



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

INSPECTION REPORT

DOE-OIG-22-27

February 2022

**ALLEGATION REGARDING
CONTRACTOR MISREPRESENTATION
ON OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION
DOCUMENTATION**



Department of Energy
Washington, DC 20585

February 18, 2022

MEMORANDUM FOR THE ASSOCIATE UNDER SECRETARY, OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY;
THE MANAGER, OAK RIDGE OFFICE OF ENVIRONMENTAL MANAGEMENT

SUBJECT: Inspection Report on Allegation Regarding Contractor Misrepresentation on Occupational Safety and Health Administration Documentation

The attached report discusses our review of the allegation regarding accident and injury reporting. This report contains two recommendations that, if fully implemented, should help ensure that the issue identified during this inspection is corrected. Management fully concurred with our recommendations.

We conducted this inspection from May 2021 through December 2021 in accordance with the Counsel of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. We appreciated the cooperation and assistance received during this evaluation.

A handwritten signature in black ink, appearing to read "Anthony Cruz".

Anthony Cruz
Assistant Inspector General
for Inspections, Intelligence Oversight,
and Special Projects
Office of Inspector General

cc: Deputy Secretary
Chief of Staff



Department of Energy Office of Inspector General

Allegation Regarding Contractor Misrepresentation on Occupational Safety and Health Administration Documentation (DOE-OIG-22-27)

WHY THE OIG PERFORMED THIS REVIEW

The Office of Inspector General received an allegation regarding contractor misrepresentation regarding classifications on injuries or illnesses reporting. The complaint alleged that URS|CH2M Oak Ridge LLC (UCOR) committed fraud by intentionally misrepresenting the date and classification of employee injuries or illnesses on Occupational Safety and Health Administration (OSHA) recordkeeping logs to increase contract fees and improve the likelihood of being awarded another contract.

We initiated this inspection to determine the facts and circumstances regarding the allegation concerning contractor misrepresentation on OSHA documentation.

What Did the OIG Find?

We did not substantiate the allegation that UCOR committed fraud by intentionally misrepresenting the date and classification of employee injuries or illnesses on OSHA documentation to increase fees and improve the likelihood of being awarded another contract.

Even though the allegation was unsubstantiated, we found that UCOR and the Department of Energy's Office of Oak Ridge Environmental Management had differing interpretations of requirements regarding occupational injury and illness reporting. Specifically, the Department's Office of Oak Ridge Environmental Management directed UCOR to ensure the information that UCOR reports in the Department's Computerized Accident/Incident Reporting System matched the information reported on the UCOR OSHA Form No. 300, Log of Work-Related Injuries and Illnesses (recordkeeping log). UCOR declined to do so, stating that while the Department can direct classification in the Department's Computerized Accident/Incident Reporting System, it does not have the authority to direct classification in OSHA's recordkeeping logs.

What Is the Impact?

Accurate reporting of accidents and incidents is critical so that the Department receives information in a timely manner regarding events that have affected or could adversely affect the health, safety, and security of the public or workers, the environment, the operations of Department facilities, or the credibility of the Department.

What Is the Path Forward?

To address the issue identified in this report, we have made two recommendations that, if fully implemented, should help ensure that the issue identified during our inspection is corrected.

BACKGROUND

The East Tennessee Technology Park, formerly known as the Oak Ridge Gaseous Diffusion Plant, began operations during World War II as part of the Manhattan Project. As the Department of Energy's mission changed, operations at the plant ceased, and the Department began a massive environmental remediation effort. In 2011, the Department contracted with URS|CH2M Oak Ridge LLC (UCOR) for the completion of the decontamination, demolition, and environmental remediation work at the East Tennessee Technology Park under a Cost-Plus-Award-Fee contract, with award fee earned based on performance in various areas, including safety. UCOR's work is overseen by the Oak Ridge Office of Environmental Management (OREM), which is part of the Office of Environmental Management (EM).

UCOR's contract requires that occupational injuries and illnesses be recorded and reported, including the recording of complete and accurate information for each incident in the Occupational Safety and Health Administration's (OSHA) Form No. 300, Log of Work-Related Injuries and Illnesses (recordkeeping log). Additionally, the Department requires UCOR to submit injury and illness reports electronically using the Computerized Accident/Incident Reporting System (CAIRS), a database used to collect and analyze Department and contractor reports of injuries, illnesses, and other accidents that occur during Department operations, including the date, classification, and result of the incident. Given the nature of UCOR's work, accurate information regarding injuries and illnesses is particularly important to determine UCOR's performance and ensure the safety of workers and the public.

