



Federal Transit
Administration

FINAL AUDIT REPORT

FTA Drug and Alcohol Compliance Auditing Program

RECIPIENT:

Napa County Transportation Planning Agency



IYON ROSARIO
ACTING DRUG AND ALCOHOL PROGRAM MANAGER
OFFICE OF TRANSIT SAFETY AND OVERSIGHT



U.S. Department
of Transportation

Headquarters

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Federal Transit
Administration

1/29/2014

Ms. Kate Miller
Executive Director
Napa County Transportation Planning Agency
625 Burnell St
Napa, CA 94559

RE: FTA Drug and Alcohol Compliance Program

Dear Ms. Miller,

As you know, on 1/29/2014, the Federal Transit Administration (FTA) conducted an audit of the FTA-mandated drug and alcohol testing programs of the Napa County Transportation Planning Agency.

Several items associated with Napa County Transportation Planning Agency's program were found that require attention. The attached Final Audit Report summarizes the findings of the audit team. This report is provided today so that you and your staff can take immediate steps to bring the identified areas to compliance.

A 90 day period for corrective actions commences as of the date of this letter. Therefore, the completion date for items needed to bring your transit system, your vendors, and your contractors into compliance is 4/30/2014. Failure to fully resolve these items within 90 days will result in a formal finding of non-compliance by the FTA.

On or before that date, please respond with a report of the corrective actions that have been taken for each audit finding. I have provided an audit response software program that you must use to respond to each finding. Also provided is the audit response software manual that explains the process for installing and using the software program.

You must reply to each item in the Final Audit Report by using the software to describe the corrective actions taken and the date the corrective actions were completed. When necessary, provide all supporting documentation that confirms the corrective actions taken.

After the Napa County Transportation Planning Agency has completed all corrective actions for each audit item in the Audit Response software, print one



copy of the Annotated Audit Report with corrective actions for your records.

For receipt on 4/30/2014, please send one printed copy of the Annotated Audit Report (including one copy of the audit response file) and any supporting documentation to Ms. Lori John at the Volpe National Transportation Systems Center; send one copy of the Annotated Audit Report (including one copy of the audit response file) and any supporting documentation to Mr. Craig McNulty of our contracted Audit Team. For the electronic delivery of any required drug/alcohol testing data, please ensure that each file or set of files is protected for secure transmission (you may continue to use the securement method established with the audit team leader during the pre-audit phase for this purpose).

1 Copy of All Materials	1 Copy of All Materials
<p>Ms. Lori John Operations Research Analyst RVT-51</p> <p>Volpe National Transportation Systems Center 55 Broadway Cambridge, MA 02142-1093</p> <p>FTADAAudit@dot.gov</p>	<p>Mr. Craig McNulty Audit Team Leader</p> <p>Cahill Swift, LLC 240 Commercial Street Boston, MA 02109 (617) 314-9208 ext. 6____ cmcnulty@cahillswift.com</p>

If you require assistance to resolve any of the deficiencies, please do not hesitate to call Ms. John or Mr. Lofgren. If you have more general questions about the FTA's Drug and Alcohol Compliance Program or regulatory questions, please contact me, Iyon Rosario, FTA Acting Drug and Alcohol Program Manager, at (202) 366-2010 or e-mail Iyon.rosario@dot.gov, or Mr. Michael Redington at (617) 494-2197 or e-mail michael.redington@dot.gov.

We understand that our audit has placed upon all involved an additional management effort that entailed a great deal of time and planning on your part. We greatly appreciate your cooperation, patience and hospitality during this review. Your staff went to great lengths to ensure the success of the audit; they are to be commended for their hard work and expertise in implementing such a complex program. Because of your efforts, we believe that the goal of improved safety for patrons and employees of Napa County Transportation Planning Agency will be more easily achieved.

It is important for you to understand that failure to fully implement FTA's drug and alcohol testing regulations may jeopardize the Napa County Transportation Planning Agency's future funding from the FTA.



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Once again, thank you for your assistance. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink that reads "Iyon Rosario".

