



Department of Energy

Washington, DC 20585

October 15, 2009

Mr. Steven Warren
Acting Project Manager
West Valley Environmental Services, LLC
10282 Rock Springs Road
West Valley, New York 14171

Dear Mr. Warren:

The Office of Health, Safety and Security's Office of Worker Safety and Health Enforcement conducted an on-site program review from July 14-16, 2009, of the worker safety and health program elements that support the West Valley Environmental Services, LLC (WVES) regulatory compliance program. The review included an evaluation of WVES processes for identifying worker safety and health noncompliances; reporting and tracking noncompliances in the Department of Energy's (DOE) Noncompliance Tracking System and WVES internal tracking systems; and correcting deficiencies to prevent recurrence. The Office of Worker Safety and Health Enforcement also conducted a limited review of the WVES worker safety and health assessment program.

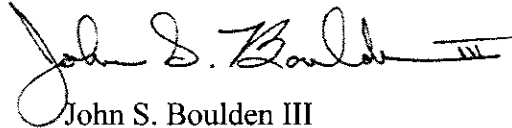
The results of this review, described in the enclosed report, identified a few strengths and many weaknesses in the WVES regulatory compliance program. Overall, the program does not provide assurance that worker safety and health noncompliances are being properly identified, evaluated, tracked, and corrected to prevent recurrence. Although WVES recently self-identified many of the program weaknesses, it was not evident to the review team that the actions to address these weaknesses would result in sustained program improvement.

DOE's Enforcement Policy (appendix B to 10 C.F.R. Part 851) allows for the mitigation of civil penalties for self-identification, timely reporting, and prompt and effective correction of noncompliance issues. Thus, failure to correct weaknesses noted in this report may result in a potential reduction or loss of mitigation for any future enforcement action against WVES. In addition, should these weaknesses persist, the Office of Enforcement would be less likely to exercise enforcement discretion for noncompliance issues that are of lesser significance.



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 Kathy McCarty, Director, Office of Worker Safety and Health Enforcement, at (301) 903-0100.

Sincerely,

A handwritten signature in black ink, reading "John S. Boulden III". The signature is written in a cursive style with a horizontal line extending to the right.

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

Enclosure

cc: Cheryl Wozniak, WVES

Office of Worker Safety and Health Enforcement
Program Review
West Valley Environmental Services, LLC

I. Introduction

During July 14-16, 2009, the U.S. Department of Energy's (DOE) Office of Worker Safety and Health Enforcement, within the Office of Health, Safety and Security, conducted an on-site review of the West Valley Environmental Services (WVES) worker safety and health regulatory compliance monitoring program. WVES manages and operates the West Valley Demonstration Project (WVDP) for DOE. This was the first program review conducted at WVDP by DOE's Office of Enforcement. The review was conducted in a manner consistent with the guidance provided in the *DOE Enforcement Process Overview*.

This review included an evaluation of WVES processes for identifying worker safety and health regulatory noncompliances, reporting and tracking noncompliances in DOE's Noncompliance Tracking System (NTS) and WVES internal tracking systems, and correcting noncompliances to prevent recurrence. It also included a limited evaluation of the WVES worker safety and health assessment program as a mechanism for identifying noncompliances. The information in this report is based on a review of the WVES program documentation provided to the review team as well as interviews with personnel responsible for implementing the WVES compliance monitoring program.

II. General Implementation

Observations

- WVES has established two primary procedures that describe the worker safety and health (WSH) noncompliance identification, evaluation, and reporting process. The Safety and Health Implementing Procedure titled *Worker Safety and Health Program Administration* (SHIP-103) describes implementing requirements related to 10 C.F.R. Part 851 including provisions for screening and reporting potential noncompliances. Chapter 6, *PAAA and WSHP Program Management*, of the *WVES Event Investigation and Reporting Manual* (WVDP-242) includes procedures for reporting, tracking, and closure of noncompliances identified in accordance with SHIP-103.
- WVES has established one overarching enforcement coordinator who is designated as the Price-Anderson Amendments Act (PAAA) Enforcement Coordinator (EC) and an Interpretative Authority (IA)/Enforcement Coordinator for each rule that applies to WVES operations (i.e., 10 C.F.R. Parts 830, 835, 851, and 708). These individuals are formally appointed by the WVES Manager for

Environmental, Safety, Health and Quality (ESH&Q). The ESH&Q Manager serves as the overall PAAA and WSH Program Manager and reports to the WVES Project Manager.

