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**OFFICE OF  
THE INSPECTOR GENERAL**

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**U.S. NUCLEAR  
REGULATORY COMMISSION**

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Audit of NRC's High-Level  
Waste Program

OIG-05-A-10 February 24, 2005

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**AUDIT REPORT**

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February 24, 2005

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

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

SUBJECT: AUDIT OF NRC'S HIGH-LEVEL WASTE PROGRAM  
(OIG-05-A-10)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of NRC's High-Level Waste Program*.

This report reflects the results of an OIG audit to determine if the Nuclear Regulatory Commission (NRC) is properly prepared to meet its Nuclear Waste Policy Act (NWPA) pre-licensing statutory requirements for a geologic high-level waste repository at Yucca Mountain in Nevada. The agency's high-level waste (HLW) program satisfies NWPA responsibilities through the promulgation and implementation of the Code of Federal Regulations Title 10 Part 63. The audit found that while NRC has been carrying out its pre-licensing responsibilities per the NWPA, its communications approach needs improvement. The agency's HLW communications are not always effective because NRC lacks a holistic, agencywide communications approach. Consequently, stakeholders do not always perceive agency communications as being clear and open. NRC also faces uncertainties surrounding the Yucca Mountain project that are beyond the agency's control. Such uncertainties may impact the agency's ability to review the Department of Energy's license application for a geologic HLW repository at Yucca Mountain.

During an exit conference on December 15, 2004, NRC officials provided informal comments concerning the draft audit report. Subsequent to that meeting, OIG met with agency senior managers to address issues and comments needing further clarification and/or explanation. Comments your office provided at the exit meeting, during subsequent discussions, and in your February 1, 2005, written response to the formal draft report have been incorporated, as appropriate, in our final report. Appendix C contains your written response in its entirety. Appendix D contains our analysis of the agency's formal comments.

If you have any questions, please call Russ Irish at 415-5972 or me at 415-5915.

Attachment: As stated

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## EXECUTIVE SUMMARY

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### BACKGROUND

The Nuclear Regulatory Commission's (NRC) mission is the regulation of the nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, the promotion of the common defense and security, and the protection of the environment. NRC is also responsible for providing regulatory oversight of spent nuclear fuel from commercial nuclear reactors that must be stored and finally disposed of in a way that protects the public. Today, spent nuclear fuel is stored at plant sites either in steel-lined vaults filled with water [spent fuel pools] or steel-and-concrete containers.

In 1977, the Federal government prohibited nuclear fuel reprocessing due to nuclear proliferation concerns. President Reagan lifted this ban, but no serious reprocessing efforts have been pursued in the United States. Because utilities believed that reprocessing would be available, they did not have spent fuel pools sufficiently large to hold all of the spent nuclear fuel they would be generating over the course of the plants' licensed lifetime. According to the Nuclear Energy Institute (NEI), by the end of 2006, about 60 commercial nuclear reactors will have no more storage space in their spent fuel pools. NEI contends that building new spent fuel pools is costly and almost impossible to fit into existing plant layouts and building dry storage facilities is very costly.

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) and amended it in 1987. The NWPA, as amended, outlines the process for the siting and construction of a geologic high-level waste (HLW) repository. Under the NWPA, the Department of Energy (DOE) is responsible for evaluating a repository site at Yucca Mountain, and designing, constructing, and operating the facility. NRC's role is to develop a regulatory framework for evaluating a license application for the repository and, thereafter, to regulate DOE's activities. NRC is also charged with the duty to issue a final decision approving or disapproving the issuance of a construction authorization for building the proposed repository. NRC is to issue a license to DOE *only* if DOE can demonstrate that it can construct and operate a repository safely and in compliance with NRC's regulations.

### PURPOSE

The purpose of this audit was to determine if NRC is properly prepared to meet its pre-licensing statutory requirements per the NWPA.

## **RESULTS IN BRIEF**

While NRC has been carrying out its pre-licensing responsibilities per the NWPA, its communications approach needs improvement. NRC's HLW program satisfies the NWPA responsibilities through the agency's promulgation and implementation of the Code of Federal Regulations title 10 part 63 (10 CFR 63). Yet, NRC's HLW communications are not always effective because NRC lacks a holistic, agencywide communications approach. Consequently, stakeholders do not always perceive NRC's communications as being clear and open. NRC also faces uncertainties surrounding the Yucca Mountain project that are beyond the agency's control. Such uncertainties may impact NRC's ability to review DOE's license application for a geologic HLW repository at Yucca Mountain.

## **RECOMMENDATION**

This report makes one recommendation to the Executive Director for Operations to enhance the agency's internal and external HLW communications.

## **AGENCY COMMENTS**

The agency basically agrees with the Office of the Inspector General's (OIG) recommendation. On February 1, 2005, the Executive Director for Operations provided comments concerning the draft audit report. OIG modified the report as appropriate in response to these comments. Appendix C contains NRC's formal comments and Appendix D contains OIG's specific response to each.

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**ABBREVIATIONS AND ACRONYMS**

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Atomic Safety and Licensing Board Panel	ASLBP
Center for Nuclear Waste Regulatory Analyses	CNWRA
Code of Federal Regulations	CFR
Department of Energy	DOE
high-level waste	HLW
key technical issues	KTIs
management directive	MD
Nuclear Energy Institute	NEI
Nuclear Regulatory Commission	NRC
Nuclear Waste Policy Act of 1982	NWPA
Office of Nuclear Material Safety and Safeguards	NMSS
Office of Public Affairs	OPA
Office of State and Tribal Programs	STP
Office of the General Counsel	OGC
Office of the Inspector General	OIG

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## I. BACKGROUND

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The mission of the NRC is the regulation of the nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, the promotion of the common defense and security, and the protection of the environment. As part of its mission, NRC is involved in providing the regulatory oversight of spent nuclear fuel from commercial nuclear reactors that must be stored and finally disposed of in a way that protects the public for a very long time.<sup>1</sup>

According to NEI,<sup>2</sup> "The country's 103 commercial nuclear reactors together produce about 2,000 metric tons of used fuel annually." Today, this used fuel is stored at plant sites, either in steel-lined vaults filled with water [spent fuel pools] or steel-and-concrete containers. DOE determined that, by the end of 2003, the United States had accumulated about 49,000 metric tons of spent nuclear fuel from nuclear reactors. In addition, there were about 22,000 canisters of solid defense-related radioactive waste. According to DOE estimates, by 2035, the United States will have about 105,000 metric tons of radioactive waste.

Utilities designed commercial nuclear power plants under the assumption that spent nuclear fuel would be reprocessed and not held on their sites. However, in 1977, the Federal government prohibited nuclear fuel reprocessing due to nuclear proliferation concerns. President Reagan lifted this ban, but no serious reprocessing efforts have been pursued in the United States. Because utilities believed that reprocessing would be available, they did not have spent fuel pools sufficiently large to hold all of the spent nuclear fuel they would be generating over the course of the plants' licensed lifetime. According to NEI, by the end of 2006, about 60 commercial nuclear reactors will have no more storage space in their spent fuel pools.

