



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

OFFICE OF THE
INSPECTOR GENERAL

July 10, 2009

MEMORANDUM TO: Martin J. Virgilio
Deputy Executive Director for Materials, Waste, Research,
State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

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

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

REFERENCE: DEPUTY EXECUTIVE DIRECTOR FOR MATERIALS,
WASTE, RESEARCH, STATE, TRIBAL, AND
COMPLIANCE PROGRAMS MEMORANDUM DATED
JUNE 10, 2009

Attached is the Office of the Inspector General's analysis and status of the recommendations as discussed in the agency's response dated June 10, 2009. Based on this response, recommendations 3 and 4 are closed and recommendations 1 and 2 are in resolved status. Please provide an updated status on the resolved recommendations by September 14, 2009.

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

Attachment: As stated

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

Audit Report

AUDIT OF THE REGIONAL COUNSEL ROLE IN THE ENFORCEMENT PROCESS

OIG-09-A-10

Status of Recommendations

Recommendation 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

Agency Response
Dated June 10, 2009: Agree. Region II management requested their Division of Resource Management and Administration (DRMA) staff to prepare a new position description for the dual role of Regional Counsel/ Enforcement Supervisor. The Region II DRMA staff will work with Region II management, the other three regions, and the Office of Enforcement (OE) to define the duties and skills for the new position, and will work with headquarters Office of Human Resources (OHR) staff to ensure that the new position description meets the applicable requirements for format and content. The DRMA staff will then coordinate a position evaluation with headquarters OHR and OE staff.

Completion date: August 30, 2009.

OIG Analysis: The proposed corrective actions address the intent of OIG's recommendation. This recommendation will be closed when OIG receives and reviews a copy of the updated position description, the position evaluation, and documentation indicating that the evaluation was coordinated with headquarters OHR and OE staff.

Status: Resolved.

Audit Report

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Status of Recommendations

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

Agency Response
Dated June 10, 2009: Agree. Region II management will define the duties and skills for the new position description and will coordinate the position evaluation with the other three regions, OE, and OHR staff. Region II management will ensure that the dual role holder meets the requirements for the new position.

Completion date: August 30, 2009.

OIG Analysis: The proposed corrective actions address the intent of OIG's recommendation. This recommendation will be closed when Region II provides documentation enabling OIG to verify that an assessment was conducted to ensure the dual role holder meets the requirements for the new position.

Status: Resolved.

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Status of Recommendations

Recommendation 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.

Agency Response
Dated June 10, 2009: Agree. The General Counsel issued a memorandum to Office of General Counsel (OGC) staff and Regional Counsels dated May 20, 2009, that provided guidance on distinguishing legal advice from non-legal advice (ML091400421). In the memorandum, he reminded agency attorneys that Attorney-Client and Attorney Work Product material is in a category of sensitive unclassified information that is considered "sensitive internal information." He also reminded them that documents containing such information, which are intended for internal use, should be marked at the top and bottom of each page as "Official Use Only – Attorney-Client Privilege" or "Official Use Only – Attorney Work Product" as appropriate. As an additional management control, the General Counsel also directed the OGC Program Support Branch to check periodically with each OGC division to ensure that privileged documents originating in OGC are marked appropriately. In addition to the memorandum, the General Counsel emphasized the importance of these markings in an OGC all-hands meeting on May 19, 2009. This action is complete.

OIG Analysis: OIG reviewed the General Counsel's May 20, 2009, memorandum and verified that it contained the guidance as described in the agency's June 10, 2009, response. This corrective action meets the intent of OIG's recommendation; therefore, this recommendation is considered closed.

Status: Closed.

Audit Report

AUDIT OF THE REGIONAL COUNSEL ROLE IN THE ENFORCEMENT PROCESS

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Status of Recommendations

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| <u>Recommendation 4:</u> | 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. |
| Agency Response Dated June 10, 2009: | Agree. In the May 20, 2009, memorandum, the General Counsel also stated that the privileged nature of some attorney-generated communications applies not only to written communications but oral communications as well. In most instances, those participating in oral discussions with counsel will understand the privileged nature of those discussions. However, the General Counsel noted that when an attorney is uncertain whether participants appreciate the sensitive nature of their discussions with counsel, attorneys should alert them to ensure that applicable privileges are preserved and that sensitive information is not inappropriately disclosed. This could include circumstances such as when an individual is new to the organization or project at issue or where the sensitive nature of the information is not obvious from the context of the discussion. This action is complete. |
| OIG Analysis: | OIG reviewed the General Counsel's May 20, 2009, memorandum and confirmed that it addresses the issue of sensitive information disclosed in oral communication. This corrective action meets the intent of OIG's recommendation; therefore, this recommendation is considered closed. |
| Status: | Closed. |