EDO Principal Correspondence Control

FROM: DUE: 06/08/09

EDO CONTROL: G20090280
DOC DT: 05/11/09
FINAL REPLY:

Stephen D. Dingbaum, OIG

TO:

Borchardt, EDO

FOR SIGNATURE OF : ** GRN ** CRC NO:

Virgilio, DEDMRT

DESC:

Audit of the Regional Counsel Role in the Enforcement Process (OIG-09-A-10) (EDATS: OEDO-2009-0313)

DATE: 05/12/09

ASSIGNED TO: CONTACT:

OE Carpenter

SPECIAL INSTRUCTIONS OR REMARKS:

Prepare memo to the OIG for the signature of the DEDMRT. Add the Commission and SECY as cc's. Please use the attached format. Coordinate with HR and OGC.

ROUTING:

Borchardt
Virgilio
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Ordaz
Burns/Gray
Collins, RI
Reyes, RII
Satorius, RIII
Collins, RIV
McDermott, HR
Burns, OGC
Arildsen, OEDO
OIG File

Template: EDO-001

E-RIDS: EDO-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: OEDO-2009-0313 **Source:** OEDO

General Information

Assigned To: OE **OEDO Due Date:** 6/8/2009 5:00 PM

Other Assignees: **SECY Due Date:** NONE

Subject: Audit of the Regional Counsel Role in the Enforcement Process (OIG-09-A-10)

Description:

CC Routing: Region I; Region II; Region III; Region IV; HR; OGC

ADAMS Accession Numbers - Incoming: **Response/Package:** NONE
ML091310154

Other Information

Cross Reference Number: G20090280, OIG-09-A-10 **Staff Initiated:** NO

Related Task: **Recurring Item:** NO

File Routing: OIG **Agency Lesson Learned:** NO

Roadmap Item: NO

Process Information

Action Type: Memo **Priority:** Medium

Sensitivity: None

Signature Level: DEDMRT **Urgency:** NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Prepare memo to the OIG for the signature of DEDMRT. Add the Commission and SECY as cc's. Please use the attached format. Coordinate with HR and OGC.

Document Information

Originator Name: Stephen D. Dingbaum **Date of Incoming:** 5/11/2009

Originating Organization: OIG **Document Received by OEDO Date:** 5/11/2009

Addressee: R. W. Borchardt, EDO **Date Response Requested by Originator:** 6/10/2009

Incoming Task Received: Memo

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

OFFICE OF THE
INSPECTOR GENERAL

May 11, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

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

SUBJECT: AUDIT OF THE REGIONAL COUNSEL ROLE IN THE ENFORCEMENT PROCESS (OIG-09-A-10)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of the Regional Counsel Role in the Enforcement Process.* The audit objective was to determine whether combining the roles of regional counsel and enforcement supervisor is a workable approach for regional enforcement programs. The audit found that the dual role approach could work for regional enforcement programs if:

- The appropriate human resources steps are followed.
- Appropriate internal controls are implemented to ensure that written legal advice provided by the dual role holder is distinguished from non-legal advice.
- Participants in discussions with the dual role holder that involve sensitive information are made aware that information disclosed is of a sensitive nature if doubt exists that the participants are not otherwise aware of the sensitive nature of the discussions.

The audit noted that Region II, the only region that currently uses the dual role approach, did not take the appropriate human resources steps to create the dual role position and that controls were not implemented to ensure the dual role holder distinguishes legal from non legal advice, both in written documents and during discussions. The report contains four recommendations intended to address these issues. Instructions for responding to OIG recommendations are attached.

If you have any questions, please contact me at 415-5915 or Anthony Lipuma, Deputy Assistant Inspector General for Audits, at 415-5910

Attachments: As stated

cc: V. Ordaz, OEDO
J. Arildsen, OEDO
P. Shea, OEDO

Instructions for Responding to OIG Report Recommendations

Instructions for Action Offices

Action offices should provide a written response on each recommendation within 30 days of the date of the transmittal memorandum or letter accompanying the report. The concurrence or clearance of appropriate offices should be shown on the response. After the initial response, responses to subsequent OIG correspondence should be sent on a schedule agreed to with OIG.