NEI contends that building new spent fuel pools is not an option. It is costly and almost impossible to fit a new structure into the existing plant layout. A number of nuclear plants are storing used fuel in large containers made of steel or steel-reinforced concrete. The containers use materials like steel, concrete and lead (instead of water) as a radiation shield. Depending on the design, a dry

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<sup>1</sup> According to the *Technical Bases for Yucca Mountain Standards* report issued in 1995 by the Commission on Geosciences, Environment and Resources, National Academy of Sciences, a time scale that is feasible for most physical and geologic aspects of repository performance for long-term stability is on the order of 1,000,000 years.

<sup>2</sup> NEI is a policy organization with over 260 corporate members (including companies that operate nuclear power plants). NEI's objective is to ensure the formation of policies that promote the beneficial uses of nuclear energy and technologies in the United States and around the world.

container can hold from 7 to 56 fuel assemblies.<sup>3</sup> However, NEI indicates that building a dry storage facility at a plant site requires an initial investment of \$10-20 million. And, once the facility is operational, it will cost \$5-7 million a year to add more containers as storage needs grow and to maintain the facility. Although NRC determined that spent nuclear fuel could be stored safely at power plant sites for 100 years, both NRC and Congress believed permanent disposal was necessary.

Congress passed the NWPA in 1982 and amended it in 1987. The NWPA, as amended, outlines the process for the siting and construction of a geologic HLW repository. The NWPA also assigned certain roles and responsibilities to different Federal agencies. The NWPA, as amended, mandated to DOE the responsibility for evaluating a repository site at Yucca Mountain, and designing, constructing, and operating the facility. NRC's role is to develop a regulatory framework for evaluating a license application for the repository and, thereafter, to regulate DOE's activities. The Environmental Protection Agency's role is to issue generally applicable standards for protection of the general environment from offsite releases to which NRC regulations must conform. Figure 1 is a diagram of the roles and interactions between DOE and the agencies that are most actively involved with DOE with regard to the NWPA.

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<sup>3</sup> Fuel assemblies are clusters of fuel rods used to make up a reactor core. Fuel rods are long, slender metal tubes that hold nuclear reactor fuel.

Figure 1



Under the NWSA, NRC is also charged with the duty to issue a final decision approving or disapproving the issuance of a construction authorization for building the proposed repository. Through its Office of Nuclear Material Safety and Safeguards (NMSS), NRC is to issue a license to DOE *only* if DOE can demonstrate that it can construct and operate a repository safely and in compliance with NRC's regulations.

## II. PURPOSE

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The purpose of this audit was to determine if NRC is properly prepared to meet its pre-licensing<sup>4</sup> statutory requirements per the NWPA. See Appendix A for more details on the scope limitations and methodology of this audit.

## III. FINDINGS

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While NRC has been carrying out its pre-licensing responsibilities per the NWPA, its communications approach needs improvement. NRC's HLW program satisfies the NWPA responsibilities through the agency's promulgation and implementation of 10 CFR 63. Yet, NRC's HLW communications are not always effective because NRC lacks a holistic, agencywide communications approach. Consequently, stakeholders do not always perceive NRC's communications as being clear and open. NRC also faces uncertainties surrounding the Yucca Mountain project that are beyond the agency's control. Such uncertainties may impact NRC's ability to review DOE's license application for a geologic HLW repository at Yucca Mountain.

### A. HLW PROGRAM FOR PRE-LICENSING POSITIONED TO MEET NUCLEAR WASTE POLICY ACT REQUIREMENTS

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The NWPA provides the statutory requirements regarding the development and licensing of a geologic repository for high-level nuclear waste. NRC has taken steps to position its HLW program to meet NWPA requirements through the promulgation and implementation of 10 CFR 63<sup>5</sup>. Based on the requirements set forth in 10 CFR 63, NRC developed more specific guidance to carry out its role.

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<sup>4</sup> For purposes of this report, pre-licensing refers to all activities conducted prior to NRC docketing DOE's license application.

<sup>5</sup> Note: The Environmental Protection Agency's 10,000-year compliance period standard was vacated by the United States Court of Appeals, District of Columbia Circuit Court on July 9, 2004, 373 F3d 1251 (2004). Part 63 was also vacated to the extent it relied on the Environmental Protection Agency standard. Supreme Court review of the court's ruling was not sought. As of the date of this report, 10 CFR 63 has not been revised.

### HLW Criteria

The NWPA delineates NRC's role in reviewing and either approving or disapproving a DOE license application for a HLW geologic repository Yucca Mountain. Specifically, the NWPA requires that NRC

- establish technical requirements and criteria that it will apply in approving or disapproving the licensing of a repository, and
- provide timely and complete information with respect to licensing and regulating the repository to the Governor and legislature of the affected state and the governing body of affected Indian tribes.

*Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada*, 10 CFR 63, prescribes the rules governing the licensing of DOE to receive and possess HLW nuclear material at a geologic repository operation sited at Yucca Mountain, Nevada. Part 63 also sets forth the rules that will be followed for site characterization and licensing, as well as pre- and post-closure activities.



The excavation and development facilities at Yucca Mountain.

## Implementation

To provide guidance for NRC staff to evaluate a DOE license application for the proposed geologic repository, the agency developed the Yucca Mountain Review Plan. The principal purpose of the Yucca Mountain Review Plan is to ensure the quality, uniformity, and consistency of NRC's staff reviews of the license application. In March 2002, NRC made the draft Yucca Mountain Review Plan available for public comment. In July 2003, the agency published the Final Yucca Mountain Review Plan that reflects revisions to address the comments received, as appropriate.

NRC identified nine key technical issues (KTIs), originally key technical uncertainties, to help enable an efficient licensing process. The KTIs are principal issue areas divided into 293 agreements that were initially identified to help focus DOE's pre-license application efforts on matters central to development of its application. NRC expects DOE to address these issues for any geologic repository license application that it submits for Yucca Mountain. NRC created KTIs in accordance with the NWPA's requirement that DOE and NRC interact before DOE submits its license application.

In further support of processing DOE's license application, NRC hired a contractor to develop a Yucca Mountain Licensing Review Project Plan. The contractor provided a draft plan to NRC staff for review with a final version due in February 2005. The Yucca Mountain Licensing Review Project Plan outlines how NRC will conduct key elements of its project. The Plan includes written procedures as well as electronic tools and organizational commitments to reach NRC's goal of achieving best project management practices resulting in a better, quality-focused project.

In 1987, to provide technical assistance for the HLW program, NRC established the Center for Nuclear Waste Regulatory Analyses (CNWRA), a federally funded research and development center. The CNWRA is focused on addressing regulatory and technical matters specific to the proposed Yucca Mountain repository. NRC categorizes the Center's work as technical assistance — the expertise of the CNWRA staff is to complement the technical capabilities of the NMSS staff.

### Meeting Pre-Licensing Statutory Requirements

NRC's HLW program is positioned to meet NWSA pre-licensing requirements through the promulgation and implementation of 10 CFR 63 and its internal guidance. The agency developed guidance to evaluate the license application, instituted controls to track technical issues, and acquired technical assistance for the HLW program.

