



## Department of Energy

Washington, DC 20585

February 11, 2013

Robert Kingsbury  
President and Chief Operating Officer  
LATA Environmental Services of Kentucky, LLC  
761 Veterans Avenue  
P.O. Box 280  
Kevil, Kentucky 42053

Dear Mr. Kingsbury:

The Office of Health, Safety and Security's Office of Worker Safety and Health Enforcement conducted an onsite regulatory assistance review of the LATA Environmental Services of Kentucky (LATA KY) worker safety and health regulatory compliance program during June 12-14, 2012. The review included an evaluation of LATA KY's programmatic processes for identifying, reporting, and tracking worker safety and health regulatory noncompliances; trending of regulatory compliance performance indicators; and self-assessment activities for monitoring the performance of the worker safety and health compliance program.

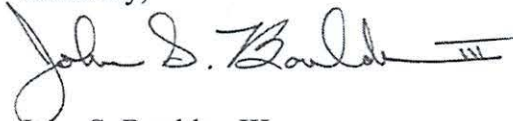
The LATA KY worker safety and health regulatory compliance program is supported by documented policies and procedures, qualified staff to develop and support the program, and a network of LATA KY organizations that demonstrate ownership of noncompliant issues and corrective actions. LATA KY's regulatory compliance program is aligned with the guidance set forth within the Department of Energy's *Enforcement Process Overview* document.

The results of this review, described in the enclosed report, identified a number of strengths as well as recommendations for your consideration that provide opportunities to further improve program implementation. Notable LATA KY strengths were a proactive training program; an Issues and Corrective Actions Tracking System readily accessible to site personnel; a Management Review Committee to oversee the noncompliance reporting process; and a thorough self-assessment process.



No reply to this letter is required. If you have any questions regarding this review, please contact me at (301) 903-2178, or your staff may contact Mr. Kevin Dressman, Director, Office of Worker Safety and Health Enforcement, at (301) 903-0100.

Sincerely,

A handwritten signature in black ink that reads "John S. Boulden III". The signature is written in a cursive style with a horizontal line at the end.

John S. Boulden III  
Director  
Office of Enforcement and Oversight  
Office of Health, Safety and Security

Enclosure: Regulatory Assistance Review Report

cc: William Murphie, PPPO  
Jennifer Freels, LATA KY

**OFFICE OF WORKER SAFETY AND HEALTH ENFORCEMENT**

**WORKER SAFETY AND HEALTH REGULATORY ASSISTANCE REVIEW  
LATA ENVIRONMENTAL SERVICES OF KENTUCKY, LLC**

**I. Introduction**

During June 12-14, 2012, at the request of LATA Environmental Services of Kentucky, LLC (LATA KY), the Office of Worker Safety and Health Enforcement, within the Office of Health, Safety and Security (HSS), conducted a regulatory assistance review of LATA KY's worker safety and health (WSH) regulatory compliance program. Regulatory assistance reviews facilitate, encourage, and support contractor processes for the prompt identification and correction of noncompliances. The regulatory assistance review was planned and conducted in accordance with the guidance provided in the U.S. Department of Energy's (DOE) *Enforcement Process Overview* (EPO) (dated August 2012) which is located on the HSS website.

The goal of the regulatory assistance review was to understand LATA KY's processes for noncompliance identification and reporting, implementation of LATA KY's internal self-assessment program, and LATA KY's trending of regulatory noncompliances. In addition, the regulatory assistance review evaluated LATA KY's effectiveness in resolving both noncompliant conditions and program deficiencies that can lead to noncompliances with the potential to adversely affect WSH. The Office of Worker Safety and Health Enforcement gained first-hand information on LATA KY's program effectiveness and had the opportunity to exchange feedback regarding implementation of the LATA KY program. Finally, regulatory assistance reviews assist the DOE contractor community by enhancing the uniformity of WSH noncompliance identification and reporting.

Overall, LATA KY's regulatory compliance program enables LATA KY to identify, evaluate, track, and correct WSH noncompliances to prevent recurrence. The review team identified a number of program strengths as well as opportunities to enhance the LATA KY WSH regulatory compliance program. The results of the review are summarized below.

