



**OFFICE OF INSPECTOR GENERAL**

U.S. Department of Energy

# INSPECTION REPORT

DOE-OIG-23-36

September 2023

**THE DEPARTMENT OF ENERGY'S  
OVERSIGHT OF THE EMPLOYEE  
CONCERNS PROGRAM**



**Department of Energy**  
Washington, DC 20585

September 29, 2023

MEMORANDUM FOR THE DEPUTY SECRETARY

SUBJECT: Inspection Report on The Department of Energy's Oversight of the Employee Concerns Program

The attached report discusses our review of the Department's oversight of the Employee Concerns Program. This report contains five recommendations that, if fully implemented, should help ensure compliance with Department Order 442.1B, *Department of Energy Employee Concerns Program*. Management fully concurred with our recommendations.

We conducted our inspection from February 2022 through January 2023 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020). We appreciated the cooperation and assistance received during our inspection.

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: Chief of Staff



## Department of Energy Office of Inspector General

### Department of Energy's Oversight of the Employee Concerns Program (DOE-OIG-23-36)

#### WHY THE OIG PERFORMED THIS INSPECTION

The Office of Environment, Health, Safety and Security manages and administers the Department of Energy's Employee Concerns Program (ECP) that was established to encourage the free and open expression of Federal, contractor, and subcontractor employee concerns. Department Order 442.1B, *Department of Energy Employee Concerns Program* (Order), establishes the criteria and processes to maintain a consistent ECP across the Department.

We initiated this inspection to assess the Department's compliance with the requirements of the Order.

#### What Did the OIG Find?

We determined that the Department's ECP Managers have not completed all requirements identified in the Order. Specifically, ECP Managers did not develop and submit implementation plans and have not always conducted self-assessments, as required. Additionally, we determined that the ECP Director only partially developed, promulgated, and implemented ECP requirements in accordance with the Order. The ECP Director has not conducted site visits to help the Department ECP Managers share best practices and implement ECPs. Finally, we determined that the ECP database, as currently utilized, is not sufficient to track and trend agency-wide employee concerns. These issues occurred because roles and responsibilities in the Order are not defined in a manner that ensures Department personnel comply with the intent of the Order.

#### What Is the Impact?

The issues identified may prevent the Department from ensuring that the ECP is properly addressing Federal, contractor, and subcontractor employee concerns. Additionally, ECP staff may be unaware of requirements necessary to ensure the program is operating as intended.

#### What Is the Path Forward?

To address the issues identified in this report, we made five recommendations that, if fully implemented, should help ensure compliance with the Order.

## BACKGROUND

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The Department of Energy relies on contractors to execute its mission with integrity. Federal Acquisition Regulation requires contractors' internal programs to include an ethics and compliance system aimed at preventing and detecting misconduct while promoting an organizational culture that encourages ethical conduct and a commitment to compliance. Contractors who conduct work for the Department must establish and maintain a program, such as an Employee Concerns Program (ECP), suitable for the organization to accept, process, and resolve employee concerns related, but not limited to, fraud, waste, and abuse. A critical feature of this compliance strategy is the Federal Acquisition Regulation's Mandatory Disclosure Rule.

The Mandatory Disclosure Rule requires a Federal contractor to timely disclose to the Office of Inspector General (OIG), in writing, whenever the contractor has credible evidence of violations of Federal criminal law involving fraud, conflict of interest, bribery, gratuity violations, or violations of the civil False Claims Act. The OIG previously conducted inspections to determine how contractors have been managing specific employee concerns that trigger Mandatory Disclosure Rule requirements. The OIG work identified instances where the contractors failed to report matters to the OIG as required. The failure to report disclosures included, for example, situations where contractors engaged outside counsel to investigate matters that had been reported through their respective employee concerns programs. Based on this information, the OIG determined that there are areas for improvement in the contractor ECP's.

Similarly, within the Department, the Office of Environment, Health, Safety and Security (Health and Safety) provides management and administration of the Department's ECP a platform for the free and open expression of concerns for Federal, contractor, and subcontractor employees, as well as an independent and formal avenue to raise those concerns and to support a safety culture where employee concerns can be promptly identified and resolved without fear of reprisal or retaliation. Department Order 442.1B, *Department of Energy Employee Concerns Program* (Order), developed by Health and Safety, establishes the criteria and processes to maintain a consistent ECP across the Department. The Office of Enterprise Assessments (Enterprise Assessments) provides Department management, Congress, and other stakeholders with an independent evaluation of the effectiveness of Department policy and management performance in safety, security, and other critical areas including the ECP.

