



U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Audit Report

Use of Oversight Funds by the
State of Nevada and Affected
Units of Local Government



Department of Energy

Washington, DC 20585

July 29, 2005

MEMORANDUM FOR THE SECRETARY

FROM:


Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Audit Report on "Use of Oversight Funds by the State of Nevada and Affected Units of Local Government"

BACKGROUND

Under the terms of the Nuclear Waste Policy Act as amended, the State of Nevada and affected units of local government are entitled to exercise oversight of the Department of Energy's Yucca Mountain Project. In Fiscal Years 2003 and 2004, the Department's appropriations included a total of \$14.5 million to be used by the State of Nevada and ten local governments for this purpose. According to the Nuclear Waste Policy Act, oversight funds may be used to review Yucca Mountain Project activities with the potential to affect local economies, public health and safety, and the environment; request impact assistance; provide information to Nevada residents and the Secretary of Energy regarding activities of the Yucca Mountain Project; and, engage in any monitoring, testing, or evaluation of activities with respect to site characterization programs. Congress specifically prohibited the use of the funds to influence legislative matters, pay litigation expenses, or support multi-State efforts and other coalition building activities.

A United States House of Representatives Report for the Fiscal Year 2004 Energy and Water Development Appropriations Act directed the Department to audit the use of oversight funds. Accordingly, we conducted this audit to determine if the State of Nevada and affected units of local government used the oversight funds in accordance with the terms of the Nuclear Waste Policy Act and annual appropriations language, and to follow-up on corrective actions from prior audits. We selected Nye, Lincoln, and Clark Counties and the State of Nevada for our review.

RESULTS OF AUDIT

We questioned \$1.2 million of the \$11.7 million spent by the counties and the State of Nevada during Fiscal Years 2003 and 2004. While the amount of questionable expenditures identified during the audit was less than in prior years, these entities continued to use oversight funds for activities either unrelated to the Yucca Mountain Project or specifically prohibited by the applicable Appropriations Acts. An examination of expenditures from the oversight fund disclosed the following:



- Nye County spent about \$720,000 for economic development, grants, salaries, supplies, and services not related to the Yucca Mountain project.
- Lincoln County expended more than \$200,000 on activities unrelated to oversight such as developing a master planned community, conducting procurement outreach and industry targeting activities, tracking litigation, and monitoring National Nuclear Security Administration activities at the Nevada Test Site.
- Clark County spent over \$163,000 on activities unrelated to oversight that included hiring contractors to analyze and monitor Federal legislation, preparing a visioning report, working on activities related to the Nevada Test Site, attending Energy Communities Alliance conferences, and purchasing office supplies for other programs.
- The State of Nevada erroneously used over \$81,000 of oversight funds to pay for litigation attorney costs, Nevada Test Site-related activities, tours of Yucca Mountain with non-Nevada residents, and excessive conference costs. During the audit, the State of Nevada paid back over \$74,000 of the erroneous expenditures.

Our review noted that the Office of Civilian Radioactive Waste Management did not sufficiently monitor the State and counties' usage of funds. In certain cases, the Office approved work plans that did not fully describe activities to be conducted by affected government units. Such information is needed to ensure that the activities comply with the requirements of the Nuclear Waste Policy Act and appropriations language.

With respect to our prior audits of the subject, we found that recommendations identified in two earlier reports had not been fully implemented. Of most importance, the Office of Civilian Radioactive Waste Management had not made a final decision about what action it would take regarding \$2.2 million of unallowable costs identified in prior Office of Inspector General reports.

To its credit, the Office of Civilian Radioactive Waste Management had taken actions to ensure that oversight funds were being used for their intended purposes. For example, program officials initiated action to review work plans prior to providing funds to the affected units of government. In addition, the Office of Civilian Radioactive Waste Management developed and issued draft guidance to assist State and local governments in identifying appropriate oversight activities. These actions, coupled with over a \$2 million decrease in questioned costs from prior years, underscore improvements that have taken place in program operations. However, the continued expenditure of Federal taxpayer-provided funds for activities unrelated to the Yucca Mountain Project suggests that this program is still not fully achieving its intended results of assisting local governments in providing appropriate Project oversight.

