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U.S. Department of Energy

AUDIT REPORT

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August 2018

MANAGEMENT OF THE WORKERS' COMPENSATION PROGRAM AT THE HANFORD SITE



Department of Energy
Washington, DC 20585

August 20, 2018

MEMORANDUM FOR THE SECRETARY

April Stephenson

FROM: April G. Stephenson
Acting Inspector General

SUBJECT: INFORMATION: Audit Report on "Management of the Workers' Compensation Program at the Hanford Site"

BACKGROUND

The Department of Energy uses operating contractors at the Hanford Site to cleanup hazardous and radioactive contamination left over from nuclear weapons production activities. The Department is self-insured and is responsible for paying all costs associated with Hanford Site Workers' Compensation claims for work related injuries and illnesses for contractors that are covered by the Memorandum of Understanding between the Department and Washington State's Department of Labor and Industries (L&I). The Department's Richland Operations Office has a contract with Penser North America, Inc. (Penser) to act on the Department's behalf as a third-party administrator to process all claims for employees of Hanford Site operating contractors designated in a Memorandum of Understanding. On behalf of the Department, Penser makes the initial claim determination and makes a recommendation to allow or deny claims to L&I, who has the authority on allowing or denying Workers' Compensations claims.

In a letter dated March 8, 2017, U.S. Senators Maria Cantwell and Patty Murray requested that the Office of Inspector General (OIG) perform a review of Workers' Compensation issues at the Hanford Site. This request (Appendix 5) identifies several areas of inquiry, including concerns about: possible intimidation of workers who file Workers' Compensation claims, Departmental oversight of the Penser contract, qualifications of the medical providers for chemical exposure claims, whether Penser is providing all relevant documentation, and the number of denied claims with chemical exposure as the cause. Our findings pertaining to these issues are incorporated into the main body of this report and are also summarized in *Questions Posed in Senators' Letter* (Appendix 6). Our objective was to assess the effectiveness of the Department's processes, procedures, and controls related to the Workers' Compensation Program at the Hanford Site.

RESULTS OF AUDIT

We determined that the Department does not have effective processes, procedures, and controls over the Workers' Compensation Program at the Hanford site. We identified problems with: incomplete documentation packages sent to L&I, a major billing and payment discrepancy with

the State of Washington L&I related to pension benefits costs, questioned costs relating to indemnity claims, and concerns with the letter of credit and payments processes. Further, we observed issues with communication and trust relating to Workers' Compensation claims at several levels. The challenges associated with communication are exacerbated by a fragmented Hanford Site Workers' Compensation process that workers find confusing. The process involves many players, including the worker, the operating contractors, the union, health advocates, the occupational medical services, the Department, Penser, physicians and medical professionals, attorneys, and L&I.

Departmental Controls over Workers' Compensation

We have identified specific concerns with the Department's management of the Workers' Compensation Program, including:

- The Department did not ensure that Penser sent complete documentation packages to L&I for claims.
- The Department had not been billed, and therefore did not pay, what the State of Washington L&I determined to be approximately \$21.8 million over a 16-year period from 2000 through 2016 for Workers' Compensation pension benefits costs. These pension benefits are monthly payments made to workers who were permanently and totally disabled from a workplace injury or occupational disease. We concluded that the Department had all the necessary data to detect this problem but failed to do so. We were informed that this problem was identified by L&I in August 2016 during a financial review, which discovered that L&I had erroneously not billed the Department.
- We questioned nearly \$38,000 of charges for fiscal year (FY) 2015 and 2016 for "indemnity claims" because the documentation appeared to support that Penser should have classified claims as "medical only claims," rather than "indemnity claims." The Department performed a detailed review of these claims and agreed that \$8,485 were not supported and that improvements to internal controls were needed. We acknowledge the Department's analysis but are recommending a more comprehensive review into this matter after the issuance of our report.
- We concluded that the Department's controls over Penser's letter of credit payments and bank reconciliations were inadequate. For example, we identified that Penser received a \$175,000 recovery check in April 2017 but did not completely return the funds to the Department until March 8, 2018.

In August 2017, we issued a memorandum to the Manager of the Department's Richland Operations Office with interim observations, which focused on weaknesses with the Department's controls and oversight of Penser. We issued the memorandum because the Richland Operations Office was preparing to re-compete the third-party administrator contract, and we concluded that management would benefit from our observations on internal control issues.

Communication and Trust

We observed problems with communication relating to Workers' Compensation claims between the union, Penser, the operating contractors, and Department officials. For injuries such as cuts, abrasions, etc., the Workers' Compensation process appears to work relatively well. In *Questions Posed in Senators' Letter* (Appendix 6), Question number 6, for example, we found that of 628 total claims from October 1, 2014, to May 4, 2017, only 70 claims were denied (11.1 percent). However, for more complicated claims, communication issues between the many parties involved are exacerbated by a fragmented Hanford Site Workers' Compensation process that many workers find frustrating. One group of claims that are often complicated involve reported exposure to chemical vapors. One difficulty associated with these claims is that it is not clear to what extent the health effects are a direct result of chemical vapors or other possible exposures or conditions. Department officials were aware of real problems in communication and trust with key stakeholders but did not take sufficient action to address these problems.

Oversight

We attributed the problems identified in this report to inadequate management by Departmental personnel. Specifically, the Department did not provide effective oversight of Penser's Workers' Compensation claim determinations and recommendations to L&I regarding the allowance or denial of claims. Further, the Department did not perform sufficient oversight of the financial and contractual controls of the Penser contract.

Questions of Harassment and Intimidation

During our review, we assessed concerns over potential harassment and intimidation of workers for filing Workers' Compensation claims. However, we did not observe direct evidence to confirm or refute workers' concerns. Our work in this sensitive area indicated that due diligence was exercised, and we have seen no evidence that specific workers were singled out and treated unfairly. Penser opens approximately 340 Workers' Compensation claims per year, on average. The large majority of these claims appear to be managed, processed, and paid without raising any concerns. We noted that each Workers' Compensation claim has its own unique facts and circumstances. We also observed that the Workers' Compensation process is complex, with numerous guidelines, multiple parties involved, varied medical opinions and diagnoses, and other complicating factors. At the Hanford Site, we observed that conflict and worker frustration often occurs when complex injury/illness claims are filed, such as those associated with chemical vapors. However, it is important to note that we did not observe evidence that Penser or the Department were treating claims associated with chemical vapors unfairly. See *Other Matters – Concerns Associated with Chemical Vapors* (Appendix 2) for additional information on chemical vapor exposures.

Call to Action

We concluded that efforts to strengthen communication, education, and advocacy throughout the Workers' Compensation process, as well as additional transparency and documentation about the claim determinations, will serve to decrease conflict and reduce worker perceptions that claims

are being mishandled. Additionally, we concluded that the Department needs to dramatically increase its involvement in all aspects of the Workers' Compensation process. To this end, on April 2, 2018, the Department opened the Hanford Workforce Engagement Center, which will assist workers with the Workers' Compensation Program and the other Hanford Site medical related programs.

We believe that improvements in communication, increased Federal involvement, and enhanced contract administration, together with the improvements that the Department has already begun, will serve to decrease frustration and perceptions of unfairness and, over time, increase trust.

MANAGEMENT RESPONSE

Management concurred with the report's findings and recommendations and indicated that corrective actions will be considered or are underway. Management commented that it is reassuring that the OIG observed that the large majority of claims appear to be managed, processed, and paid without raising any concerns. Management appreciates the OIG's sensitivity and thoroughness in its investigation of worker concerns related to harassment or intimidation of workers for filing workers' compensations claims and the results that there was no evidence of workers being singled out or treated unfairly. Specifically, that despite the increased risk for conflict and frustration when chemical vapors claims are filed, due to the complexity of the medical and legal issues, that neither Penser nor the Department were treating claims associated with chemical vapors unfairly.

Also, management commented that it recognizes that improvements in communication, education, and transparency will only serve to improve the Hanford Workers' Compensation Program. Management concurs that the Department can increase its efforts to strengthen program controls over documentation, claims processing, and financial management. The Department contracted with an independent auditor to complete an audit of the entire Penser contract, which is nearly completed and includes a full reconciliation of the accounts used for claims processing. In the interest of transparency and increasing worker confidence in the workers' compensation program, the Department is partnering with the Washington State Department of Labor and Industries (L&I) to provide support of additional claims oversight and is exploring additional opportunities for external oversight support by other certified entities. The Department has worked to bring the L&I ombuds to the Hanford site to be an active resource for workers. Additionally, the new Hanford Workforce Engagement Center resource is an innovation created to improve communication and education regarding occupational health concerns, which includes the workers' compensation claims process. Finally, as it plans for future solicitations, the Department will carefully consider applicable recommendations from the OIG and strive to implement controls that will add continued improvement to the workers' compensation claims administration process. Management comments can be found in their entirety in Appendix 4.

Management's comments are responsive to the findings and recommendations. We will track the details of the Department's planned corrective actions in the Departmental Audit Report Tracking System, quarterly, until the recommendations are closed.