Please ensure the response includes:

1. The report number and title, followed by each recommendation. List the recommendations by number, repeating its text verbatim.

2. A management decision for each recommendation indicating agreement or disagreement with the recommended action.

    a. For agreement, include corrective actions taken or planned, and actual or target dates for completion.

    b. For disagreement, include reasons for disagreement, and any alternative proposals for corrective action.

    c. If questioned or unsupported costs are identified, state the amount that is determined to be disallowed and the plan to collect the disallowed funds.

    d. If funds put to better use are identified, then state the amount that can be put to better use (if these amounts differ from OIG's, state the reasons).

OIG Evaluation of Responses

If OIG concurs with a response to a recommendation, it will (1) note that a management decision has been made, (2) identify the recommendation as resolved, and (3) track the action office's implementation measures until final action is accomplished and the recommendation is closed.

If OIG does not concur with the action office's proposed corrective action, or if the action office fails to respond to a recommendation or rejects it, OIG will identify the recommendation as unresolved (no management decision). OIG will attempt to resolve the disagreement at the action office level. However, if OIG determines that an impasse has been reached, it will refer the matter for adjudication to the Chairman.

Semiannual Report to Congress

In accordance with the Inspector General Act of 1978, as amended, OIG is required to report to Congress semiannually on April 1 and October 1 of each year, a summary of each OIG report issued for which no management decision was made during the previous 6-month period. Heads of agencies are required to report to Congress on significant recommendations from previous OIG reports where final action has not been taken for more than one year from the date of management decision, together with an explanation of delays.

AUDIT REPORT

Audit of the Regional Counsel Role
in the Enforcement Process

OIG-09-A-10 May 11, 2009

All publicly available OIG reports (including this report) are accessible through
NRC's Web site at:
http:/www.nrc.gov/reading-rm/doc-collections/insp-gen/

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

OFFICE OF THE
INSPECTOR GENERAL

May 11, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

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

SUBJECT: AUDIT OF THE REGIONAL COUNSEL ROLE IN THE ENFORCEMENT PROCESS (OIG-09-A-10)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of the Regional Counsel Role in the Enforcement Process.*

The report presents the results of the subject audit. Agency comments provided during and subsequent to an April 20, 2009, exit conference have been incorporated, as appropriate, into this report.

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

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Anthony Lipuma, Deputy Assistant Inspector General for Audits, at 415-5910.

Attachment: As stated

Electronic Distribution

Edward M. Hackett, Executive Director, Advisory Committee on Reactor Safeguards
E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel
Stephen G. Burns, General Counsel
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Samuel J. Collins, Regional Administrator, Region I
Luis A. Reyes, Regional Administrator, Region II
Mark A. Satorius, Region III
Elmo E. Collins, Jr., Regional Administrator, Region IV

EXECUTIVE SUMMARY

BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is authorized to enforce its regulatory requirements by imposing sanctions against licensees who violate those requirements. The agency's enforcement program is directed by the Office of Enforcement (OE) in headquarters, but is implemented primarily in the regional offices, where staff conduct inspections and investigations of licensees to identify violations and assess their significance so that appropriate enforcement actions can be determined.

In three of NRC's four regional offices, a dedicated enforcement staff supervisor oversees the work of the regional enforcement staff and another individual serves as the region's attorney, or Regional Counsel. In Region II, however, the Regional Counsel serves both as the region's attorney and as the enforcement staff supervisor. As enforcement supervisor, this individual is to ensure that the region adheres to the agency's enforcement policy, oversees the preparation of escalated enforcement packages, and performs other enforcement related tasks. As Regional Counsel, this individual provides legal advice to the region, including advice on the legal sufficiency of escalated enforcement packages. This audit report refers to Region II's arrangement as the "dual role" approach.

A recent Office of the Inspector General (OIG) audit found that differences in the ways the regional offices implement the enforcement program can significantly impact the enforcement process, leaving enforcement decisions vulnerable to challenge and potentially compromising public confidence in NRC's enforcement program.

PURPOSE

The audit objective was to determine whether combining the roles of regional counsel and enforcement supervisor is a workable approach for regional enforcement programs. Because this approach is currently used only in Region II, the audit findings describe what was found in that region; however, the findings and recommendations are applicable for any region that would use the dual role approach.