**II. General Implementation**

- The LATA KY Quality Assurance (QA) Department administers and oversees the WSH regulatory compliance program. The overall controlling document for the program is PAD-QA-1610, Rev. No.2, *Noncompliance Determination and Reporting*.
- The QA manager, enforcement coordinator, and LATA KY managers are responsible for program implementation. The Management Review Committee, composed of

senior managers, reviews program status on a quarterly basis. This committee also concurs on recommendations regarding events potentially reportable into DOE's Noncompliance Tracking System (NTS).

- The LATA KY enforcement coordinator monitors overall site operations, events, reports, and assessments to identify potential WSH noncompliances. The enforcement coordinator evaluates noncompliances in accordance with procedure PAD-QA-1610, *Noncompliance Determination and Reporting*. The enforcement coordinator also provides guidance to LATA KY managers on the regulatory compliance program in terms of their specific roles and responsibilities to report potential noncompliances and the processes associated with reporting.
- LATA KY managers monitor events in their functional areas and evaluate issues or trends that indicate potential noncompliances or as otherwise requested by the LATA KY enforcement coordinator.
- LATA KY conveys DOE noncompliance reporting expectations to subcontractors. Additionally, LATA KY prequalifies subcontractor safety and health plans and responsible individuals before accepting a work proposal. LATA KY requires subcontractors to report (to LATA KY) potential noncompliances and maintains oversight to ensure this requirement is implemented.

#### Strengths:

- LATA KY personnel responsible for the regulatory noncompliance identification processes are actively engaged with program implementation and refinements. The responsible individuals interviewed were knowledgeable and motivated to ensure reporting.
- LATA KY has the necessary processes in place to identify, screen, and report potential noncompliant events as appropriate. The QA manager and enforcement coordinator are both appropriately positioned in the organization to effectively address noncompliance program requirements.
- LATA KY demonstrates effective communication with subcontractors regarding DOE noncompliance reporting expectations.

#### Recommendations:

- LATA KY should benchmark with more mature noncompliance reporting programs at other sites in the DOE complex. LATA KY may thus gain insights into implementing and further improving its own evolving program.

### III. Procedures and Training

- LATA KY developed and implemented the following procedures and training to govern the screening, reporting, and tracking of WSH noncompliances:
  - PAD-QA-1210 Rev. No. 2, *Issues Management*
  - PAD-QA-1220, *Occurrence Notification and Reporting*
  - PAD-QA-1230, *Causal Analysis*
  - PAD-PLA-HS-001, *Worker Safety & Health Plan, Paducah Remediation Services Project*
  - PAD-PLA-HS-003, *Chronic Beryllium Disease Prevention Program Paducah Remediation Services Project*
  - PAD-PLA-QM-001, *Quality Assurance Program and Implementation Plan for the Paducah Environmental Remediation Project*
  - PAD-QA-1610 Rev. No. 2, *Noncompliance Determination And Reporting*
  - PAD-QA-1611, *Noncompliance Evaluation Guide* (issued May 2012).
  
- LATA KY updated some of the preceding documents before the regulatory assistance review to better reflect recent site operating experiences and organizational restructuring. LATA KY exhibited a proactive approach to keep its procedures current. The Office of Worker Safety and Health Enforcement could not evaluate implementation of some procedures because of the updates. However, the documents provide a good foundation for implementing a regulatory compliance program in accordance with DOE requirements and reporting expectations.
  
- LATA KY trains personnel responsible for identifying, reporting, and tracking WSH regulatory noncompliances in accordance with PAD-QA-1610 Rev. No. 2, *Noncompliance Determination and Reporting*. Personnel trained include the following:
  - Quality assurance specialists
  - QA support and program managers
  - QA manager
  - Remediation project manager
  - Manager of projects
  - Project integration and operations manager.
  
- LATA KY further provides training to direct reports of the above in the form of Module 26629, *DOE Enforcement Process Overview*. This LATA KY generated module draws directly from DOE course slides available on the Office of Enforcement and Oversight website.

Strengths:

- LATA KY provides subject matter training to personnel in different functional organizations. This ensures that a wide range of issues are screened for potential noncompliance reporting.

