



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

The Management of Post-Recovery Act Workforce Transition at Office of Environmental Management Sites



OAS-RA-12-06

February 2012



Department of Energy
Washington, DC 20585

February 22, 2012

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Audit Report on "The Management of Post-Recovery Act Workforce Transition at Office of Environmental Management Sites"

BACKGROUND

The American Recovery and Reinvestment Act of 2009 was enacted to stimulate the economy, preserve and create jobs and to invest in environmental protection and infrastructure improvements that will provide long-term economic benefits. The Department of Energy's Office of Environmental Management received \$6 billion under the Recovery Act to promote economic recovery through job creation and retention, while accelerating environmental cleanup activities across EM sites. As Recovery Act projects are completed, sites are reducing the workforce to levels needed to perform remaining base work. The Department estimates that with the end of Recovery Act funding and other known budget reductions, as many as 4,450 Recovery Act and base program workers at EM sites will be displaced. At the time of our review, more than 3,600 workers at EM sites had been displaced. As required by statute and/or Department regulation, displaced workers subject to involuntary separation must be given notice or payment in lieu of notice.

As we observed following previous workforce restructuring efforts (Attachment 3), the Department had not always ensured that benefits provided to similarly separated contractor employees were comparable and/or comported with guidance then in effect. Because of the extent of current reductions in staffing, we initiated this audit to determine whether the Department had developed and was properly executing an effective plan to transition its environmental remediation contractor workforce to a post-Recovery Act posture.

CONCLUSIONS AND OBSERVATIONS

Our review, at two major EM managed sites, the Hanford Site and the Savannah River Site, established that the Department and its contractors had developed plans to transition its workforce as Recovery Act funds were exhausted. These facility contractor-developed plans were approved by Federal officials and, for the most part, complied with existing guidance. Our review of Recovery Act hiring practices at the two EM sites disclosed that, to the extent practicable, both sites took up front measures to control future separation costs. For example, they emphasized hiring temporary employees who would not be eligible for separation benefits

in expectation that the workforce would be reduced at the completion of the Recovery Act projects.

We found, however, that the transition approach adopted at Savannah River has resulted in unnecessary payments of nearly \$7.7 million to separated contractor employees. The Savannah River approach, if adopted elsewhere or if considered precedent-setting, could materially impact upcoming restructuring efforts at other Department of Energy facilities. Specifically, we observed that:

- Even though not required by statute or Departmental Order, Savannah River elected to provide separating employees with 60 days of pay rather than giving them the required advance termination notices. This decision resulted in payments for which the Department received no direct benefit. The payments were in addition to severance pay and other health and outplacement benefits each terminated contractor employee received (Attachment 2). A Federal official at the Savannah River Site Office indicated that this approach was adopted for employees of Savannah River Nuclear Solutions (SRNS) because of security risks associated with high hazard work; however, no comprehensive analyses could be provided to substantiate the perceived risks; and,
- In sharp contrast, transitioning employees at Hanford were to be provided with advance notice of termination and, as a result, were to continue performing their assigned tasks during the notice period. As with separating employees at Savannah River, employees impacted by restructuring efforts by CH2M HILL Plateau Remediation Company and Mission Support Alliance at Hanford were to receive severance payments and a suite of other benefits.

In cases of significant involuntary terminations, each of the Department's contractors is required by the Worker Adjustment and Retraining Notification Act (WARN Act) to provide 60 days notice when involuntary terminations of 500 or more employees take place within a rolling 90-day period. Departmental Order 350.1 also requires that contractors provide individual employees as much notice of involuntary separation as is practicable, but not less than 2 weeks notice or 2 weeks pay in lieu of notice when the WARN Act does not apply to the workforce reduction. The WARN Act, however, does not specifically require payments in lieu of notice.

The key issues in the above cases are (i) whether it is necessary, economical, and efficient to provide payments in lieu of notice to displaced contractor employees hired as a result of the Recovery Act; and, (ii) whether disparate and significantly inconsistent treatment of contractor employees at various Department sites is fair, equitable and in the Government's best interest. Rather than adopting a consistent approach to the notice requirement, the Department authorized its contractors to provide differing benefits by location, even though the employees at both sites were similarly situated. The approach employed has thus far resulted in about \$7.7 million in payments in lieu of notice to terminated workers at Savannah River. In terms of work product, as a result of the Hanford policy, the Department will receive 60 days of additional environmental remediation services.

