

*Office of Chief Counsel  
Chicago Office*

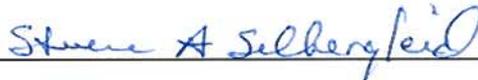
**Annual Plan  
Fiscal Year 2005**



*Steven A. Silbergleid  
Chief Counsel*

Approval of this Plan constitutes an agreement between the two parties as to performance commitments; it is not an endorsement of projected resource requirements.

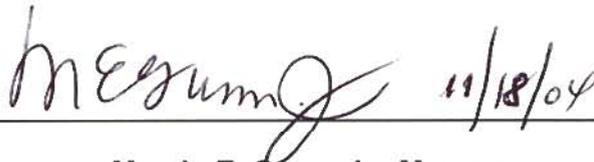
**RECOMMENDED**

A handwritten signature in blue ink that reads "Steven A. Silbergleid". The signature is written in a cursive style and is positioned above a horizontal line.

**Steven A. Silbergleid**  
**Chief Counsel**

August 2004

**APPROVED**

A handwritten signature in black ink that reads "Marvin E. Gunn, Jr." followed by the date "11/18/04". The signature is written in a cursive style and is positioned above a horizontal line.

**Marvin E. Gunn, Jr., Manager**  
**Chicago Office**

## **Executive Summary**

The FY05 Office of Chief Counsel (OCC) Annual Performance Plan (APP or Annual Plan) is a current best estimate of the level of legal and administrative services that OCC will be asked to provide to the Office of Science (SC) Field Organizations under the FY05 SC Integrated Support Center Service Plan. It should be noted, however, that the Workload Indicators are predicated on all services, including OCC services to non-SC Field Organizations. These services are briefly described in the Resource Requirements. The Initiatives, however, do not reflect these non-SC services, such as legal support to MOX/TPBAR, and Intellectual Property support to the two ongoing major Idaho Operations Office Source Evaluation Boards.

The biggest manpower demand is reflected in the first initiative under Support OneSC.

Workload indicators use a baseline of FY97-FY03.

OCC would also like to highlight the anticipated loss of up to seven (7) attorneys by the end of FY06. This is a critical year with respect to filling vacancies as they occur, especially the current general attorney vacancy, as well as being authorized to hire a patent attorney with a very select skill set.

## **Key Assumptions**

This Annual Performance Plan is based on the following important assumptions:

1. CH is given responsibility to conduct three (3) Management and Operating (M&O) contract procurements.
2. Headquarters (HQ) timely and reasonable in solicitation and contract reviews.
3. OCC Full Time Employee (FTE) allocation increased from 28 to 30 to accommodate succession planning.
4. No additional major SEBs beyond those identified in assumption 1, above.
5. CH is given responsibility as "owner" of M&O contracting.
6. Timely hiring assistance from MA-HR.
7. Sufficient travel funds in connection with assumption 1, above.

### Initiatives that Support CH Priorities and Critical Outcomes

The following initiatives represent OCC commitments for the fiscal year.

#### **Priority 1: Actively Support OneSC**

<b>Initiative</b>	<b>Measure</b>	<b>FY05 Target</b>	<b>Critical Outcome</b>
1.1.1 Support SC re-competitions of expiring SC M&O contracts.	Date of completion for LBNL SEB.	End of 1Q	1.1 Complete establishment of M&O contracting support operations.
	Date of award of LBNL contract.	End of 1Q	
	Date of Completion of Model M&O RFP T&C quarterly updates.	End of 1Q and 2Q	
	Date of completion of Ames extension.	End of 1Q	
	Date of initiation of ANL SEB.	End of 3Q	
	Date of initiation of Ames SEB.	End of 4Q	
	Date of completion of SLAC update.	End of 2Q	
	Date of completion of PPPL extend/compete package.	End of 2Q	
1.1.2 Assist ACQ with establishing M&O contracting support operations.	On-time percentage of legal review of ACQ proposed M&O policies and procedures.	90%	
1.2.1 Assist with development of SBMS Project Plan as requested.	Satisfaction rating of OCC support.	Rating of satisfied or highly satisfied.	1.2 Complete project plan for SBMS Deployment.
1.3.1 Provide assistance with transition of human resources services as requested.	HR satisfaction rating of OCC support.	Rating of satisfied or highly satisfied.	1.3 Successful transition of human resource services for the Office of Science (SC) Headquarters.
1.4.1 Participate in OneSC Phase 2 (re-engineering).	Number of OCC members with active participation on OneSC Re-engineering Teams.	At least two.	1.4 Lead or participate in all SC reengineering efforts.

