

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Follow-up of Violations Issued By the Department of Buildings

MG07-125A

June 23, 2008



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
EXECUTIVE OFFICES
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has audited the Department of Buildings (DOB) to determine the adequacy of its efforts to follow-up issued violations to ensure that conditions are corrected.

The DOB is responsible for the safe and lawful use of more than 950,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. Audits such as this provide a means of ensuring that DOB and other city agencies properly follow-up on the violations they issue to help ensure public safety.

The results of our audit, which are presented in this report, have been discussed with DOB officials, and their comments were considered in the preparation of this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Thompson, Jr.", written in a cursive style.

William C. Thompson, Jr.

WCT/ec

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*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the
Follow-up of Violations Issued by the
Department of Buildings**

MG07-125A

AUDIT REPORT IN BRIEF

The audit determined whether the Department of Buildings (DOB) efforts to follow up issued violations to ensure that conditions are corrected were adequate. The DOB is responsible for the safe and lawful use of more than 950,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. In response to complaints and requests for inspections that come from the public, community boards, or other City agencies, DOB inspects buildings and issues violations when a building does not comply with applicable codes.

The most common type of violation issued is called an Environmental Control Board Notice of Violation (ECB violation). There are two types of ECB violations: non-hazardous and, for conditions that potentially threaten public safety, hazardous. DOB follows up the violations it issues through its Special Operations Unit's Hazardous Re-inspection Program. In addition, DOB's Enforcement Division runs various re-inspection programs; among them are the Certificate of Correction (CC) Audit Program and the Multi-Hazardous Re-Inspection Program. DOB, however, lacks the authority to gain access to properties or to take measures other than issuing new violations to cure outstanding violations.

Audit Findings and Conclusions

DOB's follow-up efforts are focused mainly on the Hazardous Re-Inspection Program (to ensure that hazardous violations are corrected) and the Certificate of Correction Audit Program (to ensure the integrity of the CC process). These efforts are less than adequate not only because of deficiencies in the execution of the programs but also because the agency is limited in its ability to compel property owners to remedy violations on their property. DOB does not have the authority to require access to buildings for re-inspections or to take additional actions to ensure that the violations it issues are corrected. Therefore, outstanding violations may remain uncorrected for extended periods of time.

We noted that DOB failed to re-inspect 20 percent of the properties targeted for re-inspection in September 2007 as part of its Hazardous Re-inspection Program because they could not gain access to the property; of these, DOB's database indicated that it posted requests for re-inspection notices with only 34 percent of them. Additionally, DOB did not assess compliance for 33 percent of the CCs that were randomly selected by SEU for the Certificate of Correction Audit Program for January through June 2007. Of the cases whose violations DOB determined were not in fact corrected, DOB took no further action against more than half of them.

When we discussed with DOB officials the feasibility of using the department's role as issuer of permits to enforce the correction of violations and the payment of related penalties, they acknowledged that they had not assessed this concept and that they had looked into DOB's authority when we brought it to their attention. While officials agreed that denying permits to individuals or contractors with outstanding violations would be effective in enforcing the collection of fines and the correction of violating conditions, they emphasized that DOB does not have adequate legal power to deny permits based on outstanding violations or outstanding ECB fines.

Recommendations

To address these issues we make eleven recommendations, including that DOB should:

- Immediately implement a program of re-inspection of hazardous violations for those properties in which inspectors did not gain access and no LS4 forms, requesting property owners to call DOB and schedule and appointment for re-inspection, were left at the premises.
- Ensure that CCs selected as part of its Certificate of Correction Audit Program are actually re-inspected.
- Take additional measures, such as scheduling appointments, to gain access to properties to verify that violations were corrected as reported in CCs.
- Continue to seek ways to improve and enhance its efforts to follow up hazardous violations and ensure that conditions are corrected.
- Work with the Law Department to clearly establish DOB's authority to deny permits when there are outstanding violations and fines.

Agency Response

In its response, DOB generally agreed with the audit's eleven recommendations.

INTRODUCTION

Background

The DOB is responsible for the safe and lawful use of more than 950,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. DOB's main activities include performing examinations of building plans, issuing construction permits, inspecting properties, and licensing of construction trades. It also issues Certificates of Occupancy and Place of Assembly permits.