Recommendations:

- LATA KY should implement its updated regulatory compliance procedures and assess field performance. The resulting implementation data will either affirm the procedures as written or provide additional areas for improvement.
- LATA KY should extend Module 26629, *DOE Enforcement Process Overview*, training to line management, subject matter experts, and other personnel who may have input to the regulatory compliance program. Such training would provide a better understanding to a broader LATA KY population regarding their responsibilities for WSH and the requirements surrounding regulatory compliance.

#### IV. Identification and Screening

- LATA KY has identified the following four primary leadership positions to identify and evaluate potential WSH noncompliances:
  - QA manager
  - Enforcement coordinator
  - Line managers
  - Issues management QA specialists.
- LATA KY monitors at least the following data sources for potential WSH noncompliances:
  - Events and occurrences
  - Audit findings
  - Surveillance findings
  - Management assessment findings
  - Safety issues reported on Safety Notification Reports (SNR)
  - Hazard analysis documents
  - External assessments
  - Training deficiencies
  - DOE reports
  - Employee concerns
- LATA KY developed the Issues and Corrective Actions Tracking System (ICATS) as a management tool and database for issues identified and screened for potential noncompliances. ICATS provides a single system for recording observations and deficiencies, tracking associated corrective actions, and accessing status information.

ICATS recordkeeping capability includes archives that verify corrective action completion. Approximately 90 issues per quarter are tracked in ICATS. In the past year, 37 ICATS issues were related to WSH.

- LATA KY plans further enhancement of ICATS including issues reported into the Occurrence Reporting and Processing System and NTS. This will allow cross-referencing to facilitate sorting and trending.
- LATA KY personnel in the four primary leadership positions identified in the first bulleted paragraph are responsible for identifying and screening regulatory noncompliances within their organizations. Managers review data and performance in their respective areas. In addition, the QA manager and the enforcement coordinator review ICATS and other data to identify repetitive and programmatic noncompliances.
- Subject matter experts assist the regulatory enforcement coordinator as necessary to ensure that potential noncompliances are assigned the correct regulatory citations.
- The LATA KY industrial hygiene manager reviews monitoring results that exceed regulatory limits and initiates an SNR that is screened for NTS reportability. However, the SNR is initiated only if the recorded exposure exceeds the assigned protection factor for the personal protective equipment (PPE) worn. The LATA KY practice of considering PPE (e.g., respirators for airborne contaminants) when determining regulatory exceedances is inconsistent with 29 C.F.R. Part 1910, *Occupational Safety and Health Standards*; and DOE's Chronic Beryllium Disease Prevention Program Rule, 10 C.F.R. § 850.24(g)(3), *Exposure Monitoring*. The latter requires written notification to DOE (and the Site Occupational Medical Director) within 10 working days of results documenting an airborne concentration of beryllium at or above the action level with no provisions allowed for PPE. Additionally, this practice potentially prevents identification of other reportable noncompliances, including failure to use the hierarchy of controls to abate overexposures and failure to recognize programmatic or repetitive issues.
- LATA KY quality assurance procedure PAD-QA-1210 Rev. No. 2, *Issues Management*, assigns rankings to events ranging from Level 5 (lowest issue level) to Level 1 (highest issue level). The five levels have a graded response for subsequent site response and corrective actions.
- LATA KY investigates issues having high, moderate, or minor safety impact corresponding to priority Levels 1, 2, and 3 as detailed in PAD-QA-1210, Rev. No. 2, *Issues Management*. The investigations may include all, or a combination of, a formal root cause analysis, causal analysis, corrective action plan with assigned dates, extent of conditions, and involvement of the LATA KY Management Review Committee depending on the severity of the event.

- LATA KY addresses Levels 4 and 5 at the workforce or facility level. Corrective actions may be limited to the impacted facility or project. LATA KY does not systematically review these low-level events to identify those that represent NTS reportable repetitive or programmatic noncompliances.

Strengths:

- LATA KY developed ICATS specifically for recording and tracking observations or deficiencies. LATA KY uses ICATS as an effective tool to track issues to resolution and ensure appropriate closure. Improvements to further enhance effectiveness are planned.
- The LATA KY enforcement coordinator and WSH SMEs exhibit good professional collaboration to identify and screen potential noncompliances. Their skills and expertise are mutually supportive.
- LATA KY monitors a comprehensive set of data sources for potential WSH noncompliances. These include a range of reported events, assessments, and safety findings.
- The LATA KY program requires investigations of events from high to minor safety impact (i.e., Level 1 through 3) to ensure potential noncompliances are identified.