## **B. HLW COMMUNICATIONS NEED IMPROVEMENT**

While NRC has made strides in the communications area, its HLW communications (both internal and external) are not well coordinated across the agency. NRC's Principles of Good Regulation, management directives, strategic plan, and communication plan guidance illustrate standards for agencywide communications. Furthermore, NRC has taken steps to improve its communications through the implementation of various communication activities. However, office roles and responsibilities are not clear — particularly in the HLW communications area. As such, stakeholders perceive NRC as not always being clear and open. Because the agency's HLW communications lack a holistic approach, NRC faces an increased risk of declining public confidence.

### Communication Standards

NRC staff established the Principles of Good Regulation to serve as the framework for the development of standards of performance and professionalism within the agency. NRC uses these principles to guide its decision-making and behavior. To this end, NRC strives for good regulation through the application of independence, openness, efficiency, clarity, and reliability in its regulatory activities, decision-making, operations, and planning processes. (See Appendix B for a detailed description of the Principles of Good Regulation.)

NRC management directives specify policy, objectives, responsibilities, authorities, and other requirements in specific functional areas. More specifically, certain directives contain statements of organization and functions of NRC offices and regions, and are a means by which functions may be assigned and authority delegated to office directors and regional administrators. Because NRC's pre-licensing activities in preparation for a DOE license application span across the agency, the relevant policies, objectives, and responsibilities are found in several different management directives (MD).



NRC's Strategic Plan describes its mission and establishes the Commission's strategic direction by defining the vision, goals, and outcomes NRC intends to pursue. One goal is to ensure openness in NRC's regulatory process. The plan states —

The NRC believes in the importance of transparency in its communications, as well as early and meaningful public involvement in the regulatory process. The agency is committed to keeping the public informed and believes that a responsible and effective regulatory process includes an involved public that is well informed.

NRC maintains an intranet site for information on internal and external agencywide communication initiatives. One item contained on this site is dedicated to communication plan guidance. This guidance describes a communication plan as —

. . . the key messages and the methods for communicating a project or event with NRC's stakeholders. The primary objective of a communication plan is to deliver a consistent and accurate message about the project or event to all stakeholders in a timely fashion. Effective communications are instrumental in building and maintaining an environment in which safety, technical excellence, teamwork, creativity and continuous improvement are paramount.

Additionally, the guidance notes that while a communication plan does not have to be developed for every NRC activity, one should be developed when an NRC project or event is controversial or visible and could provoke a significant reaction from stakeholders.

### Communication Activities

With a focus on improving agencywide communications, the Chairman established a task force<sup>6</sup> in June 2003 to evaluate NRC's public communications and provide strategies for enhancing communications at all levels of the agency. The task force concluded that NRC needs to substantially improve its communications with many stakeholder groups and its use of key communication tools. The task force proposed ten

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<sup>6</sup> The task force was chaired by a Commissioner with membership consisting of agency staff members from various offices, including the team leader of the NMSS Public Outreach Team.

recommendations that covered topics such as the need for an agencywide communications plan, an increased role for the Office of Public Affairs (OPA), and community outreach efforts.

As a result of an OIG safety culture and climate survey,<sup>7</sup> NRC established a Communications Council. Responses to the safety culture and climate survey indicated that less than half of NRC employees felt that the agency does an excellent job of keeping employees informed about matters affecting the NRC. Therefore, the Executive Director for Operations established the Communications Council to plan, coordinate, and implement NRC internal communications strategies, and share best practices that add value across the agency.

In August 2003, the Chairman established the Director of Communications position to provide leadership and direction for external communications with the public, the media, and the Congress in support of the agency's strategic goals. In April 2004, NRC filled the position, which reports directly to the Chairman. While the newly appointed Director is involved in communications and is planning to initiate outreach efforts, he is not directly involved with discussions relating to HLW. However, the Director said NRC needs to take a look at the transition from its pre-licensing role to its role as a regulator.

The Director of Communications noted that he is moving to establish a comprehensive plan that is tied to the agency's strategic plan. Further, he would like to take communications to another level and educate NRC offices about the role the agency plays in upholding a unified effort to the public. He qualified that, while agency communications are "not bad," NRC staff have a tendency to simply respond to questions. He would rather see staff informing and educating the public of NRC's role and not just taking a position on the nuclear industry.

Through its organizational structure, NRC took steps to enhance the integration of the HLW program. For example, in 2001, NRC chartered a HLW Information Support Program Executive Steering Committee as a forum to exchange information covering both adjudicatory and programmatic HLW licensing process and system activities. In March 2003, in an effort to assure the integration of all programmatic and information technology/information management elements necessary to support the HLW licensing process and system, NRC established the position of High Level Waste Business and Program Integration Staff (Integrator). This position

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<sup>7</sup> OIG-03-A-03, *OIG 2002 Survey of NRC's Safety Culture and Climate*, issued December 11, 2002.

initially resided in NMSS<sup>8</sup> with a responsibility to coordinate with other agency offices to ensure the completeness of HLW business needs. Further, the Integrator was to ensure that the business needs are defined and understood, and that systems exist (or will exist) to meet those needs. In March 2004, the agency reorganized NMSS and established the Division of High Level Waste Repository Safety to provide focus and management attention on its HLW program and develop a comprehensive licensing program for the nation's HLW repository.

In an effort to ensure openness and to foster public confidence in NRC's commitment to carry out HLW licensing and regulatory responsibilities, NMSS established a Public Outreach Team. NMSS documented the formation of the Public Outreach Team in its HLW communication plan. The Team is active in making presentations and holding public meetings in Nevada, but it does not have a formal charter and staff serves on the team as a collateral duty.

The NMSS Public Outreach Team was involved with the two workshops NRC had with Native American Tribal Governments regarding HLW. In 2001, the Public Outreach Team took the lead for the first workshop, which was attended by an NRC Commissioner. Based on the first workshop, the tribes wanted more information. In response, NRC staff developed and held a workshop in 2003 to provide background information on HLW. The agency currently has no plans for additional workshops with the Tribal Governments.

The Public Outreach Team has held various meetings over the past several years. For example, in June 2003, the Team held a meeting in Tecopa, California that was scheduled for 2 hours but lasted twice that long. While many Tecopa residents were still skeptical, they expressed their gratitude for the meeting. More recently, the Public Outreach Team conducted a workshop for the affected units of local government that resulted in positive feedback.

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<sup>8</sup> In August 2004, the HLW Business and Program Integration Staff position was moved to the Office of the Chief Information Officer with a continued focus on the information technology/information management elements.

## Roles and Responsibilities

NRC's pre-licensing HLW activities span the agency. NMSS has the lead for the HLW program and other agency offices have different levels of involvement, focus, and responsibility relating to the program. As NRC becomes involved in the associated hearing process, separation of functions regulations (i.e., keeping an arms length distance) may impact how the different agency offices carry out their roles.

