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# OFFICE OF THE INSPECTOR GENERAL

U.S. NUCLEAR REGULATORY COMMISSION

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Review of the Regional Counsel Function

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

NOV 30 1989

OFFICE OF THE  
INSPECTOR GENERAL

MEMORANDUM FOR: Chairman Carr  
Commissioner Roberts  
Commissioner Rogers  
Commissioner Curtiss

FROM: Frederick W. Herr, Deputy Director  
Office of the Inspector General

SUBJECT: REVIEW OF THE REGIONAL COUNSEL FUNCTION

Attached is our report on the results of our review of NRC's Regional Counsel function. The objectives of the review were to determine if the Regional Counsels were being effectively used and if there was adequate support and oversight from the Office of the General Counsel (OGC). We conducted our review during the period March 1989 through August 1989. The Inspector General (Acting) has recused himself from the issuance of this report due to his detail to the Office of the Inspector General from the Office of the General Counsel.

Based on our review it appears that NRC's Regional Counsels are satisfactorily providing and/or coordinating the provision of legal services for their Regional Offices. In addition, the Regional Counsels seem to be receiving adequate legal support and guidance from OGC. We did identify a need to upgrade the position description for the Regional Counsels to reflect NRC's current organizational structure.

Our report contains one recommendation to all Regional Administrators to ensure that the Regional Counsel position descriptions are updated, specifically to reflect the 1987 reorganization of the Office of the Executive Legal Director into the Office of the General Counsel.

In commenting on a draft of this report, the Acting Executive Director for Operations agreed with our recommendation and indicated that action had been or would be taken by December 1, 1989 to implement it. The General Counsel also commented on a draft of this report and generally agreed with the recommendation.

*Frederick W. Herr*  
Frederick W. Herr, Deputy Director  
Office of the Inspector General

Attachment:  
As stated

cc w/attachment:  
J. Taylor, EDO  
H. Thompson, EDO  
S. Chilk, SECY  
W. Parler, OGC  
L. Hiller, ICC  
J. Blaha, EDO  
W. Russell, RA:RI  
S. Ebnetter, RA:RII  
A. Bert Davis, RA:RIII  
R. Martin, RA:RIV  
J. Martin, RA:RV



## REVIEW OF THE REGIONAL COUNSEL FUNCTION

### INTRODUCTION

The Nuclear Regulatory Commission (NRC) established Regional Counsel positions, also known as Regional Attorneys, in each of NRC's five regions in 1982 as a result of the movement of many NRC functions from Headquarters' program offices to the regional offices. The Regional Counsel serves as senior legal counsel in the Regional Office and is responsible for providing and/or coordinating the provision of legal services for the Regional Office. The Regional Counsel provides and/or coordinates legal advice and counsel to the Regional Administrator in all legal matters confronted by the Regional Office.

In March of 1989 the Office of Inspector and Auditor, now the Office of the Inspector General, initiated a review of NRC's Regional Counsel function at the suggestion of, at that time, Commissioner Carr. The purpose of our review was to determine if the Regional Counsels are effectively used and if there is adequate support and oversight from the Office of the General Counsel (OGC). This report presents the results of our review.

#### Background

The Regional Counsel positions were first proposed in 1981 and then established in 1982. In a memorandum dated October 8, 1981, the NRC Chairman notified the Executive Director for Operations (EDO) that the Commission had approved the basic features of a proposed reorganization that would create the positions of Regional Administrators, enlarge the role of regional offices and establish new controls on reactor requirements. Prior to this, the regions were headed by Regional Directors who were under the direction of the Office of Inspection and Enforcement. The Headquarters' program offices were asked in November 1981 to identify by February 1982, those activities in their respective program areas that they believed could be transferred to the regions.

In December 1981, the Executive Legal Director, (the Office of the Executive Legal Director was reorganized in 1987 to become part of OGC) proposed a three step process with respect to the assignment of attorney services to the Regional Administrators. A three step process was proposed because the nature and extent of NRC functions to be assigned to the Regional Administrator were being developed by the various program and support offices and it was not possible at that time to identify the extent to which legal support services would be needed or necessary in the regions.