RESULTS IN BRIEF

The dual role approach could work for regional enforcement programs if:

- The appropriate human resources steps are followed.
- Appropriate internal controls are implemented to ensure that written legal advice provided by the dual role holder is distinguished from non-legal advice. Participants in discussions with the dual role holder that involve sensitive information should be made aware that information disclosed is of a sensitive nature if doubt exists that the participants are not otherwise aware of the sensitive nature of the discussions.

Human Resources Steps Were Not Followed

NRC uses the dual role position in Region II, but did not follow human resources requirements to formally establish a dual role position in Region II. Specifically, Region II did not (1) develop a position description for the job or (2) evaluate the position to ensure it was properly classified or included the necessary background requirements. Instead, the region simply assigned the enforcement supervisor duties to the Regional Counsel without changing this individual's job title or assessing whether the Regional Counsel possessed the background requirements listed in the enforcement supervisor position description. Although new elements and standards reflecting both sets of duties were prepared, and the Regional Counsel has been evaluated against these elements and standards, these criteria could not be based on a current position description or position evaluation because none existed.

Agency managers did not follow the required human resources steps because they were unaware such steps were necessary. Without following human resource requirements to formally establish a dual role position, the dual role holder could be subject to unfair rating criteria, and the enforcement program might not be adequately supported.

Internal Controls To Distinguish Legal From Non-Legal Advice Were Not Implemented

Agency managers have not implemented management controls to ensure that legal advice provided by an agency attorney with a line function (dual role) is readily distinguishable from non-legal advice. Although NRC's Sensitive Unclassified Non-Safeguards Information (SUNSI) policy requires agency attorneys to mark their documents as containing legal

advice when appropriate, and the agency's General Counsel expects such marking to occur, the Region II dual role holder does not make such notations. Furthermore, there is no parallel requirement to provide similar clarification about legal advice provided during oral discussions.

Management controls were not implemented because they were not deemed necessary. However, without such clarification, the dual role arrangement could lead to public misunderstanding or legal challenge related to the issue of attorney-client privilege.

RECOMMENDATIONS

A consolidated list of recommendations appears on page 11 of this report.

AGENCY COMMENTS

During an exit conference held on April 20, 2009, the agency generally agreed with the findings and recommendations in this audit report, but opted to provide written comments concerning the draft audit report. OIG modified the report as we deemed appropriate in response to the comments. NRC reviewed the modifications and decided not to submit formal written comments to this final version of the report.

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ABBREVIATIONS AND ACRONYMS

MD	Management Directive and Handbook
NRC	U.S. Nuclear Regulatory Commission
OE	Office of Enforcement
OGC	Office of the General Counsel
OIG	Office of the Inspector General
SUNSI	Sensitive Unclassified Non-Safeguards Information

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I. BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is authorized to enforce its regulatory requirements by imposing sanctions against licensees who violate those requirements. The agency's enforcement program is directed by the Office of Enforcement (OE) in headquarters, but is implemented primarily in the regional offices, where staff conduct inspections and investigations of licensees to identify violations and assess their significance so that appropriate enforcement actions can be determined. Less significant ("non-escalated") violations may be addressed entirely at the regional office level, while more significant ("escalated") violations are addressed through a collaborative process involving OE, the Office of the General Counsel (OGC), and other headquarters offices as well as the regional offices.[1]

In three of NRC's four regional offices, a dedicated enforcement staff supervisor oversees the work of the regional enforcement staff and another individual serves as the region's attorney, or Regional Counsel. In Region II, however, the Regional Counsel serves both as the region's attorney and as the enforcement staff supervisor.[2] As enforcement supervisor, this individual is to ensure that the region adheres to the agency's enforcement policy, oversees the preparation of escalated enforcement packages, and performs other enforcement related tasks. As Regional Counsel, this individual provides legal advice to the region, including advice on the legal sufficiency of escalated enforcement packages. This audit report refers to Region II's arrangement as the "dual role" approach.

Although NRC's regional counsels are supervised by and report to their regional administrator, they also receive guidance and direction from OGC, which directs matters of law and legal policy for NRC, providing opinions, advice, and assistance to the agency. According to Management Directive 9.7, *Organization and Functions, Office of the General Counsel*, this includes coordinating and monitoring the legal activities of regional counsels.