We initiated this inspection to assess the Department's compliance with the requirements of the Order.

## OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY

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We determined that the Department is not in full compliance with the requirements of the Order. Specifically, we found that ECP Managers have not completed requirements identified in the Order. Additionally, we determined that the ECP Director partially developed, promulgated, and implemented ECP requirements in accordance with the Order. Finally, we determined that the ECP database, as currently utilized, is not sufficient to track and trend agency-wide employee

concerns. These issues occurred, in part, because roles and responsibilities in the Order are not defined in a manner that ensures Department personnel comply with the intent of the Order.

### **Employee Concerns Program Managers**

We found that ECP Managers have not completed requirements identified in the Order. Specifically, ECP Managers did not develop and submit implementation plans, as required. The Order states that Department ECP Managers are responsible for developing ECP implementing documentation that sets forth the policies and procedures to be followed by the Department ECP, as well as implementing the Department ECP in accordance with the approved implementing documentation. We also noted that several ECP Managers stated that their site utilizes one implementation plan that covers all sites for the program office. However, the Order states that field offices may share a Department ECP if it is in reasonable geographic proximity, and reasonably accessible, to their Federal and contractor employees. Due to the program office's 10 national laboratories being in different states, we determined that the sites are not in a reasonable geographic proximity.

We also found that ECP Managers have not always conducted self-assessments, as required. The Order states that Department ECP Managers must conduct a compliance and performance-based self-assessment of its ECP program within 1 year of program approval, and then at least once every 2 years afterwards. Additionally, the ECP Manager is required to provide a copy of the self-assessment report to the ECP Director. Our survey found that seven ECP Managers had not conducted a self-assessment within 1 year, as required. Additionally, 12 ECP Managers stated that they did not have an approved program despite the Order's January 31, 2019, approval date. Although a self-assessment was not required due to not having an approved program, we determined that the delay in developing program documentation contributed to an environment with limited oversight. Without the self-assessment reports, Heads of Elements are unable to evaluate the effectiveness of the Department's ECP or to address issues impacting its effectiveness, as required.

These issues occurred because roles and responsibilities in the Order are not defined in a manner that ensures Department personnel comply with the intent of the Order. Specifically, our review of the Order found that it does not specifically annotate whose responsibility it is to ensure that ECP Managers perform their roles and responsibilities. Despite Health and Safety developing the Order and the ECP Director's position residing in Health and Safety headquarters office, Health and Safety stated that this office does not have oversight responsibility of the ECP. However, we identified instances in which the ECP Director was acting in a manner consistent with performing an oversight role. For example, the ECP Director stated to ECP Managers that her responsibility was to ensure that all sites comply with the Order. The ECP Director also performed a review of site implementation plans to determine if the plans complied with the Order. The review included the requirement for ECP Managers to meet with the ECP Director. Despite these instances of oversight activity, Health and Safety stated that ECP oversight responsibility belongs to the Heads of Elements and Field Office Managers since those positions designate and provide resources to the ECP Manager. We concluded that the Order's language and the ECP Director's review made it unclear who should have ensured that ECP Managers met the requirements of the Order.

## **Employee Concerns Program Director**

We determined that the ECP Director partially developed, promulgated, and implemented ECP requirements in accordance with the Order. Specifically, we noted that the ECP Director has not conducted site visits to help the Department ECP Managers share best practices and implement ECPs in accordance with the Order; however, the ECP Director held monthly calls with ECP Managers and assisted with implementation plan revisions. The ECP Director stated that she had not conducted site visits because visits were not considered mission essential during COVID-19. At the time of this inspection, we noted that nine Federal ECP Managers who have been in the position for 4 years or more have not received a site visit.

Additionally, we found that the ECP Director had not established training curricula for ECP Managers, as required; however, the ECP Director provided informal training, published in a shared location, during the ECP monthly call. The ECP Director stated that the previous ECP Director worked on creating formal training, but it had not been completed by the time of this review. Further, we found that the ECP Director did not provide the information (i.e., report) to Department officials as required by the Order. Specifically, the Order requires the ECP Director to provide Department officials and Federal and contractor employees information on program trends, lessons learned, and the effectiveness of Department and contractor ECP implementation. A Health and Safety official stated that the required report had not been completed for approximately 10 years.