In March 2021, the Office of Inspector General Hotline received an allegation that UCOR committed fraud by intentionally misrepresenting the date and classification of employee injuries or illnesses on OSHA recordkeeping logs to increase contract fees and improve the likelihood of being awarded another contract. The complaint further alleged that UCOR and OREM officials were aware of the issue, and that despite a review by the Office of Environment, Health, Safety and Security (Health and Safety), which found that 19 of 20 cases were misclassified, UCOR continued to incorrectly classify such incidents. We initiated this inspection to determine the facts and circumstances regarding the allegation concerning contractor misrepresentation on OSHA documentation.

OCCUPATIONAL INJURY AND ILLNESS MISREPRESENTATION

We did not substantiate the allegation that UCOR was committing fraud by intentionally misrepresenting the date and classification of employee injuries or illness on OSHA recordkeeping logs to increase fees and improve the likelihood of being awarded another contract. Our review of UCOR's contract and award fee found no evidence that UCOR's fees increased because of misrepresenting the date and classification of occupational injuries or illnesses. Rather, we found that UCOR received decreased award fees for the period of performance from April 1, 2020, through September 30, 2020, in part because of issues with injury classification. We identified no instance where UCOR received increased award fees based on low injury or illness rates or classifications. Additionally, we found no evidence to support the allegation that UCOR misrepresented the date and classification of employee injuries or illness to improve the likelihood of being awarded another contract.

Even though the allegation was unsubstantiated, we found that UCOR and OREM had differing interpretations of requirements regarding occupational injury and illness reporting. Specifically, OREM considered that UCOR's contract provided OREM the authority to determine how injuries and illnesses should be reported and as such directed UCOR to ensure classification in OSHA recordkeeping logs was consistent with the information in the CAIRS database. UCOR declined to do so, stating that while the Department can direct classification in CAIRS, it does not have the authority to direct classification in OSHA's recordkeeping logs because injury and illness classification and reporting is the employer's responsibility.

As already noted, UCOR's contract requires all recordable, work-related employee fatalities, injuries, and illnesses to be recorded on OSHA recordkeeping logs. Injury and illness incident reports must also be submitted electronically in CAIRS. Health and Safety establishes expectations for occupational injury and illness recordkeeping and reporting in CAIRS, and the information is used to determine safety performance for contractors.

Health and Safety reviewed injury and illness cases reported by UCOR from fiscal year 2016 through fiscal year 2020 and found that 19 of 20 were misclassifications. For example, one case was reported as requiring only first aid care in OSHA recordkeeping logs, but according to the requirements for reporting in CAIRS, the case should have been classified as a "recordable injury" with lost workdays away and restricted. Also, Health and Safety identified issues with delayed reporting of occupational incidents. As a result of the review, OREM directed UCOR to change its classification of injuries and illnesses and noted that it was the third such request. Since 2017, OREM had directed UCOR at least three times to ensure that injuries and illnesses were recorded accurately and that the information in OSHA recordkeeping logs was consistent with the information in CAIRS. While UCOR acknowledged the Department's authority to direct changes in CAIRS and reclassified the incidents as directed, it maintained that the Department did not have statutory authority to direct similar changes in OSHA recordkeeping logs.

OREM directed UCOR to ensure that work-related injuries and illnesses of its workers and subcontractor workers, as defined in Title 29 Code of Federal Regulations (CFR) 1904.31, *Covered employees*, and Department Order 231.1B, *Environmental, Safety and Health Reporting*, are recorded and reported accurately and consistent with Title 10 CFR 851, *Worker Safety and Health Program*, and Department Order 231.1B. Title 10 CFR 851.26, *Recordkeeping and recording*, states that contractors "must ensure that the work-related injuries and illnesses of its workers and subcontractor workers are recorded and reported accurately and consistent with DOE reporting directives." Further, Department Order 231.1B states that injury and illness incident reports must also be submitted electronically using CAIRS. Conversely, UCOR stated that it followed Title 29 CFR 1904.31, which UCOR interpreted as not requiring the reporting of subcontractor employee incidents, as defined in Title 29 CFR 1904.31 and Department Order 231.1B. Thus, UCOR has declined to record subcontractor employee incidents.

According to OREM, OSHA recordkeeping logs should support the information in CAIRS; if discrepancies exist, there is no assurance that the information in CAIRS is accurate. In addition

to using injury and illness data to determine award fee and performance, the Department analyzes such data to identify adverse trends, lessons learned, and corrective actions developed to prevent recurrence.

Accurate reporting of accidents and incidents is critical so that the Department receives information in a timely manner regarding events that have affected or could adversely affect the health, safety, and security of the public or workers, the environment, the operations of Department facilities, or the credibility of the Department. As such, OREM and UCOR should resolve their conflicting interpretations of reporting requirements as soon as possible.