**Priority 2: Establish “Best in Class” Customer Service**

<b>Initiative</b>	<b>Measure</b>	<b>FY05 Target</b>	<b>Critical Outcome</b>
2.1.1 Develop OCC Customer Service Plan, including plans for Customer Survey(s).	Date of Completion.	End of 1Q	2.1 Define and adopt “Best-in-Class” customer service consistent with CH Policy.
2.1.2 Negotiate expectations with Site Office Managers and other OCC Customers.	Date of Completion.	End of 1Q	
2.1.3 Develop, issue, and evaluate Customer Surveys, and develop Corrective Action Plan(s) as appropriate.	Date of Completion of Customer Survey(s).	End of 2Q	
	Date of Issuance of Customer Survey(s).	End of 3Q	
	Percentage of customers responding to survey indicating they are satisfied or highly satisfied with OCC services.	90%	
	Date of Completion of Corrective Action Plan.	End of 4Q	
2.1.4 Provide timely legal review services.	Percentage of legal reviews complete within Customer’s deadline.	90%	
	Average review time for Cooperative Research and Development Agreements, Joint Work Statements, Work for Others, etc.	3 days or less	
	Percentage of above reviews performed in less than 3 days.	90%	

2.1.5 Implement effective ethics oversight program.	Number of errors in ethics advice provided after full and accurate disclosure of the facts by employee(s).	No more than 2 errors.	2.1 Define and adopt "Best-in-Class" customer service consistent with CH Policy (Continued).
	Timely OCC notification to cognizant supervisors of subordinates with unsatisfied annual SF 450 requirement.	Timely means no less than 1 week prior to deadline.	
	Percentage of SF 450s reviewed and guidance (if necessary) provided within 30 days of receipt.	100%	
	Percentage of individuals subject to the requirement who receive mandatory ethics training by the OGC due date.	95%	
	Percentage of individuals subject to the requirement who receive mandatory ethics training by 10 working days after the OGC due date, or remedial action is recommended.	100%	
2.1.6 Coordinate with CH elements and other DOE elements on cross-cutting matters.	Number of legal issues not fully or properly coordinated with affected DOE elements (CH, SC, OGC).	No more than three	
	Percentage of correspondence that evidences proper coordination in a random sampling of the OCC reading files.	90%	
	Number of non-concurrences by other CH Elements on OCC-generated documents based on substantive issues.	Five or less	
	Percentage of non-concurrences resolved below the Office of the Manager level.	95%	

2.1.7 Champion and monitor OCC and CH Freedom of Information Act and Privacy Act Programs.	Percentage of CH on-time responses [within 20 business days of acknowledgement or extension deadline].	85%	2.1 Define and adopt "Best-in-Class" customer service consistent with CH Policy (continued).
	Percentage of CH overdue response within additional 20 business days of deadline.	85%	
	Percentage of OCC on-time responses [within 20 business days of acknowledgement or extension].	95%	
	Percentage of OCC overdue response within additional 20 business days of deadline.	95%	
	Average processing time of CH overdue responses.	20 days	
	Average time to provide CH-OMC with new information for posting.	30 days of availability of the information to OCC	
2.1.8 Oversee contractor outside legal services.	Percentage of quarterly status reports entered into Litigation Management Tracking System by deadline.	100%	
	Percentage of on-time evaluations of Contractor performance against Legal Management Measures.	100% within CO deadline	