While we are sensitive to the impact that the transition has on employees, the need to ensure that taxpayer provided funds are spent prudently is especially important in these trying budgetary and economic times. In short, we are concerned that it may not have been reasonable or equitable to provide terminated employees in Savannah River with additional payments beyond the suite of benefits provided to similarly situated employees in Hanford.

Decision to Provide Payments in Lieu of Notice

Even though not specifically required by the WARN Act or by agency regulation, SRNS decided, with Department approval, to provide 60 days of pay in lieu of providing contractor employees with notice. According to a Federal official at the Savannah River Site Office, the decision to pay employees in lieu of the advance warning was directly tied to site safety and security and is a custom that has been in practice since 1993. However, the Site Office was unable to provide documentation to support this decision. Instead we found that SRNS had not fully analyzed whether or not such a notice exacerbated site safety and security issues, and, if so, to what degree. In particular, we determined that SRNS had not performed comprehensive vulnerability assessments in support of the decision to not provide employees with notice.

The situation at Hanford was in contrast. Our review of transition plans at Hanford demonstrated that it planned to provide notice instead of payment in lieu of notice – either the 60 days required by the WARN Act or the 2 weeks required by the Department – for transitioning employees.

EM and other responsible offices had reviewed and approved the differing treatment of employees at these two sites even though the workers were similarly situated. Workers at both Hanford and Savannah River had similar missions and employee classifications and thus faced similar security risks. Although Savannah River had a nuclear weapons-related mission that did not exist at Hanford, the workers involved in the transition were involved with environmental cleanup and did not have access to the special nuclear materials areas at the site. Nonetheless, a Federal official at Savannah River indicated that the Department would not have provided notice even if the nuclear weapons activities were not performed at the site.

Guidance

Inconsistent application of the workforce notification or payments in lieu of notification requirement occurred because sites did not receive formal guidance from Headquarters on implementation. Specifically, an EM official told us that no overarching guidance was provided to sites; instead, site contractors were allowed to decide whether to provide notice or pay in lieu of notice.

Impact on Funding/Program

Inconsistencies in the approach used by Hanford and Savannah River to address workforce notice requirements, despite similarities in the number and mission of the workers being displaced at the two sites, were not fully justified by management, led to increased transition costs at Savannah River and will likely result in disparate treatment of separating employees. As noted, the Department has paid approximately \$7.7 million in lieu of notice to 526 contractor employees during the post-Recovery Act workforce transition at Savannah River.

These payments were not specifically required by the WARN Act, and, in our judgment, the argument put forth regarding additional risk had not been fully analyzed and was, therefore, problematic. While the Department's efforts in constructing and executing the overall workforce transition plans are notable, additional action is required to ensure that transition costs are limited to those required and necessary. Further, the Department needs to ensure that similarly situated workers are treated with reasonable consistency.

RECOMMENDATIONS

We recommend that the Senior Advisor for Environmental Management, in coordination with the Office of the General Counsel, direct responsible officials to:

1. Review inconsistencies in the amount of notice/payments in lieu of notice given to involuntarily separated employees at the EM sites; and,
2. Provide formal guidance to the sites as necessary.

MANAGEMENT AND AUDITOR COMMENTS

Management concurred with the report's finding and recommendations. Regarding Recommendation 1, Management agreed that responsible officials should review the amount of notice/payments in lieu of notice given to involuntarily separated employees at EM sites and note various reasons for inconsistencies. Regarding Recommendation 2, EM will require specific approval by senior EM management for use of pay in lieu of providing WARN Act notice. Further, EM, in coordination with the Office of the General Counsel, will provide additional guidance to the sites on WARN Act notice and the Office of the General Counsel will lead a field call on the subject this year.

We consider management's comments and planned actions responsive to our recommendations.

Attachments

cc: Deputy Secretary
Associate Deputy Secretary
Under Secretary for Nuclear Security/Administrator, National Nuclear Security
Administration
Acting General Counsel
Senior Advisor for Environmental Management
Chief of Staff

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of our audit was to determine whether the Department of Energy (Department) had developed and was properly executing an effective plan to transition its environmental remediation contractor workforce to a post-American Recovery and Reinvestment Act of 2009 (Recovery Act) posture.