Recommendations:

- LATA KY should establish a process to review ICATS reported Level 4 and 5 events in a systematic manner to identify those that represent NTS reportable repetitive or programmatic noncompliances.
- LATA KY should screen for NTS reportability all industrial hygiene monitoring results in excess of regulatory limits regardless of the use of PPE.

## V. Evaluation of NTS Reportability

- PAD-QA-1611, *Noncompliance Evaluation Guide*, establishes the LATA KY requirements for evaluating noncompliances including those related to WSH. The document contains guidance for the process as well as a helpful list (in paragraph 4.0) of screening errors to avoid.
- PAD-QA-1611, *Noncompliance Evaluation Guide*, contains a process flowchart in attachment F – 10 CFR§851 *Worker Safety and Health Program*, for determining a WSH noncompliance. Such decision aids can assist the process. However, the flowchart does not include all of the criteria detailed in the Office of Enforcement and Oversight's *Safety and Security Enforcement Coordinator Handbook* (dated August 2012); table III-1, *Worker Safety and Health Noncompliances Associated with Occurrences* and table III-2, *Other NTS Worker Safety and Health Reportable*



*Conditions.* Specifically, the LATA KY process flowchart lacks references to programmatic deficiencies and repetitive noncompliances.

- The LATA KY enforcement coordinator makes recommendations concerning NTS reporting that are subsequently vetted by the Management Review Committee. This committee meets on a quarterly basis, or more frequently if required, for case review and trend analysis.
- LATA KY did not document the decision rationale for events deemed not NTS reportable prior to the assistance review. One example was the analysis of Safety Incident Report #SIR-LK-11-051, which involved loading a forklift beyond rated capacity at the C-411 Tank Farm.
- LATA KY personnel based some NTS reporting decisions on residual risk (i.e., the risk remaining after controls are instituted) versus inherent risk (i.e., the risk that exists without controls in place). The residual risk rationale presupposes that the controls will always work effectively and never fail, which may not always be the case. It is more appropriate to evaluate events based on the inherent risk to better identify latent programmatic or recurrent issues.

#### Strengths:

- LATA KY has a Management Review Committee to oversee the noncompliance reporting process documented in PAD-QA-1610, *Noncompliance Determination and Reporting*. LATA KY has strengthened its regulatory compliance program by direct Management Review Committee oversight of the noncompliance reporting process.

#### Recommendations:

- LATA KY should maintain due diligence files documenting negative NTS determinations. LATA KY has recognized this need by including such a requirement in the recently revised PAD-QA-1610 Rev. No. 2, *Noncompliance Determination and Reporting*, paragraph 6.2, *Screening Potential Noncompliances*.
- LATA KY should incorporate decision criteria for determining programmatic deficiencies and repetitive noncompliances in PAD-QA-1611, *Noncompliance Evaluation Guide*, which contains a process flowchart in attachment F – 10 CFR§851 *Worker Safety and Health Program*. This will enhance the usefulness of the attachment F flowchart and better align it with DOE reporting expectations.
- LATA KY should evaluate issues/events for NTS reportability based on inherent risk (i.e., the risk that exists without controls in place) rather than residual risk (i.e., after implementing controls).

## VI. Regulatory Noncompliance Issue Management and Trending

- LATA KY manages noncompliant issues with corrective action plans tracked to completion. LATA KY conducts effectiveness reviews when corrective actions are implemented. LATA KY will conduct interim reviews for corrective action plans of long duration.
- LATA KY tracks internal assessments and the findings that may result. The QA Department reviews and questions assessments with no reported findings.
- LATA KY tracks the issues listed below and provides quarterly trend reports to the Management Review Committee:
  - ICATS issues and actions currently open vs. closed
  - Issue characterization (level, priority, days open, and origin)
  - Issue closures compared to target dates
  - Leading and lagging indicators of program performance
  - Assessment schedule and completion status
  - External assessment findings (e.g., DOE Preliminary Notice of Violation)
  - Personnel participation in program elements
  - Operating experience and lessons
- LATA KY is reviewing the current quarterly tracking/trending schedule with plans to increase the frequency to monthly for some metrics. More frequent reviews will better address rapidly emerging issues.
- LATA KY effectively uses tracking/trending data to focus WSH resources. For example, a recent emerging trend showed increased hand injuries from manual material handling. LATA KY responded by providing mechanical lifting equipment as an effective engineering control. LATA KY conducted follow-up tracking of correction effectiveness that subsequently revealed a secondary trend indicating the need for enhanced worker training. LATA KY implemented the additional training to fully address the original issue of hand injuries.
- The LATA KY Environment, Safety, and Health Department receives periodic medical surveillance reports from the site occupational medical provider but does not formally track medical issues documented in these reports to identify areas of potential noncompliance.