Program Strength

- In May 2009, WVES conducted a good, critical self-assessment of its WSH/PAAA program based in part on the Energy Facility Contractors Group (EFCOG) *Program Review Compliance Assurance and Reporting Checklist* developed by the EFCOG Safety and Security Regulatory Working Group. The assessment identified many important program weaknesses and corresponding actions to address those weaknesses. However, the results of this program review indicate that many of the actions have not yet been effective in fostering needed program improvement as identified later in this report. It is also difficult to understand the relationship between SHIP-103 and WVDP-242, chapter 6 which appear to have some inconsistencies.

Program Weaknesses

- WVES has established an unnecessarily complex organizational and procedural structure for implementing its regulatory compliance monitoring process that makes it difficult to understand the respective roles, responsibilities, and authorities of the individuals involved. WVES has identified positions as division managers (e.g., industrial safety), interpretive authorities, enforcement coordinators, PAAA enforcement coordinator, rule managers, and program managers, and uses other designations such as “WSH Manager,” but there are actually very few people involved in the program.
- WVES requires the IAs and ECs to complete training course TR1114B, *Price-Anderson Amendments Act Overview*. WVES has established another course, HS509B, *10 CFR 851, Worker Safety and Health Program (WSHP) Overview*, but this course is not referred to in the program procedures. These courses provide a high-level overview of the rules applicable to the respective programs but do not provide sufficient information to train individuals on how to implement the WVES regulatory compliance monitoring program. For example, the courses do not address: (1) roles and responsibilities of WVES personnel, (2) the screening process, (3) methods for determining NTS reportability, or (4) noncompliance tracking, trending, and corrective action management.
- WVDP-242, chapter 6 identifies the “contractor reported citations” and “corrective actions” sections of NTS reports as optional to complete. The primary purpose of the system is for contractors to self-report regulatory noncompliances and demonstrate that prompt and effective corrective actions are being implemented. Thus, failure to complete these two key components of an NTS report does not provide the Office of Enforcement with information needed to determine that the contractor is effectively identifying and correcting noncompliances.

III. Identification and Screening

Observations

- WVES appropriately reviews a large and diverse set of source documents for potential noncompliances. These include issue reports, occurrence reports, industrial safety program assessments, self-assessments, monthly inspections, injury/illness reports, critiques, and DOE surveillance reports.
- Documents generated by the Industrial Safety organization are reviewed for potential noncompliances by the WSH IA. Documents issued by other organizations, which can include issue reports, critiques, and occurrences, are reviewed first by the PAAA EC who can determine that no potential WSH noncompliance exists. Upon determination that a potential WSH noncompliance exists, the document is forwarded to the WSH IA for review. In practice, almost all of the source documents that relate to WSH issues or conditions are being reviewed by the WSH IA.
- The PAAA EC and WSH IA each use a stamp to indicate that a document has been reviewed. The stamp, along with the reviewer's initials and date, provides an effective means for quickly determining that a particular document has been reviewed.
- WVES recently initiated a bi-weekly PAAA team meeting in response to the May 2009 PAAA/WSH program self-assessment. The meeting provides a forum for timely discussion of potential noncompliance issues and exchange of information related to NTS reportability. Issues discussed and decisions made by the team regarding noncompliances and reportability are logged and tracked.
- Noncompliances are clearly specified as a subset of the records captured in the WVES Open Items Tracking System (OITS) and can be readily retrieved from the system. In the past two years, five WSH noncompliances have been entered into the system.