## **Employee Concerns Program Database**

We determined that the ECP database, as currently utilized, is not sufficient to track and trend agency-wide employee concerns. Specifically, the Order requires that the ECP Director develop and maintain a Department agency-wide system for tracking and trending employee concerns. We found that the ECP database is not accessed directly by contractors despite 16 of the 17 Department's national laboratories being operated by contractors. Health and Safety officials stated that the ECP database is a records management database that is required for Federal ECP Managers. The Order states that Federal ECP Managers must enter information into the ECP database for tracking and trending the types and numbers of employee concerns. Although contractors did not utilize the ECP database, ECP representatives provided the necessary information on a spreadsheet via email. Due to the reliance on manual input of information by the ECP Director, the system may not be sufficient to track information from contractors since the information is a summary that is not created from underlying support similar to Federal site information which could create data integrity issues.

## **OFFICE OF ENTERPRISE ASSESSMENTS**

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We determined that Enterprise Assessments had not assessed the overall effectiveness of the Department's ECP. The Order requires Enterprise Assessments to independently assess the overall effectiveness of Department and contractor ECPs and the processes used to implement the Order, as appropriate. Additionally, we found that Enterprise Assessments had not coordinated with the ECP Director, as required by the Order. The Order states that Enterprise

Assessments interfaces with the ECP Director and Department ECP Managers regarding ECP implementation, as well as programmatic implementation impacts. As a result of our review, Enterprise Assessments met with the ECP Director to discuss Enterprise Assessments' historical approach to assessing the ECP and the current ECP structure. Enterprise Assessments' intended actions are to update the report distribution to include the ECP Director for all reports that contain the ECP as part of the review and to consider a standalone assessment in fiscal year (FY) 2024 or FY 2025. Enterprise Assessments' planned actions address our initial findings.

## **IMPACT**

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The issues identified may prevent the Department from ensuring that the ECP is properly addressing Federal, contractor, and subcontractor employee concerns. Additionally, ECP staff may be unaware of requirements necessary to ensure that the program is operating as intended.

## **RECOMMENDATIONS**

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We recommend that the Deputy Secretary ensure Health and Safety:

1. Revises the Order to clearly define all oversight roles and responsibilities in the ECP;
2. Evaluates the need for ECP Director site visits;
3. Establishes training curricula for Department ECP managers, staff, and contracting officers;
4. Ensures the ECP Director completes the required report; and
5. Reviews the ability to update ECP information in a database to include contractors for tracking and trending employee concerns.

## **MANAGEMENT RESPONSE**

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Management fully concurred with our recommendations. According to management's response, the ECP Director will recommend consolidating the oversight responsibilities in a single section of the Order to provide clear direction on oversight. Furthermore, the ECP Director will continue to schedule site visits in FY 2024 and beyond, as applicable. The Department has a training curriculum under development in collaboration with the National Training Center. Management also stated that, since the Order was issued, the first FY 2022 *Activity Report* is in draft form and going through the correspondence process. Lastly, the Department concurred with reviewing the ability to update ECP information in a database to include contractors for tracking and trending employee concerns. Management's comments are included in Appendix 3.

## **INSPECTOR COMMENTS**

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Management's comments and corrective actions are responsive to our recommendations.

## **Appendix 1: Objective, Scope, and Methodology**

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### **OBJECTIVE**

We initiated this inspection to assess the Department of Energy's compliance with the requirements of Department Order 442.1B, *Department of Energy Employee Concerns Program*.

### **SCOPE**

The inspection was performed from February 2022 through January 2023. We conducted the inspection at the Office of Environment, Health, Safety and Security in Washington, DC. The inspection scope included a review of the Department's implementation and compliance with the requirements of Department Order 442.1B, *Department of Energy Employee Concerns Program*, from January 2019 through May 2022. The inspection was conducted under Office of Inspector General project number S22HQ010.

### **METHODOLOGY**

To accomplish our inspection objective, we:

- Reviewed Department Order 442.1B, *Department of Energy Employee Concerns Program*;
- Interviewed the Employee Concerns Program (ECP) Director and officials from the Office of Enterprise Assessments;
- Reviewed the ECP training material;
- Reviewed additional implementation tracking documentation;
- Evaluated the ECP database;
- Reviewed Office of Inspector General prior reports and Office of Enterprise Assessments reports that included ECP reviews for fiscal year 2019 through fiscal year 2022; and
- Conducted and analyzed a survey of Federal and contractor ECP Managers. Of the 65 respondents, 35 were Federal employees and 30 were contractors.