[1] Escalated enforcement includes violations designated through the traditional enforcement process as Severity Level I, II, and III and violations related to Red, Yellow, or White significance determination process (SDP) findings. Non-escalated enforcement refers to violations designated as either Severity Level IV or associated with a Green SDP finding.

[2] In all four regions, the supervisor also oversees the regional allegations staff. However, because this report focuses only on enforcement, information on allegation positions is not provided.

A recent Office of the Inspector General (OIG) audit[3] found that differences in the ways the regional offices implement the enforcement program can significantly impact the enforcement process, leaving enforcement decisions vulnerable to challenge and potentially compromising public confidence in NRC's enforcement program.

II. PURPOSE

The audit objective was to determine whether combining the roles of regional counsel and enforcement supervisor is a workable approach for regional enforcement programs. Because this approach is currently used only in Region II, the audit findings describe what was found in that region; however, the findings and recommendations are applicable for any region that would use the dual role approach. This audit was initiated subsequent to OIG's *Audit of NRC's Enforcement Program*, based on questions about dual role effectiveness raised during that review. The Appendix contains information on the audit scope and methodology.

[3] OIG-08-A-17, *Audit of NRC's Enforcement Program*, dated September 26, 2008.

III. FINDINGS

The dual role approach could work for regional enforcement programs if:

- The appropriate human resources steps are followed.
- Appropriate internal controls are implemented to ensure that written legal advice provided by the dual role holder is distinguished from non-legal advice. Participants in discussions with the dual role holder that involve sensitive information should be made aware that information disclosed is of a sensitive nature if doubt exists that the participants are not otherwise aware of the sensitive nature of the discussions.

A. HUMAN RESOURCES STEPS WERE NOT FOLLOWED

The dual role approach can be a workable arrangement for regional enforcement programs if the appropriate human resources management directives are followed. However, agency managers did not follow human resources requirements to formally establish a dual role position in Region II because they were unaware that such steps were necessary. As a result, the dual role holder could be subject to unfair rating criteria, and the enforcement program might not be adequately supported.

Human Resources Requirements

NRC's policy is to appoint and assign well-qualified employees in a fair, equitable, efficient, and effective manner to carry out the agency's mission. Toward this end, the agency has issued management directives covering a range of human resources issues. These directives require that:

- Position descriptions be prepared when a new position is established or when a significant change in the assigned duties or responsibilities of an existing position occurs (Management Directive and Handbook 10.37, *Position Evaluation and Benchmarks*).
- Position evaluations be conducted for each position so that a proper occupational series and grade may be determined and qualification requirements established (Management Directive and Handbook 10.37).
- Supervisors assure that position descriptions reflect the duties and responsibilities assigned to their employees (Management Directive and Handbook 10.67, *Non-SES Performance Appraisal System*).

- Employees be appraised annually to assess their performance against performance plans based on the requirements of the employee's position (Management Directive and Handbook 10.67).

- The individual filling the position possesses the knowledge, skills, and abilities to fill the position (Management Directive and Handbook 10.15, *Merit Staffing Program*).

NRC's regional offices provided OIG with their latest position descriptions for the positions of (1) regional counsel and (2) enforcement supervisor. Background requirements for both sets of positions were similar across the regions. According to the position descriptions from all four regional offices, a regional counsel must have graduated from an accredited law school and an enforcement supervisor must have an engineering background. In two of the regional offices, the enforcement supervisor must have at least an undergraduate degree in nuclear engineering, engineering, health physics, or other scientific discipline, or equivalent experience in one of these fields. In the other two regional offices, the enforcement supervisor must have a thorough knowledge of theories, principles, and practices of nuclear engineering and radiation safety, supplemented by extensive and responsible experience in the field of engineering.

To create a position that combines the roles of regional counsel and enforcement supervisor as it is presently defined across the agency, (1) the position description would need to include both a legal education and a technical education and/or background requirement and (2) any candidate selected to fill the position would need to possess both sets of qualifications.

