



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

# AUDIT REPORT

DOE-OIG-19-49

September 2019

**CLAIMS REIMBURSEMENT PROCESS  
FOR LICENSEES UNDER TITLE X OF  
THE ENERGY POLICY ACT OF 1992**



**Department of Energy**  
Washington, DC 20585

September 17, 2019

MEMORANDUM FOR DIRECTOR, OFFICE OF WASTE DISPOSAL, OFFICE OF ENVIRONMENTAL MANAGEMENT  
DIRECTOR, OFFICE OF SITE OPERATIONS, OFFICE OF LEGACY MANAGEMENT

*Michelle Anderson*

FROM: Michelle Anderson  
Deputy Inspector General  
for Audits and Inspections  
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "Claims Reimbursement Process for Licensees Under Title X of the Energy Policy Act of 1992"

BACKGROUND

From 1942 through 1970, the U.S. Army Manhattan Engineer District and the Atomic Energy Commission entered into several contracts with commercially operated mills to purchase uranium concentrate in support of U.S. defense programs. The owners of these mills were considered licensees under the Atomic Energy Act. Because of the limited knowledge of the radiological hazards created by the resulting mill process wastes, such as tailings, these contracts lacked provisions for managing and remediating wastes. In 1992, Congress passed Title X of the Energy Policy Act of 1992 (Title X), which established the authority and framework for providing Federal assistance for the remediation of contamination at active uranium and thorium sites. Congress authorized the reimbursement of cleanup costs, on a cost-sharing basis, and originally established a reimbursement limit of \$40 million for thorium licensees and \$270 million for uranium licensees, totaling \$310 million. Congress subsequently amended the statutory reimbursement ceilings to \$365 million for thorium licensees and \$350 million for uranium licensees, totaling \$715 million. Congress also specified that the Department of Energy should adjust this amount for inflation each year. The Department's Office of Environmental Management (Environmental Management) determined the Federal share of cleanup costs by multiplying the total cost to perform remedial action at each site by the percentage of Federal-related tailings to total tailings located at each respective site. As of 2017, the total reimbursement ceiling for all licensees had increased to more than \$852 million, when including inflation adjustments.

Title X required the Department to administer all claims related to active uranium and thorium licensees. In addition, 10 CFR Part 765, *Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites*, provided the Department with claim approval authority for the reimbursement program. Specifically, this regulation authorized the Department to verify

the appropriateness of costs claimed by auditing supporting documentation prior to approving claims for reimbursement. After performing this function for several years, Environmental Management transferred the audit function in 2011, including the financial and technical reviews performed on claims, to the Department's Office of Legacy Management (Legacy Management). Legacy Management was selected to oversee the review function because it has the ultimate responsibility for assuming custody and performing long-term surveillance and maintenance of all the uranium sites in the Title X program. As a result, Legacy Management now receives the annual claims and provides guidance to its contractors that perform the technical and financial reviews of these claims.

During fiscal years 1994 through 2017, licensees submitted \$1.72 billion in total claims, before review and application of the Federal cost-share ratios. Through fiscal year 2017, reimbursements to all uranium and thorium licensees totaled \$716.25 million. We initiated this audit to determine whether the Department obtained assurance that only reimbursable costs were paid to licensees for the Federal portion of cleanup costs incurred under Title X. For the purposes of this audit, we reviewed the claim review process for the 2016 and 2017 financial and technical reviews.

## RESULTS OF AUDIT

Based on our audit, we believe that the Department has provided assurance that only reimbursable costs were paid to licensees for the Federal portion of cleanup costs. Specifically, Environmental Management provided sufficient oversight of the claim review process performed under Legacy Management that was supported by financial and technical reviewers. However, our audit identified an instance after the claim review was conducted where a licensee was not reimbursed the appropriate amount. The Department's underpayment to the licensee was most likely due to an unintentional reporting oversight by Legacy Management. The licensee was underpaid because the financial review team submitted an updated financial review report that allowed costs that had been previously disallowed. The subsequent change to the report was not provided to Environmental Management. The lack of complete and finalized operating procedures for oversight of the Title X program that included requirements for reporting subsequent events may have contributed to the oversight. While not directly related to the underpayment, we also noted that there have been continual changes in both Federal oversight personnel and contractor claim reviewers. Going forward, as these changes occur, we believe that the Department would benefit from having complete and finalized operating procedures for oversight of the Title X program.