In response to complaints and requests for inspections that come from the public, community boards, or other City agencies, DOB inspects buildings and issues violations when a building does not comply with applicable codes. The most common type of violation issued is called an ECB violation. According to the Fiscal Year 2007 Mayor's Management Report (MMR), DOB issued 50,685 ECB violations. An ECB violation contains a notice that a property does not comply with applicable provisions of law, as well as an order to correct the violating condition and to certify with DOB that the correction has been made. There are two types of ECB violations: non-hazardous and, for conditions that potentially threaten public safety, hazardous. For first-time offenders, non-hazardous violations indicate the two options available to clear the violation without necessitating an ECB hearing: through either a cure or a stipulation offer.¹ (Use of the cure or stipulation option is an inherent admission of guilt.) A cure offer generally allows property owners 35 days to correct the violation; a stipulation offer generally allows 75 days. ECB hazardous (and multiple offense) violations result in a mandatory ECB hearing in an administrative court. The respondent (person named in the violation) must attend the hearing to contest the violation.

The Department also issues a DOB violation, which notifies a property owner that a property is not in compliance with some provision of applicable law and includes an order from the DOB Commissioner to correct the condition. Although there is no fine or penalty attached to a DOB violation, it can be used as the basis for a Criminal Court summons and prosecution, which may result in the imposition of a fine and/or imprisonment. During the first half of Fiscal Year 2007, DOB issued 31,486 DOB violations, the majority of which were administrative violations (computer-generated violations issued to owners that fail to submit evidence of annual inspections on time).

Violations (both ECB and DOB) data are entered in DOB's Buildings Information System (BIS) mainframe computer application. Violations must be corrected before a new or amended Certificate of Occupancy can be obtained. Uncorrected ECB and DOB violations may

¹ In the case of a cure (remedying the violation), a cure date will appear on the violation form. To have the ECB hearing and penalty waived, a completed Certificate of Correction must be submitted before the cure date and be approved by DOB. Similarly, in the case of a stipulation offer, by meeting the terms and conditions of the stipulation offer, the ECB hearing is waived, but a reduced penalty has to be paid and a completed Certificate of Correction submitted.

impair the sale or refinancing of a property because a title search will show the outstanding violation against it.

To remove an ECB violation from the property's record, the respondent must file a CC form and related documents with the DOB Administrative Enforcement Unit (AEU) certifying that the violating condition(s) has been corrected. If the unit accepts the documented proof and approves the CC, the property's record in BIS will show that the violation was corrected. ECB violations that have not been corrected or that are not dismissed by the administrative court will continue to appear as “open” on DOB records until acceptable proof is submitted, even if the penalty imposed at ECB has been paid.

The requirements to remove DOB violations from the property's record vary depending on the type of violation issued, i.e., Fire Safety, Elevator (Local Law 10/81). The respondent must correct the condition and submit proof of that correction to the unit issuing the violation; if there is a hazardous condition, a re-inspection is conducted to confirm compliance before a DOB violation is cleared from the property's record in BIS.

DOB follows up the violations it issues through its Special Operations Unit's Hazardous Re-inspection Program. The Hazardous Re-inspection Program requires the re-inspection of conditions for which a hazardous violation was issued and a Certificate of Correction or ECB hearing resolution has not been recorded. In addition, DOB's Enforcement Division² focuses on bringing properties into compliance with applicable laws. It runs various re-inspection programs. Among them are the Certificate of Correction Audit Program, which requires a randomly selected 10 percent of the Certificates of Correction (CCs) approved each month be re-inspected, and the Multi-Hazardous Re-Inspection Program, which targets buildings with multiple, long-standing open violations. DOB, however, lacks the authority to gain access to properties (unless an access warrant is obtained) or to take measures other than issuing new violations to cure outstanding violations.

This audit was requested by various elected officials and community housing groups because of their concerns that the current procedures for resolving building code violations do not ensure that the violations are corrected by the respondents or provides the necessary disincentive to prevent violations from occurring.

Objective

The objective of this audit was to determine the adequacy of DOB's efforts to follow up issued violations to ensure that conditions are corrected.

Scope and Methodology

The scope of this audit was Fiscal Year 2007. To accomplish our objective and to gain an understanding of the processing of violations, we met with DOB officials responsible for issuing and following up violations; and we reviewed DOB organization charts, the Mayor's

² The Enforcement Division consists of various units, i.e., the Administrative Enforcement Unit, the Special Enforcement Unit, the Borough Enforcement Unit.