SCOPE

This review was performed between February 2011 and February 2012, at Department Headquarters in Washington, DC; the Hanford Site in Richland, Washington; and, the Savannah River Site in Aiken, South Carolina.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed the Recovery Act legislation and implementing guidance;
- Reviewed applicable Federal laws and regulations, Departmental policies and procedures and contract requirements related to hiring practices and/or workforce transition;
- Analyzed data provided by Headquarters Office of Environmental Management (EM) and obtained from EM's website to identify the amount of Recovery Act funds obligated, the number of Recovery Act jobs and the projected number of displaced contract workers at each site;
- Interviewed Headquarters officials from EM, Office of Legacy Management and Office of the General Counsel as well as officials from operations offices and site contractors to gain an understanding of Recovery Act hiring practices and workforce transition;
- Reviewed documentation supporting Recovery Act hiring practices employed by site contractors;
- Reviewed Recovery Act workforce transition plans for the four EM sites with the greatest amount of Recovery Act funding and largest Recovery Act workforces, and associated costs for the two EM sites visited; and,
- Reviewed supporting documentation to determine compliance with applicable Federal laws and regulations as well as Departmental policies and procedures.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective. The audit included tests of controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the Department's implementation of the *Government Performance and Results Act of 1993* and concluded that it had not established performance measures related to transition of Recovery Act contactor workforce. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we did not rely on computer-processed data to accomplish our audit objective.

Officials from the Office of Environmental Management waived an exit conference.

Summary of Activities and Services for Involuntarily Separated Employees¹

Benefits Received	Contractor		
	Savannah River Nuclear Solutions	CH2M HILL Plateau Remediation Company	Mission Support Alliance
Severance Pay	✓	✓	✓
Medical Benefits - Displaced Worker Medical Benefits (DWMB) ² or Consolidated Omnibus Reconciliation Act (COBRA)	✓	✓	✓
Vision Benefits – COBRA	✓	✓	✓
Dental Benefits - COBRA	✓	✓	✓
Flexible Spending Accounts - COBRA	✓	✓	✓
Preference-In-Hiring	✓	✓	✓
Outplacement Services	✓	✓	✓
Employee Assistance Program	✓	✓	✓
Involuntary Separation Notice		✓	✓
60-Day Pay in Lieu of Notice	✓		

¹ All activities and services are subject to eligibility as determined by the site and/or contractor.

² Employees who elect to retire receive associated retirement benefits instead of DWMB.

RELATED REPORTS

Office of Inspector General:

- Audit Report on [*Contractor Severance Plans at the Department of Energy*](#), (OAS-L-09-04, February 2009). Evaluation of 23 contractor plans disclosed that the Department of Energy (Department) did not have a consistent approach to reimbursing contractor severance benefits costs. Further, contractor severance plans were not always consistent in the amount of severance pay available to separated employees based on the same number of years of service.
- Audit Report on [*Voluntary Separation Program at the Idaho Cleanup Project*](#), (DOE/IG-0765, May 2007). The audit found that the Idaho National Laboratory (Idaho) separation program was exceptionally costly and, in certain respects, inefficient. The program provided significantly higher incentives than were offered in other recent comparable separation programs, used costly incentives that did not have analytical support to justify the additional benefits paid, and did not retain critical skills of certain employees needed to accomplish the Idaho Cleanup Project.

Government Accountability Office:

- Report on [*The Worker Adjustment and Retraining Notification Act: Revising the Act and Educational Materials Could Clarify Employer Responsibilities and Employee Rights*](#), (GAO-03-1003, September 2003). In 2001, there were 8,350 plant closures and mass layoffs, one-quarter of which appear subject to the Worker Adjustment and Retraining Notification (WARN) Act. Of these, the U.S. Government Accountability Office (GAO) found that employers only provided notice for about one-third of the subject closings and layoffs. GAO states that employers and employees find the WARN Act definitions and calculations for deciding whether or not it is necessary to give notice difficult to apply.
- Report on [*Department of Energy: Value of Benefits Paid to Separated Contractor Workforce Varied Widely*](#), (GAO/RCED-97-33, January 1997). GAO conducted this audit due to concerns expressed by a member of Congress about the costs associated with implementation of the Department's workforce restructuring plans. The audit found similar types of separation benefits were offered at most facilities, but the value of these benefits varied among locations. Additionally, limited oversight over implementation of workforce restructuring plans is provided by the Department. GAO also noted that the Department has improved its ability to retain critically needed skills during downsizing.
- Report on [*Federal Downsizing: The Costs and Savings of Buyouts versus Reductions-in-Force*](#), (GAO/GGD-96-63, May 1996). As part of ongoing work examining how Federal agencies have used buyouts to downsize the Federal workforce, GAO compared the projected costs and savings of buyouts with an alternative downsizing strategy,

reductions-in-force (RIF), over a 5-year period. GAO found that buyouts will generate more savings than RIFs if typical bumping and retreating take place. In cases in which bumping and retreating do not take place, RIFs may yield more savings than buyouts for retirement-eligible employees. However, if the separated employee is not eligible for retirement, buyout savings would exceed the RIF savings.

- Report on [Workforce Reductions: Downsizing Strategies Used in Selected Organizations](#), (GAO/GGD-95-54, March 1995). The Federal Workforce Restructuring Act of 1994 required Federal agencies to reduce employment levels by 272,900 full-time equivalent positions by the end of Fiscal Year 1999. To obtain information that might be of value in carrying out Federal downsizing, GAO contacted 17 companies, 5 states and 3 foreign governments that had downsized in recent years. This report presents a compendium of the approaches these employers used, including: the planning involved, the methods used to reduce their workforces and the human resources aspects of the downsizing.

MANAGEMENT COMMENTS



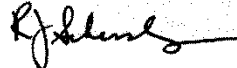
Department of Energy

Washington, DC 20585

January 23, 2012

MEMORANDUM FOR RICKEY R. HASS
DEPUTY INSPECTOR GENERAL
FOR AUDITS AND INSPECTIONS
OFFICE OF INSPECTIONS

FROM:

THOMAS JOHNSON, JR. 
DIRECTOR
ENVIRONMENTAL MANAGEMENT RECOVERY ACT
PROGRAM

SUBJECT:

Draft Audit Report on "Management of Post-Recovery Act Workforce Transition at Office of Environmental Management Sites" (File No. A11RA024)

Thank you for the opportunity to review and comment on the subject draft audit report dated November, 23, 2011, regarding the Management of Post-Recovery Act Workforce Transition at Office Environmental Management (EM) Sites. EM has reviewed the draft report and concurs with the recommendations outlined within the report and provides the following responses to the recommendations.

RECOMMENDATIONS

To ensure correct and consistent application of notification and/or payment in lieu of notification across Departmental sites, we recommend that the Acting Assistant Secretary for Environmental Management, in coordination with the Office of General Counsel, direct responsible officials to:

1. *Review inconsistencies in the amount of notice/payments in lieu of notice given to involuntarily separated employees at EM sites;*

Response: Concur. Responsible officials should review the amount of notice/payments in lieu of notice given to involuntarily separated employees at EM sites. Attention should be paid to reasons for any inconsistencies, such as WARN requirements, employment status (i.e., direct prime contractor employee versus a term employee not generally entitled to WARN notice or a staff augmentation or subcontractor employee whose separation pay costs are not generally reimbursed by DOE), terms of the DOE-approved WFR plan, past practices regarding WARN notices, applicable contract and/or collective bargaining agreement terms, and documented security risks/vulnerability assessments.



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2. Provide formal guidance to the sites as necessary.

Response: Concur. The Office of Environmental Management (EM) is planning to issue delegations of workforce restructuring authority under the Secretary's May 5, 2011 memorandum titled "Authorize Changes to Workforce Restructuring Policy" that will require specific approval by senior EM management for use of pay-in-lieu of providing WARN Act notice. EM will continue to work with the Office of General Counsel (OGC) to provide additional guidance to the sites on this topic. OGC, in coordination with EM and other programs, will lead a field call on this subject this year.

If you have any questions or require additional information, please contact me at (202) 586-8367 or Colin J. Jones, Senior Policy Advisor, at (202) 586-5125.

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4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report which would have been helpful?
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