### **Understated Claim Amount**

While conducting our review, we identified a reporting miscommunication that allowed the Department to approve a claim reimbursement for an incorrect amount, thereby understating the amount due for that claim cycle. The Department's annual 2017 Title X status report indicated that seven licensees submitted claims in fiscal year 2016, totaling \$46.43 million before application of the Federal cost-share ratio. After financial reviews were conducted in 2017, it was determined that \$45.13 million was considered the approved claim amount. After the application of the Federal cost-share ratio, \$16.25 million was approved for reimbursement. We

determined that this amount had been understated because Environmental Management was unaware of a change made on a licensee's financial review report provided to Legacy Management. Specifically, the financial review questioned \$603,545 on this licensee's claim after determining that the licensee did not have an adequate timekeeping system. However, the licensee subsequently provided additional supporting documents, in the form of affidavits, certifying the time in question. The financial review team updated its report and provided a new version to Legacy Management that no longer questioned these costs. According to Environmental Management, this change to the report was not provided to them by Legacy Management and therefore did not make it in the licensee's reimbursement letter or statement of account. This resulted in an underpayment to the licensee of \$309,015 after application of the licensee's Federal cost-share ratio of 51.2 percent.

### **Lack of Complete and Finalized Operating Procedures**

The Department's underpayment to the licensee was most likely due to an unintentional reporting oversight by Legacy Management. However, the lack of complete and finalized operating procedures for oversight of the Title X program that included requirements for reporting subsequent events may have been a contributing factor. Further, although not directly related to the underpayment, we noted that there have been continuous changes in both Federal oversight personnel and contractor claim reviewers. Going forward, as these changes occur, we believe that the Department would benefit from having complete and finalized operating procedures for oversight of the Title X program.

In 2011, Environmental Management signed a Memorandum of Agreement with Legacy Management to assume permanent responsibility for conducting the annual audits of Title X claims. Under this Memorandum of Agreement, Legacy Management would receive the annual claims, coordinate with review contractors and licensees to conduct onsite audits of the claims, and make the final determination of costs eligible for reimbursement at each site. Funding for Title X is appropriated from Environmental Management's Uranium Enrichment Decontamination and Decommissioning Fund; therefore, Environmental Management would continue to request funding for Title X and arrange for the reimbursement payments to the licensees. Although the Memorandum of Agreement outlined some high level responsibilities for each program, specific roles and responsibilities were never completed and finalized.

Without complete and finalized operating procedures, the potential for future breakdowns in the claims review process could be increased by the continuous changes in the Federal oversight personnel and contractor claim reviewers. Specifically, there has been significant turnover in the staff responsible for program oversight since the claim review process for the program was transferred to Legacy Management. In particular, Legacy Management has cycled through six different program managers since it became the lead for financial and technical reviews in 2011, five of those since 2014. Additionally, the financial review team has changed three times. Most recently, in 2016, the responsibility for performing financial reviews was transferred to an external audit firm. Environmental Management has also experienced some changes in its oversight personnel. While it recently replaced its program lead, for now it still benefits from coordination with the prior program lead.

The lack of complete and finalized operating procedures had also been noted by program staff in the past. In particular, after completing the fiscal year 2016 claims review, the Title X review team (including Legacy Management, financial, and technical reviewers) discussed lessons learned from reviewing the licensees' claims. A lessons-learned document was prepared and issued on June 13, 2016, which noted that a draft of standard operating procedures and a policy to document the process and procedures required to manage the program would need to be developed. Legacy Management had previously initiated its own effort to document the process and created draft procedures that have been in place for several years. However, Environmental Management's management had not reviewed these procedures, and they did not outline the communication process needed for reporting subsequent events.

During our audit, we discussed the need for complete and finalized operating procedures with Environmental Management's personnel. Initially, they believed a formal procedures document was unnecessary because they were using the Title X legislation documentation and the annual Title X status report as guidance. However, after we discussed the events that led to the licensee's underpayment with Environmental Management's personnel, they agreed that finalizing procedures that include the process for reporting subsequent events could be helpful in avoiding a recurrence of this issue.

