



NOTICE OF NON-COMPLIANCE: C-0255, ASBESTOS PROGRAM ISSUED OCTOBER 18, 2024

Summary

As part of the 2024 WMSC Audit of [Metrorail's Automatic Train Control \(ATC\) and Signals Program](https://wmsc.gov/audits/) (<https://wmsc.gov/audits/>), the WMSC found that Metrorail is putting its personnel at risk due to health hazards such as damaged and repositioned materials marked as containing asbestos that are not being identified and managed as required by its Agency Safety Plan. As a result, corrective action plan (CAP) C-0255 was developed as required. As part of that CAP development, outlined in Program Standard Section 9.C, a new revision of this CAP was expected to be provided by Metrorail on April 19, 2024; however, on April 18, 2024, Metrorail informed the WMSC that a CAP would not be provided to address this finding.

Authority

The Washington Metrorail Safety Commission (WMSC) Compact (P.L. 115-54), Article IV, Powers, Sec. 30(a) states "In carrying out its purposes, the Commission, through its Board or designated employees or agents, shall, consistent with federal law: (a) Adopt, revise, and distribute a written State Safety Oversight Program[]" and Sec. 30(c) states "(c) Require, review, approve, oversee, and enforce the adoption and implementation of any Corrective Action Plans that the Commission deems appropriate[.]" Further, WMSC Compact Sec. 31(c) provides that the WMSC may "[c]ompel WMATA's compliance with any Corrective Action Plan or order of the Commission by such means as the Commission deems appropriate...".

Pursuant to WMSC Compact Sec. 30(a) and 30(b) and 49 CFR sec. 674.27(a)(1), version 7 of the WMSC Program Standard became effective on July 1, 2024 (may be found at <https://wmsc.gov/program-standard/>). Program Standard Section 9.C states that "Each finding issued by the WMSC requires WMATA to develop a suitable CAP. The WMSC may also require WMATA to develop a CAP due to other types of findings or conclusions, including from the sources noted in Section 9.A."

49 C.F.R. § 674.27(a)(5) states that "The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. § 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit."

This Notice of Non-Compliance is brought in accordance with Program Standard sec. 11.B:

In the event WMATA fails to comply with any provision of this Program Standard, the WMSC may issue a notice of non-compliance, provide notice that the WMSC is invoking a power provided in Section 11.C, or both. The WMSC will identify the noncompliance issue and state any action required of WMATA in an email to the WMATA Executive Vice President and Chief Safety & Readiness Officer, or the General Manager. WMATA must then respond by the deadline set by the WMSC. If WMATA fails to address the issue, the WMSC may take further action described in this Section 11.

Background

On January 18, 2024, the WMSC issued its Audit of Metrorail's Automatic Train Control (ATC) and Signals Program. Finding 3 stated that "Metrorail is putting its personnel at risk due to health hazards such as damaged and repositioned materials marked as containing asbestos that are not being identified and managed as required by its Agency Safety Plan." C-0255 is the corresponding corrective action plan identifier for this finding 3, had one been fully developed as required.

As part of this audit, during the WMSC's on-site visits to Train Control Rooms, the audit team observed disturbed and damaged floor tiles in the Arlington Cemetery Train Control Room that Metrorail had labeled as "DANGER ASBESTOS DO NOT DISTURB Vinyl Tile Floor or Mastic." The same apparent type of tiles and mastic were also disturbed elsewhere in the room (without such signage), and those disturbed tiles slid under the feet of personnel entering or exiting the room. There were also locations where tiles had been dislodged but evidence of the mastic (glue used to hold the tiles in place) remained and was exposed with personnel placing their full body weight on this mastic as they walked in and out of the room. This exposure provided visible changes to the condition and amount of the remaining mastic in heavy foot traffic locations. The WMSC observed similar disturbed tiles and mastic in other Train Control Rooms, including the Woodley Park, Metro Center, and Rosslyn Train Control Rooms.