Program Weaknesses

- SHIP-103 does not establish clear requirements and expectations for use of WV-4270, *WVES Potential 10 CFR 851 Worker Safety & Health Rule Noncompliance Screening Form*, and there are inconsistencies between SHIP-103 and WVDP-242 that make it difficult to understand the WVES noncompliance screening process and purpose of the screening form. The only reference to the screening form in SHIP-103 indicates that deficiencies are to be evaluated using the screening criteria established on the form. However, the form is not completed when conducting the initial screening to determine whether there is a potential noncompliance even though it appears that the primary purpose of the form is to determine whether or not a potential noncompliance has occurred. The form has been used rarely, and the rationale for using the form was not clear to the review team.

- The stamp used to mark documents that have been reviewed is misleading. SHIP-103 indicates that when the WSH IA or PAAA EC review determines that there is no potential noncompliance, the document is then stamped, initialed, and dated. However, the WSH stamp reads “Determined Not Applicable to 10 CFR 851,” which is different than indicating that a safety or health-related condition or issue has been evaluated and no potential regulatory violation appears to have occurred.
- The review team observed numerous issues identified through WVES assessments that could represent noncompliances (e.g., electrical safety deficiencies, ladder deficiencies, problems with walking/working surfaces and spills, inadequate emergency lighting). The assessment reports did not provide sufficient information to determine whether a noncompliance had occurred and the reports were stamped as not applicable to 10 C.F.R. 851 (i.e., not a potential noncompliance) with no further explanation. In the case of a confined space entry permit assessment, the assessment identified that “incidences” were found, but provided no further information. It was not evident to the review team that these issues had been sufficiently evaluated to determine whether a noncompliance had occurred.
- There were numerous safety and health-related issues associated with a July 2008 personal injury event in Waste Receiving involving the emergency shower/eyewash station, personal protective equipment, lockout/tagout, hazard identification, and hazard analysis. These issues were not fully evaluated to determine whether one or more noncompliances had occurred.
- The screening form that was completed for noncompliances associated with fire extinguishers incorrectly identifies National Fire Protection Association (NFPA) 13, *Standard for the Installation of Sprinkler Systems*, as the reference requirement rather than NFPA 10, *Standard for Portable Fire Extinguishers*.
- Two of the five WSH noncompliances that are identified in OITS were identified as a result of DOE surveillances. This represents a disproportionately high number of noncompliances being identified by DOE rather than self-identified.
- The WVES program self-assessment determined there was not a reasonable number of WSH noncompliances being identified relative to the number of 10 C.F.R. 835 noncompliances (i.e., within the local tracking system, 10 C.F.R. 835 noncompliances predominated, indicating a biased mix). This was attributed to the application of a significance threshold, although the assessment did not state how this conclusion was reached. The assessment identified the bi-weekly PAAA team meeting as the action to correct this weakness. It was not clear to the review team how this action would effectively correct the weakness.

- WVES is incorrectly categorizing noncompliances as “de minimus” based on an assessment of safety significance. Use of a risk assessment methodology to determine that a noncompliance constitutes a de minimus regulatory violation is an inappropriate application of the de minimus concept.
- Some WSH issues or conditions were reviewed only by the PAAA EC, as allowed by WVES procedures. These items were not reviewed by an individual with occupational safety and health experience or expertise. Further, the WSH IA does not currently have a broad working knowledge of applicable worker safety and health regulations, and it was not evident to the review team that the WSH IA obtains subject matter expertise when necessary to help make noncompliance determinations.
- WVES does not have a process to ensure timely and accurate screening of information for potential WSH noncompliances. The review team noted:
 - The WSH IA relies passively on documents to be submitted for review to determine whether a noncompliance has occurred. The WSH IA is not on distribution for key reports such as causal analyses or extent of condition reviews, which provide more information about potential noncompliances.
 - The WSH IA receives occupational injury/illness documentation because this individual also serves as the Computerized Accident/Injury Reporting System coordinator. While the WSH IA reviews these reports for potential WSH noncompliances, the reports contain limited information and are insufficient to determine potential WSH noncompliances. In many instances, this is the only information being used to make a noncompliance determination for occupational injury and illness cases.
 - One of the five WSH noncompliances in OITS was not screened until six months after the condition was identified. A second one was originally determined not applicable to 10 C.F.R. 851 when it was reviewed. It was screened three months later and determined to be a noncompliance.