Management Report, and relevant information obtained from the DOB Web site and other sources.

To familiarize ourselves with DOB day-to-day operations and to determine the adequacy of the internal controls over the handling of violations and their processing in BIS, we conducted walk-throughs and interviewed chiefs, clerks, and field inspectors. We also accompanied field inspectors to observe their daily work activities (e.g., writing and serving violations, performing re-inspections), and we independently visited some buildings with serious violations on their BIS records. To obtain an understanding of BIS, we met with officials from the Information Technology (IT) unit, conducted data-entry observations, and reviewed documentation of record layouts and field names for the database. Additionally, we reviewed various DOB policies and procedures. The following were used as audit criteria:

- “Standard Operating Procedures: How to Prepare an ECB Violation” (draft as of July 02, 2007);
- “ECB Violation Reference Guide Part I—Understanding your ECB Violation” (published June 2006);
- “ECB Violation Resolution Guidelines” (revised May 2007);
- “Resolving Your Department of Buildings Violations: Fact Sheet” (last updated: May 2007);
- “Certificate of Correction Audit Program: Program Protocol 8/23/06”;
- “Inspector Training Series: False Certification of Correction and Failure to File Certificate of Correction ECB Violations,” (Borough Enforcement Unit, Queens, August 2007); and
- “Special Operations Unit: Field Manual, Hazardous Re-inspection Program” (draft revised September 07, 2007).

The Comptroller’s Office performed an in-depth audit of BIS, *Audit Report on the Buildings Information System of the Department of Buildings* (Audit Number 7A04-101, issued September 27, 2004), which found that BIS is secure and functions reliably. Additionally, for this audit, we performed limited tests of the accuracy, completeness, and reliability of information in the BIS database. We chose a sample of 30 buildings (those with the largest number of hazardous ECB violations) and compared the information in BIS with DOB’s manual records. We selected a sample of 32 of the 192 violations for these buildings (stratified to include the four DOB units that issued violations on these buildings—construction, elevators, boilers, plumbing) and determined whether essential information from the manual files was accurately recorded in the BIS database.

To determine whether DOB’s Special Operations Unit conducted the required re-inspections for the Hazardous Re-inspection Program during the month of September 2007, we obtained and analyzed a file from BIS data of all open ECB hazardous violations written during the month of May 2007 (the re-inspections should take place four months after the violations are issued).

To determine whether DOB’s Multi-Hazardous Re-Inspection Program, administered by the Special Enforcement Unit (SEU), is an effective enforcement tool, we obtained a list of all

buildings that were included in the program. As of January 2008, there had been three “rounds” in the program. SEU used different criteria to identify properties for each of the three rounds. The first round began in July 2005 and focused on properties that appeared in the Special Operations Unit’s Hazardous Program and had three or more open hazardous violations issued between September 2003 and December 2004 for failure to maintain building interior and/or failure to maintain exterior building wall. Round two began in June 2006, and round three began in October 2007. To determine the status of SEU enforcement efforts, we reviewed DOB’s files for each of the 14 buildings in round one, since this round was the most recent for which complete data was available.

To determine whether the Certificate of Correction Audit Program operated as intended, we obtained a file from BIS containing the 16,386 CCs received and approved during the six-month period January through June 2007. We analyzed the 1,628 (10%) randomly selected CCs included in SEU’s audit program to determine the results of DOB’s follow-up efforts. Additionally, we reviewed SEU’s “Awaiting Audit Results” report as of November 29, 2007, to determine the number of outstanding re-inspections of the reportedly corrected violations.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis to assess the adequacy of DOB compliance with applicable criteria as they pertained to our audit objective.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other audit procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