RECOMMENDATIONS

We recommend that the Associate Under Secretary, Office of Environment, Health, Safety and Security:

1. Provide EM with a formal policy determination regarding injury and illness reporting requirements for UCOR to include classifying such incidents in OSHA's recordkeeping logs and recording subcontractor employee incidents.

We also recommend that the Manager, Oak Ridge Office of Environmental Management direct the Contracting Officer to:

2. Ensure URS|CH2M Oak Ridge LLC reports such incidents in accordance with Health and Safety's determinations above.

MANAGEMENT RESPONSE

Management fully concurred with our recommendations. Management stated that Health and Safety will coordinate with EM, OREM, and the Office of General Counsel to issue a policy determination within 90 days. Management also stated that the OREM Manager will direct UCOR via letter from the Contracting Officer to report all incidents in accordance with the Health and Safety policy determination by May 31, 2022.

Management comments are included in Appendix 2.

INSPECTOR COMMENTS

Management's planned corrective actions are responsive to our recommendations.

Appendix 1: Objective, Scope, and Methodology

OBJECTIVE

We initiated this inspection to determine the facts and circumstances regarding the allegation concerning contractor misrepresentation on Occupational Safety and Health Administration documentation.

SCOPE

The inspection was performed from May 2021 through December 2021. The parties in the allegation were located at the East Tennessee Technology Park in Oak Ridge, Tennessee. The scope was limited to the facts and circumstances regarding the allegation concerning contractor misrepresentation on Occupational Safety and Health Administration documentation. The inspection was conducted under Office of Inspector General project number S21OR017.

METHODOLOGY

To accomplish our inspection objective, we:

- Reviewed Federal and Department of Energy regulations, policies, procedures, and guidance;
- Held discussions with Department and URS|CH2M Oak Ridge LLC personnel with subject matter expertise in the inspection areas;
- Reviewed the Department's contract with URS|CH2M Oak Ridge LLC, including award fees; and
- Reviewed correspondence regarding the inspection areas between the Department and URS|CH2M Oak Ridge LLC.

We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020) as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

Management officials waived an exit conference on February 2, 2022.

Appendix 2: Management Comments



Department of Energy
Washington, DC 20585

January 27, 2022

MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: MATTHEW B. MOURY *MB Moury*
ASSOCIATE UNDER SECRETARY FOR
ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: Response to Office of Inspector General Draft Revised
Inspection Report on "Allegation Regarding Contractor
Misrepresentation on Occupational Safety and Health
Administration Documentation" (S21OR017)

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) draft revised inspection report on "Allegation Regarding Contractor Misrepresentation on Occupational Safety and Health Administration Documentation" (S21OR017). The Office of Environmental Management (EM) and the Office of Environment, Health, Safety and Security (AU) have completed their review of the report and provide the following comments:

Office of Environment, Health, Safety and Security

Recommendation 1.1: We recommend that the Associate Under Secretary, Office of Environment, Health, Safety and Security: Provide EM with a formal policy determination regarding injury and illness reporting requirements for UCOR to include classifying such incidents in OSHA's recordkeeping logs and recording subcontractor employee incidents.

Management Response: Concur.

Action Plan: AU will coordinate with EM, Oak Ridge Office of Environmental Management (OREM) and the Office of General Counsel to issue a policy determination within 90 days.

Estimated Completion Date: April 29, 2022.

Office of Environmental Management

Recommendation 1.2: We also recommend that the Manager, Oak Ridge Office of Environmental Management direct the Contracting Officer to: Ensure URS|CH2M Oak Ridge LLC reports such incidents in accordance with Health and Safety's determinations above.



Management Response: Concur.

Action Plan: The OREM Manager will direct the URS/CH2M Oak Ridge LLC via letter from the Contracting Officer to report all incidents in accordance with the Office of Health and Safety policy determination.

Estimated Completion Date: May 31, 2022.

If you have any questions, please contact me at (202) 586-1285 or matthew.moury@hq.doe.gov, or have a member of your staff contact Michael Silverman, Director, Office of Environmental Protection and ES&H Reporting, at (202) 586-6535 or josh.silverman@hq.doe.gov.

FEEDBACK

The Office of Inspector General has a continuing interest in improving the usefulness of its products. We aim to make our reports as responsive as possible and ask you to consider sharing your thoughts with us.

Please send your comments, suggestions, and feedback to OIG.Reports@hq.doe.gov and include your name, contact information, and the report number. You may also mail comments to us:

Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at 202-586-1818. For media-related inquiries, please call 202-586-7406.