MANAGEMENT REACTION

The Office of Civilian Radioactive Waste Management concurred with our recommendations and stated that it would build upon the actions taken over the last two years to assure that funds are only expended for authorized activities. Management comments are included in their entirety in Appendix 3.

Attachment

cc: Deputy Secretary
Under Secretary for Energy, Science and Environment
Chief of Staff
Acting Director, Office of Civilian Radioactive Waste Management
Deputy Director, Office of Repository Development

REPORT ON USE OF OVERSIGHT FUNDS BY THE STATE OF NEVADA AND AFFECTED UNITS OF LOCAL GOVERNMENT

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USE OF OVERSIGHT FUNDS

Fund Use

Nye, Lincoln, and Clark Counties and the State of Nevada (Nevada) used oversight funds for activities unrelated to acceptable activities described in the Nuclear Waste Policy Act (Act). Oversight funds were expended for specifically prohibited activities, such as influencing legislative matters and litigation expenses. In some cases, funds were used for activities that were not clearly related to oversight according to the available documentation. For the period under review, we identified \$1.2 million in questionable costs. (Detailed information on all questioned costs was provided under separate cover to the Office of Civilian Radioactive Waste Management (OCRWM), the affected units of local government, and the State of Nevada.)¹ OCRWM also had not fully implemented recommendations made in prior audit reports.

Nye County

During Fiscal Years (FY) 2003 and 2004, Nye County improperly charged the oversight fund for a number of activities unrelated to the Yucca Mountain Project, including economic development activities, salaries, supplies, and services for costs that should have been charged to the Independent Scientific Investigations Program (ISIP) grant. The ISIP grant provides funds for Nye County to evaluate site characterization, repository design, and performance issues affecting human health, safety, and the environment. For example, a number of individuals worked on activities related to both oversight and the ISIP grant; however, the entire cost of salaries, supplies, and services was charged to the oversight fund. After our previous audit, Nye County determined that the salaries for half of these employees had not been correctly allocated between oversight and other grant activities. In March 2003, Nye County started allocating employee costs to other accounts but did not reimburse the oversight fund the \$224,000 for incorrect allocations made between July 2002 and February 2003.

In another example, Nye County paid contractors nearly \$485,000 of oversight funds for economic development activities, grants, and other unrelated activities. Nye County also spent about \$12,000 for travel costs, including

¹ We questioned the entire amount of those invoices that lacked sufficient detail to allow us to correctly separate oversight expenditures from expenditures for unrelated activities.

a trip to New Orleans for a National Association of Counties conference. Some Nye County employees inappropriately received travel reimbursement for accompanying foreign officials on a tour of National Nuclear Security Administration activities at the Nevada Test Site. None of this travel was related to nuclear waste activities and, therefore, should not have been paid with oversight funds. In total, we questioned \$720,067 of Nye County's expenditures.

Lincoln County

Similarly, Lincoln County paid for unrelated and prohibited activities from oversight funds. Specifically, Lincoln County paid one contractor about \$57,000 for an unrelated activity of planning the development of a block of land for a master planned community. In another instance, Lincoln County transferred \$30,000 of oversight funds to the County's Regional Development Authority for unrelated activities such as procurement outreach and industry targeting activities. Another contractor received about \$86,000 for prohibited activities that included tracking litigation, meetings with a legislator, interacting with organizations that directly or indirectly influence legislation, and reviewing the State of Nevada's litigation activities. The contractor also received oversight funds for unrelated activities such as monitoring National Nuclear Security Administration activities at the Nevada Test Site, meetings and meals with Department officials, and paying travel costs for a trip not taken. In total, we questioned \$211,396 of Lincoln County's expenditures.

