documents, completing internal interviews of relevant individuals, and completing their deliberations, the Panel issued their report to me.

Following receipt of their report, I provided a copy of the report to you for your review. On May 29, 2015, I talked to you by telephone to discuss the Panel's report and to get your insights and comments. We also communicated via e-mail on the content of my proposed response to the report. You provided me additional insights into your concerns and your thoughts for resolving the issue.

In order to make a decision with regard to your DPO, I reviewed your DPO submittal, the Panel's report, met with the Panel, talked with you, and then re-considered your comments to me.

CONTACT: Trent L. Wertz, NRR
301-415-1568

Statement of Concern

Based on a review of the DPO package and an initial interview with the submitter, the following concerns were identified by the Panel:

1. The November 20, 2014, revision to IMC 0305, which changed the definition of repetitive degraded cornerstone from "more than four consecutive quarters" to "more than five consecutive quarters," is an unnecessary relaxation in regulatory oversight and is without a valid basis.
2. The November 20, 2014, revision to IMC 0305, which changed the definition of repetitive degraded cornerstone from "more than four consecutive quarters" to "more than five consecutive quarters," should have resulted in a notification to the Commission before the revision was implemented.
3. Multiple changes to the Reactor Oversight Process and IMC 0305 have occurred and more changes are being considered. Making multiple changes one at a time could lead to unintended consequences. The multiple changes to the ROP and IMC 0305 should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

The submitter suggested a compromise solution to allow five consecutive quarters without a deviation when the agency issues final significance determinations in the third or fourth quarter that the finding would count in the Action Matrix.

The Panel concluded the following:

1. The November 20, 2014, revision to IMC 0305, which changed the definition of repetitive degraded cornerstone from "more than four consecutive quarters" to "more than five consecutive quarters," is a slight relaxation in regulatory oversight. The Panel did not believe the change needs to be rescinded.
2. The November 20, 2014, revision to IMC 0305, which changed the definition of repetitive degraded cornerstone from "more than four consecutive quarters" to "more than five consecutive quarters," did not require prior notification to or approval from the Commission before the revision was implemented.
3. Making multiple changes one at a time to ROP guiding documents could lead to unintended consequences. The panel agrees the multiple changes to the ROP and IMC 0305 should be evaluated in the aggregate to ensure an unacceptable change in regulatory oversight does not occur.

Based on these conclusions, the Panel made the following recommendations:

1. Assess the potential unintended consequences of changing from 4 to 5 quarters (see examples described in response to Concern 1).
2. Although impractical to create a set of guidelines for what constitutes a substantive change and/or when and how to engage the Commission for every ROP change

scenario, it may be useful to create a document for major items, such as the Action Matrix column definitions. The program office should consider establishing some basic thresholds for when a change would be viewed as "substantive" and for the method and content of communications to the Commission (e.g., level of detail, coverage in "standalone" or annual ROP self-assessment SECY, information transmitted by Commissioner Assistants note, etc.). These guidelines could be captured in an appropriate bases document for the ROP.

3. When proposing changes to the Action Matrix that are vetted through regional and headquarters senior management, consider documenting the details of the rationale for key aspects of the decision on the path forward, including Commission involvement considerations. These decisions could then be captured in ROP technical basis documents to provide a historical context to staff pursuing later changes.
4. Implement guidelines for a process to evaluate aggregate/cumulative effects of changes to the ROP. The results of aggregate impact reviews should be captured in an ROP technical basis document.

After considering all the information, I align with the recommendations provided by the DPO Panel. They have thoroughly and conscientiously endeavored to address your well-thought-out and articulated concerns to lay out an approach that will be appropriately responsive.

In addition, as part of recommendation 4, the Division of Inspection and Regional Support (DIRS) should provide an assessment of unintended consequences of both individual and collective changes made to the ROP during the period of time under consideration. This could be incorporated into the ROP Self-Assessment process currently under development.

DIRS is directed to incorporate into its operating procedures a methodology that will ensure coordination with appropriate regional staff prior to making any changes to Inspection Manual Chapter 0305.

DIRS is directed to provide me a memorandum in 60 days indicating the time frames in which it plans to address each of the recommendations.

A summary of the DPO will be included in the Weekly Information Report (when the case is closed) to advise interested employees of the outcome.

R. Powell

- 4 -

Thank you for raising your DPO and for your active participation in the DPO process. An open and thorough exploration of how we carry out our regulatory processes is essential to keeping these programs effective. Your willingness to raise concerns with your colleagues and managers and ensure that your concerns are heard and understood is admirable and vital to ensuring a healthy safety culture within the Agency.

Enclosure:

DPO Panel report, dated May 5, 2015

cc: J. Uhle, NRR

M. Evans, NRR

P. Holahan, OE

R. Pedersen, OE

M. Sewell, OE

A. Stone, RIII

J. McHale, NRR

T. Pruett, RI

D. Dorman, RI

D. Lew, RI

M. Johnson, OEDO

R. Powell

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DPO Panel report, dated May 5, 2015

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D. Lew, RI
M. Johnson, OEDO

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OFFICE	NRR
NAME	WDean
DATE	06/11/15

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