Per MD 9.15, the Office of State and Tribal Programs (STP) is charged with working cooperatively with Federal, State, and Tribal Governments through its liaison program to maintain effective relations and communications — yet NMSS is taking the lead for communications with Tribal Governments. In April 2000, NRC announced that the Commission designated STP to serve as the first point of contact with Tribal Governments, as well as have the responsibility for development and implementation of policies on cooperation with State and Tribal Governments. According to the agency announcement, this designation was made because Tribal Government interest had increased in multiple areas where NRC regulates, namely HLW transportation and disposal. The announcement also stated that the STP name change<sup>9</sup> was not intended to affect existing relationships and communications between NRC program offices and States and Tribes on specific technical issues. An STP official stated that in 1993, responsibility for State, local and Tribal interactions involving HLW and Yucca Mountain was transferred to NMSS, including one full time equivalent. Therefore, STP officials view STP's role in the HLW program as supportive because historically NMSS had the lead for interactions with State, local, and Tribal Governments regarding the proposed repository at Yucca Mountain. STP officials cited STP's role for the two tribal workshops as an example of the supportive role it provides. However, the Public Outreach Team expected STP to be the driver regarding relations and communications with the Tribal Governments.

STP has taken some steps to promote agency communications with Tribal Governments. In October 2001, the office created a list server<sup>10</sup> to share communications of interest for Tribes, such as press releases and information on public meetings. STP identified representatives from Tribal Governments to receive this information via the Internet. Currently, there are 39 subscribers to the Tribal list server — 8 are NRC subscribers and 31 subscribers are

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<sup>9</sup> Prior to becoming the Office of State and Tribal Programs, the office was called the Office of State Programs.

<sup>10</sup> A list server is the hardware and software for operating a system that serves as a repository for electronic messages that can be accessed by multiple users, either automatically or on-demand.

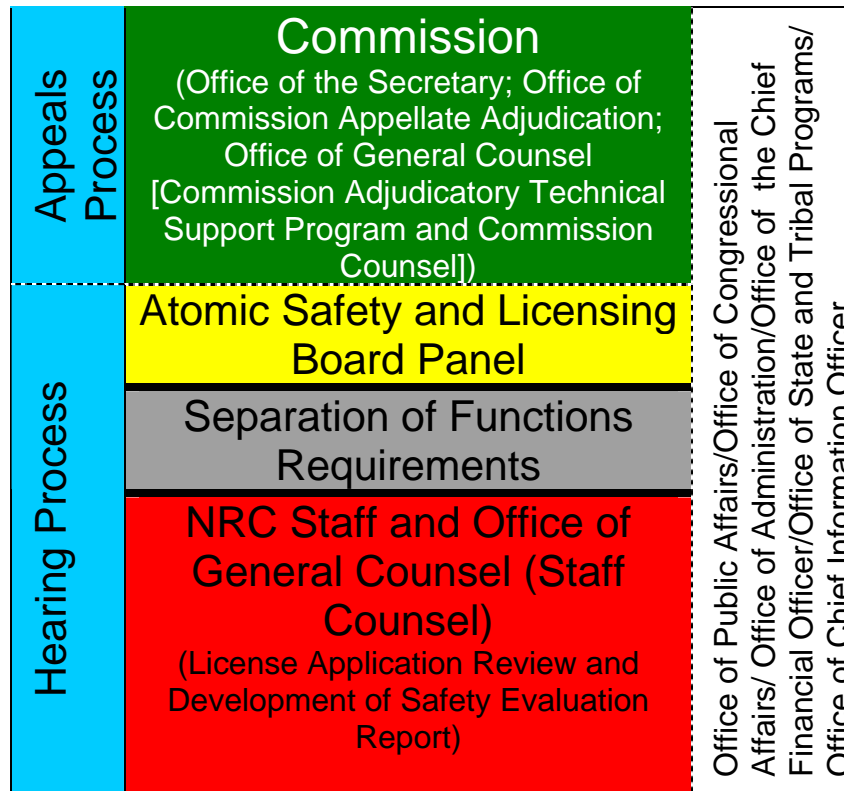
representatives of Native American Tribes. Further, STP officials advised that they are trying to be proactive in communicating information to Tribal Governments by drafting a new strategy that will have elements of a communication plan. Currently, STP's new strategy has been slow to progress due to other, more pressing needs.

Per MD 9.11, OPA is responsible for developing and administering agencywide policies and programs that inform the public and the news media of NRC's policies, programs, and activities, and inform NRC management of media coverage on activities that interest the agency. OPA officials stated that in general their responsibilities include counseling, training, public meetings, outreach planning, and press releases. Yet, OPA officials believe that they have no role during the pre-license application process beyond preparing press releases (which must be approved by the Chairman before issuance). OPA officials also noted that while they look at communication plans, they do not help develop such plans. They also try to attend public meetings regarding HLW, but did not attend the Tribal workshops.

While the Public Outreach Team's objective is to ensure openness and foster public confidence, the Office of the General Counsel (OGC) expressed concerns and reservations about NRC's public outreach actions taking place at the same time the agency is preparing for mandated hearings associated with the licensing process. As highlighted in NRC's strategic plan and Principles of Good Regulation, an agency goal is to ensure openness in its regulatory process. Moreover, the NWPA requires NRC to provide timely and complete information with respect to licensing and regulating the repository to the Governor and legislature of affected states and the governing body of affected Indian tribes. At the same time, the Commission's regulations establish a structured and formal decisionmaking and hearing process associated with the licensing of a facility. Thus, a senior OGC official is concerned that continuing outreach activities as the agency transitions into its formal license review and hearing process can adversely affect the agency's credibility. The OGC official believes that public outreach presentations and discussions can be misconstrued as the staff's positions and potentially undermine the effectiveness of its case during the formal hearing process. OGC believes that unless the foregoing concerns can be accommodated in the agency staff's outreach activities, OGC recommends against continuing outreach activities as the agency moves into the more formal license review and hearing process. Further, OGC believes that public outreach should be terminated once the formal hearing process is initiated.

NRC must also ensure that the adjudicatory staff working for the Commission and the Atomic Safety and Licensing Board Panel (ASLBP) keep an “arms length” from those individuals involved in the formal license review and hearing process.<sup>11</sup> That is, observe the required separation of functions rule.<sup>12</sup> A senior NRC official stated that while the agency has the separation of functions rule in place to guide NRC staff conduct in this area, NRC also has experience in ensuring independence between these groups. Further, the Commission created an independent group to serve as its technical advisors should a matter in adjudication come before the Commission. Nevertheless, not all NRC officials are clear on when NRC will begin operating in this mode. While the agency must ensure the separation of functions between the staff reviewing the license application and the adjudicatory staff, other agency support offices will still be involved with both sides. See Figure 2 for a depiction of how the agency should operate during the formal license review and hearing process.

**Figure 2**



Source: Office of the General Counsel, NRC

<sup>11</sup> The staff conducting the formal license review are in NMSS.

<sup>12</sup> 10 CFR 2.348, Separation of functions.

Instead of one HLW agencywide communication plan guiding these agency offices, NRC has multiple communication plans related to the HLW program. NRC's communication plan guidance recommends that a communication plan be developed for controversial or visible projects or events. Yet, a number of communication plans that relate to specific aspects of the HLW program exist across the agency.

### Stakeholder Perceptions

Many stakeholders agree that NRC's HLW communications have improved over the years; however, some still feel that NRC is withholding information and not making enough effort to help the public understand the complexities of the proposed repository. Several stakeholders believe that in the beginning of the HLW program, NRC was unprepared and somewhat hostile in its public relations. Some stakeholders find that the agency has since learned to engage the public and keep them informed. Other stakeholders believe that NRC is still not always sharing information or making enough effort to explain the complexities of the proposed repository. In particular, some Native American Tribe members believe that NRC is not showing enough interest in tribal issues.