The three steps were:

Phase 1 Beginning immediately and continuing until the needs of the Administrators warrant the activation of Phases 2 and 3.

- Provide attorney services to the Administrator to deal with specific problems at the request of the Administrator.

- As the legal workload develops in the Regional offices, assign attorneys to visit those offices on a regular schedule such as one day a week, every other week or once a month. When regularity of visits is established, efforts will be made to assure that the same attorney or attorneys make all visits to any given regional office so as to provide continuity.

Phase 2 Beginning when the workload of particular regional offices so warrants.

- Assign one attorney full time to each regional office to provide legal services. This attorney would be at the grade level GG-12/14.
- Provide additional attorney services from Headquarters for short periods of time to deal with work overload problems or where specific expertise not available through the resident attorney is necessary.

Phase 3 To begin when the regional offices mature to the extent that more expanded legal staffing warrants.

- Appoint a full time Chief Counsel at grade level GG-15 to provide all legal services. Additional full time attorneys would be assigned as warranted by the workload.

It was further proposed that attorneys selected for Phase 3 would be assigned to the Regional Administrators. The selection of the attorneys would be the joint responsibility of the Executive Legal Director and the Regional Administrator and subject to the concurrence of both. The performance appraisals for the Chief Counsel (Phase 3) assigned to the Regional Administrator would be performed by the Regional Administrator with advice from the Executive Legal Director.

In June 1982, a memorandum from the Executive Legal Director to all Office of the Executive Legal Director (OELD) attorneys informed them of the new Regional Attorney positions being established in Regions I, II and III and solicited volunteers for those positions. The memorandum also included the position description for the Regional Attorney position at the GG-15 level. A similar memorandum was distributed in July 1982 for the Regional Attorney position in Region IV and another memorandum was distributed in December 1982 for the Regional Attorney position in Region V.

Currently, there is one Regional Counsel at the GG-15 level in each of the five regions.

#### SCOPE

Our review was performed in accordance with generally accepted Government auditing standards relevant to the purpose of the audit. Our review was conducted during the period March 1989 through August 1989. The purpose of the review was to determine if the Regional Counsels were being effectively used, and if there was adequate support and oversight from OGC. The review

included interviews with numerous officials involved with the Regional Counsel function at Headquarters and in the regions. In addition, we reviewed pertinent memoranda and documentation relating to the Regional Counsel function. We reviewed the summaries of the Regional Counsel conference calls, observed a Regional Counsel counterpart meeting and discussed OGC's oversight role with Regional Counsels and OGC staff. Because the Regional Counsels do not keep records of most of the work they perform, the majority of our review was based upon interviews with the Regional Administrators, the Regional Counsels and various staff members from OGC.

### FINDINGS

Overall, it appears that NRC's Regional Counsels are satisfactorily providing and/or coordinating the provision of legal services for their regional offices. In addition, the Regional Counsels seem to be receiving adequate legal support and guidance from OGC. We did identify a need to upgrade the position description for the Regional Counsels to reflect NRC's current organizational structure. The following sections of this report describe the duties of the Regional Counsels and the Regional Counsel's relationship with OGC.

#### Regional Counsel Duties

The Regional Counsels are under the direction of their respective Regional Administrators and provide and/or coordinate legal advice and counsel to the Regional Administrators in all legal matters confronted by the Regional Office. The Regional Counsels receive professional guidance from NRC's General Counsel and make frequent contact with the Assistant General Counsel for Hearings and Enforcement and the Deputy Assistant General Counsel for Enforcement to coordinate the provision of legal services to the Regional Office and to coordinate Regional Office and OGC staff efforts.