NRC Did Not Follow Human Resources Steps

NRC uses the dual role position in Region II, but did not develop a position description for the job and did not evaluate the position to ensure it was properly classified or included the necessary background requirements. Instead, the region simply assigned the enforcement supervisor duties to the Regional Counsel without changing this individual's job title or assessing whether the Regional Counsel possessed the background requirements listed in the enforcement supervisor position description. Although new elements and standards reflecting both sets of duties were prepared, and the Regional Counsel has been evaluated against these elements and standards, these criteria could not be based on a current position description or position evaluation because none existed.

The Region II Administrator, who implemented the dual role arrangement approximately 9 years ago, explained that it was a regional staffing decision made after OGC stopped providing the regions with 1 FTE for a regional counsel position. The Regional Administrator said this was a sensible way to fully utilize the Regional Counsel. The Regional Counsel recalled that the Regional Administrator also felt it would provide the Regional Counsel with management experience. The Regional Administrator explained that although the Regional Counsel lacks the technical background listed as a prerequisite in the enforcement supervisor position description, the Regional Counsel has the skills to succeed in the position and has consistently performed well in the dual role. The Regional Administrator further stated that there are a sufficient number of participants in the regional enforcement process who do possess a technical background, that the enforcement team leader's role is to provide policy – not technical – guidance, and that, collectively, the required skills are applied to the enforcement review process.

Agency Did Not Recognize Need for Human Resources Action

Agency managers did not follow required human resources steps because they were unaware that such steps were necessary. According to Region II's Human Resources Team Leader, at the time the Region II Regional Counsel was assigned the new role, it was viewed as a realignment of work and a lateral reassignment rather than assignment to a new position. The Team Leader recalled that the new assignment was seen as a prudent business decision to better utilize a resource. The Team Leader also noted that while the enforcement supervisor position description describes a technical background requirement, Region II managers did not view the position as technical. The Team Leader agreed that Region II will now update the position description for the dual role position and conduct a position evaluation that will be submitted to the headquarters Office of Human Resources to verify the evaluation outcome.

Impact on Dual Role Holder and Agency

Without taking the necessary human resources steps to formally establish the dual role regional counsel/enforcement supervisor position, the dual role holder could be subject to unfair rating criteria, and the enforcement program might not be adequately supported.

NRC managers have the latitude to make staffing decisions that benefit their organizations provided they follow human resources requirements, which exist to ensure fairness and consistency in agency staffing decisions. Furthermore, if Region II or any other region determines that a

technical background is no longer needed for a position, then they must follow applicable human resources steps to change the position description or risk appearing arbitrary or inconsistent in filling the position with someone who does not meet the background requirements.

Recommendations

OIG recommends that the Executive Director for Operations:

1. Develop a new position description and conduct a position evaluation for the dual role Regional Counsel/Enforcement Supervisor position and have headquarters Office of Human Resources verify the evaluation outcome.

2. Ensure that a dual role holder meets the requirements for the new position.

B. INTERNAL CONTROLS TO DISTINGUISH LEGAL FROM NON-LEGAL ADVICE WERE NOT IMPLEMENTED

Agency managers have not implemented management controls to ensure that legal advice provided by an agency attorney with a line function (dual role) is readily distinguishable from non-legal advice. Although NRC's Sensitive Unclassified Non-Safeguards Information (SUNSI) policy requires agency attorneys to mark their documents as containing legal advice when appropriate, and the agency's General Counsel expects such marking to occur, the Region II dual role holder does not make such notations. Furthermore, there is no parallel requirement to provide similar clarification about legal advice provided during oral discussions. Management controls were not implemented because they were not deemed necessary. However, without such clarification, the dual role arrangement could lead to public misunderstanding or legal challenge related to the issue of attorney-client privilege.

Management Controls To Distinguish Legal From Policy Advice

Management controls are needed for any dual role position that combines the role of a functioning agency attorney (advisory role) with a line-staff (program implementation) position to ensure that legal advice or guidance provided by the dual role holder in their attorney role is readily distinguishable from non-legal advice or guidance this individual provides in their other role. Distinguishing legal from non-legal advice is particularly important in connection with the attorney-client and attorney work product privilege and in light of the agency's goal for openness and clarity in its regulation of the nuclear industry.