Discussion of Audit Results

The matters covered in this report were discussed with DOB officials during and at the conclusion of this audit. A preliminary draft report was sent to DOB officials on May 08, 2008, and discussed at an exit conference held on May 19, 2008. On May 22, 2008, we submitted a draft report to DOB officials with a request for comments. We received a written response from DOB on June 6, 2008. In its response DOB stated: “. . . the Department is in the process, or has implemented, all of the recommendations contained in the report. . . .The audit, which covered Fiscal Year 2007, resulted in eleven (11) preliminary recommendations made by the Comptroller’s Office. The content of these recommendations has helped the Department review and strengthen our procedures.” The full text of DOB’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOB's follow-up efforts are focused mainly on the Hazardous Re-Inspection Program (to ensure that hazardous violations are corrected) and the Certificate of Correction Audit Program (to ensure the integrity of the CC process). These efforts are less than adequate not only because of deficiencies in the execution of the programs but also because the agency is limited in its ability to compel property owners to remedy violations on their property. DOB does not have the authority to require access to buildings for re-inspections or to take additional actions to ensure that the violations it issues are corrected. Therefore, outstanding violations may remain uncorrected for extended periods of time. DOB's senior management has identified other weaknesses and states that it is making good faith efforts to address them, but believes that changes in law, additional resources, and changes in DOB's operating culture are necessary to address these weaknesses. However, we are concerned that DOB has not taken steps to strengthen its existing programs (including enhancing its supervisory reviews) nor made adequate use of its role as the issuer of building-related permits as an enforcement tool to compel respondents to correct violations and pay related penalties. These findings are discussed in the following sections of this report.

DOB's Re-Inspection of Open Hazardous ECB Violations is Lacking

DOB failed to re-inspect 20 percent of the properties targeted for re-inspection in September 2007 as part of its Hazardous Re-inspection Program because they could not gain access to the property; of these, DOB's database indicated that it posted requests for re-inspection notices with only 34 percent of them. Failing to adequately follow up increases the risk that violations will not be corrected and that future violations will be ignored.

DOB's Hazardous Re-inspection Program was established to ensure that hazardous conditions are corrected by re-inspecting open hazardous violations. DOB's inspectors are often not able to gain access to properties to complete the re-inspection. In these cases, the "Special Operations Unit: Field Manual, Hazardous Re-inspection Program" requires that a "Notice to Call for Inspection" (LS4) form be left for the property owner to call DOB for a re-inspection.

Each month, DOB's Special Operation's Unit receives a list of all open hazardous ECB violations, excluding violations written by the following units: electrical, plumbing, elevators, boilers, cranes and derricks, scaffold, and the building enforcement safety team. (Due to the technical knowledge needed, the issuing units themselves follow up on these violations.) The violations included on the list are violations that were written four months earlier, i.e., violations written during the month of January are included on May's list. The four-month lag is permitted so as to give the respondent time to have the violation corrected and to submit the appropriate paperwork for dismissal of the violation. Inspectors from the Special Operations Unit are responsible for re-inspecting every violation on the list. Re-inspections are conducted to see if these hazardous conditions still exist. If it is found that the respondent did not correct the violation, then additional violations are to be issued.

We reviewed the Special Operations Unit's re-inspection list for the month of May 2007. Inspectors were responsible for re-inspecting these violations during the month of September

2007. There were 1,449 hazardous ECB violations to be re-inspected; inspectors reported that inspections of 845 (58%) of them resulted in no new violations. Of the remaining 604 violations, inspectors reported that hazardous conditions still existed for 312 of them and additional violations were issued. Inspectors did not gain access to the properties to conduct a re-inspection for the remaining 292 violations. These 292 violations make up 20 percent of the violations targeted for re-inspection.

DOB officials informed us that if inspectors are unable to gain access during their first attempt, they do not make a second attempt because they do not have the resources to visit these properties numerous times. DOB requires only that inspectors leave an LS4 form letter at the premises. The LS4 form letter (a request for the property owner to call DOB and schedule an appointment for re-inspection) is the primary method used by DOB to reach absent property owners. It is, therefore, important that LS4 forms be left when inspectors cannot gain access to properties to re-inspect them. DOB officials stated that they do not keep track of LS4 form letters; nor do they follow up with the owner if they do not receive a call for re-inspection. Our review of the database found that inspectors indicated they left LS4 forms for only 100 (34%) of the 292 properties when they could not gain access. Therefore, DOB cannot be assured that inspectors left LS4 forms for the other 192 hazardous violations or whether these violations were essentially ignored.

If a respondent has not corrected the hazardous violation, there is little incentive on a respondent's part to allow DOB access to the premises or to respond to the LS4 form letter. It is apparent that there is a significant risk that conditions have not been corrected for cases in which DOB could not reinspect because inspectors could not gain access.