### **Adequate Processing of Future Claims**

Because the underpayment went unnoticed, total Title X program costs were underreported for the 2017 and 2018 claim cycles. The underpayment detailed in our report was not discovered until after the 2018 payment had already been made to the licensee. The Department informed us that it plans to make the correction in the 2019 payment cycle. It is unknown whether complete and finalized procedures would have prevented the underpayment. However, with the loss of experienced personnel and other program changes, we believe that finalizing operating procedures that include the process for reporting subsequent events would be beneficial for future reviewers.

### **RECOMMENDATIONS**

To ensure adequate oversight over the Title X program continues in the future and to increase the likelihood that only accurate payments are made to licensees, we recommend that the Director, Office of Waste Disposal, Office of Environmental Management:

1. Ensure that the \$309,015 licensee underpayment is corrected in the 2019 payment cycle.

We also recommend that the Director, Office of Waste Disposal, Office of Environmental Management, work with the Director, Office of Site Operations, Office of Legacy Management, to:

2. Develop and finalize complete operating procedures for oversight responsibilities for the Title X program, including specifics on the communication process for the reporting of subsequent events.

## MANAGEMENT RESPONSE

Management concurred with the report's recommendations and indicated that corrective actions have been initiated to address the issues identified in the report. Management confirmed that the licensee underpayment had been corrected in the 2019 payment cycle and that Environmental Management and Legacy Management staff are collaborating on operating procedures for oversight responsibilities for the Title X program.

## AUDITOR COMMENTS

Management comments and planned corrective actions are responsive to our recommendations. Management comments are included in Attachment 3.

### Attachments

cc: Deputy Secretary  
Chief of Staff  
Under Secretary for Science

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### OBJECTIVE

We conducted this audit to determine whether the Department of Energy obtained assurance that only reimbursable costs were paid to licensees for the Federal portion of cleanup costs incurred under Title X of the Energy Policy Act of 1992.

### SCOPE

This audit was performed from February 2018 through June 2019 and included a site visit to the Department of Energy's Office of Legacy Management in Grand Junction, Colorado. For the purpose of this audit, we assessed the claim review process for the 2016 and 2017 financial and technical reviews. The audit was conducted under Office of Inspector General project number A18OR021.

### METHODOLOGY

To accomplish the audit objective, we:

- Reviewed applicable laws, regulations, and Departmental guidance to establish program requirements, as well as prior reports issued by the Office of Inspector General;
- Interviewed Office of Environmental Management, Office of Legacy Management, and contractor personnel responsible for preparing or reviewing the reimbursement claims;
- Reviewed supporting documentation, including technical and financial reviews; and
- Identified and evaluated the processes in place for reviewing and approving licensee claimed costs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, the audit included tests of controls and compliance with laws and regulations necessary to satisfy the audit objective. 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. Finally, we relied on computer-processed data to some extent to satisfy our audit objective. Based on our comparison of computer-processed data to supporting information, we determined that the data was sufficiently reliable for the purposes of this audit.

The Office of Environmental Management and the Office of Legacy Management waived an exit conference on August 27, 2019, and August 28, 2019, respectively.



**PRIOR REPORT**

- [\*Management Controls Over Title X Claims Reimbursement at the West Chicago Thorium Processing Facility\*](#) (OAS-M-04-08, September 24, 2004.) This audit was conducted to determine whether the Department of Energy obtained adequate assurance that only reimbursable costs would be paid to Kerr-McGee Chemical LLC (Kerr-McGee) for remediation of the West Chicago Thorium Processing Facility. Our audit of Kerr-McGee's 2002 claimed costs disclosed that it had inappropriately claimed costs that had not actually been paid in the claim year and overhead expenses that were not allowable or allocable. The Office of Inspector General's audit and the Department's technical and financial review identified about \$7.3 million in non-reimbursable costs claimed by Kerr-McGee for 2002. The Office of Inspector General also questioned \$14 million in overhead previously approved by the Department from the 1994 through 2001 claims. This occurred because the Department had not developed an assurance strategy that included both adequate technical and financial reviews of the Kerr-McGee claims. As a result, the Department could pay Kerr-McGee up to \$164 million more for cleanup without adequate assurance that only reimbursable costs will be paid. During the audit, the Department initiated corrective actions by requiring that the Defense Contract Audit Agency issue an opinion on the adequacy of the 2002 claimed costs and by removing the \$4 million in disallowed cost from the 2002 claim payment. The Office of Inspector General viewed the Department's actions as a positive first step in addressing the important issue and made several formal recommendations that it believed would help ensure that reimbursed costs were allowable and appropriate.