### Priority 3: Improve Efficiency and Effectiveness of Management Systems

Initiative	Measure	FY05 Target	Critical Outcome
3.1.1 Characterize key OCC processes.	Date of completion of identification of key processes and systems.	End of 2Q FY05	3.1 Complete documentation and characterization of CH operating systems and processes.
	Date of completion of process and system characterization.	End of 4Q FY05	
3.2.1 Manage the OCC cost of doing business.	Net increase in cost of law library subscriptions.	Zero net increase	3.2 Plan for managing integration of business and customer requirements with available resources (HR, IM, Financial, etc.).
3.2.2 Use enhanced automated systems.	Percentage increase in OCC members who use the MDSS as a decision-making tool in conjunction with the implementation of the business line approach as CH operating model.	30%	
3.2.3 Develop criteria for prioritizing work and allocation of funding and other limited OCC resources.	Date of completion.	End of 2Q FY05	

**Priority 4: Advance the Strategic Management of Human Capital**

Initiative	Measure	FY05 Target	Critical Outcome
4.1.1 Update and implement OCC Staffing Plan.	Date of completion of FY05 Staffing Plan.	End of 3Q	4.1 Implement workforce management initiatives (workforce analysis, staffing plans, succession planning priorities, etc.).
	Date of filling of vacant FTEs.	End of 4Q	
	Percentage of new hires with Performance Expectations within 45 days of hire.	100%	
4.1.2 Develop OCC Succession Plan.	Date of Completion	End of 2Q	
4.1.3 Update, review, approve, and implement Individual Development Plans (IDPs).	Percentage of FY05 IDPs submitted for approval by OCC deadline.	90%	
	Percentage of FY05 IDPs reviewed by OCC deadline.	100%	
	Percentage of FY06 IDPs approved by HR deadline.	80%	
	Percentage of FY06 IDPs approved by HR deadline +30 days.	100%	
	Percentage of employees who complete FY05 CLE requirements.	100%	
	Percentage of employees achieving 40 hours of training in FY05.	80%	
4.1.4 Participate in CH Employee Satisfaction Survey.	Percentage of OCC employees responding to CH satisfaction survey.	75%	

4.1.5 Develop, Issue, and evaluate OCC Employee Satisfaction Survey, and develop Improvement Plan(s) as appropriate.	Date of completion of OCC Employee Satisfaction Survey.	End of 2Q	4.1 Implement workforce management initiatives (workforce analysis, staffing plans, succession planning priorities, etc.) (Continued).
	Percentage OCC response to Survey.	85%	
	Date of completion of evaluation of OCC Employee Satisfaction Survey.	End of 3Q FY05	
	Date of completion of Improvement Plan(s).	End of 4Q FY05	
4.2.1 Give preferential consideration to displaced CH employees for OCC vacancies.	Timely review of qualifications of displaced CH employees against OCC needs.	Within 5 business days of notification	4.2 Meet potential staffing realignment initiatives (EM, NN, A-76, etc.).
4.3.1 Complete FY05 Individual Performance Plans (IPPs).	Percentage of OCC APP initiatives that are represented as measures and initiatives in IPPs.	70-75%	4.3. Link Employee performance expectations and recognition to strategic goals and priorities.
4.3.2 Reward and recognize individual performance.	Percentage of on-time performance reviews.	85%	
	Percentage of late performance reviews completed within 10 days after deadline.	100%	
	Percentage of bonus fund expended by end of August, 2005.	95%	
4.4.1 Implement four-tier Employee Performance Management System, as required.	Date of Completion.	As specified by HR.	4.4 Create and implement four-tier employee performance management system.

**Projected Workloads**

Note: Baseline is average over the period 1997 to 2003 unless otherwise indicated. "Contractual Agreements" includes contracts, subcontracts, grants, cooperative agreements.

<b>Workload Indicators</b>	<b>Projected Results</b>
Major M&O actions	~ 6 (300% increase over baseline)
GL Directives Reviews	~ 40 (30% increase over baseline)
GL Contract Reviews	~185 (10% increase over baseline)
Other GL Reviews	stable @ ~ 300 <sup>1</sup>
% On-time Reviews	stable
CH FOIA Requests	stable @ ~ 50-80
CH FOIA Responses	stable @ ~ 40-70
Environmental Assessments On-going	~ 4 (100% increase over baseline)
Administrative Litigations On-going During FY	stable @ ~ 2-4
GL 450 Reviews	stable @ ~ 250 (SSO & BSO vs EML)
IP WFO Reviews	~ 200 (50% increase over baseline)
IP Copyrights	~ 14 (30% increase over baseline)
IP Contractual Agreement Close-outs	~ 1500 (25% increase over baseline)
IP New Contractual Agreement and Mod Reviews	~ 6500 (20% increase over baseline)
Invention Disclosures Received	~ 950 (25% increase over baseline)
Inventions Pending	~ 1850 (ongoing increase ~50/year)
Inventions Disposed	~ 955 (60% increase over baseline)
Patent Applications Filed	stable @ ~ 22 (20% decrease from baseline)
Confirmatory Licenses Submitted	~ 400 (20% increase over baseline)
IP CRADA Reviews	stable @ ~ 90
Waiver Statements of Considerations Forwarded	stable @ ~40
Hours of Activities External to "normally assigned duties"	~ 2000 (10% increase over FY03)

