

WR-B-99-04

AUDIT REPORT

APPROVAL OF TITLE X
REMEDICATION CLAIMS



JUNE 1999

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES

June 25, 1999

MEMORANDUM FOR THE MANAGER, ALBUQUERQUE OPERATIONS OFFICE

FROM: Lawrence R. Ackerly, Regional Manager (Signed)
Western Regional Audit Office
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "Approval of Title X Remediation Claims"

BACKGROUND

From 1943 to 1970, most of the uranium ore in the United States was milled under contract between the U.S. Atomic Energy Commission and private companies. In the 1960s and 1970s, after these contracts ended, many of the uranium mills closed down and left large quantities of waste, such as uranium mill tailings and abandoned buildings at the sites. Numerous scientific studies determined that the abandoned mill sites were a potential health hazard. In response to this health hazard, the U.S. Congress passed the *Uranium Mill Tailings Radiation Control Act of 1978*. Subsequently, Congress determined that the Federal Government had a responsibility to pay for part of the sites reclamation costs. Consequently, a reimbursement methodology was established and codified as *Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites* (10 CFR 765). This regulation allowed for mining companies to submit remediation claims to Department of Energy (DOE) for review, approval, and reimbursement. However, the claims had to be supported by reasonable documentation in order to be eligible for payment.

The objective of the audit was to determine if *Title X--Remedial Action and Uranium Revitalization* (Title X) of the *Energy Policy Act of 1992* remediation claims were properly supported and approved for payment.

RESULTS OF AUDIT

We reviewed seven remediation claims and found that the Albuquerque Operations Office (Albuquerque) approved portions of six claims that were properly supported. The seventh claim, however, was approved for payment even though an \$18.1 million portion of the \$30.5 million claim was unsupported. The \$18.1 million portion had twice been reviewed by the Defense Contract Audit Agency and found not to be supported by reasonable documentation. Despite these audit results, Albuquerque approved the payment of the claim. The claim would not have been approved for payment if Albuquerque had followed its procedures for processing claims. As a result of its actions, Albuquerque approved an unsupported claim that will cost taxpayers about \$14.7 million, the Federal portion of the \$18.1 million claim. We recommended that Albuquerque (1) reverse the approval and payment decision of the \$14.7 million Federal portion of the claim and (2) follow its internal control procedures based on Title X requirements, including procedures for approving claims for payment based solely upon reasonable documentation and for appealing determinations.

MANAGEMENT REACTION

Albuquerque nonconcurred with our finding and recommendations.

APPROVAL OF TITLE X REMEDIATION CLAIMS

TABLE OF CONTENTS

Overview

Introduction and Objective 1

Conclusions and Observations 1

Approval Of Title X Remediation Claims

Details of Finding 3

Recommendations and Comments 6

Appendices

Scope and Methodology 9

Calculation of Federal Portion of TVA Claim 10

Overview

INTRODUCTION AND OBJECTIVE

From 1943 to 1970, most of the uranium ore in the United States was milled under contract between the U.S. Atomic Energy Commission, a predecessor of the Department of Energy (DOE), and private companies. In the 1960s and 1970s, after these contracts ended, many of these uranium mills closed down and left large quantities of waste, such as uranium mill tailings and abandoned buildings, at the mill sites. Numerous scientific studies determined that the abandoned mill sites were a potential health hazard. In response to this health hazard, the U.S. Congress passed the *Uranium Mill Tailings Radiation Control Act of 1978*. Title I of the Act directed DOE to stabilize, dispose of, and control, in a safe and environmentally sound manner, uranium mill tailings at 24 inactive uranium mill sites. Title II addressed the closure of uranium mill sites that were still active in 1978.

Congress subsequently determined that the Federal Government had a responsibility to pay for part of the mill site's reclamation costs. Consequently, it passed *Title X--Remedial Action and Uranium Revitalization* (Title X) of the *Energy Policy Act of 1992*. DOE established a reimbursement methodology in its regulations codified as *Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites* (10 CFR 765). This regulation allowed for mining companies to submit remediation claims to DOE for review, approval, and reimbursement. However, the claims had to be supported by reasonable documentation in order to be eligible for payment. The objective of this audit was to determine if Title X remediation claims were properly supported and approved for payment.