Clark County

Clark County also paid contractors with oversight funds for activities that were not permitted or were unrelated to the Yucca Mountain Project. In the first case, a contractor tasked with analyzing and monitoring Federal legislation was paid \$87,000 of oversight funds. In addition to reporting on legislative matters, the contractor met with various legislators, the Office of Management and Budget, and Nuclear Energy Institute (NEI) officials. While the Act allows Clark County to provide information regarding activities of the State of Nevada, Secretary of Energy, or Nuclear Regulatory Commission, meetings and discussions with other Federal officials were not permitted oversight

activities. In another instance, a contractor was paid about \$70,000 to prepare a visioning report for Indian Springs, Nevada. The visioning report was prepared to identify what the community envisioned for its future. Since the report did not address impacts associated with nuclear waste or the Yucca Mountain Project, it did not qualify as an oversight activity. Clark County also expended about \$4,200 of oversight funds for the following unrelated activities: writing the entry copy for an award presented by the International Association of Business Communicators, monitoring Nevada Test Site activities, attending Energy Communities Alliance (ECA) conferences, and purchasing office supplies for other programs. To cover some of the incorrect expenditures, Clark County officials transferred nearly \$960 of costs that had been inappropriately charged to the oversight fund to their general funds account. In total, we questioned \$163,020 of Clark County's expenditures during FYs 2003 and 2004.

State of Nevada

Nevada used oversight funds to pay litigation attorney costs which is a prohibited activity. For example, Nevada used the same law firm to handle litigation and licensing support network issues. While the law firm submitted separate bills for each of these activities, the State paid some litigation costs from the oversight fund. During the audit, Nevada corrected most of the erroneous payments. In total, we questioned \$81,381 of Nevada's expenditures.

Monitoring Oversight Funds

OCRWM has not sufficiently monitored the use of oversight funds received by the affected units of government. OCRWM approved work plans that did not always specifically describe the activities of affected units of government. Such information is necessary to ensure compliance with the Nuclear Waste Policy Act and appropriations language. For example, OCRWM approved work plans of Lincoln and Nye Counties that included general descriptions of their activities with the ECA and the NEI, both of which directly or indirectly influence legislation. The work plans did not show the specific activities the governmental units would conduct with the ECA and the NEI that were allowable under the Nuclear Waste Policy Act and appropriations language. Part of ECA's mission is to promote community interests in order to effectively address an increasingly complex set of

constituent, environmental, regulatory and economic development needs. In addition, ECA has extensive relationships with key decision makers to advocate its position on legislative matters. Similarly, the NEI is a policy organization of the nuclear energy and technologies industry and participates in both the national and global policy-making process. Since these activities are outside the scope of the authorized legislation, they should not have been included in the counties' work plans.

Follow-Up on Prior Audit Reports

OCRWM had initiated but not completed all of the corrective actions recommended in our two prior oversight audits. In our prior reports, we questioned \$3.37 million of the \$9.48 million spent by Nye, Lincoln, and Clark Counties and the State of Nevada and recommended that management recover all unallowable costs. OCRWM subsequently determined that about \$2.2 million of the questioned costs were unallowable. In lieu of recovering the unallowable costs, OCRWM withheld an equivalent amount from future oversight funds and allowed the affected units of government to reduce their work plans accordingly. However, OCRWM officials advised that since the withheld funds cannot be used for any purpose other than oversight, they plan to redistribute the withheld funds for that purpose in the future. The determination as to which governmental entity will receive the funds has yet to be made. Thus, the net effect may be that the \$2.2 million of unallowable charges will not be recovered.

The United States House of Representatives Appropriations Committee reviewed the expenditures questioned by the Office of Inspector General. In subsequent guidance, the Committee stated that it lacked sufficient information to opine as to whether the Department should seek to recover these Federal funds. Further, the Committee stated that this judgment remained with the Department. Consistent with the Committee's comments, we believe OCRWM should seek a formal determination on its statutory authority to recover oversight funds that were used for unauthorized activities.