WVES expects the new bi-weekly PAAA team meeting to resolve the timeliness issues.

- The screening form, WV-4270, exhibits numerous weaknesses. The most significant of these include the following:
 - The form is used to determine both whether there is a potential noncompliance and whether the noncompliance is NTS reportable. It is not clear which criteria on the form apply to which decision or how to make each of those decisions.
 - The form includes criteria based on a risk evaluation.
 - The form identifies the *WVES Worker Safety and Health Plan* as the only source document for requirements rather than as one of many sources (the rule, Occupational Safety and Health Administration (OSHA) standards, applicable NFPA standards, etc.).

- The form refers to Enforcement Guidance Supplement 03-02 which is outdated and does not contain WSH NTS reporting thresholds.
- The intentional violation or misrepresentation criterion is inappropriately limited to activities that involve alteration, concealment, or destruction of documents.
- The form includes criteria that are not based on the NTS reporting thresholds or 10 C.F.R. 851 (e.g., failure to activate the site emergency action plan).
- The form contains criteria based on Appendix B to Part 851, *General Statement of Enforcement Policy*.
- The final disposition decision regarding reportability of a noncompliance to either the local tracking system or NTS is made by the PAAA EC rather than the WSH Manager or the PAAA and WSHP Program Manager.

IV. Evaluation for NTS Reportability

Observations

- WVES has not submitted any WSH NTS reports to date. The review team identified several issues that should have been more completely evaluated and may have warranted reporting into NTS upon closer scrutiny. Examples include noncompliances associated with the July 2008 employee injury in Waste Receiving, and several repetitive/programmatic issues discussed later in this report.

Program Weaknesses

- WVES has inappropriately established a risk matrix based on probability and consequence severity to determine whether a condition or issue is NTS reportable. The Office of Enforcement's guidance in the *DOE Enforcement Process Overview* has always stated that DOE expects NTS reports to be submitted based simply on the NTS reporting thresholds, and that a decision to report should not be based on the contractor's evaluation of safety significance.
- The WVES process for NTS reportability is inconsistent with the Office of Enforcement's 20-day reporting guideline. WVDP-242 allows 20 days for reporting from the time all necessary personnel have agreed that an NTS-reportable noncompliance exists. The Office of Enforcement's guidance identifies prompt reporting as occurring within 20 calendar days after determining that a noncompliance exists, not that a noncompliance is NTS reportable.

V. Issues Management and Trending

Observations

- WSH issues at WVES are monitored via Performance Analysis Summary Reports that are prepared for senior management on a quarterly basis.

Program Weaknesses

- The Performance Analysis Summary Reports do not identify or discuss trends in noncompliances. Thus, it is not clear how the WVDP-242 requirement for the PAAA EC to trend and screen non-NTS reportable noncompliances is being accomplished.
- The Performance Analysis Summary reports and WVES self-assessments provide evidence of issues that should have been further evaluated to ensure that programmatic and/or repetitive noncompliances had not occurred. These include:
 - A Performance Analysis Summary Report identifies that there are various issues with the respiratory protection that are documented in four Issue Reports (IR-1877, 1880, 1883, and 1887). These were not evaluated to determine whether there is a programmatic compliance issue with the program.
 - Another summary report identifies a lack of adequate hazard assessment, hazard control, and personal protective equipment use associated with ten hand injury reports. There was no indication that these issues were evaluated individually for noncompliances, or collectively for repetitive or programmatic noncompliance issues.
 - Numerous self-assessments identified equipment that was found to be past due for inspection (e.g., fire extinguishers, slings, cranes) or inoperable on repeated occasions (e.g., emergency lighting). These were not evaluated as possible programmatic or repetitive noncompliance issues.
- WVES has not implemented effective corrective actions in response to self-assessments of the regulatory compliance monitoring program.
 - A previous self-assessment identified weaknesses related to screening employee concerns, completing training, and documenting the rationale for the determination of noncompliances when the determination is not self-evident. These issues were also identified during the May 2009 self-assessment.
 - The May 2009 self-assessment identifies the new bi-weekly PAAA team meeting as the action item to address six of the twelve recommendations in the report. It is not clear how this meeting will effect needed improvements, particularly since the program procedures already provide proper direction in many of these areas.
 - The May 2009 self-assessment also indicated that numerous OSHA noncompliances were found that were screened as PAAA non-applicable and provided a recommendation to re-screen documents that identified noncompliances. Only three documents were re-screened, and the rationale for selecting those three documents was unclear.
- Corrective actions for noncompliances entered into OITS lack sufficient detail to ensure that a noncompliance has been corrected effectively and corrective actions are