<sup>1</sup> 50% increase in grants offset by other reductions

## Resource Requirements

<b>Resource</b>	<b>Projected FY 2005</b>
FY Beginning on-board strength	27 FTE
FY Ending on-board strength	30 FTE
Salaries, Benefits, Awards	\$ (to be centrally developed later)
Travel	\$ 46,654.00
PCS Moves	Number of moves: <u>1</u>
Training	\$ 20,000.00
Support Services	\$ 293,000.00
Other Related Expenses	\$ 56,000.00
<b>Total Funding Required</b>	<b>\$415,654.00*</b>

\*excluding Salaries, Benefits, Awards, and expense of one Permanent Change of Station.

## **Staffing**

The current OCC allocation is twenty-eight (28) FTEs based on its FY04 Workforce Analysis and resultant Staffing Plan. In FY04, OCC acquired an Assistant Chief Counsel for the General Law Division (GL) and a Senior Patent Attorney for the Intellectual Property Law Division (IPL), who provide the full-range of legal services, including intellectual property legal services, to the Berkeley Site Office (BSO) and the Stanford Linear Accelerator Center (SLAC) Site Office (SSO), as well as intellectual property legal services (not including patent prosecution) to the Pacific Northwest Site Office (PNSO). OCC was unsuccessful in recruiting a GS-12 to 14 procurement attorney specializing in M&O contracting, and is in the process of working with CH-HR to issue a refocused vacancy announcement for a GS-11 to 13 general attorney.

OCC has been providing just over eleven (11) FTEs of support to the five (5) CH Site Offices; with the additional responsibility associated with the three (3) SC Site Offices on the west coast, support increased to a minimum of thirteen (13) FTEs. This represents 6.5 GL FTEs (or slightly more than 50% of its staff), and almost 6.5 IPL FTEs.

IPL FTEs are allocated along two general functional lines: invention management and patent prosecution (7 FTEs); and procurement, technology transfer, general policy, and Intellectual Property (IP) advice and counsel (8 FTEs). Support for CH business groups and other customers generally would include both of these functional areas. Additional IPL administrative personnel support is required for the workload transferred from the Oakland Operations Office, and continuing support to the Department of Homeland Security Environmental Measurements Laboratory (EML). Two additional administrative FTEs are necessary to support these activities; however, current planning is to acquire this support by contracting out.

Thirty FTEs are currently considered necessary to assure continued quality, cost-effective, and timely legal services. This would reflect the recruitment of a Patent Attorney in FY05 with electrical engineering and/or biotechnology expertise. These skills are not currently reflected in the on-board skill set and are necessary to keep up with our evolving workload. Additionally, either a Program Analyst or the development of an upward mobility position encompassing Program Analyst skills, is a necessary addition. Consistent with OCC Succession Planning, this position would ultimately absorb the workload of the CH Freedom

of Information Act/Privacy Act Officer and Technical Information Officer on the retirement of the incumbent.

In order to compete with the private sector and other agencies, OCC needs the ability to pay permanent change of station expenses for experienced attorneys. OCC believes that it is critical to fill the described vacancies as OCC anticipates losing seven (7) of its nineteen (19) attorneys, and the GL lead secretary, through retirement and attrition by the end of FY06. It will be necessary that any new hires are trained and acclimated to CH by that time.

OCC also intends to increase the efficiency of its experienced legal staff by relying more upon support services contracts for functions that are not essentially governmental, and by participating in externship programs with local law schools – providing opportunities for legal experience at no cost to the government.