Intended Results

We questioned \$1.2 million of the expenditures made by the State and three counties during the period included in our

review. Further, the impact of these activities suggests that this program is still not fully achieving its intended results of assisting local governments in exercising oversight of the Yucca Mountain Project.

RECOMMENDATIONS

We recommend that the Acting Director, Office of Civilian Radioactive Waste Management:

1. Assure that approved work plans fully describe the allowable activities to be conducted with organizations that, among other things, carry out lobbying and other activities prohibited by the authorization language in the Nuclear Waste Policy Act and appropriation language.
2. Make a determination on OCRWM's authority to recover oversight funds that were expended for unauthorized purposes.
3. Recover all oversight funds that affected units of local government spent on unallowable activities, if it is determined that OCRWM has the authority.

MANAGEMENT REACTION

Management concurred with the recommendations and stated that OCRWM would continue the actions it started over the past two years to assure that funds are only expended for authorized activities. These actions included conducting comprehensive annual reviews of proposed work plans and providing written oversight funding guidance to the State of Nevada and the affected units of local government. To build upon these actions, OCRWM will regularly interact with the State of Nevada and affected units of local government and perform more frequent assessments of expenditures. In addition, management stated that it will consult with the Office of General Counsel to obtain a legal opinion on OCRWM's authority to recover oversight funds expended for unauthorized purposes. Based on the legal opinion, management will implement appropriate remedies with respect to funds determined to have been expended for unallowable activities.

Management's comments are included in their entirety in Appendix 3.

AUDITOR COMMENTS

Management's comments are responsive to our recommendations.

Appendix 1

OBJECTIVE

Our objective was to determine if the State of Nevada and affected units of local government used the oversight funds according to the terms in the Nuclear Waste Policy Act and annual appropriations language and to follow-up on corrective actions from the prior audits.

SCOPE

The audit was performed between March 2004 and March 2005 at the OCRWM's Office of Repository Development in Las Vegas, Nevada; the State of Nevada's Agency for Nuclear Projects office in Carson City, Nevada; Clark County government offices in Las Vegas, Nevada; Lincoln County government offices in Pioche and Caliente, Nevada; and Nye County government offices in Pahrump, Nevada. The scope was limited to costs incurred by the State of Nevada from May 1, 2002, to June 30, 2004, and by Clark, Lincoln, and Nye Counties during their Fiscal Years 2003 and 2004, which span from July 1, 2002, to June 30, 2004. The State and three counties spent \$11.7 million during the period covered by our audit.

METHODOLOGY

To accomplish the audit objective, we:

- Evaluated Federal and Department guidance concerning the use of Nuclear Waste Funds for oversight responsibilities;
- Reviewed files and documentation supporting Nuclear Waste expenditures;
- Analyzed annual work plans; and,
- Held discussions with Department and affected units of government personnel.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits, and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the objective of the audit.

Accordingly, the audit included a review of the affected units of government's use of oversight funding. Because our audit was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. As part of our review, we

also evaluated the Department's implementation of the Government Performance and Results Act of 1993. We found that OCRWM had no specific or measurable performance measures related to the local governments' use of oversight funds. We conducted a limited assessment of computer-processed data when we traced expenditures charged against the oversight fund to supporting invoices. We found the data to be sufficiently reliable.

We discussed the results of the audit with OCRWM on May 31, 2005. Management waived the exit conference.