While NRC staff has conducted a number of public meetings, some stakeholders view NRC as an unfair regulator because NRC staff had closed meetings<sup>13</sup> with DOE regarding the "audit" of three DOE analysis model reports. The meetings between NRC staff and DOE were announced, and the entrance and exit interviews were initially open to the public and then closed. Stakeholders referred to these meetings as the "secret meetings." While OIG investigators found that these meetings were appropriately closed, it does not change stakeholders' perceptions regarding this apparent lapse in effective communication.

Stakeholders find NRC's language regarding the KTIs to be ambiguous. Many stakeholders believe that NRC is changing what it expects of DOE regarding the resolution of the KTIs. According to stakeholders, initially the KTIs were supposed to be complete at the time of the license application. Stakeholders believe this has been amended by DOE to say that the KTIs must all be addressed before DOE submits its license application. Stakeholders view this as a sign of NRC bowing under the pressure that is being put on them by DOE. NRC officials contend that the agency has not

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<sup>13</sup> Closed meetings are meetings that due to the subject matter are not open to the public.

changed its expectations for the KTIs. Historic agency documentation supports this assertion. However, this message has not been clearly shared with stakeholders.

Stakeholders are not clear when NRC will assume its congressionally mandated regulatory role. In accordance with the NWPA, NRC is serving in a consultative role with DOE during the pre-license application phase. Once DOE submits its license application, NRC will need to assume the formal role of regulator. Yet, stakeholders are concerned that the consultation phase will continue throughout the licensing process, which would adversely affect the quality of NRC's independent oversight. Some stakeholders believe that NRC will do what DOE commands and that DOE will force an application on NRC and control the momentum of the process. A senior NRC official stated that NRC will not automatically accept the license application.

#### HLW Communications Need Improvement

NRC's HLW communications are not always effective because the agency lacks a holistic approach. The management directives that specify relevant policies, objectives, and responsibilities are out of date — adding to the situation of unclear roles regarding the HLW program. The purposes of various public outreach efforts and the role of the hearing process must be understood both internally and externally. Until then, NMSS and OGC will continue to struggle over their conflicting objectives regarding public outreach. In addition, multiple communication plans related to the HLW program make it difficult to identify which aspects of the program are being covered and which aspects are not being covered. Overall, NRC lacks systematic communication between the offices.

Stakeholders do not always perceive NRC as being clear and open with its HLW communications. NRC lacks an agencywide HLW communications plan. The agency's communication strategies and activities, as well as dedicated resources for successfully carrying out these strategies and activities are not documented in one place. Furthermore, there is not always input and buy-in from all agency offices involved with NRC's HLW communications.

Without a single agencywide HLW communication plan, NRC faces an increased risk of public confidence declining. As public confidence declines, the potential increases for additional agency resources to be consumed. The consequence of unclear communications could complicate the hearing process and further distract from NRC's focus on the technical issues surrounding the license application.



## **Recommendation**

OIG recommends that the Executive Director for Operations —

1. Develop and implement a single agencywide HLW communication plan.

## **C. HLW PROGRAM FACES EXTERNAL UNCERTAINTIES**

NRC faces external uncertainties beyond its control that may impact the staff's review of DOE's license application. Specifically, a court ruling vacated an Environmental Protection Agency 10,000-year compliance period standard. Consequently, NRC will have to revise its regulations when the Environmental Protection Agency issues its new standard.

Further, an Atomic Safety and Licensing Board ruling struck DOE's certification that it made available all DOE documentary material on its proposed Yucca Mountain HLW repository. DOE's certification has an important impact on the overall licensing schedule as it starts the 6-month clock for the earliest date when NRC can docket DOE's license application. DOE currently projects that it will resubmit its certification in spring 2005.

During this period of uncertainty, effective internal and external communications are essential for NRC keeping itself properly positioned to receive, review, and make a decision on DOE's license application.

## **IV. SUMMARY AND CONCLUSION**

NRC has taken steps to ensure that it is properly prepared to receive DOE's license application. The agency has developed and continues to develop guidance documents in accordance with the NWPA. Yet, the agency's HLW communications are lacking because NRC does not have a single agencywide HLW communication plan. In addition, NRC faces external uncertainties beyond its control that may impact the staff's review of DOE's license application. While operating in this environment of uncertainties, it is critical that NRC's communications are deliberate, open, clear, and independent.

## **V. AGENCY COMMENTS**

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On February 1, 2005, the Executive Director for Operations basically agreed with OIG's recommendation and provided comments concerning the draft audit report. OIG modified the report as we determined appropriate in response to these comments. Appendix C contains the Executive Director's for Operations transmittal memorandum and comments on this report. Appendix D contains OIG's specific responses to the comments.

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## SCOPE AND METHODOLOGY

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OIG initiated this audit to determine the status of NRC's HLW program in relation to DOE's projected date for submitting a license application to the agency for initiating construction of the proposed HLW repository at Yucca Mountain. Specifically, OIG planned to determine if NRC was sufficiently positioned to meet the 3 to 4-year deadline for making a licensing decision as imposed by the NWPA, as amended. However, in order to report useful information in a timely manner, OIG limited the scope of this audit to determine if NRC is properly prepared to meet its pre-licensing statutory requirements per the NWPA. OIG plans to conduct a future audit of NRC's HLW program to determine if the agency is sufficiently positioned to evaluate and approve or disapprove the license application within the 3 to 4-year NWPA timeframe.

In order to fulfill its objective, the OIG audit team toured Yucca Mountain and the surrounding area. While in Nevada, auditors interviewed representatives from affected units of government — including the State of Nevada. The audit team also met with Native American representatives, specifically members of the Timbisha Shoshone and Western Shoshone, and private citizen groups. Auditors interviewed DOE managers and NRC staff and managers involved with the HLW program. These meetings provided auditors with a well-rounded concept of the different perceptions regarding the proposed HLW repository at Yucca Mountain.

Additionally, the audit team reviewed and analyzed Federal legislation and regulations to determine NRC's compliance with these requirements. Auditors monitored current events associated with Yucca Mountain. The audit team also conducted reviews of agency communication plans and other documents related to the Yucca Mountain project.

This audit was conducted in accordance with generally accepted Government auditing standards and included a review of management controls related to the objective of this audit. This audit was conducted from May 2004 to November 2004.

Major contributors to this report are Russell Irish, Senior Level Assistant for Audit Operations; Sherri Miotla, Audit Manager; Yvette Russell, Senior Auditor; Debra Lipkey, Senior Management Analyst; Andrew Blanco, Engineer; Jerrol Sullivan, Management Analyst; and Matthew Dennis, Summer Intern.