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.

We held an exit conference with management officials on September 25, 2023.

## Appendix 2: Prior Report

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Audit Report on [\*Implementation of Employee Concerns Programs at Selected Office of Environmental Management Sites\*](#) (DOE-OIG-19-55, September 2019). Generally, Savannah River Nuclear Solutions, LLC's and Fluor Idaho, LLC's Employee Concerns Programs adequately handled concerns officially filed by employees. However, the audit found that Savannah River Nuclear Solutions, LLC and Fluor Idaho, LLC could better foster environments of free and open expression of concerns, a key aspect of an effective employee concerns program.

## Appendix 3: Management Comments

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### Department of Energy

Washington, DC 20585

September 15, 2023

#### MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: TODD N. LAPOINTE  
DIRECTOR  
OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: DRAFT INSPECTION REPORT COMMENTS: The Department of Energy's Oversight of the Employee Concerns Program  
(Project Number: S22HQ010)

The Department of Energy (DOE or Department) appreciates the opportunity to comment on the Office of Inspector General's (OIG) draft inspection report titled "The Department of Energy's Oversight of the Employee Concerns Program." The Office of Environment, Health, Safety and Security (EHSS) provides the following comments.

**Recommendation 1:** Revise the Order to clearly define all oversight roles and responsibilities in the ECP.

**Management Response:** Concur. DOE O 442.1B currently describes the roles and responsibilities for providing oversight of Employee Concerns Programs (ECP) in multiple sections throughout the Order and Appendix. EHSS recognizes the benefit of clear direction regarding ECP oversight responsibilities complex wide.

**Action Plan:** Revise the current order. During the next Order revision, the ECP Director will recommend consolidating these oversight roles and responsibilities in a single section of the Order in order to provide clear direction on oversight responsibilities.

**Estimated Completion Date:** September 30, 2025

**Recommendation 2:** Evaluate the need for ECP Director site visits.

**Management Response:** Concur. The ECP Director began conducting site visits after Covid traveling restrictions were lifted. The ECP Director began traveling in April 2022, and has visited a total of 5 sites. Those visits included meetings with the ECP Managers and management officials responsible for overseeing the ECP, for the purpose of gaining a better understanding of their organizations and the ECP, as well as providing guidance and resources for further improvement of their Programs.

**Action Plan:** The ECP Director understands the value of conducting site visits and as required by the Order will continue to schedule them in FY24 and beyond as applicable.

## Appendix 3: Management Comments

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**Estimated Completion Date:** May 21, 2022, the ECP Director resumed site visits fulfilling the order requirement.

**Recommendation 3:** Establish training curricula for Department ECP managers, staff, and contracting officers.

**Management Response:** Concur. At the time of the OIG review, the training curriculum was under development with the collaboration of the National Training Center (NTC). TLP-310, Employee Concerns Program, was piloted in mid-2023 and Course development has been completed.

**Action Plan:** Provide a copy of training curricula and recommend close out.

**Estimated Completion Date:** Completed on August 11, 2023

**Recommendation 4:** Ensure the ECP Director completes the required report.

**Management Response:** Concur. The first Fiscal Year 2022 Annual Activity Report since the new order was issued is currently in draft form and going through the correspondence process.

**Action Plan:** Once the correspondence process is finalized and approved the report will be issued.

**Estimated Completion Date:** October 31, 2023

**Recommendation 5:** Review the ability to update ECP information in a database to include contractors for tracking and trending employee concerns.

**Management Response:** Concur. As required by DOE O 442.1B, *Department of Energy Employee Concerns Program*, the ECP database's ability to include contractor data for tracking and trending was completed in June 2021.

**Action Plan:** Provide ECP database development Project tracker to show completion date and recommend close out.

**Estimated Completion Date:** Completed on June 28, 2021

If you have any questions regarding this response, please contact Todd Lapointe, Director for the Office of Environment, Health, Safety and Security, at [todd.lapointe@hq.doe.gov](mailto:todd.lapointe@hq.doe.gov).

## FEEDBACK

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