PRIOR AUDIT REPORTS

Office of Inspector General

- *Oversight Funds Provided to Local Governments in the State of Nevada* (DOE/IG-0600, May 2003). The audit determined that Clark, Lincoln, and Nye Counties used oversight funds for activities that were prohibited by the Nuclear Waste Policy Act. Specifically, counties spent oversight funds to hire lobbyists and attorneys to perform work that was not related to oversight activities, sponsor events and rallies held in protest of the Yucca Mountain Project; and, purchase supplies, materials, and services for their own operations unrelated to oversight activities. OCRWM had not monitored the expenditures and had not ensured that county program plans were implemented. As a result, the report questioned costs totaling \$3.3 million over a two-year period.
- *Audit of State of Nevada Yucca Mountain Oversight Funds for Fiscal Year 2001* (DOE/IG -CR-C-02-01, August 2002). The audit determined that the State of Nevada used oversight funds contrary to the Nuclear Waste Policy Act. Specifically, the State of Nevada paid for lobbying and coalition building activities. Additionally, the State of Nevada paid for the salary of a consultant that performed the same duties as a state employee. Finally, the audit found that the oversight funds had not been used by the state agency designated in the Appropriations Act. As a result, the report recommended the recovery of \$25,753 in questioned costs; future certifications of the amount of expenditures used each year; and, proper use of funds by the agency identified in the legislation.



Department of Energy

Washington, DC 20585

QA: NA

July 19, 2005

MEMORANDUM FOR GEORGE W. COLLARD
ASSISTANT INSPECTOR GENERAL FOR AUDIT SERVICES
OFFICE OF INSPECTOR GENERAL

FROM: PAUL M. GOLAN, PRINCIPAL DEPUTY DIRECTOR
OFFICE OF CIVILIAN RADIOACTIVE
WASTE MANAGEMENT *PMG*

SUBJECT: Comments on Inspector General Draft Audit Report on the Use
of Oversight Funds by the State of Nevada and Affected Units
of Local Government

INSPECTOR GENERAL RECOMMENDATION 1

"Assure that approved work plans fully describe the allowable activities to be conducted with organizations that among other things carry out lobbying and other activities prohibited by the authorization language for the Nuclear Waste Policy Act and appropriation language."

MANAGEMENT DECISION

Concur.

OCRWM reviews work plans to assure that only activities permitted by the Nuclear Waste Policy Act and authorized through appropriations language are approved for funding. When proposed activities are general in nature, OCRWM explicitly directs that funds may only be expended for activities that the State of Nevada and affected units of local government (AULG) can demonstrate are authorized pursuant to the Nuclear Waste Policy Act, as amended, or other applicable laws. In Fiscal Year (FY) 2003 and FY 2004, OCRWM also included a statement to the State of Nevada and the AULG that funds were not to be expended for lobbying, coalition building, and economic development activities.

Over the past two years, OCRWM has taken the following actions, which will continue: conducted comprehensive annual reviews of proposed work plans to ensure that only those activities authorized to be funded are approved for funding; conducted workshops with the AULG on the appropriate uses of and accounting for oversight funds; provided written oversight funding guidance to the State of Nevada and the AULG regarding any



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changes to the authorized uses of oversight funding; and increased the frequency of assessments of the oversight programs.

To build upon these actions, OCRWM will regularly interact with the State and AULG to answer questions on the application of oversight funds and will perform more frequent assessments including either monthly on-site reviews or require the monthly submittal of expenditures for review.

Estimated date of closure: December 2005

INSPECTOR GENERAL RECOMMENDATION 2

“Make a determination on OCRWM’s authority to recover oversight funds that were expended for unauthorized purposes.”

MANAGEMENT DECISION

Concur.

OCRWM will consult with the Office of General Counsel regarding authority to recover oversight funds.

Estimated date of closure: OCRWM will request the Office of General Counsel to provide a legal opinion within 90 days.

INSPECTOR GENERAL RECOMMENDATION 3

“If it is determined that OCRWM has the authority, recover all oversight funds that affected units of local government spent on unallowable activities.”

MANAGEMENT DECISION

Concur.

If it is determined that OCRWM has the authority to recover funds, OCRWM will develop a plan to implement available remedies with respect to any funds determined to have been expended for unallowable activities.

Estimated date of closure: To be determined.

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