Attorney-client privilege is a legal concept that identifies certain communications between a client and their attorney as confidential or protected from disclosure requirements. A related concept is the work-product doctrine, which provides protection from disclosure through the legal process of pre-trial discovery of certain documents and other tangible things prepared by a lawyer in preparation for, or anticipation of, going to trial. According to an OGC attorney, the prerequisites for information to be considered attorney-client privilege are (1) an attorney who is officially performing the role of an attorney for a client provides the information and (2) the attorney is providing legal advice. Therefore, the OGC attorney explained, whenever a regional counsel provides legal advice in his or her capacity as an attorney within a region, the information is subject to attorney-client privilege.

NRC's SUNSI policy requires documents to be marked as attorney-client privilege or work-product, as appropriate. An agency attorney who also performs a line function may need to identify oral sensitive information, such as legal advice, so that such information can properly be understood as being sensitive.

Agency Did Not Implement Needed Management Controls

NRC has not imposed management controls to ensure that advice provided by a functioning agency attorney, who also performs an agency line function, is clearly distinguished as legal versus non-legal in nature. Furthermore, the Region II dual role holder does not specify in written products or oral discussion whether the advice provided is legal or non-legal in nature.

The agency's General Counsel told OIG that it is good practice for agency attorneys to clarify whether information is of a legal or policy nature in written documents in accordance with NRC's SUNSI policy and in oral discussions if the distinction is not readily apparent. The General Counsel said it is important for the dual role holder to make such distinctions and expects this is occurring in Region II. However, the General Counsel would not expect such clarification to become overly procedural in nature or ask attorneys always to clarify because in many cases it is very obvious. Further, according to OGC staff, the expectation that oral legal advice be identified as sensitive should not operate to interfere with the free flow of discussion involving legal and programmatic policy advice.

No Requirement To Preface Advice

Management controls to ensure a distinction between legal and programmatic advice were not implemented because they were not deemed necessary.

According to the Region II dual role holder, there is no need for her to mark memoranda prepared as attorney-client material because it is obvious from the information contained in the memos that attorney advice is being provided, and the privilege would be asserted if the document was requested in a Freedom of Information Act request. The dual role holder expressed a willingness to mark written documents as attorney-client material to ensure correct interpretation, but opposed the idea of having to clarify for agency staff when oral remarks constituted legal versus programmatic advice. The dual role holder was not aware of staff ever experiencing a problem where legal advice was mistaken for programmatic advice or vice versa.

OIG contends that, consistent with SUNSI requirements, it is important for there to be a process by which the dual role holder may distinguish legal from non-legal advice. Failure to have such a process could lead to confusion as to the protections to be accorded various documents. It could also lead to a public perception that NRC has the authority to withhold all documents prepared by the dual role holder – or even documents prepared by others that contain advice provided by the dual role holder.

OIG further observes the situation involving classified information, where protection requirements address both written and oral classified information. Classified documents must be marked so there is no confusion by a recipient about the level of protection needed for the information. When classified information is discussed orally in a meeting, participants must be cautioned that the information discussed was classified and needs to be protected accordingly. OIG recognizes that classified information warrants more rigorous protection than SUNSI information, but provides this example to show that the technique of informing listeners of the nature of certain information is not unusual, and is already practiced at NRC.

Distinction Can Prevent Misunderstanding

It is important for the agency to provide a process to delineate the character of the communication from NRC attorneys who are also assigned an agency line function to clarify when they are providing legal versus non-legal advice. Making this distinction will help prevent potential misunderstanding by the public that any advice provided by the dual role holder could be protected using an attorney-client privilege rationale. Conversely, making such distinctions can help ensure that NRC is able to protect the legal advice it seeks to properly protect.

Recommendations

OIG recommends that the Executive Director for Operations, in consultation with the General Counsel:

3. Develop a management control to ensure that when an agency attorney is also assigned a line function, written legal advice provided by this individual is easily distinguished from non-legal advice.

4. Develop for agency attorneys who are also assigned a line function guidance to convey the need to clarify in conversations involving sensitive information that the information disclosed is of a sensitive nature.