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**PRINCIPLES OF GOOD REGULATION**

<p><b>Independence</b> – Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information and must be documented with reasons explicitly stated.</p>
<p><b>Openness</b> – Nuclear regulation is the public's business and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory process as required by law. Open channels of communication must be maintained with Congress, other Government agencies, licensees, and the public, as well as with the international nuclear community.</p>
<p><b>Efficiency</b> – The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required and must be a constant agency goal. NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.</p>
<p><b>Clarity</b> – Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives, whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied.</p>
<p><b>Reliability</b> – Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.</p>

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## AGENCY FORMAL COMMENTS



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

February 1, 2005

MEMORANDUM TO: Stephen D. Dingbaum  
Assistant Inspector General for Audits

FROM: Luis A. Reyes   
Executive Director for Operations

SUBJECT: COMMENTS ON DRAFT REPORT OF THE AUDIT OF THE U.S.  
NUCLEAR REGULATORY COMMISSION'S HIGH-LEVEL WASTE  
PROGRAM

I welcome the opportunity to comment on the draft report of the Audit of NRC's High-Level Waste (HLW) Program, as forwarded by your memorandum of January 25, 2005. These comments reflect input from the technical staff, as well as from the Office of General Counsel, the Office of Public Affairs, and the Office of State and Tribal Programs.

We understand that the purpose of this audit was to determine if NRC is properly prepared to conduct its pre-licensing activities under the Nuclear Waste Policy Act of 1982, as amended (NWPA). We are pleased that the Office of the Inspector General concurs that NRC is prepared and has been carrying out its pre-licensing activities under the law. NRC's activities under NWPA, reflected in NRC's regulations at 10 CFR Part 63, include the provision of timely and complete information regarding determinations or plans with respect to the characterization, siting, development, design, licensing, and regulation of the proposed repository, among others. We also agree that a coordinated, comprehensive agency-wide communications plan is a reasonable way to address staff's manifold communication challenges. Staff's existing HLW communication plan, prepared originally in 2000, and updated in 2003, was extensively coordinated with the Spent Fuel Project Office, the Office of General Counsel, and the Office of Public Affairs. The staff will ensure that this existing plan continues to evolve, with agency wide input and coordination, such that NRC is prepared to meet the new communications challenges it will face should it receive a license application for a proposed repository at Yucca Mountain.

In the most recent Inspector General's Assessment of the Most Serious Management Challenges Facing NRC (OIG-05-A-01), the Inspector General states that "...[t]he agency needs to provide a diverse group of external stakeholders (e.g., the Congress, general public, other Federal agencies, industry and citizen groups) clear, accurate, and timely information about, and a meaningful role in, NRC's regulatory activities." Over the past five years, NRC's HLW program has greatly expanded its efforts to do just that, and has risen to the challenge. Since 1999, staff has conducted more than twenty public meetings and workshops in Nevada on its HLW regulatory program, five specifically on the HLW licensing process. The majority of our more recent public meetings have been held at the request of local community



S. D. Dingbaum

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representatives who have heard earlier NRC presentations. Our staff has also held open houses in Nevada; participated in information sessions at professional society meetings; and developed a growing library of information sheets, posters, and plain language materials, many of which appear on our web site; to expand the availability of information about NRC's HLW program.

The HLW outreach program has been recognized both inside and outside of the agency for its innovation and leadership in this area. The leader of the HLW program's public outreach team was asked to serve on the Chairman's task force on external communication, in large measure, because of the innovation and success the HLW program had achieved in improving its outreach and communication efforts. HLW outreach staff represent the United States and the NRC as invited experts on international panels and in the Organization for Economic Cooperation and Development's Forum on Stakeholder Confidence. HLW outreach staff have also chaired sessions and presented invited papers documenting NRC's progress in HLW communication at both domestic and international conferences. Unfortunately, the tone and balance of the audit report does not fairly reflect staff's considerable progress in this area. Of course we agree that we need to continue to focus our efforts to improve communications as we prepare to receive a license application. And, without question, we intend to do so in a manner that is both sensitive to the need to achieve NRC's openness goals without causing confusion about the decision making process and that protects the integrity of the potential hearing process. The NRC staff believes that the tone and balance of the draft report would be greatly improved by acknowledging the extent of staff's successful activities, as carried out within the resources authorized.

A list of specific comments, are attached. Please feel free to contact Melinda Malloy of my staff at (301) 415-1785 if you have questions or require clarification of these comments.

Attachment: Specific Comments

cc: W. Dean, OEDO  
P. Shea, OEDO

**Specific Comments on the Draft Report of the Office of the Inspector General  
"Audit of U.S. Nuclear Regulatory Commissions's High-Level Waste Program"**

1. On page 3, line 11, delete "radiation protection standards" and substitute "generally applicable standards for protection of the general environment from offsite releases" to better track the Nuclear Waste Policy Act (NWPA).
2. On page 5, Section III, in the first sentence ("While NRC . . ."), delete "is prepared to meet its pre-licensing statutory responsibilities per the NWPA," and substitute "has been carrying out its prelicensing responsibilities."
3. Also on page 5, third sentence under Section III, "Findings," add "agency-wide" so the sentence reads: "...because NRC lacks a holistic, agency-wide communications approach.
4. On pages 5-6, under subsection A, in the second sentence, strike "pre-licensing."
5. On page 7, second paragraph, correct the description of the purpose of the key technical issues (KTIs) and the KTI agreements to read:

NRC ~~put into place~~ identified nine key technical issues (KTIs), originally key technical uncertainties, to help enable an efficient licensing process and encourage development of a high-quality license application. These issues provided a framework for development of NRC's Yucca Mountain Review Plan (YMRP) and, eventually, for development of NRC's Safety Evaluation Report. NRC entered into 293 agreements concerning the KTIs with DOE, to focus NRC's pre-licensing interactions with DOE. ~~The KTIs are 9 principal issue areas divided into 293 agreements that were initially identified to help focus DOE's pre-licensing application efforts on matters central to development of its application.~~ NRC expects DOE ~~must~~ to address these ~~issues~~ for agreements in any geologic repository license application that it submits for Yucca Mountain.

6. On page 8, correct the first two sentences of first paragraph to read:

In further support of processing DOE's license application, NRC developed, with contractor support, ~~hired a contractor to develop~~ a Yucca Mountain Licensing Review Project Plan. The contractor has provided a draft plan to the NRC staff ~~agency~~ for review with a final version...

7. On page 11, in the section entitled "Communication Activities," the report should acknowledge that the head of the HLW public outreach team served on the Chairman's task force, and contributed to the cited recommendations. The fact that NRC's HLW staff was asked to serve on this task force was due, in large measure, to the improvements brought about in the HLW communications area.

Attachment

8. On page 14, change the second paragraph to read:

...Commissioner. Based on the first workshop, the tribes wanted more information. ~~and in 2003, the tribes invited NRC back for~~ In response, NRC staff developed and held a workshop in 2003 to provide background information on HLW ~~further training~~. The agency...

9. On page 15, beginning with line 19, revise to read:

...An STP official stated that ~~as a result~~ in 1993, responsibility for State and Tribal interactions involving HLW and Yucca Mountain was transferred to NMSS, including one Full Time Equivalency. ~~was given to NMSS so that NMSS would have a Tribal Liaison for the Tribes that could be affected by NRC's HLW program. The official stated that the transfer of the Full Time Equivalency was the documentation of the agreement that NMSS would take the lead with Tribal Governments on HLW issues.~~ Therefore, STP officials ~~stated that~~ viewed STP's ~~has no direct~~ role in the HLW program as supportive because historically, NMSS has had the lead for interactions with State, local, and Tribal Governments regarding the proposed repository at Yucca Mountain. STP officials cited STP's support for the two tribal workshops as an example. ~~However,~~The Public Outreach Team expected STP to continue to be the driver regarding overall relations and communications with the Tribal Governments...