Iyon Rosario
Acting Drug and Alcohol Program Manager

Electronic cc:

Tom Rogers, Napa County Transportation and Planning Agency
Leslie Rogers, Region IX
Bernardo Bustamante, Region IX
Lori John, US DOT/Volpe Center
Joseph Lofgren, Cahill Swift, LLC



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The following publications may be useful to you. Each of these publications is available and can be downloaded from the Substance Abuse section of the FTA Office of Safety and Security website at <http://transit-safety.volpe.dot.gov/Publications/>.

Best Practices Manual: FTA Drug and Alcohol Testing Program, October, 2009

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit, Federal Transit Administration, April 1994; revised November 2003, October 2009

Prescription and Over-the-Counter Toolkit, April, 2011

FTA Drug and Alcohol Regulation Updates (published quarterly since the Fall of 1995)

Presentations from the Annual FTA D&A Program National Conference

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Napa County Transportation Planning Agency Veolia Transportation - Fixed Route

Policy Manual Review Interview

Veolia Transportation - Fixed Route
Interview Date: 1/16/2014

Veolia Transportation - Fixed Route - Policy Manual Review Interview

Item	Action Date:	4/30/2014	Question #:	55
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1

Question: EMPLOYER SPECIFIC ELEMENTS: If the employer implements elements of an anti-drug program and alcohol misuse prevention program that are in addition to those required by Section 655, does the policy give covered employees specific information concerning which provisions are mandated by the FTA rules and which are not? Are any such additional policies or consequences clearly and obviously described as being based on independent authority?

Answer: Other. Section VI (page 4) incorrectly states who may be referred to a SAP.

Supplemental Answer: Per 49 CFR Part 40, only safety-sensitive employees who fail or refuse a DOT test may be referred to a SAP. In all other instances (e.g. Employee Self-Referral), Veolia may make referrals to a counselor, but not to a SAP.

Amend the policy accordingly.

FTA Rule Requirement: Section 655.15(j) states: "The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."

Drug and Alcohol Program Manager Interview

Veolia Transportation - Fixed Route

Interview Date: 1/29/2014

Veolia Transportation - Fixed Route - Drug and Alcohol Program Manager Interview

Item	Action Date:	4/30/2014	Question #:	14
1	Question:	What information do you provide to the collection site for each DOT test you are requesting?		
	Answer:	Other. The notification form currently used by Veolia includes whether the test is to be observed or not, but the supervisors are often not checking either box when sending an employee for testing.		
	Supplemental Answer:	In response to this audit finding, submit to FTA a statement signed by each supervisor who may require a covered employee to submit to testing certifying an understanding of the requirement to include this information for each test.		
	FTA Rule Requirement:	Section 40.14 states: "As an employer, or an employers service agent for example a C/TPA, you must ensure the collector has the following information when conducting a urine specimen collection for you: (a) Full name of the employee being tested. (b) Employee SSN or ID number. (c) Laboratory name and address (can be pre-printed on the CCF). (d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-A). (e) DER information required at 40.35 of this part. (f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-B). (g) The DOT Agency which regulates the employees safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1-D). (h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up. (i) Whether the test is to be observed or not (see 40.67 of this part). (j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF)." [65 FR 79526, Dec.19, 2000, as amended at 75 FR 59107, September 27, 2010]		

Veolia Transportation - Fixed Route - Drug and Alcohol Program Manager Interview

Item	Action Date:	4/30/2014	Question #:	35
2	Question:	If the DAPM is safety-sensitive and is in the random pool and the DAPM's name is selected for a random test, how is the DAPM made aware that their name is on the current random selection list and when does the DAPM proceed for random testing?		
	Answer:	The DAPM views the list and then notifies a supervisor who will schedule the DAPM for a random test sometime during the selection period.		
	Supplemental Answer:	This practice is not compliant with section 655.45(h). In response to this audit finding, submit to FTA a description of the procedural changes Veolia has implemented to maintain compliance with this requirement.		
	FTA Rule Requirement:	Section 655.45(h) states: "Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately."		

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Answer: Other. Disabling damage would include towing a vehicle at night because the headlights were out.

Supplemental Answer: Per section 655.4(2) below, headlight damage is the type of damage that, because it would not preclude the departure of the vehicle "in its usual manner in daylight," is not included as disabling, even if it means a tow at night.

In response to this audit finding, submit to FTA a statement signed by each supervisor certifying an understanding of the term "Disabling Damage" as defined in section 655.4 below.