Attachment

cc: Deputy Secretary
Chief of Staff
Under Secretary for Science
Assistant Secretary for Environmental Management

MANAGEMENT OF THE WORKERS' COMPENSATION PROGRAM AT THE HANFORD SITE

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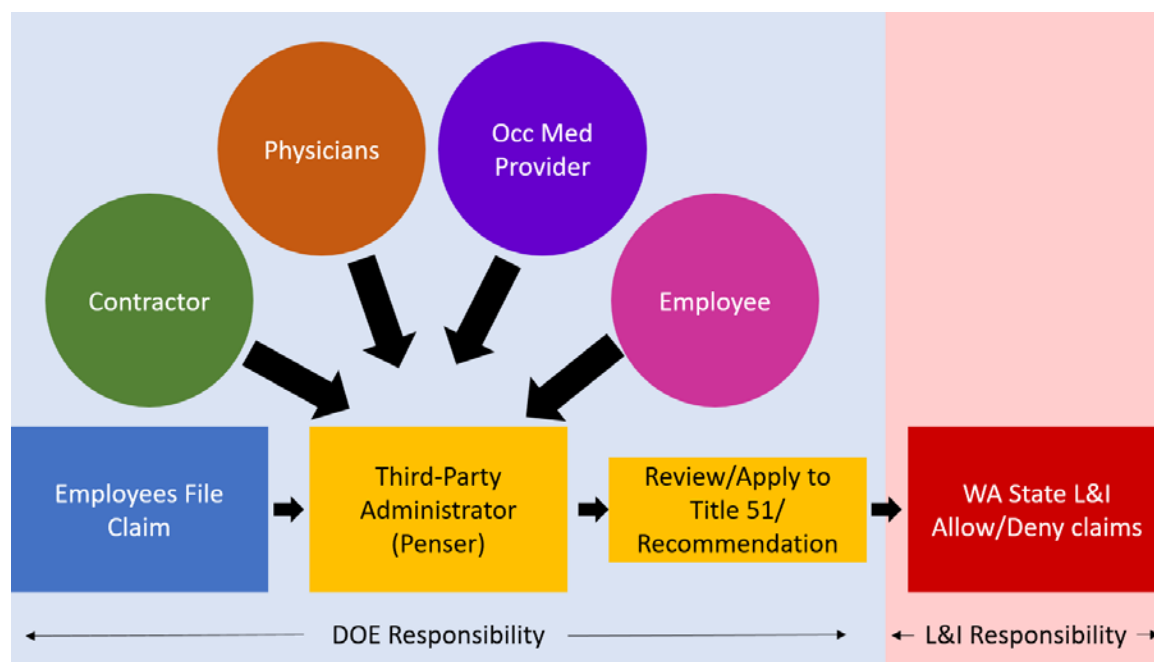
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MANAGEMENT OF THE WORKERS' COMPENSATION PROGRAM AT THE HANFORD SITE

BACKGROUND

The State of Washington's Department of Labor and Industries (L&I) is responsible for administering the State's Workers' Compensation laws. In this capacity, L&I serves as the final authority for decisions to allow or deny claims. The Department of Energy participates in L&I's "self-insured" Workers' Compensation Program and is considered the "statutory employer" for purposes of Workers' Compensation claims for most of the Hanford Site operating contractors, some subcontractors, and certain legacy contractors. Self-insurance is a program in which the employer provides Workers' Compensation benefits to injured workers. L&I oversees the provision of benefits by the self-insurer to ensure compliance with the State's rules and regulations. As a self-insured employer, the Department is responsible for opening, processing, and administering claims, and for payment of benefits. The Department's Richland Operations Office has a contract with Penser North America, Inc. (Penser) to act on the Department's behalf as a third-party administrator, in accordance with the Revised Code of Washington, Title 51, *Industrial Insurance*. As shown in the graphic below, the Department maintains responsibility for the program until Penser provides the claim to L&I:



Accordingly, when a worker files a Workers' Compensation claim, Penser, on behalf of the Department, performs the work effort associated with processing these claims. Commonly, these duties include, among other things, obtaining information from physicians, the Occupational Medical provider, the operating contractor, and the employee. Penser assesses whether the injury was related to an incident and/or job duties on a "more probable than not" basis. Penser then makes a recommendation for allowing or denying a claim to L&I, who then makes the final decision. To pay the cost associated with Workers' Compensation claims, the Department

established a letter of credit¹ with Penser, which allows quick transfer of Departmental funds to Penser's bank account. Penser writes the checks from its bank account to directly pay for Workers' Compensation claim benefits. These checks go to workers, medical service providers, and other parties. One exception to this practice is that Penser pays L&I for "pension" benefits claims, and L&I then pays the beneficiary. A "pension" benefit Workers' Compensation claim is where L&I determines that a worker suffered permanent total disability, and hence, receives benefits for life.

The management of the Workers' Compensation Program and the payments to claimants ultimately remain the responsibility of the Department of Energy. Specifically, the Department's Richland Operations Office is responsible for ongoing management responsibilities for this program. These duties include contract administration for the Penser contract, and financial management of the Department's letter of credit account and all transactions associated with Workers' Compensation.

DETAILS OF FINDINGS

Controls Over the Workers' Compensation Program

We concluded that the Department does not have effective processes, procedures, and controls over the Workers' Compensation Program at the Hanford Site. We identified problems with:

- Incomplete documentation packages sent to L&I;
- A major billing and payment discrepancy with the State of Washington L&I related to pension benefits costs;
- Questioned charges relating to indemnity claims;
- Letter of credit processes; and
- Communication and trust.

Documentation Sent to L&I

Penser did not always send complete documentation packages to L&I. Specifically, in interviews, Hanford workers told us of concerns that Penser may not be providing L&I all the documentation germane to claims. Per Washington Administrative Code (WAC) 296-15-420, when Penser recommends the denial of a claim or requests an interlocutory order, it must provide L&I with all records, excluding bills. In our correspondence with L&I, an official clarified that "all documents received and collected regarding the claim filed by the worker should be submitted to the department [L&I]." However, in our testing, we concluded that documentation

¹ While both this report and the Penser contract use the phrase "letter of credit" as a general term, the contractor actually utilizes an Automated Standard Application for Payments (ASAP) regular account. ASAP is an electronic funds transfer system used by Federal agencies.

lapses occurred. Specifically, we conducted a comprehensive analysis of five judgmentally-selected, completed claims that had been denied or contained an interlocutory order by comparing documentation that Penser had on file to L&I's records. Some of these claims were very large, with hundreds of pages of documentation. We observed that in four of five claims, there were lapses in the documentation provided to L&I by Penser. For example, in one file, the Tank Farm Event Report, which described the events surrounding the injury, was not sent to L&I. Additionally, documents related to visits to the attending physician or the on-site medical clinic were also not sent to L&I. We did not draw any conclusions as to whether the documents that were not provided would have changed the determination made by L&I because this falls outside of the scope of our review. However, we concluded that management should look into this matter.

Further, we determined that the only party with the capability to independently access and compare both Penser's claim files and L&I files is the Department's Richland Operations Office personnel. We were informed that a Department employee tracked claims and received periodic updates from Penser. However, we observed no evidence that Departmental personnel had ever conducted a level of oversight that would detect the incomplete documentation packages that Penser sent to L&I. We also noted that Penser did not have any policies or procedures in place to guide what should be provided to L&I.

Billing and Payment Discrepancy

The State of Washington L&I erroneously neglected to bill the Department of Energy for what L&I determined to be approximately \$21.8 million over a 16-year period for certain Workers' Compensation costs related to pension benefits. Further, Department officials did not identify that the Department had not been billed, and therefore, it had not paid for these costs from 2000 through 2016. Workers' Compensation funds are used to pay pension benefits in circumstances where a worker is deemed to have suffered a permanent total disability due to the workers' workplace injury or occupational disease. When this occurs, the Department, through Penser, pays L&I the pension benefits costs, and L&I pays the injured worker. However, in August 2016, L&I performed a review of its financial records and concluded that L&I erroneously did not charge the Department of Energy for 16 years of Workers' Compensation pension benefits costs. L&I brought its billing error to the Department's attention in December 2016. It is important to note that even with the error, all workers received payment for their pension benefits. Based on our review, we concluded that all the necessary data to detect this discrepancy was available to the Department. We noted that this category of costs was included on a standard financial report that the Department provided to L&I. Additionally, had a Department employee performed additional accounting steps, this error could have been detected. The Department's records had details about how much pension benefits costs were associated with each Workers' Compensation claim. Also, both the Department and Penser had records of how much money was being withdrawn from the Department's letter of credit account to pay for Workers' Compensation costs.

Management stated that the State of Washington and the Department have agreed upon a settlement to resolve this matter.

Questioned Charges for Indemnity Claims

We identified questionable charges of \$37,894 for payments to Penser for “indemnity claims” where the documentation may not have supported the classification of an indemnity claim. Specifically, we identified 36 approved claims classified as indemnity claims during fiscal year (FY) 2015 and 2016; however, Penser did not pay indemnity-type claim costs on the claims. When we examined the inconsistency between indemnity claims and indemnity payments, we found that Penser’s contract allows Penser to earn a fixed-unit rate for processing Hanford Site Workers’ Compensation claims: 75 percent of the amount is paid when a new claim is opened, and 25 percent is paid when the claim is closed. The other two types of claims are “hearing loss” and “medical only.” For example, in FY 2015, the total unit rate for processing each type of claim was: hearing loss, \$1,404; medical only, \$1,149; and indemnity, \$2,174. With this payment structure, Penser received nearly twice as much payment for processing an indemnity claim than it would for processing a medical only claim.