### **Travel**

The OCC FY05 travel budget request is \$46,654, allocated as follows: Travel in support of mission critical meetings, reviews and evaluations, \$15,724; Travel in support of required training (e.g., qualification, certification, training required for the employee's current position), \$3,030; Travel in support of DOE-sponsored conferences, \$17,500; Travel in support of other conferences and job-related training not essential to the employee's current position, \$3,400; and Travel supporting professional or developmental training, \$7,000. The budget request is significantly larger than the FY04 travel budget of \$35,844 due to the additional offices now being served by OCC, and the increase in the number of major M&O procurement actions assigned to CH. However, the budget does not include dollars associated with any M&O SEBs for which CH may be assigned lead responsibility.

In addition to the above, in FY04 approximately \$7,777 was funded by our Customers, including the Office of Program and Project Management for the Mixed Oxide Fuel program; Office of Nuclear Energy, Science and Technology for the competition of the Idaho contract; the Princeton Site Office, EML, the Golden Field Office, the Idaho Operations Office, the Oak Ridge Office, and PNSO.

### **Training**

During FY04, CH training funds again were limited. Since approval was done on a case-by-case basis, and was specifically dedicated to internal requirements, such as continuing education and attorneys' meetings not directly attributable to customer support; or directly related to the individual's position, OCC spent \$3,935 on training. An increase to \$20,000 is believed to be needed to allow for adequate and meaningful training for OCC staff. Current CH planning is to maintain all training funds on a centralized basis.

Not only inflation, but more importantly, the workload from newly-assigned SC Site Offices, will determine amounts necessary for FY05 through FY07.

## Support Services

OCC has been operating with a decreased administrative support staff and no contractor administrative support for several years. Funding for contractor data entry support (2 FTEs) is needed by IPL to provide for timely data entry and maintenance of an updated and accurate database.

IPL obtains drafting services for the drawings submitted with patent applications through purchase orders. Drawings are priced at a set amount per sheet, typically \$250 to \$700 per patent application. IPL spent \$4570 during FY03, \$1,700 during FY04, and will need approximately \$4,000 for FY05 for the three purchase orders for drafting services.

IPL received \$75,000 in FY04 funding from GC-62 for outside law firm contracts. IPL also received funds from NETL, \$24,000 of which was obligated into the law firm contracts, and in August, 2004, received \$30,000 from Albany Research Center which also will be placed in the law firm contracts. IPL expended about \$77,000 during FY04 and anticipates expending an additional \$65,000 on law firm orders during FY04. Although the funds received from the National Energy Technology Laboratory, the Albany Research Center, and GC-62 will provide sufficient funding for patent prosecution services through most of FY05, additional funds will be needed for preparation of patent applications during late FY05 and early FY06 until FY06 funds may be made available. Typically, such funds for law firm contracts are not available until midway into the new fiscal year. IPL will need about \$125,000 during FY05 for use in latter FY05 and early FY06 to continue to meet its goal of 20+ patent applications filed on behalf of the Government each year. GC-62 has indicated that, because of budget cuts expected in GC-62, any funds which may be made available for patent application preparation during FY05 is most likely to be on a case-by-case basis.

The CH Workforce Analysis and Succession Planning exercises identified the need for additional clerical and administrative support for CH attorneys co-located with the Berkeley Site Office and the Brookhaven Site Office. OCC is seeking a total additional \$56,000 to provide the equivalent of ½ FTE of clerical support at each location, to perform tasks currently being performed by CH attorneys at the GS-14 and GS-15 level.

In addition, as indicated in the **Staffing** discussion, above, approximately \$112,000 is required to contract for the equivalent of 2 FTEs of additional administrative support needed in IPL.

## Other Related Expenses

During FY04 OCC spent approximately \$36,000 on GL and IPL library services, primarily subscriptions. The current intent is to maintain or reduce that number in FY05. General office supplies directly purchased by OCC totaled \$6,227 in FY04, and OCC expects to require at least the same amount in FY05.

Finally, OCC attorneys' bar dues currently exceed \$3,900 per year. The CH Policy allowing reimbursement of these fees makes this an additional cost to the Organization that must be budgeted for.