The Regional Counsels are responsible for advising the Regional Administrators and rendering legal services in such matters as: inspection and enforcement proceedings; contracts; personnel; Freedom of Information and Privacy Act; operating reactor license amendments; nuclear materials licenses; and other legal matters that arise in the Regional Office. However, the extent to which legal issues are pursued by the Regional Counsels depends, in part, on the types and volume of activities confronted by the regions. In addition, the Regional Administrators determine the extent to which legal services will be performed by their Regional Counsels since there is no prescribed set of duties that the Regional Counsels must perform. As a result, different priorities are established by the various Regional Administrators for their Regional Counsels.

Based on interviews with the Regional Administrators and Regional Counsels, it appears that the majority of the Regional Counsels spend a substantial amount of time providing legal services in the enforcement area. However, the time each Regional Counsel estimates is spent in this area ranges from approximately 20% to 70%. We were told that activities affecting the Regional Counsels' work load included such things as the number of material licensees, power reactor licensees, and participating Agreement States in the region. Region IV's Regional Counsel provides unique legal services to the Uranium Recovery Field Office in Denver, Colorado. The Regional Counsel in Region IV



estimates the Uranium Recovery Field Office takes approximately 30% of the Regional Counsel's time while the enforcement area takes approximately 20% of the time. However, we could not determine a true breakdown of time spent in each major area by any of the Regional Counsels because there are no task related time tracking systems for any of the Regional Counsels.

In an OIG audit report entitled, "Review of NRC's Enforcement Program," dated August 1, 1989, we recommended that the Director, Office of Enforcement, (OE) reassess the role of the regional counsels in the enforcement review process. In commenting on that recommendation, the EDO stated that OE would send a memorandum to each Regional Administrator requiring regional counsels to review each escalated enforcement action in either draft or final form, when the regional counsel is available. In addition, the job descriptions and elements and standards for regional counsels would be revised to specify their role in the enforcement process.

The Regional Counsels also serve as point of contact between the regional offices and OGC. We were told by Regional Administrators, Regional Counsels and staff in OGC that Regional Counsels are involved in all legal matters affecting the regions. When a legal issue arises in a region, the Regional Counsel must decide, based on the Regional Counsel's judgement, whether the legal issue can be resolved by the Regional Counsel or whether the legal matter should be brought to OGC's attention. This is based to some extent on whether the matter appears to have generic implications or requires significant research. We were told by Regional Counsels and staff in OGC that if a legal issue brought forth from a region is given to OGC to resolve, the Regional Counsel is kept informed and acts as an intermediary to the regional office. Based on our discussions with the Regional Administrators, Regional Counsels, and OGC staff, there have been no problems or confusion with this arrangement.

The effectiveness of the Regional Counsel function is determined to some extent by the Counsel's working relationship with OGC. The Regional Attorney position description states that the Regional Attorney "serves as point of contact between the Regional Offices and the Office of the Executive Legal Director. In this capacity, the incumbent must be knowledgeable in the functions of all Divisions of OELD both to provide legal advice and services to the Regional Administrator and to coordinate the providing of legal services by the Office of the Executive Legal Director for legal matters requiring the participation of that office."

OELD was reorganized in 1987 into the Office of the General Counsel. The reorganization did not decidedly affect the functions and responsibilities of the Regional Attorneys; however, the Regional Attorney position descriptions were never changed to reflect the organizational changes of OELD.

The Regional Counsel positions are filled by the Regional Administrators with input from OGC. Since the initial staffing of the Regional Counsel positions in 1982, there have been only three Regional Counsel position vacancies. Through our discussions with the Regional Administrators and OGC staff, there appears to be no problem with the selection process for the Regional Counsels.

Some OGC staff stated the working relationship with the Regional Counsels has been successful because most of the Regional Counsels have had their legal

background in OELD or OGC. It should be noted that four of the five current Regional Counsels came from either OELD or OGC. The remaining Regional Counsel came from the legal staff at the Department of Energy. However, this Regional Counsel was very familiar with NRC because the Regional Counsel's legal career started with the Atomic Energy Commission. Based on our interviews, we identified no problems with the Regional Counsels' working relationships with the OGC staff.