When we discussed our concerns with management, neither Penser nor Departmental personnel could provide us with contractual documentation or policies and procedures to clearly govern how a claim should be categorized, or the distinctions between types of claims. This allowed Penser to make its own judgments when categorizing the type of each claim, which impacted the payments it received.

After reviewing a draft of our report, Departmental officials performed their own detailed review of the same 36 indemnity claims to ensure that the claims were accurately classified. Of the 36 invoiced indemnity claims questioned, the Department determined that 28 claim files had the supporting facts that justified the claim type as indemnity, while 8 did not – totaling \$8,485. Department officials stated that its review of the 36 indemnity claims used the “commonly understood” criteria that has been in place since the Department became self-insured in 2000. The Department acknowledged that efforts should be made to improve internal controls over this area. We acknowledge the analysis and conclusions of the Department’s team of subject matter experts. However, we question the \$37,894 of payments for FY 2015 and 2016 for these 36 indemnity claims, and concluded that further review of this issue is warranted.

Letter of Credit Activities

We concluded that the Department’s Richland Operations Office activities associated with reviewing letter of credit payments under Penser’s contract were inadequate. Specifically, Department officials did not review the letter of credit arrangement nor reconcile its letter of credit payments to Penser’s records, invoices, and payments. The Department used the letter of credit to provide Penser advanced funding to cover workers’ time loss checks, medical bills, attorney fees, and other Workers’ Compensation claim costs. This funding was separate from the invoice payments Penser received for fulfilling its duties under the contract with the Department. Penser requested funds from Treasury, usually daily, which were deposited directly to Penser’s bank account. Penser notified the Department of the amount of funding requested, and the Department’s Finance Division (Finance) personnel checked to make sure the amount

reported by Penser was the actual amount requested. However, Departmental personnel did not receive a copy of Penser's monthly bank statement and took no steps to ensure that Penser adequately handled the Government's funds.

Verification of Penser's records of letter of credit payments is important in order to minimize the risk of errors, overpayments, and fraud. By comparing individual payments made by Penser through the letter of credit with claim file records, Department officials are more likely to prevent and detect duplicate payments to doctors, pharmacies, and others; overpayments to providers or workers; and funds request errors resulting in an excess bank balance.

We performed our own tests of payments and identified several instances that resulted in Penser having an excess bank balance. For example, Penser received a \$175,000 recovery check on behalf of the Department on April 26, 2017, and deposited it to Penser's bank account on June 23, 2017. The \$175,000 was not completely returned to the Department until March 8, 2018, after our audit identified this as a concern. Additionally, we identified at least \$9,879 of excess funds in Penser's bank account that were not returned to the Department. These excess funds represented cancelled checks that did not go through Penser's check voiding process, which would have returned the unused funds back to the Department. Also, a law firm was paid twice for the same service, and both \$60 checks cleared the bank statements.

When we spoke to management about these concerns, both Penser and the Department were unaware of these excess funds in Penser's account. Because Penser uses its bank account for both Department and non-Department purposes and neither Penser nor the Department conducted regular reconciliations of the account, there is risk that these overpayments could go unnoticed. This basic level of Department review is essential to proper contract administration but did not occur. It is important to note that we did not find indications that the financial problems we identified affected approved Workers' Compensation payments.

Communication and Trust

We observed issues with communication relating to Workers' Compensation claims at several levels. Specifically, workers and the union identified communication problems in the Workers' Compensation Program, and we observed inadequacies in communication between the Department and its operating contractors.

During our audit, we conducted detailed interviews with 19 of the 36 workers we attempted to contact who had filed Workers' Compensation claims. Of these 19 workers, 14 expressed concerns over various issues, such as concerns about the lengthy and complicated claims process, poor communication among involved parties, and negative interactions with the Department and Penser. We note that the workers we selected for interview potentially had issues/concerns and were not necessarily representative of the Workers' Compensation Process as a whole. For context, Penser opens approximately 340 claims per year.

Additionally, we observed an opportunity to improve communication in Penser's claim allowance notice. Specifically, while Penser used the required L&I form to send notice to workers of its recommendation for claim allowance or denial, we noted that Penser's notification

to the workers of its recommendation for claim approval or denial generally did not provide a detailed explanation as to why Penser was making the specific recommendation. This was especially true in cases where Penser recommended denial of the claim. The notifications typically would cite generic reasons for the denial recommendation, such as “condition is not the result of an industrial injury...” or “no personal injury was sustained by the claimant....” The notifications made no mention of any specific supporting facts, circumstances, or medical diagnoses. In our opinion, the lack of analysis on the written notifications could have contributed to a sense of frustration among workers. Without such a documented analysis, it could be difficult for injured workers to easily understand the reasons for claim determinations. We noted that the Penser contract requires that it provide “... exceptional customer service in the processing of claims to include providing all claimants timely information that will help them gain a clear understanding of the Workers’ Compensation adjudication process and the status of their claim(s)....” In our judgment, more details and analysis in Penser’s notification letter to workers recommending denial would serve to increase workers’ understanding of the reasons for denial and may contribute to decreased frustration.

Additionally, we were told of and have reviewed correspondence that indicated a breakdown in communication and trust between the Hanford Atomic Metal Trades Council union officials, Penser, Departmental officials, and workers. We discussed the particulars of these communication problems with Departmental officials, who acknowledged them and agreed that improvements were necessary.

Further, we were informed of communication problems between the operating contractors and the Department and Penser. Specifically, a Contractor Workers’ Compensation Representative, who works for an operating contractor, informed us that she was given limited information about claims, which limited the Contractor Workers’ Compensation Representatives’ ability to assist the workers as their claims went through Penser’s process. The Contractor Workers’ Compensation Representatives are generally the workers’ initial contact to start a claim after an injury, and these representatives work with the operating contractor to help the worker return to work. However, once the claim is sent to Penser, we were told that the representatives then get very little information, which hinders the representatives’ ability to assist the workers as their claims are processed.

The challenges associated with communication are exacerbated by a fragmented Hanford Site Workers’ Compensation process that workers find confusing. The process involves many players, including the worker, the operating contractors, the union, health advocates, the occupational medical services, the Department, Penser, physicians and medical professionals, attorneys, and L&I. For example, after a workplace injury or event occurs, workers may take a number of avenues to file their claim. Workers can visit the on-site Occupational Medical provider, where they are given the option to file a Workers’ Compensation claim. We were told that if the worker decides to file a claim, the Occupational Medical provider will contact the Contractor Workers’ Compensation Representative. Workers may also go directly to their Contractor Workers’ Compensation Representative who will help them file the appropriate paperwork. Additionally, workers may choose to visit the emergency room or another physician before filing a claim, but their Contractor Workers’ Compensation Representative may still be contacted if they do so. On occasion, workers may choose to talk to their union steward about

workplace injuries. The worker also has the option to contact the Department. After the claim is filed, the documentation goes to Penser. Penser gathers additional information in the processing of the claim, including current and prior medical history from the Occupation Medical provider, the attending physician, and any other appropriate physicians. The Contractor Workers' Compensation Representative helps Penser attain information about the injury or event, as well as other relevant documentation. In some situations, a claim may involve one or more Independent Medical Examiners. Penser sends relevant claim information to the Independent Medical Examiner, and the Independent Medical Examiner renders an opinion. Penser then uses the data and medical opinions it has gathered to make an allowance or denial recommendation to L&I. Once L&I officially allows or denies a claim, Penser or the worker may choose to protest or appeal the decision. To further demonstrate the complex process and parties potentially involved during a Workers' Compensation claim, we created a graphical representation that can be seen in *Workers' Compensation Process* (Appendix 7).

For certain complex Workers' Compensation claims, such as those related to chemical vapor inhalation, workers reported a high level of frustration and risk for miscommunication, due to the additional complexities associated with these claims. For example, workers may have to interact with multiple medical providers, who sometimes give different diagnoses. Additionally, according to the *Vapor Management Expert Panel Member Report* issued in December 2016, it is not clear to what extent the health effects are a direct result of Tank Farms vapors or other possible exposures or conditions. Even the most current technology, science, and medicine are limited in their ability to discern, delineate, and predict health effects from myriad chemicals, particularly at low levels of exposure or when non-specific transient symptoms occur. In *Other Matters – Concerns Associated with Chemical Vapors* (Appendix 2), we provide an update for stakeholders on the Department's current activities underway to address these problems that are unique to vapor exposures.

Also, per the *L&I Self-Insurance Claims Adjudication Guidelines*, a medical opinion must create a causal relationship between the condition diagnosed and the incident or exposure on a "more probable than not" basis for it to be allowed, and the doctor must substantiate the diagnosis with objective medical findings. Finally, when Penser recommends a denial for chemical vapor inhalation claims, they are turned over to L&I's special Chemical Related Illness Unit for additional review, which likely takes additional time. It is important to note that we did not observe evidence that Penser or the Department were treating vapor inhalation claims unfairly.