## MANAGEMENT COMMENTS



Department of Energy  
Washington, DC 20585

August 6, 2019

MEMORANDUM FOR MICHELLE ANDERSON  
DEPUTY INSPECTOR GENERAL  
FOR AUDITS AND INSPECTIONS  
OFFICE OF INSPECTOR GENERAL

FROM: ELIZABETH A. CONNELL   
ASSOCIATE PRINCIPAL DEPUTY ASSISTANT  
SECRETARY FOR REGULATORY AND POLICY AFFAIRS

SUBJECT: Office of Environmental Management's Response to IG-30  
A18OR021, Draft Audit Report on "*Claims Reimbursement Process  
for Licensees Under Title X of the Energy Policy Act of 1992*"

I concur on the Office of Inspector General's (IG) report, A18OR021, Draft Audit Report on "*Claims Reimbursement Process for Licensees Under Title X of the Energy Policy Act of 1992*". The Office of Waste Disposal (EM-4.22) and the Office of Site Operations (LM-20) are making progress to implement the recommendations presented in the draft report. The summary below describes actions taken or planned on IG's recommendations.

Recommendation 1: Ensure that the \$309,015 licensee underpayment is corrected in the 2019 payment cycle.

The \$309,015 licensee underpayment has been corrected in the 2019 payment cycle.

Recommendation 2: Develop and finalize complete operating procedures for oversight responsibilities for the Title X program, including specifics on the communication process for the reporting subsequent events.

EM-4.22 staff continues to collaborate with LM-20 staff on the operating procedures for oversight responsibilities for the Title X program. The procedure is being developed jointly, and will be co-owned by EM and LM. The draft procedures are being reviewed by the program leads and will be implemented prior to further claims review and processing.

If you have any questions, please contact me or Ms. Lois Jessup, Director, Office of Program Planning, at (202) 586-3586.

cc: Mark Senderling, EM-4.2  
Lois Jessup, EM-5.112





**Department of Energy**

Washington, DC 20585

August 2, 2019

**MEMORANDUM FOR IG-30 (A18OR021)**

**FROM: DAVID S. SHAFER, Ph.D., DIRECTOR  
OFFICE OF SITE OPERATIONS  
OFFICE OF LEGACY MANAGEMENT, LM-20**

**DAVID  
SHAHER**

Digitally signed by DAVID SHAFER  
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**SUBJECT** Office of Legacy Management Review of  
Draft Audit Report on "Claims Reimbursement Process for  
Licensees Under Title X of the Energy Policy Act of 1992"

In response to the Office of Inspector General request for review of the subject report, the Office of Legacy Management (LM) concurs with no comments but wishes to provide an update of corrective actions it has taken and plans to take to address the recommendations on page 4.

Recommendations and LM responses are as follows:

1. Ensure the \$309,015 licensee underpayment is corrected in the 2019 payment cycle.

*LM response: LM has coordinated with Environmental Management (EM) to ensure licensees affected by underpayments have been fully reimbursed in the 2019 claim cycle.*

2. Develop and finalize complete operating procedures for oversight responsibilities for the Title X program, including specifics on the communication process for the reporting of subsequent events.

*LM response: LM is working to refine the draft procedures LM developed in 2017 (referenced in the report) to incorporate clearer communication protocols based on this 2019 claim cycle. Additionally, LM wants to ensure the Title X operating procedure provide for continuous improvement opportunities as they arise from lessons learned. LM intends to collaborate with EM on formalizing operating procedures for the Title X program. LM hopes to complete these in FY 2020.*

Thank you for the opportunity to comment on the draft report.

Please contact me at [David.Shafer@lm.doe.gov](mailto:David.Shafer@lm.doe.gov) or (303) 410-4806 if you have any questions.

cc:  
J. Dayvault, DOE-LM (e)  
J. Elmer, Navarro (e)  
DOE Read File  
File: LM 1000-03



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