### Strengths:

- LATA KY program documents for issue management and training are well written and consistent with the other procedures mentioned in this report.

- LATA KY demonstrated effective use of tracking and trending data to institute engineering controls addressing increased worker hand injuries.
- LATA KY exhibited a willingness to enhance issue tracking/trending frequency based on changing conditions and organizational experience.

Recommendations:

- LATA KY should establish a formal process to track and trend data received from the site occupational medical provider to identify and report issues defined in the DOE *Safety and Security Enforcement Coordinator Handbook*, tables III-1 and III-2. The current informal process may not be rigorous enough to recognize trends or repetitive issues.

## VII. Assessments

- LATA KY conducts the following internal program related assessments:
  - Safety and health program implementation (e.g., activity hazard analysis verification, work control utilization, PPE use)
  - Industrial hygiene monitoring adequacy (e.g., heat stress, airborne contaminants, noise)
  - New operations or work changes
  - Subcontractor safety plan compliance
  - Management self and cross functional verifications
- LATA KY hosts the following external assessments:
  - LATA corporate evaluations (periodic as scheduled)
  - Project status (conducted annually)
- LATA KY line managers conduct Management by Walking Around (MBWA) worksite assessments at least monthly. The structure is informal with no unified safety topic focus. LATA KY plans to enhance the MBWA assessments by targeting common issues (based on site experience).
- LATA KY monitors safety and health experiences at other DOE sites and tailors its assessments to address emerging hazards. These included recent DOE reports of injuries from falls and electric golf-cart operations; and reports of respirator contamination from an external vendor. In each case, LATA KY adapted its assessment process to focus on these areas and respond to similar hazards if found. Specifically, LATA KY proactively removed eight electric golf carts from its own fleet to minimize/eliminate worker exposure. LATA KY increased quality control checks to include all respirators on site (i.e., 100% verification).

- LATA KY conducts worksite safety assessments and dedicated safety startup meetings following extended work shutdowns or long holidays in order to evaluate site conditions prior to start and refocus personnel on safe work conduct.

#### Strengths:

- LATA KY has an assessment schedule focused on key programs and site hazards derived from a risk based approach and lessons learned from similar work activities at other DOE sites.
- LATA KY learns from incident reports at other DOE sites and proactively addresses similar hazards at its own location.
- LATA KY elevates WSH program focus at times of increased potential for safety and health events (e.g., return to work after extended shutdowns).

#### Recommendations:

- LATA KY should enhance the value of MBWA assessments by focusing on regular safety topics and directly involving applicable SMEs to accompany the managers during the walks. This latter point will provide a technical resource to the manager during the tours and also help convey a mutually supportive relationship among LATA KY organizations.

### **VIII. Conclusion**

LATA KY has established and maintains a regulatory compliance program appropriate for the activities and hazards at the site. The LATA KY program contains all functional elements necessary for identifying, screening, and reporting WSH regulatory noncompliances; and managing corrective actions consistent with the guidelines delineated in the DOE EPO.

LATA KY should evaluate the recommendations identified during this review as opportunities for improving performance and avoiding or reducing the severity of WSH noncompliances. Improvements to the LATA KY WSH program will promote appropriate recognition and corrective action for program weaknesses; facilitate the Office of Worker Safety and Health Enforcement's exercise of discretion for noncompliant conditions considered to be less significant; and support mitigation consideration in a future enforcement proceeding. Corrective actions taken to address these recommendations should be coordinated with the Portsmouth/Paducah Project Office.