To its credit, the Department has recently recognized that more can be done to improve communication. Specifically, Department officials changed the Program Manager for the Hanford Site Workers' Compensation Program and reorganized the position to be under the Office of the Manager. The new Program Manager stated that she is working to improve avenues of communication between the parties involved in the Hanford Site Workers' Compensation process, including the information available to the operating contractors. Notably, on April 2, 2018, the Department opened a new outreach center that will serve to educate the workforce and improve communication about the Workers' Compensation processes and other important issues.

Inadequate Federal Oversight

We attributed the problems identified in this report to inadequate management by Departmental personnel. Specifically, the Department did not provide effective oversight of Penser's Workers' Compensation claims processing activities and controls. Further, Departmental personnel did not perform sufficient oversight of the financial and contractual controls of the Penser contract. Also, Departmental stewards were aware of major problems in communication and trust with key stakeholders but did not take sufficient action to address these problems.

Claims Processing Controls

The Department did not provide effective oversight of Penser's Workers' Compensation claims processing activities and controls. In particular, the Department had not performed, nor had it contracted for, formal audits or assessments of Penser's claims processing activities and controls – normally, this is an integral part of a Federal oversight program of contractor operations. When we discussed this concern, a Department official stated that the Department relied heavily on L&I for oversight because L&I performs significant oversight of Penser. However, when we spoke with L&I and asked what type of reviews they perform, we learned that since 2013, L&I performed a total of three audits of the Hanford Site Workers' Compensation Program, all of which had limited scope. For example, in its 2016 audit, L&I reviewed a total of nine claims and only determined if lost wage calculations were correct. The 2017 audit examined the “timeliness of transactions.” However, L&I audits did not examine the adequacy of claim documentation, the legitimacy of claims, or ensure Penser's compliance with the Department of Energy contract. These important areas require oversight and are clearly in the domain of the Department, yet reviews over these areas did not occur.

Further, L&I informed us that when a third-party administrator, such as Penser, submits a recommendation, they generally rely on the third-party administrator's recommendation. In fact, L&I informed us of a State of Washington Joint Legislative Audit and Review Committee study which indicated that L&I heavily depends on the recommendations of Self-Insured Employers and their third-party administrators. Specifically, the Joint Legislative Audit and Review Committee study cited that “L&I agrees with the [self-insured] employer for 99 percent of acceptance decisions and 98 percent of denials.” Therefore, in an environment where L&I relies on Penser's recommendation, but Penser may not provide all required documentation, there is a risk that L&I's determination may not have considered all facts and circumstances necessary to make an informed decision. We concluded that management needs to look into this matter further.

When we discussed our concern over the level of oversight that the Department provides over claims processing, we were told that the Department required recurring reports and requested *ad hoc* reports periodically. Also, Department personnel regularly met with Penser and operating contractors. However, we concluded that this level of involvement was not sufficient to identify the concerns that we found during our review and that a more formal and structured oversight paradigm was necessary. We concluded that increased Department-led or contracted audits and assessments will, over time, serve to increase worker and public confidence that claims are treated objectively and fairly.

Financial and Contractual Controls

We concluded that the Department did not provide sufficient oversight of the financial and contractual controls for the Penser contract. In particular, we concluded that Departmental personnel failed to perform reconciliation procedures between what Penser pays for Workers' Compensation benefits for Hanford employees and the letter of credit funding that the Department provides Penser. The letter of credit funding was separate from the invoice payments Penser received for fulfilling its duties under the contract with the Department. This represented a breakdown in the Department's management control system over Workers' Compensation costs.

We observed that Finance personnel did not demonstrate an adequate understanding of Penser's disbursement system to be able to conduct an appropriate level of oversight. Finance believed that L&I reviewed claim payments (which was not the case), so Finance did not perform a detailed review of letter of credit payments to Penser's bank account. We were also told that the Department did not have access to Penser's bank account, except for during audits, which were not performed. Further, key Departmental officials could not demonstrate a command of the financial and contractual controls, and routinely directed our inquiries on these subjects to Finance. Accordingly, we concluded that officials at the Department's Richland Operations Office did not have a comprehensive understanding of financial and contractual controls over the Workers' Compensation process to perform appropriate oversight.

The Department had no knowledge that Penser's account was not exclusively used for Departmental program activities. We discovered that Penser used its bank account to make deposits, pay fees and charges, and make transfers for its other clients – which, we were told, were unrelated to the Department of Energy contract. This in itself was not contrary to the requirements. However, Penser also did not keep track of the deposits made into the account that were unrelated to the Department and had a difficult time reconciling the bank account; therefore, Penser was unable to distinguish the existence of any under-or-over-payments of Government funds. In addition, the Department had not attempted, nor requested Penser to attempt, to reconcile the bank account during either of Penser's contracts, the first of which was initially effective in FY 2010.²

Additionally, during our audit, we observed that the Department included minimal guidance in its contract that would have aided Penser in managing the letter of credit bank account and did not have an accounting system review performed to ensure that Penser could adequately protect Government assets. Initially, Finance officials told us that the requirements that governed Penser's letter of credit would include appropriate Federal Acquisition Regulation (FAR) clauses and an agreement between the Department, the contractor, and the financial institution. FAR 32.411, *Agreement for special account at a financial institution*, states that the contracting officer must use a form of agreement for a special account for advance payment that would include a statement requiring that amounts advanced to the contractor be deposited separate from the contractor's general or other funds. However, we were later informed that the Department did

² The Department has a contract with Penser to serve as its third-party administrator, which has been in place since FY 2015. From FY 2010 through FY 2014, there was a separate contract for the same service with Penser.

not have Penser create an agreement for its account because it determined that Penser was not a “major contractor.” In discussions with Department Headquarters Financial Policy personnel, we learned that Penser indeed did not have a “letter of credit” by definition that would require such agreement, though it is identified as a “letter of credit” in Penser’s contract. Therefore, the FAR controls and the controls outlined in the Department’s *Financial Handbook* for a letter of credit would not be applicable to Penser’s situation and were not included in its contract. When we asked what controls would be applicable to a situation like Penser’s, the Department Headquarters Financial Policy personnel explained that each field office is responsible for ensuring that there is an adequate accounting system and establishing how to set up the accounts and processes. Overall, we found that the Richland Operations Office had minimal controls over Penser in this area.

To its credit, the Department contracted for a detailed audit of the Penser contract beginning November 2017 that will begin to examine some of the issues we identified.

Assessment of Intimidation and Harassment

During our review, we did not observe direct evidence to confirm or refute workers’ allegations of intimidation or harassment for filing Workers’ Compensation claims. Our work in this sensitive area indicated that due diligence was exercised, and we have seen no evidence that specific workers were singled out and treated unfairly. Assessing the intimidation and harassment within a large organization is inherently difficult and relies largely upon subjective data, such as the expressed opinions of workers. Although we structured our interviews so that they were voluntary and would obtain a variety of opinions, our review may not have fully captured all perspectives. Specifically, there was a risk that employees chose not to respond to our requests for voluntary and anonymous interviews because they were not confident that they would remain anonymous and may then be intimidated or harassed after speaking with the Office of Inspector General. Also, workers may have felt intimidated by the idea of speaking with our review team. Further, individuals who felt that they had been intimidated or harassed may or may not have verifiable reasons for that feeling. Therefore, the results of our interviews may provide indicators and insights on this issue but may not fully capture all concerns.

The results of our interviews revealed that all workers interviewed (19 of 19) said that neither the Department nor the operating contractors had discouraged them from reporting their injury or illness events. However, of the 19 workers we interviewed, 7 stated that they felt intimidated or harassed for filing a Workers’ Compensation claim. Four of the allegations related to Penser and three related to the operating contractor. For example, those relating to Penser include:

- A worker stated that Penser harassed the doctors who treated him because Penser thought that the worker was not injured due to a vapor inhalation. He explained that doctors do not like working with Penser, and they avoid claims related to vapor exposure. We spoke to one of the worker’s doctors, who said that most of the communication with Penser was through letters but would have liked the opportunity to speak with a Penser claims examiner more often. The doctor thought that the Workers’ Compensation process of trying to prove that a worker’s illness was “real and connected to work” was in itself “demeaning” and a cause of “frustration.” Ultimately, the doctor stopped accepting L&I claims because of the process involved, which, according to the doctor, included talking

to judges and lawyers and also required the time-consuming task of writing letters. We should note that Workers' Compensation regulations do, in fact, require injuries and illnesses be real and connected to work.

- One worker had an email that his medical provider had written to Penser, saying, "[the claimant] suffers from the after effects of his injury as [the claimant] and his family incurs financial hardship as your organization continues to find reasons to delay his coverage." In our review of the claimant's file, we observed that the claim was ultimately allowed.
- One worker felt harassed when he was going through the Workers' Compensation process, specifically when he had to continually verify the process was fair and reach out to [L&I] to obtain clarifications. As discussed earlier in our report, workers' frustrations can be attributed to the communication issues, as well as the complicated and confusing Workers' Compensation process itself.
- Another worker felt that Penser's attorney contacting his doctor was "intimidation." We met with one of the worker's doctors who said that his interactions with Penser's attorney were "typical for a lawyer" and that "lawyers are usually intimidating." However, the doctor said that he was not pressured to change his recommendation.