10. On page 16, the draft report indicates says that Office of Public Affairs (OPA) officials believe they have no role during the pre-license application process beyond preparing press releases. However, OPA has stated that its role for high-level waste, as for all agency activities, includes continuously responding to reporter requests, made by phone, e-mail, or other means, and alerting reporters to agency actions and activities, in addition to answering questions from the public. OPA has written a fact sheet on the high-level waste licensing process that is now posted on the agency's web site. It also has helped staff prepare for public meetings.
11. OIG in its report fails to recognize that the role of OPA will increase exponentially when a license application is received and as the agency moves into the hearing stage.
12. On page 16, second full paragraph, line 5, delete "statutorily" between "for" and "mandated." The Commission determined that a hearing was called for in the public interest; it is not explicitly addressed in the NWPA. Also in this paragraph, on line 12, delete "the Atomic Energy Act establishes" and insert "the Commission's regulations establish."
13. On page 17, the language in the top paragraph does not fully reflect our OGC's concerns regarding the continuation of outreach efforts. Thus, after the first full sentence, strike "The OGC official" and insert:

In particular, OGC is concerned that continuing outreach activities can cause confusion in the minds of the public with respect to the NRC's decision making process--informal outreach versus formal staff review and adjudication--and create false expectations in regard to the public's ability to influence agency decisions through informal means. And while general discussion of the hearing

process and associated requirements has already been provided to various audiences at a number of outreach sessions, detailed direction as to how the requirements for formal participation can be satisfied cannot be given by the agency. OGC is also concerned that limited resources—both staff and OGC—not be distracted from the required formal review and adjudicatory processes to conduct discretionary, informal outreach, especially in light of the very limited timeframe for decision making specified in the NWPA. In addition, the OGC official...

Also, change “construed” to “misconstrued.”

Delete the sentence beginning “As such...” and substitute:

Unless the foregoing concerns can be accommodated in the staff's outreach activities, OGC recommends against continuing outreach activities as the agency moves into the more formal license review and hearing process, and, in any event, terminating such activities once the formal hearing process is initiated.

In the second paragraph which starts on page 17, footnote 11 (from page 18) should be moved up to the end of the second sentence. In the third sentence of the same paragraph, substitute “accordance” for “addition” on page 18. Also on page 18, in the fourth sentence of the paragraph, strike “...adjudicatory team should a legal appeal be filed with...” and substitute “...technical advisors should a matter in adjudication come before...”

14. On page 21, improve the tone and balance of the report by changing the heading “HLW Communications Are Lacking” to “HLW Communications Need Further Improvement.”
15. Also, on page 21, the two sentences beginning “The purposes of various...” may not capture the point. Internally, there is an understanding of both public outreach efforts and the hearing process; the decision to continue public outreach notwithstanding the not-insignificant downsides is a matter of policy and discretion.
16. On page 22, in the first sentence of Section C, “HLW Program Faces External Uncertainties,” delete “agency’s ability to fulfill its role under the NWPA” and substitute “potential submission of DOE’s application and the agency’s related review.” Also, strike the next sentence, beginning “In recent months,...”

In the second paragraph, line 4, strike “extremely.”

17. On page 23, the point of the first full sentence (“In addition, NRC...”) is unclear. The recent court decision may affect when DOE submits an application and the timeframe for the NRC’s review, but it does not affect “the agency’s ability to fulfill its responsibilities under the NWPA.”

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APPENDIX D

**DETAILED OIG ANALYSIS OF COMMENTS**

At an exit conference on December 15, 2004, NRC provided informal, written comments on the draft HLW report. OIG incorporated the suggestions as appropriate. On February 1, 2005, NRC provided formal written comments on the draft HLW report (see Appendix C), which in several cases were contrary to the comments it provided at the exit conference.

Note: The page numbers used in NRC's Comments do not correspond with the page numbers in this report because the draft report was double-spaced and this final report is single-spaced. Therefore, the correct page numbers are stated, in bold, before each comment.

**NRC Comment 1 (Page 2 of report)**

On page 3, line 11, delete "radiation protection standard" and substitute "generally applicable standards for protection of the general environment from offsite releases" to better track the Nuclear Waste Policy Act (NWPA).

**OIG Response**

Wording changed as suggested.

**NRC Comment 2 (Page 4 of report)**

On page 5, Section III, in the first sentence ("While NRC. . ."), delete "is prepared to meet its pre-licensing statutory responsibilities per the NWPA," and substitute "has been carrying out its prelicensing responsibilities."

**OIG Response**

Wording changed as suggested.

**NRC Comment 3 (Page 4 of report)**

Also on page 5, third sentence under Section III, "Findings," add "agency-wide" so the sentence reads: ". . .because NRC lacks a holistic, agency-wide communications approach."

**OIG Response**

Wording changed as suggested.

**NRC Comment 4 (Page 4 of report)**

On pages 5-6, under subsection A, in the second sentence, strike "pre-licensing."

**OIG Response**

Wording changed as suggested.

**NRC Comment 5 (Page 6 of report)**

On page 7, second paragraph, correct the description of the purpose of the key technical issues (KTIs) and the KTI agreements to read:

NRC put into place identified nine key technical issues (KTIs), originally key technical uncertainties, to help enable an efficient licensing process and encourage development of a high-quality license application. These issues provided a framework for development of NRC's Yucca Mountain Review Plan (YMRP) and, eventually, for development of NRC's Safety Evaluation Report. NRC entered into 293 agreements concerning the KTIs with DOE, to focus NRC's pre-licensing interactions with DOE. The KTIs are 9 principal issue areas divided into 293 agreements that were initially identified to help focus DOE's pre-licensing application efforts on matters central to development of its application. NRC expects DOE must to address these issues for agreements in any geologic repository license application that it submits for Yucca Mountain.

**OIG Response**

OIG's discussion of the KTIs is to give the agency credit for actions taken to help ensure an efficient licensing process. While KTI data may be used in other related applications, OIG did not seek out this information during its audit as it is not significant to the objective of the report. Therefore, except for minor edits, the text remains unchanged.

**NRC Comment 6 (Page 6 of report)**

On page 8, correct the first two sentences of first paragraph to read:

In further support of processing DOE's license application, NRC developed, with contractor support, hired a contractor to develop a Yucca Mountain Licensing

Review Project Plan. The contractor has provided a draft plan to the NRC staff agency for review with a final version. . .

**OIG Response**

According to the statement of work for the *Development of a High-level Waste Licensing Program Project Plan*, "The Contractor shall develop a project plan to support project planning, implementation, execution and closeout. At a minimum, the project plan should be built using industry and NRC best practices. . ." Thus, the statement of work shows that the contractor was hired to develop the Plan. Therefore, except for minor edits, the text remains unchanged.

**NRC Comment 7 (Page 8 of report)**

On page 11, in the section entitled "Communication Activities," the report should acknowledge that the head of the HLW public outreach team served on the Chairman's task force, and contributed to the cited recommendations. The fact that NRC's HLW staff was asked to serve on this task force was due, in large measure, to the improvements brought about in the HLW communications area.