The Regional Counsels' performance appraisals are prepared by the Regional Administrators with input from OGC. There is no weighting of the input provided by OGC for the performance appraisals. However, the Regional Administrators, OGC management and the Regional Counsels stated that there have not been any problems with this procedure. It was suggested that the input provided by OGC be included as an attachment to the Regional Counsels' performance appraisal. Some regional management had problems with this suggestion because the Regional Administrators are the appraising officials for the Regional Counsels and it could be awkward to provide the two appraisals together. In addition, a Deputy Regional Administrator and a Regional Administrator from two different regions stated that for the last two performance periods they had not received OGC's input in time for the Regional Counsels' appraisals. Nevertheless, the Regional Counsels, OGC management and the Regional Administrators appeared to have few problems with the results of the performance appraisals.

All the NRC staff we interviewed stated that the Regional Counsel function was important and provided very useful services. One benefit attributed to the Regional Counsel function by OGC staff was a decline in travel to the regions by OGC attorneys. One such area mentioned was for Hearings. The Regional Counsels can usually prepare witnesses for testimony so that the Hearings' attorneys do not have to travel to the regions for witness preparation. The Regional Counsel can also line up meetings and research information that is needed from the region that OGC staff attorneys would otherwise have to travel to the region to obtain. Another benefit mentioned was that the Regional Counsel can identify legal problems that the regional staff may not recognize, such as in the area of conflict of interest. It was also stated that the Regional Counsel provides a regional perspective and is a good legal intermediary between the regional offices and OGC. In fact, one Regional Administrator stated that without his Regional Counsel, he would have to "think hard" about continuing his position as the Regional Administrator.

#### OGC Support of the Regional Counsel Function

It appears that adequate support and oversight are given to the Regional Counsel from the Office of the General Counsel. The NRC Manual Chapter Appendix D115, Organization and Functions Office of the General Counsel, states that the Assistant General Counsel for Hearings and Enforcement Division coordinates and monitors the legal activities of Regional Counsels. Some of the means used to accomplish this task are: weekly conference calls with the Regional Counsels; several meetings each year with the Regional Counsels, including the annual OGC management meeting; visits to the regions; and forwarding significant documents to the Regions.

The weekly conference calls seem to provide an excellent means of communication between OGC and the Regional Counsels. The summaries of the



conference calls are distributed to various OGC management officials and serve as an effective means of keeping OGC management abreast of the legal issues encountered by the Regional Councils. The Regional Counsel counterpart meeting and the OGC management meeting also provide useful forums for communications between OGC and the Regional Councils.

Based on our interviews of the Regional Councils, the Regional Councils have had few problems receiving the support they need from OGC. They stated that in the past, the Regional Councils may not have received informational documents from OGC that they thought they should have received; although they said this was not a major problem. They said information flow to the regions has improved. The Regional Councils stated that they receive fairly prompt responses from OGC staff when assistance is needed. Overall, it appears that OGC provides the necessary legal support and oversight for the Regional Counsel function.

#### CONCLUSION

Our review found that Regional Councils provide a valuable, and in the eyes of some Regional Administrators, indispensable service to the Regional Administrators and regional staff. Our review identified no problems in the relationship among the Regional Councils, Regional Administrators and OGC. OGC is providing adequate support and legal oversight to the Regional Councils. The position description for the Regional Counsel position does need to be updated.

#### RECOMMENDATION

We recommend that all Regional Administrators ensure that the Regional Counsel/Regional Attorney position descriptions are updated, specifically to reflect the 1987 reorganization of the Office of the Executive Legal Director into the Office of the General Counsel.

#### AGENCY COMMENTS

On November 17, 1989, the Acting Executive Director for Operations (EDO), commented on a draft of this report (see Appendix I). The Acting EDO agreed with our recommendation and indicated that action had been or would be taken by December 1, 1989, to implement it. On November 21, 1989, the General Counsel commented on a draft of this report (see Appendix II) and noted that OGC and the regions were working together to implement the report's recommendation. Both the Acting EDO and General Counsel suggested editorial changes that we took into consideration in preparing the final report.