Additionally, three workers stated that they felt harassed by their operating contractor employer. For example, one employee with an injury had a difficult time negotiating appropriate job tasks while the injury healed and felt that intimidation or harassment had occurred. Once again, we concluded that workers' feeling of intimidation and harassment may be attributable to poor communication between the parties involved in the Workers' Compensation process rather than any overt effort on the part of Penser or the operating contractor. In all seven cases, we observed much worker frustration, and this report documents problems with: communication, a confusing and fragmented claims filing process, inadequate Department involvement, inadequate Department assessments of Penser's work, and problems with contract administration.

Call to Action

We concluded that the Department needs to dramatically increase its involvement in all aspects of the Workers' Compensation process, especially to strengthen controls over documentation, claim determinations, and financial controls. Additionally, efforts to improve communication, education, and advocacy throughout the Workers' Compensation process, as well as additional transparency about claim determinations may serve to decrease conflict and reduce worker perceptions that claims are being mishandled and in a manner that they feel is unfair or harassing.

To this end, on April 2, 2018, the Department opened a Hanford Workforce Engagement Center. This is a resource center for workers to gain a better understanding of the processes associated with, and the relationship between, the Workers' Compensation program and the other Hanford Site medical related programs.

RECOMMENDATIONS

To address the concerns identified in this report, we recommend that the Manager, Richland Operations Office:

1. Develop a corrective action plan to address the concerns identified over contractual and financial issues. At a minimum, this should include:
 - a) Performing a reconciliation of payments (and refunds) made to workers with Federal funding for the entirety of the Penser contract.
 - b) Implementing requirements for recurring reconciliation procedures into the third-party administrator contract.
 - c) Clear contractual language for various types of claims, such as indemnity claims and medical only claims, together with detailed policies and procedures that specify difference and characteristics between various claims.
 - d) The Contracting Officer determining whether the nearly \$38,000 in questioned charges to Penser related to the indemnity/medical only issue identified in this report were allowable, performing an extent of condition review of the issue, and taking appropriate action based on the result.
 - e) Implementing detailed requirements, policies, and procedures for letter of credit transactions into the third-party administrator contract.
2. Develop a corrective action plan that addresses the identified concerns over operational aspects of the third-party administrator. This should include:
 - a) Performing an extent of condition review over the concern that Penser did not appropriately transmit all required claim documents to L&I.
 - b) Independently determining whether any missing documents may impact claim determination.
 - c) Based upon results, engaging L&I with any needed corrections to claim determinations.
 - d) Establishing clear contractual language in the third-party administrator's contract to ensure that all required documents are transferred to L&I.
 - e) Implementing a Federal oversight regimen to ensure that all required documents are provided to L&I.
 - f) Implementing a Federal oversight regimen to review the third-party administrator's claim determinations to provide assurance that the claim determinations are sound.

-
3. Develop a corrective action plan to address the communication concerns identified in this report. This should include:
 - a) Steps to improve the timeliness of the third-party administrator's response to inquiries from workers and other customer service issues;
 - b) High-level management involvement in addressing communication issues between the Department leadership, the third-party administrator, the union, and workers; and
 - c) Periodic assessments and reviews to determine whether concerns over communication are improving over time.

MANAGEMENT RESPONSE

Management concurred with the report's findings and recommendations and indicated that corrective actions will be considered or are underway. Management commented that it is reassuring that the Office of Inspector General (OIG) observed that the large majority of claims appear to be managed, processed, and paid without raising any concerns. Management appreciates the OIG's sensitivity and thoroughness in its investigation of worker concerns related to harassment or intimidation of workers for filing workers' compensations claims and the results that there was no evidence of workers being singled out or treated unfairly. Specifically, that despite the increased risk for conflict and frustration when chemical vapors claims are filed, due to the complexity of the medical and legal issues, that neither Penser nor the Department were treating claims associated with chemical vapors unfairly.

Also, management commented that it recognizes that improvements in communication, education, and transparency will only serve to improve the Hanford Workers' Compensation Program. Management concurs that the Department can increase its efforts to strengthen program controls over documentation, claims processing, and financial management. The Department contracted with an independent auditor to complete an audit of the entire Penser contract, which is nearly completed and includes a full reconciliation of the accounts used for claims processing. In the interest of transparency and increasing worker confidence in the workers' compensation program, the Department is partnering with the Washington State Department of Labor and Industries (L&I) to provide support of additional claims oversight and is exploring additional opportunities for external oversight support by other certified entities. The Department has worked to bring the L&I ombuds to the Hanford site to be an active resource for workers. Additionally, the new Hanford Workforce Engagement Center resource is an innovation created to improve communication and education regarding occupational health concerns, which includes the workers' compensation claims process. Finally, as it plans for future solicitations, the Department will carefully consider applicable recommendations from the OIG and strive to implement controls that will add continued improvement to the workers' compensation claims administration process.

Management's comments are included in Appendix 4.

AUDITOR COMMENTS

Management's comments are responsive to the findings and recommendations. We will track the details of the Department's planned corrective actions in the Departmental Audit Report Tracking System, quarterly, until the recommendations are closed.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

To assess the effectiveness of the Department's processes, procedures, and controls related to the Workers' Compensation Program at the Hanford Site.

Scope

This audit was performed from May 2017 through August 2018. We conducted the audit at the Department of Energy's Richland Operations Office and Office of River Protection in Richland, Washington. It was also conducted at Penser North America, Inc. (Penser); Washington River Protection Solutions; CH2M Hill Plateau Remediation Company; Mission Support Alliance; HPM Corporation; Battelle Memorial Institute; and Wastren Advantage, Inc.; all located in Richland, Washington. This audit was conducted under the Office of Inspector General project number A17RL031.

Methodology

To accomplish the objective of this review, we:

- Examined each of the areas identified in the Senators' letter, dated March 8, 2017;
- Reviewed the key policies and processes associated with the Hanford Site Workers' Compensation Program; and
- Interviewed key stakeholders, including Department officials, Penser management, representatives from the State of Washington's Department of Labor and Industries, and various union representatives.

Additionally, we engaged with workers who had filed Worker's Compensation claims to learn about their experience with the process. We called and emailed workers from a sample of claimants. In all, we interviewed 19 workers. During our discussions, we inquired about the following:

- What type of an injury or illness the worker sustained;
- Whether the doctors were qualified to determine the workers' health condition;
- Whether all the relevant information related to the workers' claim was provided to their doctors; and
- Whether the workers felt intimidated or harassed for filing a Workers' Compensation claim.

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 objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, we assessed significant internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the Department's implementation of the *GPRA Modernization Act of 2010* as it relates to our audit objective and found that the Department had established performance measures applicable to the Workers' Compensation Program at the Hanford Site.

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 relied on computer-processed data to some extent to satisfy our objective related to the Hanford Site Workers' Compensation Program. To verify the accuracy of that data we confirmed the validity and reliability by reviewing supporting documentation used to generate the computer-processed data.

We held an exit conference with the Department on August 9, 2018.

OTHER MATTERS – CONCERNS ASSOCIATED WITH CHEMICAL VAPORS

Contributing to the frustration associated with certain Workers' Compensation claims at the Hanford Site is a hazard associated with the Hanford Tank Farms, where "vapor inhalation" events sometimes occur. In this section of the report, for informational purposes, we concluded that it is valuable for stakeholders to understand some of the Department's current activities to address this worker risk area.

As stated in our previous report issued in November 2016, Department of Energy's *Actions to Address Worker Concerns Regarding Vapor Exposures at the Hanford Tank Farms* (OIG-SR-17-01), for decades, the Department has been storing and managing millions of gallons of chemical and radioactive waste in the Hanford Tank Farms in Washington State. Approximately 56 million gallons of this waste are stored in dozens of aging tanks. Tank operations routinely occur to manage the waste, to transfer waste from old or leaking tanks, to perform evaporation activities, and to perform other actions that are referred to as "waste disturbing activities." Tank waste generates vapors as heat and radiation break down chemical compounds. From time to time, workers at the Tank Farms are exposed to these vapors. When inhaled at high enough concentrations, according to an independent panel of experts, some of these vapors may represent a serious occupational hazard to the Tank Farms workforce. Due to the hazards associated with vapors, the Department and its operating contractors have engaged in various activities in an attempt to minimize the risk of human exposure. Since 2014, the Department and its tank operations contractor, Washington River Protection Solutions, LLC (WRPS), have been engaged in renewed activities to measure, minimize, and mitigate exposure. Nevertheless, incidents of worker exposure to vapors were still being reported.

Over the years, numerous studies have been performed on various aspects of vapor hazards. One class of studies focused on questions surrounding industrial hygiene parameters, such as reviews to establish screening values, acceptable exposure limits, and the industrial hygiene technical basis for certain chemicals found in vapors. Another class of studies, assessments and independent reviews, focused on management actions to address vapor hazards. Of these reviews, the October 2014 *Hanford Tank Vapor Assessment Report*, produced by the Savannah River National Laboratory, identified 10 overarching issues and made 47 detailed recommendations that the Department and WRPS plan to address using a 2-phased approach.