FTA Rule Requirement: Section 655.4 defines the term "Disabling damage" as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.
 (1) Inclusion. Damage to a motor vehicle where the vehicle could have been driven, but would have been further damaged if so driven.
 (2) Exclusions. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
 (ii) Tire disablement without other damage even if no spare tire is available.
 (iii) Headlamp or tail light damage.
 (iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable."

Veolia Transportation - Fixed Route - Drug and Alcohol Program Manager Interview

Item **Action** **4/30/2014** **Question #:** **51**
Date:

6

Question: What are the time limits for drug and alcohol post-accident testing? (if DAPM is involved in post-accident decision-making process)

Answer: I don't know

Supplemental Answer: In response to this audit finding, submit to FTA a statement signed by each supervisor certifying an understanding of the post-accident testing time-frames - and documentation requirements - set forth in sections 655.44(a)(2)(ii) and 655.44(b) below.

FTA Rule Requirement: Section 655.44(a)(2)(ii) states: "(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record.

Section 655.44(b) states: "An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident."

Veolia Transportation - Fixed Route - Drug and Alcohol Program Manager Interview

Item **Action** **4/30/2014** **Question #:** **53**
Date:

7

Question: Does this company provide the contact information of a qualified Substance Abuse Professional (SAP) readily available to assist any employee who has refused a test or had a positive test? Even if the employee is to be terminated?

Answer: Other. No.

Napa County Transportation Planning Agency

Supplemental Answer: In response to this audit finding, submit to FTA a description of the procedure Veolia has implemented to maintain consistent compliance with the requirements of sections 655.62(a) and 40.287 below.

FTA Rule Requirement: Section 655.62(a) states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs."

Section 40.287 states: "As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent."

Veolia Transportation - Fixed Route - Drug and Alcohol Program Manager Interview

Item	Action Date:	4/30/2014	Question #:	70
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8

Question: Have the transit system and the MRO or C/TPA established a password or other verification method to ensure that verbal transmission of positive test results from the MRO is secure?

Answer: No, we have not.

Supplemental Answer: In response to this audit finding, submit to FTA a statement certifying that the result transmission security requirements of section 40.167(b) have been addressed.

FTA Rule Requirement: Section 40.167(b) states: "You (the MRO or C/TPA) must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.
 (1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163).
 (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification."

Records Management Interview

Veolia Transportation - Fixed Route

Interview Date: 1/29/2014

Veolia Transportation - Fixed Route - Records Management Interview

Item	Action Date:	4/30/2014	Question #:	13
1	Question:	Does the employer request the following information from the DOT-regulated employers who have employed the applicant or transferee for any period during the two years prior to the date of application or transfer: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration; (2) Verified positive drug tests;(3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol testing regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests)?		
	Answer:	Other. Veolia makes this request going back three years, as opposed to two.		
	Supplemental Answer:	Because this Veolia location is operating under an FTA-funded contract, background information requested in accordance with section 40.25 must go back two years, as opposed to three. In response to this audit finding, submit to FTA compliant 40.25 request forms that reflect the two-year background check period, consistent with all non-FMCSA modes.		
	FTA Rule Requirement:	Section 40.25(a) states: " As an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in Section 40.25(b). Section 40.25(b) states: "You must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;(2) Verified positive drug tests; (3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol testing regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-do-duty process (e. g. , an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee."		

Veolia Transportation - Fixed Route - Records Management Interview

Item	Action Date:	4/30/2014	Question #:	31
2	Question:	If a post-accident alcohol test is not administered within two hours following the accident, does the employer prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered?		
	Answer:	No.		
	Supplemental Answer:	In response to this audit finding, submit to FTA a statement signed by each supervisor certifying an understanding of the requirements of section 655.44(a)(2)(ii) below. Should Veolia's post-accident testing form be updated to prompt supervisors for this information, submit a legible copy of that updated form as well.		
	FTA Rule Requirement:	Section 655.44(a)(2)(ii) states: "If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered..."		

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being performed under FMCSA authority, as opposed to FTA.

- Most DOT alcohol testing forms reviewed included a check in the "15-Minute Wait: No" box. This portion of Step 3 of the ATF should only be used when there is a non-negative screening result.