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

NOV 17 1989

MEMORANDUM FOR: Frederick W. Herr, Deputy Director  
Office of the Inspector General

FROM: James M. Taylor  
Acting Executive Director  
for Operations

SUBJECT: OIG REVIEW OF THE REGIONAL COUNSEL FUNCTION

This responds to your October 19, 1989 memorandum transmitting the subject audit report. Please note that the location, on page 6, of Region IV's Uranium Recovery Field Office should be changed to Denver, not Golden, Colorado. With respect to your specific recommendation, I submit the following:

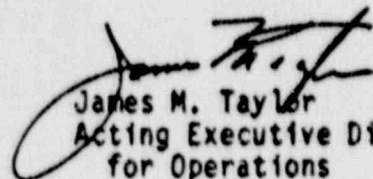
Recommendation

We recommend that all Regional Administrators ensure that the Regional Counsel/Regional Attorney position descriptions are updated, specifically to reflect the 1987 reorganization of the Office of the Executive Legal Director into the Office of the General Counsel.

Response

Agree. Most of the Regional Offices have completed this recommended action. The actual or estimated completion date for each Region is as follows:

|            |  |
|------------|--|
| Region I   | Completed 10/26/89                         |
| Region II  | Estimated completion date December 1, 1989 |
| Region III | Estimated completion date December 1, 1989 |
| Region IV  | Completed 11/1/89                          |
| Region V   | Completed 10/25/89                         |

  
James M. Taylor  
Acting Executive Director  
for Operations

cc: W. Parler



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

NOV 21 1989

MEMORANDUM FOR: Frederick W. Herr, Deputy Director  
Office of the Inspector General

FROM: William C. Parler  
General Counsel

SUBJECT: OIG REPORT ON THE REGIONAL COUNSEL FUNCTION

This responds to your memorandum dated October 19, 1989 requesting OGC review and any comments on the draft OIG report "Review of the Regional Counsel Function". We view the report as a favorable reflection on the Regional Counsel program and, as a matter of substance, we have only one comment. The report states (pp. 7 - 8):

We were told by Regional Counsels and Staff in OGC that if a legal issue brought forth from a region is given to OGC to resolve, the Regional Counsel is kept informed and acts as an intermediary to the regional office with the final decision.

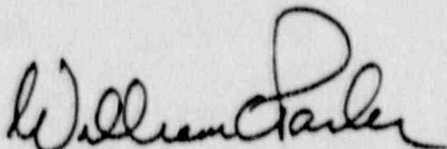
As Steve Lewis discussed with you, this statement could be read to mean incorrectly that Regional Counsel have the final decision as to the legal advice rendered on matters referred to OGC for review. As to their legal advice function, Regional Counsel are under the general direction of the General Counsel, who is responsible for legal advice provided to the regions on matters that have been referred to OGC for review. This advice is coordinated with the Regional Counsel. To remove any ambiguity, we suggest deletion of the words ". . . with the final decision."

We have noted on p. 4 that the person selected to fill the Region I vacancy is not yet working full-time in the Region. This is a slight change from the situation at the time of preparation of your report, but may not necessitate any modification to the report. Other suggested changes of a clarifying nature are noted on the mark-up returned with this memorandum.

OGC and the regions are currently addressing the report's recommendation that Regional Attorney position descriptions be updated.



If you have any questions regarding our comments, please contact Steve Lewis  
or 21684.



William C. Parler  
General Counsel

Enclosure:

(1) Mark-up of draft report.

cc w/Encl.: J. Taylor  
L. Chandler  
J. Goldberg  
J. Lieberman  
K. Smith, KI  
R. Goddard, RII  
B. Berson, RIII  
W. Brown, RIV  
M. Blume, RV