To address the findings of the *Hanford Tank Vapor Assessment Report*, the Department and WRPS management developed and launched a major project designed to address the identified issues. The initial activities for this project had approximately \$45 million in funding. Additional project activities were scheduled to be conducted with total project funding approaching \$100 million. According to the *Office of Enterprise Assessments Follow-up Assessment of Progress on Actions Taken to Address Tank Vapor Concerns at the Hanford Site* report issued February 28, 2018, Office of River Protection and WRPS senior management have demonstrated their commitment to addressing and implementing recommendations from multiple reports besides the *Hanford Tank Vapor Assessment Report*, such as the Office of Enterprise Assessments, National Institute for Occupational Safety and Health, Office of Inspector General,

and Center for Toxicology and Environmental Health reports. The Office of Enterprise Assessments cited that a key improvement since its January 2017 report was the development of the draft, *Hanford Vapors Integrated Safety Management Strategy*, and the companion draft, *Comprehensive Vapor Action Plan*.

Further, the Department convened a tank Vapor Management Expert Panel in March 2015, which reported to the Department's Office of River Protection and was responsible for evaluating the effectiveness of the underway actions to implement the *WRPS Implementation Plan for Hanford Tank Vapor Assessment Report Recommendations*, as well as assuring that actions related to new, emergent issues were being carried out and were effective in protecting workers from potential vapor exposures. This team consisted of experts such as a former manager of the Richland Operations Office, a former director of the Washington State Department of Ecology, a physician, a National Institute for Occupational Safety and Health toxicology fellow, a former Occupational Safety and Health Administration administrator, as well as others. The Department required that this team have the requisite expertise and integrity to increase confidence that known and emergent tank vapor issues are being satisfactorily addressed. The team was contracted to issue semiannual reports. The first *Vapor Management Expert Panel Member Report* was issued on December 6, 2016.

According to the December 2016 Vapor Management Expert Panel report, in order to describe the health patterns at Hanford, it was important to distinguish exposure related health effects that were transient, reversible, and non-specific from illnesses associated with objective, persistent clinical findings. Such health effects reported by employees included symptoms such as headache, nausea, watery eyes, runny nose, and burning sensations. These symptoms were generally transient and reversible, and their precise cause was difficult to determine. The report goes on to say that it is not clear to what extent those health effects are a direct result of Tank Farms vapors or other possible exposures or conditions. Even the most current technology, science, and medicine are limited in their ability to discern, delineate, and predict health effects from myriad chemicals, particularly at low levels of exposure or when non-specific transient symptoms occur. This further complicates efforts to distinguish between possible health effects from Hanford exposures and health effects that, more likely, may have resulted from other factors or exposures in a person's history.

One of the recommendations from the *Hanford Tank Vapor Assessment Report* stated, "Routine medical surveillance is a key workplace evaluation tool needed to predict health impairment from vapor exposures; appropriately designed epidemiology studies focused on Tank Farms workers are recommended to evaluate potential long-term health consequences." According to the January 2017 *Office of Enterprise Assessments Follow-up Assessment of Progress on Actions Taken to Address Tank Vapor Concerns at the Hanford Site*, the current efforts to design a clinical study at Hanford using Workers' Compensation cases may have limited value because of the small sample size. We also held a discussion with officials from the Office of the Associate Under Secretary for Environment, Health, Safety and Security. According to these officials, an epidemiology study would be very useful but would take many years. In 2016, the National Institute for Occupational Safety and Health performed an assessment of worker safety and health programs at the Hanford Tank Farms. One of the National Institute for Occupational Safety and Health's recommendations was for the Department to conduct a focused review of

Tank Farms worker medical surveillance data to maximize the usefulness of current medical surveillance and screening activities and to help establish the most appropriate occupational medical care for Tank Farms workers.

PRIOR REPORTS

- Special Report on the [*Department of Energy's Actions to Address Worker Concerns Regarding Vapor Exposures at the Hanford Tank Farms*](#) (OIG-SR-17-01, November 2016). Seven of the 52 workers we interviewed indicated that they had concerns with reporting, communicating, reprisal, or fear of retaliation related to potential vapor exposures. One of the workers had filed a formal complaint regarding retaliation. The remaining workers we spoke to generally told us that they felt free to discuss their concerns about vapors without fear of retaliation. Additionally, while we found that a number of actions were underway to address the risks posed by vapors, such as evaluating technologies in the Tank Farms, we found that improvements in communication were needed to inform workers about the status of actions and to ameliorate continuing fear of retaliation on the part of some workers.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

JUL 23 2018

MEMORANDUM FOR APRIL G. STEPHENSON
PRINCIPAL DEPUTY INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL

FROM: ANNE MARIE WHITE 
ASSISTANT SECRETARY
FOR ENVIRONMENTAL MANAGEMENT

SUBJECT: Management Response to the Office of Inspector General Draft
Audit Report on "Management of the Workers' Compensation
Program at the Hanford Site"

The Department of Energy (DOE) Office of Environmental Management appreciates the opportunity to review and comment on the subject Office of Inspector General (OIG) draft report. We reviewed the information in the draft report with respect to the facts presented, conclusions reached, and appropriateness of the recommendations.

The OIG observations that the large majority of claims appear to be managed, processed, and paid without raising any concerns, is reassuring to DOE. DOE appreciates the OIG's sensitivity and thoroughness in its investigation of worker concerns related to harassment or intimidation of workers for filing workers' compensation claims, and the results that there was no evidence of workers being singled out or treated unfairly. Specifically, that despite the increased risk for conflict and frustration when chemical vapors claims are filed, due to the complexity of the medical and legal issues, that neither Penser nor DOE, were treating claims associated with chemical vapors unfairly.

DOE recognizes that improvements in communication, education, and transparency will only serve to improve the Hanford Workers' Compensation Program. DOE Management concurs that DOE can increase its efforts to strengthen program controls over documentation, claims processing, and financial management. DOE contracted with an independent auditor to complete an audit of the entire Penser contract. The audit is nearly completed and includes a full reconciliation of the accounts used for claims processing. In the interest of transparency and increasing worker confidence in the workers' compensation program, DOE is partnering with the Washington State Department of Labor and Industries (L&I) to provide support of additional claims oversight, and is exploring additional opportunities for external oversight support by other certified entities. DOE has worked to bring the L&I Ombuds to the Hanford site to be an active resource for workers. Additionally, the new Hanford Workforce Engagement Center (HWEC) resource is an innovation created to improve communication and education regarding occupational health concerns, which includes the workers' compensation claims process.



Finally, as it plans for future solicitations, DOE will carefully consider applicable recommendations from the OIG, and strive to implement controls that will add continued improvement to the workers' compensation claims administration process. A discussion of the report's recommendations follows.

Recommendation 1:

Develop a corrective action plan to address the concerns identified over contractual and financial issues. At a minimum, this should include:

- a) Performing a reconciliation of payments (and refunds) made to workers with Federal funding for the entirety of the Penser contract.
- b) Implementing requirements for recurring reconciliation procedures into the third-party administrator contract.
- c) Clear contractual language for various types of claims, such as indemnity claims and medical only claims, together with detailed policies and procedures that specify difference and characteristics between various claims.
- d) The Contracting Officer determining whether the nearly \$38,000 in questioned charges to Penser related to the indemnity/medical only issue identified in this report were allowable, performing an extent of condition review of the issue, and taking appropriate action based on the result.
- e) Implementing detailed requirements, policies, and procedures for letter of credit transactions into the third-party administrator contract.

Management Response: DOE concurs in principle.

The OIG investigation did identify areas where increased DOE involvement and oversight can provide additional protections to DOE. However, it should be noted that DOE has used a graded approach for oversight and despite identified areas of weakness, there were no instances discovered in which claimants were not paid correctly, nor were any funds identified as missing or questioned as fraudulent. DOE has already addressed outstanding financial concerns regarding Penser's accounts by contracting for an independent audit of the entire Penser contract and undergoing a full reconciliation of Penser accounts beginning in FY 2010. Beginning with October 1, 2017, Penser started completing current month bank reconciliations and will provide them to the Department as completed. The related Monetary Impact Report has been reviewed. DOE has already reviewed the questioned charges. DOE will perform an extent of condition review and take appropriate actions.

DOE has reached a settlement with L&I regarding L&I's failure to bill DOE for pension costs. DOE completed a thorough review of L&I records to ensure that all workers have been correctly paid their pension claims. DOE is in the process of implementing internal procedures to carefully track the pension programs administered by L&I. DOE will also consider OIG recommendations where applicable as it prepares for future solicitations.

Recommendation 2:

Develop a corrective action plan that addresses the identified concerns over operational aspects of the third-party administrator. This should include:

- a) Performing an extent of condition review over the concern that Penser did not appropriately transmit all required claim documents to L&I.
- b) Independently determining whether any missing documents may impact claim determination.
- c) Based upon results, engaging L&I with any needed corrections to claim determinations.
- d) Establishing clear contractual language in the third-party administrator's contract to ensure that all required documents are transferred to L&I.
- e) Implementing a Federal oversight regimen to ensure that all required documents are provided to L&I.
- f) Implementing a Federal oversight regimen to review the third-party administrator's claim determinations to provide assurance that the claim determinations are sound.

Management Response: DOE partially concurs.