CONCLUSIONS AND OBSERVATIONS

We reviewed seven remediation claims and found that the Albuquerque Operations Office (Albuquerque) approved portions of six claims which were properly supported. The seventh claim, however, was approved for payment even though an \$18.1 million portion of the \$30.5 million claim was unsupported. The claim would not have been approved for payment if Albuquerque had followed its procedures for processing claims. As a result of its actions, Albuquerque has approved an unsupported claim that may cost taxpayers about \$14.7 million, the Federal portion of the \$18.1 million claim.

This audit identified issues that management should consider when preparing its yearend assurance memorandum on internal controls.

(Signed)
Office Of Inspector General

Approval Of Title X Remediation Claims

Claim Approval

Albuquerque approved portions of six claims that were properly supported. However, it also approved an \$18.1 million portion of a \$30.5 million claim from the Tennessee Valley Authority (TVA) for remediation of its Edgemont, South Dakota, site that was not properly supported. Albuquerque did a technical review of the claim and requested the Defense Contract Audit Agency (DCAA) to perform an audit. Based on the review and DCAA's audit, Albuquerque approved a portion of the claim for payment in July 1995 and disallowed an \$18.1 million portion due to the lack of reasonable documentation. Two years later, TVA resubmitted its original claim to Albuquerque with some additional documentation. Once again, Albuquerque requested that DCAA audit the claim. Similar to the finding of its first audit, DCAA determined that the documentation submitted by the claimant did not support the \$18.1 million portion of the claim. In spite of the lack of reasonable documentation, Albuquerque approved TVA's resubmitted claim for payment.

Reasonable Documentation

Title X authorizes active uranium or thorium processing site owners reimbursement for the costs of decontamination, decommissioning, reclamation, and other remedial action. Title X requires that reimbursement claims be supported by reasonable documentation.

DOE issued implementing regulations as Title 10 of the Code of Federal Regulations (CFR), Section 765. According to the CFR, remediation claims for work, which occurred before enactment of Title X, can be approved for payment by DOE if the claimant produces reasonable supporting documentation. Further, the CFR states that the documentation used in support of a claim must demonstrate that remediation costs were incurred specifically for activities in the site's reclamation plan. Additionally, the documentation must clearly demonstrate that the remediation costs were authorized, completed, billed, and paid. The CFR requires all summary documentation used in support of the claim be cross-referenced to the relevant page and activity of the licensee's reclamation plan or other written authorization. The CFR also requires DOE to provide the claimant with a written determination of its decision to approve, approve in part, or deny a claim. Finally, the CFR requires a claimant to utilize the DOE's administrative appeals process to appeal any Title X determination. Thus, a claimant may file an appeal to DOE's Office of Hearings and Appeals.

Subsequent guidance issued to Title X claimants by DOE confirmed and amplified the requirements of Title X. For instance, in February 1993, before the first claim was filed, DOE sent TVA a letter which stated that reasonable documentation would be required to support any claim. In May 1994, TVA and the other claimants were provided with copies of DOE's guidance for preparing claims. The guidance was further discussed in a June 1994 meeting attended by an Albuquerque claim reviewer and a TVA representative. Both the guidance and the discussion pointed out that to be considered reasonable, supporting documentation must demonstrate that a clear trail exists between the claimed expenditures and remediation requirements. Additionally, the documentation must clearly illustrate that the expenditures were authorized, completed, billed, and paid.

In April 1994, the Deputy Assistant Secretary for Environmental Management issued a memo delegating implementation of the Title X reimbursement program to Albuquerque. As a result, Albuquerque became responsible for approving Title X claims.

**Not Following
Established Controls**

The TVA claim was approved because established internal controls were disregarded. Specifically, Albuquerque approved the resubmission even though it did not meet the reasonable documentation requirement, and Albuquerque allowed TVA to bypass the appeals process.

Approval Without Reasonable Documentation

Title X requires all claims to be supported by reasonable documentation. Although Albuquerque adhered to this requirement in some instances, it did not always do so. Our review of the seven largest claims submitted to Albuquerque showed that Albuquerque disallowed claims or portions of claims that were not supported with reasonable documentation. For example, Albuquerque disallowed a \$1 million portion of a claim due to the lack of reasonable documentation. Another portion of a claim for about \$5,000 was disallowed for lack of supporting documentation. Albuquerque had also disapproved a portion of TVA's original claim because it lacked support.