In response to this audit finding, submit to FTA a description of the procedure Veolia has implemented to consistently review incoming DOT testing forms, and to require correction/cancellation as appropriate.

FTA Rule
Requirement:

Section 40.209(a) states: "As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph b of this section [40.209(b)]." Section 40.275(a) states: "As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not fatal flaws or correctable flaws."

Breath Alcohol Technician Interview

Workhealth Occupational Health Services

Interview Date: 1/29/2014

Veolia Transportation - Fixed Route - Breath Alcohol Technician Interview

Item	Action Date:	4/30/2014	Question #:	3
1	Question:	Was consent or release - giving the collection site or its personnel indemnification - required for testing to be performed?		
	Answer:	Other. The form given to the donor upon checking in contains a sentence stating that if the donor leaves the waiting area, the test will be ruled a refusal.		
	Supplemental Answer:	This refusal is not in the list of refusals in Part 40, and should not be distributed to any DOT employee in the future.		
		In response to this audit finding, amend the form accordingly, and provide a copy of all forms that will be used as part of the revised employee sign-in procedure.		
	FTA Rule Requirement:	Section 40.355(a) states: "Do not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent."		

Veolia Transportation - Fixed Route - Breath Alcohol Technician Interview

Item	Action Date:	4/30/2014	Question #:	5
2	Question:	Did the BAT explain the testing procedure and show the employee the instructions on the back of the Alcohol Testing Form (ATF)?		
	Answer:	No.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on company letterhead a statement signed by each BAT certifying an understanding of the requirements of section 40.241 below.		
	FTA Rule Requirement:	Section 40.241 states: "As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using: ...(e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF."		

Veolia Transportation - Fixed Route - Breath Alcohol Technician Interview

Item	Action Date:	4/30/2014	Question #:	15
3	Question:	If the screening test result is less than 0.02, does the BAT complete Step 3 of the ATF by dating and signing the certification?		
	Answer:	Other. While completed correctly during the mock collection, the records reviewed at Veolia included several ATFs with a check in the "15-Minute Wait: No" box.		
	Supplemental Answer:	This portion of Step 3 of the ATF should only be used when there is a non-negative screening result.		
		In response to this audit finding, submit to FTA a statement signed by all BATs at this site		

Urine Collections Interview

Workhealth Occupational Health Services

Interview Date: 1/29/2014

Veolia Transportation - Fixed Route - Urine Collections Interview

Item	Action Date:	4/30/2014	Question #:	7
1	Question:	Does the collector explain the basic collection procedure to the employee and show the employee the instructions on the back of the CCF?		
	Answer:	No.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on company letterhead a statement signed by each DOT collector certifying an understanding of the requirements of section 40.61(e) below.		
	FTA Rule Requirement:	Section 40.61(e) states: "Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF."		

Veolia Transportation - Fixed Route - Urine Collections Interview

Item	Action Date:	4/30/2014	Question #:	30
2	Question:	After the employee completes (Copy 2) Step 5 of the CCF, does the collector then complete Step 4 (i.e., providing a signature, printed name, date, time of collection, and name of delivery service)?		
	Answer:	No, the collector complete Step 4 before the employee completed Step 5.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on company letterhead a statement signed by each DOT collector certifying an understanding of the requirement to certify the completion of the test in Step 4 only after the donor has completed Step 5.		
	FTA Rule Requirement:	Section 40.73(a)(2) states: "Complete the chain of custody on the CCF (Step 5) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory." Section 40.45(b)(4) states: "As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event."		

Veolia Transportation - Fixed Route - Urine Collections Interview

Item	Action Date:	4/30/2014	Question #:	50
3	Question:	What is done if the employee admits to adulterating or substituting the specimen?		
	Answer:	Conduct a directly observed test.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on company letterhead a statement signed by each DOT collector certifying an understanding of the requirement report a refusal in this case, per the requirements of section 40.159(c) below.		
	FTA Rule	Section 40.159(c) states: "If the employee admits to having adulterated or substituted the		

Napa County Transportation Planning Agency

Medical Review Officer Interview

Fleetscreen, Ltd.

Interview Date: 01/22/2014

Finding: Not deficient with FTA requirements.

Substance Abuse Professional Interview

Sandy Steinman L.C.S.W.

Interview Date: 01/24/2014

Finding: Not deficient with FTA requirements.