DOE is in agreement that it can take steps to strengthen controls over the third party administrator's processes and procedures for filing and documenting claims recommendations. DOE does not have the required certifications to independently determine whether missing documentation may impact claim determination. For this reason, DOE is exploring additional ways to utilize L&I, or other certified entities, to support DOE in the oversight of the claims process by the third party administrator. Currently, the third party administrator contract requires compliance with applicable law. DOE supports engaging L&I, as it has the qualifications and expertise to determine whether claims determination are sound and properly documented. DOE will also consider the recommendations made regarding documentation requirements as it prepares for future solicitations.

Recommendation 3:

Develop a corrective action plan to address the communication concerns identified in this report. This should include:

- a) Steps to improve the timeliness of the third-party administrator's response to inquiries from workers and other customer service issues.
- b) High-level management involvement in addressing communication issues between the Department leadership, the third-party administrator, the union, and workers.
- c) Periodic assessments and reviews to determine whether concerns over communication are improving over time.

Management Response: DOE concurs in principle.

DOE and its contractors continue to focus on process improvements in the Workers' Compensation Program that have resulted in better customer orientation and flow of information, as well as other institutional changes including making the State Ombuds for Workers' Compensation available to the contractor employee workforce. DOE has also established the HWEC to assist in communication. Communication is paramount to building trust with the contractor employee workforce. DOE will continue to work with its contractor(s) to identify opportunities to effectively engage the contractor employee workforce regarding the concerns associated with occupational illnesses and injuries and make improvements to the Workers' Compensation Program at the Hanford Site.

As noted in Appendix 2 of your report, DOE has demonstrated a commitment to addressing and implementing recommendations from multiple independent and external assessments regarding concerns associated with chemical vapors. A common theme throughout several of those assessments pertained to improving worker communication and trust, including within the workers' compensation program. DOE and its tank farm contractor have implemented a number of changes aimed at making systematic operational and programmatic improvements to promote better communication and improved trust among contractor workers with respect to tank vapor issues. Such changes include enhanced vapors communications and information surveys, maintaining easily accessible websites and publications for transparent and open communication of meaningful vapor-related information, additional chemical worker training, and other tools to foster better understanding of vapors.

DOE will implement a corrective action plan to conduct additional reviews and audits of timeliness and responsiveness for claims processing and make efforts to acquire additional feedback to determine whether concerns over communication are improving over time.

cc: Jonathan Black, IG-301.4
Deborah Thomas, IG-301.3
James Owendoff, EM-2
Angela Watmore, EM-2.1 COS (Acting)
Joceline Nahigian, EM-2.1 DCOS
Kenneth Picha, Jr., EM-3 (Acting)
Celinda Crawford, EM-3
Shari Davenport, EM-5 (Acting)
Norbert Doyle, EM-5.2
Andrew Wirkkala, EM-5.21
Timothy Harms, EM-5.112
Leslie Jackson, EM-5.112

REQUEST



March 8, 2017

April Stephenson
Acting Inspector General
Office of the Inspector General
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Acting Inspector General Stephenson:

We write to request the Office of the Inspector General (OIG) complete a follow-on assessment on the safety environment at the Hanford Nuclear Reservation (Hanford). As you know, the OIG issued a special report last fall that examined whether employees at Hanford fear retaliation. It also assessed the status of actions underway by Washington River Protection Solutions (WRPS) to implement the 2014 Hanford Tank Vapor Assessment Report (Report) recommendations.¹ We further request that this follow-on assessment be expanded to include a review of Penser North America, Inc. (Penser) and the workers' compensation claims process at Hanford.

Penser has a contract with the U.S. Department of Energy (Department) to serve as the third-party administrator of the Hanford Site Workers' Compensation program. We have heard concerns from Hanford workers and labor unions about their experience with Penser inadequately addressing workers' compensation claims following chemical vapor exposures.

Although Washington state law dictates the terms of the workers' compensation program through the State of Washington's Department of Labor and Industries, the Department is responsible for the selection and oversight of the third-party administrator. We believe the Department has a responsibility to review the performance of that administrator. Multiple accounts of workers' compensation claims being dismissed on arbitrary grounds, tactics bordering on intimidation, and actions taken to discredit claims have been shared with us. These allegations are very troubling and we urge the OIG to take immediate action. Specifically, the OIG should investigate the treatment of workers and claims throughout the tenure of Penser's contract with the Department.

To help inform our continued efforts to improve the safety environment at Hanford, we ask the OIG to return to Hanford to assess the actions taken by WRPS to implement the recommendations in OIG's 2016 special report and review the workers' compensation claims process administered by Penser. As part of these reviews, we respectfully request the OIG address the following:

¹ U.S. Department of Energy Office of the Inspector General, *Department of Energy's Actions to Address Worker Concerns Regarding Vapor Exposures at the Hanford Tank Farms*, OIG-SR-17-01 (Nov. 2016).

United States Senate

WASHINGTON, DC 20510

1. Review any allegations of harassment and/or intimidation in relation to workers who have filed workers' compensation claims due to workplace related injuries or illnesses at Hanford.
2. Does the Department perform any form of oversight on the third-party administrator, Penser? Is there any oversight specific to the management of claims? If not, why not?
3. To what extent, if at all, does the Department work with the third-party administrator, Penser, to administer the workers' compensation claims program?
4. Are the doctors and/or medical providers selected by Penser qualified to determine health conditions caused by exposure to chemicals at Hanford? What methodology is used to ensure the doctors and/or medical providers are qualified?
5. Are the doctors and/or medical providers selected by Penser provided all of the necessary and relevant information related to a workplace injury or illness to make an accurate determination?
6. Please detail the number of workers' compensation claims which have been approved for a workplace injury or illness caused by chemical vapor exposure. Further, please provide the number of workers' compensation claims denied in which chemical vapor exposure was detailed as the cause.
7. Develop a process by which the OIG conducts annual reviews on the implementation of current and future recommendations on health and safety practices at Hanford.

Finally, the concerns raised by workers about Penser are further heightened by the Department's decision on January 31, 2017 to stay important protections provided to whistleblowers pursuant to a previous regulation.² We fear that halting this regulation would discourage whistleblowers from stepping forward with safety concerns and workers from raising concerns with health and safety practices.

Thank you for your attention to these important matters.

Sincerely,



Maria Cantwell
United States Senator



Patty Murray
United States Senator

² U.S. Department of Energy, *Procedural Rules for DOE Nuclear Activities*, 82 Fed. Reg. 8807 (Jan. 31, 2017) (final rule; stay of regulations).

Questions Posed in Senators' Letter

Our report considered all seven issues requested in correspondence from Senators Murray and Cantwell to the Acting Inspector General. Our reply to the Senators is presented here.

1. Review any allegations of harassment and/or intimidation in relation to workers who have filed workers' compensation claims due to workplace related injuries or illnesses at Hanford.

During our review, we did not observe direct evidence to confirm or refute workers' allegations of intimidation or harassment for filing Workers' Compensation claims. Our work in this sensitive area indicated that due diligence was exercised, and we have seen no evidence that specific workers were singled out and treated unfairly. We met with Office of Inspector General (OIG) Hotline personnel, Department and Contractor Employee Concerns Program Managers, the L&I Ombuds, and workers in order to review any allegations of harassment and/or intimidation in relation to workplace related injuries or illnesses at Hanford. Additionally, we interviewed 19 workers who had filed Workers' Compensation claims. The results of our interviews revealed that all workers interviewed (19 of 19) said that neither the Department nor the operating contractors had discouraged them from reporting their injury or illness events. However, 7 of the 19 workers we interviewed stated that they felt intimidated or harassed for filing a Workers' Compensation claim. Four of the allegations related to Penser and three related to the operating contractor. In all seven cases, we observed much worker frustration, and this report documents contributing factors such as problems with communication, a confusing and fragmented claims filing process, and inadequate Department involvement in claim determinations.

2. Does the Department perform any form of oversight on the third-party administrator, Penser? Is there any oversight specific to the management of claims? If not, why not?

The Department participates in L&I's "self-insured" Workers' Compensation Program and is considered the "employer" for purposes of Workers' Compensation claims. As a self-insured employer, the Department is responsible for opening, processing, and administering claims, and for payment of benefits. The Department has a contract with Penser to act on the Department's behalf as a third-party administrator. The Department maintains responsibility for the program until Penser provides the claim to L&I. However, we observed that the Department performed limited oversight over Penser. We were informed that a Department employee tracked claims and received periodic updates from Penser. Nevertheless, we observed no evidence that Departmental personnel had ever conducted a level of oversight that would detect documentation issues between Penser and L&I. Additionally, the Department had not performed, nor had it contracted for, formal audits or assessments of Penser's claims processing activities and controls – normally, this is an integral part of a Federal oversight program of contractor operations. We were told that this was not done because audits and assessments were not required by the contract.

As for financial oversight, Departmental personnel did not receive a copy of Penser's monthly bank statement and took no steps to ensure that Penser adequately handled the Government's funds. By comparing individual payments made by Penser through the letter of credit with claim file records, Department officials are more likely to prevent and detect duplicate payments to doctors, pharmacies, and others; overpayments to providers or workers; and funds request errors resulting in an excess bank balance. It is important to point out that none of the financial problems we identify in this section harmed workers or their claims in any way – that is, approved Workers' Compensation payments were not affected. We were told that the financial reviews were not in place because Penser was a smaller contractor.

3. To what extent, if at all, does the Department work with the third-party administrator, Penser, to administer the workers' compensation claims program?

See question 2.