However, Albuquerque reversed its decision following TVA's resubmission and approved a portion of the claim even though it was still not supported with reasonable documentation. The explanation

offered by the Albuquerque approving official for circumventing the intent of Title X was that TVA was the only claimant which had completed its reclamation work prior to passage of Title X. Further, the official believed that TVA had done the remediation work and incurred the costs because he had knowledge of the site reclamation activities when he worked for TVA. If Albuquerque followed its control procedures, the unsupported resubmission would not have been approved, the belief by the former TVA official would not have been accepted without corroborating evidence, and the audit work done by DCAA would not have been dismissed.

Appeals Process

Title X provides an appeals process for claimants who disagree with a final determination. The appeal must be submitted to the Office of Hearings and Appeals within 45 days. Albuquerque's July 1995 determination disallowed \$0.1 million as an unallowable cost and \$18.1 million of TVA's claim for lack of reasonable support. The letter sent to the claimant explained the appeals process. However, Albuquerque's letter also stated that the claimant could resubmit its claim if it obtained additional support for the disallowed portion of the claim and if additional funding for remediation claims became available. Thus, Albuquerque allowed this claimant a second course of action--one not authorized in the legislation that created Title X.

A month later, DOE's Office of Environmental Management (EM) reinforced the mistake. Personnel within EM sent a letter to TVA that said: "While we have disallowed these costs at this time, we do not believe it is necessary for TVA to file an appeal to maintain their future eligibility. Rather, we suggest that TVA resubmit its claim for these costs along with additional supporting information if, as notified by the Department, excess funds for reimbursement are available."

The two actions, the first by Albuquerque and the second by EM, encouraged TVA to circumvent the appeals process, a control procedure that was intended by Title X. Further, other claimants were invited to notify Albuquerque if they disagreed with the audit work done by DCAA. Although we did not find that other claimants had resubmitted disallowed claims, the potential for them to do so existed because of the way the appeals process was circumvented.

Effect Of The Approval

If this approval is not reversed, DOE may pay TVA about \$14.7 million (see Appendix 2). The payment was determined based on the ratio of Government sales to total mine sales. Therefore, for the TVA claim, the Federal portion is 81.3 percent and TVA's portion is 18.7 percent. Although the claim has been approved, it has not yet been paid.

RECOMMENDATIONS

We recommend that the Manager, Albuquerque Operations Office require the Director of its Environmental Restoration Division to:

1. reverse the approval and payment decision for the \$14.7 million Federal portion of TVA's claim and notify TVA of the decision; and,
2. follow its internal control procedures based on Title X requirements, including procedures for approving claims for payment based solely upon reasonable documentation and for appealing determinations.

MANAGEMENT REACTION AND AUDITOR COMMENTS

Albuquerque nonconcurred with the finding, recommendations, and the cost savings. Management contended that (1) the regulations gave them certain flexibility in the type of documentation they could accept; (2) the Office of Inspector General (OIG) did not understand DCAA's role in reviewing claims, (3) the appeals process was not circumvented, and (4) the effect of the approval was less than claimed by the OIG since the claim exceeds the current reimbursement ceiling. Each of these contentions is addressed below.

Management Comments: Management stated that Title X is a unique program where traditional accounting practices may not always be applicable; when work is performed prior to the passage of Title X, provisions must be made for different circumstances and levels of record-keeping; the OIG did not recognize the Management discretion allowed by DOE's own regulation; and there is no risk that the Government is reimbursing costs that were not incurred or paid.

Auditor Response: Title X and the CFR clearly state that reasonable documentation is required for reimbursement of remediation activities that took place prior to the passage of Title X. In its response to the claimant's first submission, Management acknowledged that there was a lack of documentation for amounts exceeding TVA's reimbursement ceiling, and that additional documentation would be required before the claim could be approved. Management also noted that TVA was not relieved of any requirement for submission of

reasonable documentation. The only discretion allowed by the CFR is the provision for use of non-contemporaneous documentation, such as audit reports. This form of documentation may be acceptable if it proves that costs are reasonable. The CFR clearly states that all remediation claims must be supported by reasonable documentation. DOE's guidance further states that costs that cannot be traced back to an approved reclamation plan or other written authorization are not reimbursable. Finally, DCAA twice determined that the documentation received by DOE in support of the \$18.1 million portion of the claim did not meet the reasonableness standard. Therefore, the risk remains that the claim may include costs that were not related to remediation activities.

