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United States Government **Department of Energy**

memorandum

DATE: August 27, 2009

REPLY TO
ATTN OF: IG-40

SUBJECT: Letter Report on "Allegations of Improper Hanford Workers' Compensation Payments," (INS-L-09-07, S09IS017)

TO: Manager, Office of River Protection
Manager, Richland Operations Office

This is to advise you of the results of an Office of Inspector General inspection concerning workers' compensation related allegations at the Hanford site. Specifically, it was alleged that the Hanford site's tank farm contractor, Washington River Protection Solutions (WRPS), was paying employees on workers' compensation over 100 percent of their net salaries and beyond the 180 day limit allowed under the site's labor agreement. It was also alleged that the Department of Energy's (DOE's) Office of River Protection (ORP), WRPS, and the alternative dispute resolution mediator, the Hanford Concerns Council (HCC), were negotiating employee settlements outside the statutorily required exclusive remedy of workers' compensation. Finally, it was alleged that WRPS knowingly coded employee timecards incorrectly, suggesting a possible violation of federal statute.

BACKGROUND

The Hanford site is managed by two DOE offices, the Richland Operations Office (RL) and ORP. Each office monitors separate contracts held by private companies. For example, ORP monitors the tank farm contract which is currently held by WRPS. At the Hanford site, the workers' compensation program is administered by RL, where RL is the Hanford site authority for all workers' compensation issues. According to State of Washington law, workers' compensation is the exclusive remedy for workplace injury where the State of Washington compensates injured workers for approximately 60 percent of the employee's salary. DOE compensates injured workers for the remaining approximately 40 percent of the employee's salary per the labor agreement. Under this agreement, DOE compensation is provided for up to 180 days from the date of injury.

We initiated an inspection to review the workers' compensation related allegations of overpayment, unauthorized settlements, and incorrect timecard coding.

RESULTS OF INSPECTION

We did not substantiate the allegation that ORP, WRPS, and the HCC were negotiating employee settlements outside the exclusive remedy of workers' compensation. Although we learned of other proposed workplace related settlements, these settlements were outside the scope of workers' compensation and the purpose and nature of these settlements were being reviewed by RL at the time of our inspection, to include a determination of cost allowability. In addition, we found no evidence of incorrect timecard coding.

However, we did substantiate the allegation that some WRPS employees were receiving workers' compensation payments over 100 percent of employees' net salaries and that employees were compensated beyond the 180 days allowed under the site labor agreement.

Gross Income Versus Net Income

We found that some WRPS employees were paid over 100 percent of their net salary. As previously stated, the State of Washington's workers' compensation program provides the employee with approximately 60 percent of the employee's salary with the remaining approximately 40 percent provided by DOE. A 2002 labor agreement with DOE stated that employees on workers' compensation would be "paid an amount equal to the difference between the forty (40) hour weekly salary he otherwise would have received" for up to 180 days. An interpretation of this agreement resulted in some employees being paid 100 percent of their gross income rather than net income, or approximately $200-400 dollars more per week in excess of their regular salaries since workers compensation payments are not subject to income tax. We noted that DOE Order 350.1, "Contractor Human Resource Management Programs," allows for workers' compensation disability to be paid up to only 100 percent of the employee's *net* pay. However, the *net* pay provisions of this order, which became effective in 1996, were not implemented in the 2002 labor agreement.

The 2002 labor agreement was renegotiated in 2007. During negotiations, RL and ORP provided allowable economic parameters that were consistent with workers' compensation payments of 100 percent of *net* pay as set forth in DOE Order 350.1. However, the site contractors incorporated a workers' compensation clause into the 2007 labor agreement that allowed some workers' compensation claims to be administered in accordance with the 2002 agreement. As a result, some claims filed prior to, and after 2007, were administered under the 2002 agreement which allowed payment of 100 percent of an employee's gross income rather than net income.

We were told that RL was not aware that this workers' compensation clause had been included in the 2007 labor agreement until after the agreement had been ratified. Prior to the initiation of our inspection, RL was in the process of amending the 2007 agreement and collecting data on possible overpayments in order to assess the cost allowability of these overpayments. As a result of our inspection, WRPS completed the analysis of overpayments resulting from this condition and, as of July 2009, identified overpayments totaling $29,887.

180 Day Supplemental Payments

We also found that certain WRPS employees were provided with compensation from DOE beyond the 180 days from the date of injury. Although the WRPS employees did receive payments beyond the 180 days period, WRPS was of the opinion that the payments were not workers' compensation related and stated that they were approved by ORP. The rationale for the extended payments was that, due to a number of reasons, the settlement process was taking a long time and the individuals needed financial stability to possibly prevent them from seeking other legal remedies. However, after the payments were approved by ORP as an allowable cost, ORP was informed by RL officials that ORP could not extend the 180 days period cited in the labor agreement. An ORP official said that ORP realized they had made a mistake in approving payments beyond 180 days and denied future payment requests. At the time of our fieldwork, resolutions of payments beyond the 180 days period were still pending.

We are not making any formal recommendations at this time since management is aware of these issues and is in the process of taking corrective action. However, we suggest that RL and ORP review future labor agreements in a timely manner to ensure compliance with the economic parameters provided by RL and ORP, and that RL and ORP continue to review the cost allowability of workers' compensation payments that were not consistent with the provisions of DOE Order 350.1 and the site labor agreement. In addition, the workplace related settlements that were outside the scope of workers' compensation may represent a significant financial exposure to DOE. Therefore, we also suggest that ORP continue to protect DOE interests by closely evaluating the cost allowability of any proposed non-workers' compensation settlements submitted to DOE for cost reimbursement.

This inspection was conducted in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency. We appreciate the cooperation we received from your staff during the inspection. If you have any questions concerning this review, please contact Mr. Richard Curran, Director, Office of Inspections, Western Region, at (505) 845-5153.

Herbert Richardson

Herbert Richardson
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