IV. AGENCY COMMENTS

During an exit conference held on April 20, 2009, the agency generally agreed with the findings and recommendations in this audit report, but opted to provide written comments concerning the draft audit report. OIG modified the report as we deemed appropriate in response to the comments. NRC reviewed the modifications and decided not to submit formal written comments to this final version of the report.

V. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Develop a new position description and conduct a position evaluation for the dual role Regional Counsel/Enforcement Supervisor position and have headquarters Office of Human Resources verify the evaluation outcome.

2. Ensure that a dual role holder meets the requirements for the new position.

OIG recommends that the Executive Director for Operations, in consultation with the General Counsel:

3. Develop a management control to ensure that when an agency attorney is also assigned a line function, written legal advice provided by this individual is easily distinguished from non-legal advice.

4. Develop for agency attorneys who are also assigned a line function guidance to convey the need to clarify in conversations involving sensitive information that the information disclosed is of a sensitive nature.

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Appendix

SCOPE AND METHODOLOGY

The audit objective was to determine whether combining the roles of regional counsel and enforcement supervisor is a workable approach for regional enforcement programs.

Auditors reviewed Office of Personnel Management and agency human resources guidance to identify human resource requirements for creating and filling positions. Guidance reviewed included the following:

- Management Directive and Handbook (MD) 10.15, *Merit Staffing Program.*
- MD 10.37, *Position Evaluation and Benchmarks.*
- MD 10.67, *Non-SES Performance Appraisal System..*

Auditors reviewed the enforcement staffing configurations in each regional office and position descriptions for regional counsels and enforcement supervisors in each region. Auditors reviewed NRC's *Enforcement Policy*, *Enforcement Manual*, and guidance pertaining to the Alternative Dispute Resolution Program to identify the roles played by various NRC staff in the enforcement process. Auditors also reviewed agency information security requirements as posted on the agency's internal Web site.

OIG interviewed headquarters staff in the Office of Enforcement and the Office of the General Counsel to learn about the roles played by regional and headquarters staff in the enforcement process and to obtain their views on the effectiveness of the dual role. OIG interviewed an Office of Human Resources official about agency personnel procedures. OIG interviewed the Region IV Administrator and Regional Counsel by telephone to obtain their views on the effectiveness of the dual role. OIG traveled to Atlanta, Georgia, and interviewed Region II managers about the effectiveness of the dual role and their rationale for using that approach.

OIG conducted this audit between November 2008 and March 2009 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

Major contributors to this report were Anthony Lipuma, Deputy Assistant Inspector General for Audits, and Judy Gordon, Senior Analyst.

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

MEMORANDUM FOR: [Name]
Assistant Inspector General for Audits

FROM: [Name]
Title of appropriate Deputy Executive Director

SUBJECT: REVIEW OF THE COST EFFECTIVENESS OF NRC'S ITS TRAINING LABORATORY

This responds to the February 2, 1989 memorandum transmitting the subject audit report. I am pleased to note your conclusion that the NRC's ADP Training Program has been successful in providing in-house training to NRC employees on how to use NRC-supported micro-computer software at a cost comparable to that of outside vendors in the Washington, D.C., Metropolitan area. With respect to your specific recommendations, I submit the following:

Recommendation 1

Establish a policy whereby the training budget for offices will be charged for employees failing to attend or failing to cancel a course in a timely manner.

Response

Agree. I intend to send a memorandum to all Offices and Regions to inform them that providing for employee training is a function essential to improved job performance and career development; and that I am seriously concerned about the effect of "no-shows" and last minute cancellations when registered for NRC courses. Completion date: March 31, 1989.

Recommendation 2

Advise agency supervisors of the need to ensure that employees attend ADP training courses once their attendance has been approved.

Response

Agree. Training programs where problems in attendance and cancellations are of greatest concern will be indicated in the memorandum to all Office Directors and Regional Administrators described in Response to Recommendation Number 1. Completion date: March 31, 1989.

Recommendation 3

Assure that the ITS Training Laboratory contractor's monthly business reports and detailed financial status reports include, at a minimum, segregation of design costs between the original contract and each work scope modification, identification of the course under design/revision, and the status of any revisions.

Response

Agree. This has been accomplished. The contractor has been informed of this requirement and reports are being modified to include identification by course of design/revision and status of revisions in the contractor's business reports and detailed financial status reports.