**OIG Response**

Footnote added to show that the team leader of the NMSS Public Outreach Team was a member of the Chairman's task force.

**NRC Comment 8 (Page 10 of report)**

On page 14, change the second paragraph to read:

. . . Commissioner. Based on the first workshop, the tribes wanted more information. ~~and in 2003, the tribes invited NRC back for~~ In response, NRC staff developed and held a workshop ~~in 2003~~ to provide background information on HLW ~~further training~~. The agency. . .

**OIG Response**

Wording changed as suggested.

**NRC Comment 9 (Page 11 of report)**

On page 15, beginning with line 19, revise to read:

. . . An STP official stated that ~~as a result~~ in 1993, responsibility for State and Tribal interactions involving HLW and Yucca Mountain was transferred to NMSS,



including one Full Time Equivalent ~~cy~~ was given to NMSS so that NMSS would have a Tribal Liaison for the Tribes that could be affected by NRC's HLW program. The official stated that the transfer of the Full Time Equivalency was the documentation of the agreement that NMSS would take the lead with Tribal Governments on HLW issues. Therefore, STP officials stated that ~~viewed~~ STP's has no direct role in the HLW program as supportive because historically, NMSS has had the lead for interactions with State, local, and Tribal Governments regarding the proposed repository at Yucca Mountain. STP officials cited STP's support for the two tribal workshops as an example. However, The Public Outreach Team expected STP to continue to be the driver regarding overall relations and communications with the Tribal Governments. . .

**OIG Response**

Wording basically changed as suggested, with a few minor edits.

**NRC Comment 10 (Page 12 of report)**

On page 16, the draft report indicates says [sic] that Office of Public Affairs (OPA) officials believe they have no role during the pre-license application process beyond preparing press releases. However, OPA has stated that its role for high-level waste, as for all agency activities, includes continuously responding to reporter requests, made by phone, e-mail, or other means, and alerting reporters to agency actions and activities, in addition to answering questions from the public. OPA has written a fact sheet on the high-level waste licensing process that is now posted on the agency's web site. It also has helped staff prepare for public meetings.

**OIG Response**

During an interview with members of the OIG audit team, OPA officials clearly stated that OPA has "no role" during the prelicensing process. However, OPA officials did provide a list of the office's general responsibilities. Text listing these general responsibilities has been added to the report.

**NRC Comment 11 (General comment, no specific page in the report)**

OIG in its report fails to recognize that the role of OPA will increase exponentially when a license application is received and as the agency moves into the hearing stage.

**OIG Response**

The Communications Director informed OIG, during an interview, that OPA's future role in the HLW area will be to continue taking care of the media. He did not state that OPA's role would increase exponentially. Further, OPA officials did not express this idea of an exponentially increased role to OIG during their interview. Therefore, the text remains unchanged.

**NRC Comment 12 (Page 12 of report)**

On page 16, second full paragraph, line 5, delete "statutorily" between "for" and "mandated." The Commission determined that a hearing was called for in the public interest; it is not explicitly addressed in the NWPA. Also in this paragraph, on line 12, delete "the Atomic Energy Act establishes" and insert "the Commission's regulations establish."

**OIG Response**

Wording changed as suggested.

**NRC Comment 13 (Page 12 of report)**

On page 17, the language in the top paragraph does not fully reflect our OGC's concerns regarding the continuation of outreach efforts. Thus, after the first full sentence, strike "the OGC official" and insert:

In particular, OGC is concerned that continuing outreach activities can cause confusion in the minds of the public with respect to the NRC's decision making process—informal outreach versus formal staff review and adjudication—and create false expectations in regard to the public's ability to influence agency decisions through informal means. And while general discussion of the hearing process and associated requirements has already been provided to various audiences at a number of outreach sessions, detailed direction as to how the requirements for formal participation can be satisfied cannot be given by the agency. OGC is also concerned that limited resources—both staff and OGC—not be distracted from the required formal review and adjudicatory processes to conduct discretionary, informal outreach, especially in light of the very limited timeframe for decision making specified in the NWPA. In addition, the OGC official. . .

Also, change "construed" to "misconstrued."

Delete the sentence beginning "As such. . ." and substitute:

Unless the foregoing concerns can be accommodated in the staff's outreach activities, OGC recommends against continuing outreach activities as the agency moves into the more formal license review and hearing process, and, in any event, terminating such activities once the formal hearing process is initiated.

In the second paragraph which starts on page 17, footnote 11 (from page 18) should be moved up to the end of the second sentence. In the third sentence of the same paragraph, substitute "accordance" for "addition" on page 18. Also on page 18, in the fourth sentence of the paragraph, strike ". . .adjudicatory team should a legal appeal be filed with. . ." and substitute ". . .technical advisors should a matter in adjudication come before. . ."

**OIG Response**

While OIG appreciates OGC's concerns and opinions, OIG cannot find evidence to substantiate OGC's statement that the agency's HLW outreach program is an informal process that can cause confusion in the minds of the public and create false expectations in regard to the public's ability to influence agency decisions through informal means. A number of representatives from the affected units of government advised OIG that they have a strong working relationship with NRC and they want ongoing and regular meetings. Therefore, the text remains unchanged.

Wording changed as suggested -- "construed" changed to "misconstrued."

Because the text was not changed to reflect OGC's first comment in this section (see the first paragraph in this section), this comment is not relevant. Therefore, the text remains unchanged.

As suggested, the footnote (which is now footnote 12 due to the addition of footnote 6) was moved to after the second sentence. The third sentence has been modified for clarification. Wording changed as suggested to the fourth sentence.

**NRC Comment 14 (Page 15 of report)**

On page 21, improve the tone and balance of the report by changing the heading "HLW Communications Are Lacking" to "HLW Communications Need Further Improvement."

**OIG Response**

Wording basically changed as suggested.

**NRC Comment 15 (Page 15 of report)**

Also, on page 21, the two sentences beginning “The purposes of various. . .” may not capture the point. Internally, there is an understanding of both public outreach efforts and the hearing process; the decision to continue public outreach notwithstanding the not-insignificant downsides is a matter of policy and discretion.

**OIG Response**

Wording modified for clarification. The language in the report goes to the heart of OIG’s message -- agency policy (e.g., Strategic Plan, Principles of Good Regulation) clearly sets the standard for NRC’s goal of openness. Therefore, while NRC fulfills its openness goal through public outreach, it must also consider its role in the hearing process. The staff and OGC need to realize the importance of both efforts.

**NRC Comment 16 (Page 16 of report)**

On page 22, in the first sentence of Section C, “HLW Program Faces External Uncertainties,” delete “agency’s ability to fulfill its role under the NWPA” and substitute “potential submission of DOE’s application and the agency’s related review.” Also, strike the next sentence, beginning “In recent months, . . .”

In the second paragraph, line 4, strike “extremely.”

**OIG Response**

Wording modified for clarification.

**NRC Comment 17 (Page 16 of report)**

On page 23, the point of the first full sentence (“In addition, NRC. . .”) is unclear. The recent court decision may affect when DOE submits an application and the timeframe for the NRC’s review, but it does not affect “the agency’s ability to fulfill its responsibilities under the NWPA.”

**OIG Response**

Wording modified for clarification.