Metrorail has previously confirmed, including in a 2014 report provided by Metrorail, that the tiles and the associated mastic at Rosslyn contain asbestos. The damaged floor and dirty room at Rosslyn were not noted for correction in Metrorail inspections. The 2014 report identified multiple assumed or confirmed asbestos-containing building materials in the sample of locations that were tested at that time due to those locations being scheduled for renovation. However, documents provided from Metrorail's 2021 physical assessment of asbestos-containing materials demonstrate that the 2021 assessment did not include the Train Control Room locations previously identified by Metrorail in the limited 2014 sample as containing asbestos.

The WMSC reviewed these health hazards with Metrorail personnel on site and with Metrorail managers during audit interviews, followed up with several document requests, discussed this with Metrorail again during the exit conference for this audit, and additionally provided Metrorail with a more detailed written description as the WMSC continued to review the follow-up documents provided by Metrorail. Metrorail provided records that demonstrate Metrorail's Plant Maintenance, Structures, and Power team did not identify the marked asbestos hazard in the Arlington Cemetery Train Control Room during a site survey that was conducted in March 2023, the same month as the WMSC's site visit for this audit. In addition, Safety Department Operational Safety Oversight inspections conducted as part of Metrorail's actions under CAP C-0213 to address the WMSC's August 4, 2022, Order recorded a missing cover on a wall-mounted fiber optic cable box as the only item that needed to be addressed in this Train Control Room, and did not identify the health hazard.

Ongoing monitoring of known asbestos-containing materials is the basis for any determination that material has not been disturbed, that it remains in a condition where it is safe for people, and whether any replacement is required. Further, for several ATC locations in rail yards that were included in the areas to be inspected in the 2021 assessment report, Metrorail did not assess the condition of the materials to determine whether action was required.

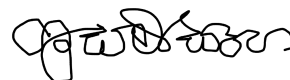
In accordance with the WMSC Program Standard (Sections 5.E.4 and 9.C), Metrorail provided a draft CAP for review to the WMSC. The WMSC provided feedback on March 5, 2024. Metrorail revised the draft CAP and submitted it to the WMSC for consideration on March 19, 2024. The WMSC reviewed and provided further comments on the draft CAP on April 2, 2024. Based on the WMSC's latest feedback, WMATA was expected to provide a new revision on April 19, 2024. However, on April 18, 2024, Metrorail informed the WMSC that a CAP would not be provided to address this finding, stating:

As you are aware, on March 8, 2024, WMATA emailed WMSC in an effort to informally resolve a matter concerning the scope of the WMSC's Audit of WMATA's Fitness for Duty and Occupational Health Programs. Since then, WMSC issued a subpoena dated April 8, 2024, seeking records and information pertaining to the referenced programs. In light of this development, WMATA intends to pause further discussion of the matters subject to the subpoena until the subpoena is resolved. This includes: (1) Responding to ongoing requests from WMSC for occupational safety and health data; (2) Submitting a revised draft for CAP #WMSC-24-C0255; and (3) Delaying upcoming deliverables for actionable items associated with CAPs listed in the attached document.

As of October 18, 2024 (the date of this notice of non-compliance), the WMSC has not received a further draft of the CAP. Worker safety is a fundamental part of the safety of the WMATA Rail System, and it is identified in WMATA's Public Transportation Agency Safety Plan. The WMSC is obligated to oversee the safety elements in WMATA's Agency Safety Plan. The WMSC and WMATA have had ongoing discussions attempting to resolve the differences that are preventing Metrorail from producing worker safety-related documents. However, WMATA stated this month that it would stand by its objections for producing any worker safety information. As the WMSC explained in its written response to Metrorail's written objections, and in subsequent discussions, Metrorail's objections to the WMSC's authority are without merit and do not justify its refusal to fully respond and participate in the CAP development process.

Compliance

For WMATA to return to compliance with the WMSC Program Standard requirements for C-0255, WMATA must follow all processes regarding WMSC Corrective Action Plans as outlined in WMSC Program Standard Section 9.C.



Sharmila Samarasinghe
Deputy CEO & Chief Operating Officer
Washington Metrorail Safety Commission