4. Are the doctors and/or medical providers selected by Penser qualified to determine health conditions caused by exposure to chemicals at Hanford? What methodology is used to ensure doctors and/or medical providers are qualified?

Penser does not select doctors and/or medical providers; rather, workers select their own attending physicians. Also, although Penser "selects" Independent Medical Examiners (IMEs), they all are on a list of qualified providers that the State of Washington L&I maintains. L&I is responsible for maintaining the list of IMEs and for ensuring that they are qualified. Since our scope was limited to internal controls of the Department and its contractors, we did not assess the methodology that L&I uses to determine whether IMEs are qualified.

Sometimes IMEs are scheduled to give an objective medical-legal examination to establish medical facts about a worker's physical condition. IMEs are requested by L&I or Penser to make a determination on claim validity and the necessity of a claimant's future treatment, as well as resolving claim issues, determining permanent partial disability, and assisting in the decision to reopen a claim. We identified no basis to question the qualifications of the IMEs on L&I's list of qualified providers.

However, L&I informed us that there are a limited number of IMEs available with chemical exposure expertise. Additionally, we observed that the IME list has very few pulmonologists throughout the State of Washington from which Penser can choose. As of January 17, 2018, there were only two pulmonologist IMEs. L&I has a long list of qualifications for medical providers applying to be IMEs, which includes obtaining a license without restrictions, having no significant malpractice claims, and achieving a passing score on the *Medical Examiners' Handbook* test prior to initial application or renewal. In our file review, we have not identified any instances when claimants were sent to the wrong type of doctor, given their injury or illness.

5. Are the doctors and/or medical providers selected by Penser provided all of the necessary and relevant information related to a workplace injury or illness to make an accurate determination?

We were unable to determine if doctors and/or medical providers were provided all of the necessary and relevant information related to a workplace injury or illness. Penser does not select doctors and/or medical providers; rather, workers select their own attending physicians, and some physicians were not willing to speak with the OIG. However, we were able to look at whether L&I was provided complete documentation packages. We found that Penser did not always send complete documentation packages to L&I. Specifically, we conducted a comprehensive analysis of five judgmentally-selected, completed claims that had been denied or contained an interlocutory order by comparing documentation that Penser had on file to L&I's records. We observed that in four of five claims, there were lapses in the documentation provided to L&I by Penser.

6. Please detail the number of workers' compensation claims which have been approved for a workplace injury or illness caused by chemical vapor exposure. Further, please provide the number of workers' compensation claims denied in which chemical vapor exposure was detailed as the cause.

There were 628 total claims from October 1, 2014, to May 4, 2017, with a status of "allowed," "denied," or "pending." Of the 628, 70 claims (or 11.1 percent) were denied. Of these 628, we determined that claims with a loss cause of "by inhalation," "cumulative," "toxic exposure," "contact, toxic," and "unclassified, insufficient data" may potentially be related to chemical vapor exposure. The overall potential chemical vapor exposure claim denial rate was about 38.7 percent (12 of 31 potential chemical vapor exposure claims). Therefore, Penser's potential chemical vapor exposure claim denial rate was over three times that of its total denial rate of 11.1 percent.

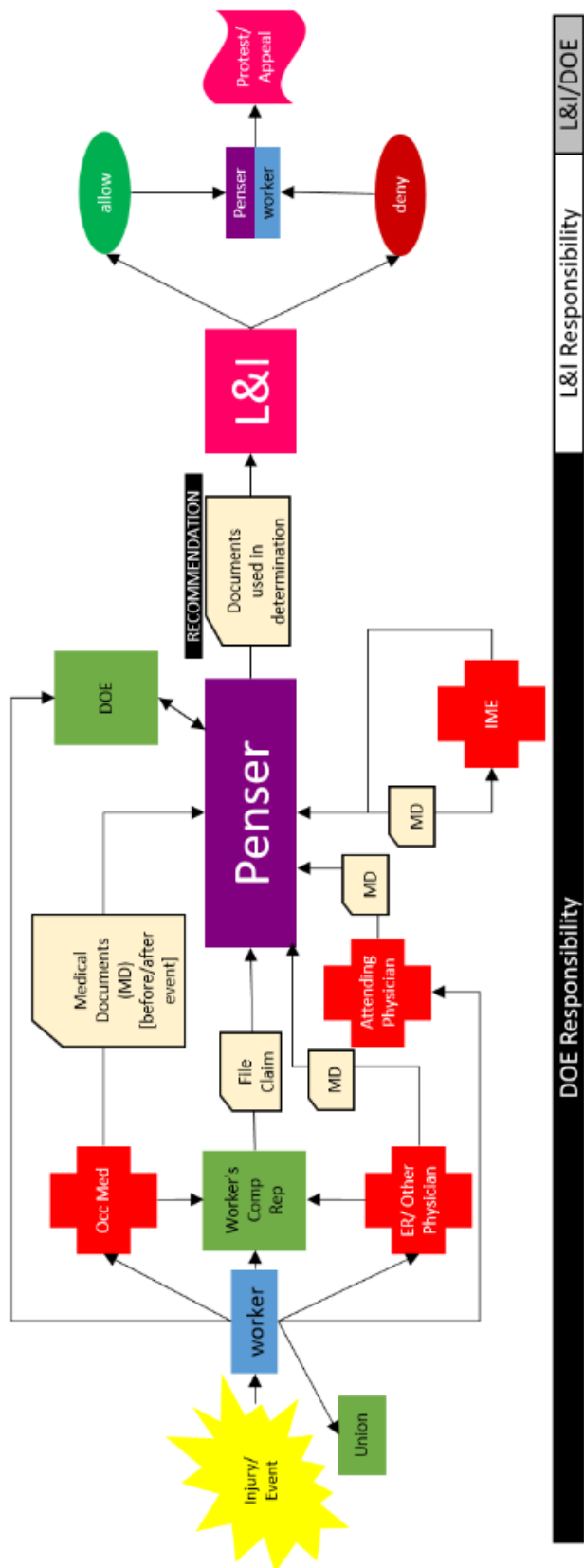
However, although the denial rate was higher for vapor exposure claims, this alone is not sufficient basis to conclude that Penser is treating these claims unfairly. Vapor exposure injuries are very complex and are affected by many factors that are outside the scope of this review. According to the December 2016 *Vapor Management Expert Panel Member Report*, one difficulty associated with these claims is that it is not clear to what extent the health effects are a direct result of chemical vapors or other possible exposures or conditions. Per the *L&I Self-Insurance Claims Adjudication Guidelines*, a medical opinion must create a causal relationship between the condition diagnosed and the incident or exposure on a "more probable than not" basis for a claim to be allowed. Additionally, the doctor must substantiate the diagnosis with objective medical findings. Thus, chemical vapor inhalation claims have a high level of frustration and risk for miscommunication. It is important to note that we did not observe evidence that Penser or the Department were treating vapor inhalation claims unfairly.

Potential Chemical Vapor Exposure Claims					
Data provided by Penser and analyzed by the OIG					
Loss Cause	Allowed	Denied	Pending	Total	% Denied
Total*	554	70	4	628	11.1%
“By Inhalation”**	14	11	1	26	42.3%
Chemical Vapor related** “Cumulative”	2	0	1	3	0%
Chemical Vapor related** “Toxic Exposure”	0	1	0	1	100%
Chemical Vapor related** “Contact, Toxic”	0	0	0	0	0%
Chemical Vapor related** “Unclassified, insufficient data”	1	0	0	1	0%
Total Potential Chemical Vapor Exposure Claims	17	12	2	31	38.7%
*Total claims between October 1, 2014, and May 4, 2017, with a status of “allowed,” “denied,” or “pending.”					
** Potentially chemical vapor related. Penser did not have a “chemical vapor exposure” specific loss cause.					

7. Develop a process by which the OIG conducts annual reviews on the implementation of current and future recommendations on health and safety practices at Hanford.

The OIG will include the implementation of current and future recommendations on Hanford Site’s health and safety practices in our annual risk-based planning process.

Workers' Compensation Process



After a workplace injury or event occurs, workers may take a number of avenues to file their claim. Workers can visit the on-site Occupational Medical provider, where they are given the option to file a Workers' Compensation claim. We were told that if the worker decides to file a claim, the Occupational Medical provider will contact the Contractor Workers' Compensation Representative. Workers may also go directly to their Contractor Workers' Compensation Representative who will help them file the appropriate paperwork. Additionally, workers may choose to visit the emergency room or another physician before filing a claim, but their Contractor Workers' Compensation Representative may still be contacted if they do so. On occasion, workers may choose to talk to their union steward about workplace injuries. The worker also has the option to contact the Department. After the claim is filed, the documentation goes to Penser. Penser gathers additional information in the processing of the claim, including current and prior medical history from the Occupation Medical provider, the attending physician, and any other appropriate physicians. The Contractor Workers' Compensation Representative helps Penser attain information about the injury or event, as well as other relevant documentation. In some situations, a claim may involve one or more Independent Medical Examiners (IMEs). Penser sends relevant claim information to the IME, and the IME renders an opinion. Penser then uses the data and medical opinions it has gathered to make an allowance or denial recommendation to L&I. Once L&I officially allows or denies a claim, Penser or the worker may choose to protest or appeal the decision.

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