not readily correlated to noncompliances via the OITS system. Although there are corrective action fields available within each OITS entry, these are not typically used to identify corrective actions. Instead, a separate OITS entry is used for each corrective action. This makes it difficult to track and evaluate whether proposed and completed corrective actions for noncompliances are effective. In addition, since the corrective actions tend to lack detail, it is necessary to pull hard copy files to try to understand the actions that were taken.

- A June 2008 monthly safety observation identified a ladder deficiency requiring corrective action. A December 2008 assessment identified the same deficiency because it had not been fixed and had not been entered into a tracking system to ensure that it would be addressed. Both instances were determined as not applicable to 10 C.F.R. 851.

VI. Assessment Programs

Observations

- The WVES Integrated Assessment Schedule covers a diverse list of WSH program areas including respiratory protection, hoisting and rigging, asbestos, lockout/tagout, and confined space. This schedule is augmented by scheduled monthly and quarterly assessments and observations of programs, activities, and hazards.

Program Strength

- A large amount of safety-related performance information is being gathered and reviewed as a result of the DOE-WVDP and WVES assessment activities.

Program Weaknesses

- WVES assessments of some WSH programs were not comprehensive and complete, and others lacked adequate detail to determine the extent of the evaluations. For example, the October 2008 lockout/tagout program assessment lacked provisions for the periodic inspection of energy control procedures per 29 C.F.R. 1910.147(c)(6). The Respirator Program Assessment (2008-RESP-03) covered only a limited set of operations involving asbestos removal. A December 2008 confined space program assessment consisted of a one-page sign-off that only stated the program was up to date and compliant. A March 2009 Radiation Protection/Respirator Program assessment only contained references to the governing procedure. There was no validation of implementation for the specific program provisions.
- The WVES assessment process does not identify potential regulatory violations. Assessments are reviewed only by the WSH IA and there is no evidence to indicate that appropriate subject matter experts are consulted when necessary to determine whether a noncompliance has occurred.

VII. Conclusion

This program review determined that WVES has established the basic elements of a WSH regulatory compliance monitoring program but the program warrants improvement in several critical areas to provide assurance that noncompliances are being properly identified, evaluated, tracked, and corrected to prevent recurrence. Procedures pertaining to the program are well established and provide a good foundation from which to evolve the program. WVES is reviewing a large, appropriate body of source information to look for potential noncompliances, and has established a tracking system that clearly identifies those conditions that have been determined to be noncompliances. However, those reviews are not being conducted in sufficient detail or with sufficient information and expertise to determine whether a noncompliance has occurred.

The WSH screening form has numerous weaknesses and, as such, is not an effective tool for determining that a WSH noncompliance has occurred or whether it should be reported into NTS. In addition, WVES incorrectly uses a safety significance/risk assessment methodology to categorize noncompliances and evaluate them for NTS reportability. Many of the weaknesses identified in this report were identified during the recent WVES self-assessment of the program. However, the recommendations to address these weaknesses are not based on institutional changes such as revisions to the screening process, program procedures, assigned responsibilities, or staff training to facilitate effective and permanent correction.