Management Comments: Management contended that the OIG did not understand the role of DCAA, which was employed only to pass judgement on the accounting basis for the claim.

Auditor Response: The OIG clearly understands that DCAA was required to determine if there was reasonable documentation to support the claim. In fact, DCAA's Description of Work states that the audit of supporting documentation will verify the accuracy, legitimacy, and completeness of the claim. After reviewing the second submission, DCAA found that the claim was not supported by reasonable documentation. Subsequent to DCAA's review, a former TVA employee asserted that the work had been done and the costs were reasonable. The employee, however, did not have first hand knowledge of the remediation costs or evidence to support the assertion. Thus, the OIG concluded that there was not a reasonable basis to approve the claim.

Management Comments: Management contended that the appeals process was not circumvented because Title X is silent on the resubmission of disallowed claims.

Auditor Response: Neither Title X nor 10 CFR 765 provide any alternative to the appeals process. In fact, the CFR states that the appeals process must be used to exhaust the claimant's administrative remedies. Thus, by inviting the claimant to resubmit its claim as opposed to going to the Office of Hearings and Appeals, DOE attempted to circumvent the appeals process.

Management Comments: Management contended that the approval of the resubmitted claim will not cost the taxpayers \$14.7 million because the claim exceeds the current reimbursement ceiling.

Auditor Response: In 1996, Congress increased the ceiling for uranium sites from \$270 million to \$350 million. Later, in testimony before the House of Representatives, in July 1998, a senior DOE official stated that the uranium reimbursement ceiling is greater than the amount of expected future claims. If total authorized funds have not been expended by 2005, the Secretary of Energy has the discretion to reimburse claimants whose costs exceed their individual ceilings. Consequently, funds may be made available to pay the entire TVA claim. Therefore, although the necessary funds are not currently available to pay TVA's entire claim, Albuquerque's approval of an unsupported claim permits its payment if adequate funding becomes available.

Appendix 1

SCOPE

The audit was performed at Albuquerque's Environmental Restoration Division, Albuquerque, New Mexico, from September 1998 to March 1999.

METHODOLOGY

To accomplish the audit objective, we:

- reviewed a judgmental sample of seven recent Title X claims totaling about \$484 million and constituting about 74 percent of the total value of all claims;
- reviewed supporting documentation, including technical reviews and DCAA audits;
- interviewed Albuquerque Environmental Restoration Division personnel;
- interviewed Office of Hearings and Appeals personnel;
- interviewed Office of Southwest Area Programs (EM-45) personnel; and,
- reviewed testimony of William Wisenbaker, Acting Associate Deputy Assistant Secretary for Environmental Restoration before the House Committee on Commerce, Subcommittee on Energy and Power, July 27, 1998.

The audit was conducted 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, we assessed the significant internal controls and performance measures established under the *Government Performance and Results Act of 1993* related to Albuquerque's review and approval of Title X remediation claims. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We did not rely extensively on computer processed data and, therefore, did not fully examine the reliability of that data.

We discussed the finding with Albuquerque and DOE EM officials on March 22, 1999.

Appendix 2

Calculation Of Federal Portion Of TVA Claim

| | | |
|---|----------------|----------------|
| | | |
| TVA's 1994 Claim | | \$30.5 million |
| Less Disallowed Title I Disposal Costs | \$ 0.1 million | |
| Less Costs Lacking Reasonable Documentation | \$18.1 million | |
| Total Disallowed | | \$18.2 million |
| 1994 Approved Claim | | \$12.3 million |
| Federal Reimbursement Ratio | | 0.813 |
| Federal Portion of 1994 Approved Claim | | \$10 million |
| | | |
| | | |
| TVA's 1997 Claim | | \$30.5 million |
| Less Previously Disallowed Costs | \$ 0.1 million | |
| Less Previously Approved Claim | \$12.3 million | |
| Total Previously Approved or Disallowed | | \$12.4 million |
| Balance Subject to Second Review | | \$18.1 million |
| 1997 Disallowed Costs | | \$ 0.0 |
| 1997 Approved Costs | | \$18.1 million |
| Federal Reimbursement Ratio | | 0.813 |
| Federal Portion of 1997 Approved Claim | | \$14.7 million |

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