Considering the agency's limited resources, DOB needs to better ensure that they are fully utilizing the tools at its disposal. Although there is a significant risk that a respondent who has not corrected a violation will not respond to the LS4 form letter, a respondent will make no effort to contact DOB if the form is not left at the premises at all. Therefore, DOB needs to enhance its supervisory review of its inspectors to ensure that they leave LS4 forms, as required, at all locations for which they are unable to gain access. Furthermore, DOB should make additional efforts to follow up violations for those buildings to which inspectors were unable to gain access or whose owners fail to respond to the LS4 form letters by making evening inspections and by obtaining warrants to gain entry.

Recommendations

DOB's Special Operations Unit should:

1. Immediately implement a program of re-inspection of hazardous violations for those properties in which inspectors did not gain access and no LS4 forms, requesting property owners to call DOB and schedule an appointment for re-inspection, were left at the premises.

DOB's Response: "While your recommendation has some validity, the Department contends that the existing program meets this objective. We re-inspect all hazardous

conditions three months after the original violation is issued in order to determine if the violating condition has been corrected. . .

In response to the Findings of the Audit regarding the claim that no LS-4 was left in 66% of the instances reviewed by the auditors, the Department contends that there is no evidence to support the audit findings and subsequent recommendation. We agree that at the time of the audit, the database had no capacity for tracking whether an LS-4 was posted. Although some Department inspectors may occasionally indicate that they left an LS-4 in their comment section of the re-inspection form, this requirement has never been in our inspection protocol and therefore can not yield verifiable data.

In order to substantiate and duplicate the findings contained in the audit, during the exit conference the Department requested the auditors' relevant working papers that formed the basis of the conclusion that the Department had not left LS-4's in 66% of the reviewed cases. This request was refused. When told that such provision was appropriate under GAGAS, the response was 'I have to ask my Director.' No further response was provided and the Department believes this lack of transparency is contrary to the spirit of GAGAS.

However, we do agree that our procedures should be updated to reflect the fact that an LS-4 was left at the property. Going forward, this will occur both on the paperwork, and subsequently entered into the database. . . ."

Auditor Comment: DOB claims to re-inspect all hazardous conditions three months after the original violation is issued; however, our review shows that they do not perform an actual re-inspection where access to the property is denied. As stated in the report, 20 percent of the re-inspections for the month of September 2007 were not performed. We are pleased to note that in response to audit recommendation # 3, DOB indicated that it will institute a program of no access re-inspections in May 2008.

While DOB officials casually asked to see our workpapers during the exit conference, they did not follow up nor make a formal request to have access to them; consequently, we did not take their request seriously. In fact, upon further reflection, we are dismayed that DOB officials felt the need to substantiate and duplicate the audit findings. During the course of the audit we had constant and open communication with DOB officials including discussions of the audit findings; hence, the statement about a 'lack of transparency' in our audit is unfounded. The fact is that DOB does not keep track of LS4 form letters, nor do they follow up with the owners if they do not receive a call for re-inspection. We remain concerned that there is a significant risk that a respondent who has not corrected a hazardous violation will not respond to the LS4 form letter, and will make no effort to contact DOB if the form is not left at the premises at all. Accordingly, we urge DOB to strengthen its efforts in the follow-up of properties not responding to LS-4 forms.

2. Ensure that inspectors leave LS4 form letters at all properties to which they are not able to gain access to conduct a re-inspection.

DOB's Response: "The Department will consider the issuance of an updated procedure that includes documenting the issuance of an LS-4 and related operations."

3. Track all LS4 form letters and implement a program of phone calls or other forms of communication to follow up with property owners if they fail to call for a re-inspection appointment.

DOB's Response: "We have implemented an LS-4 tracking mechanism in the database that will cover those premises where a hazardous violation was issued in January 2008 and beyond. No access re-inspections will be conducted beginning in May 2008."

Multi-Hazardous Re-Inspection Program's Efforts Need To Be More Aggressive

The results of DOB's Multi-Hazardous Re-Inspection are mixed. The program appeared to play a role in ensuring that violations were corrected at 8 of the 14 properties reviewed. However, there has been no action taken by DOB for at least 11 months for the remaining six properties.

The Multi-Hazardous Re-Inspection Program is supposed to be an intensive enforcement approach for properties with multiple hazardous violations that have been outstanding for extended periods of time. The program is intended to ensure that the property owners clear the violations and make the buildings safe. Once a building has been placed in the program, DOB's legal unit takes the lead in the efforts to bring the building into compliance with the building code. However, 6 of the 14 buildings placed in the program in July 2005 still have outstanding hazardous violations.

SEU established the Multi-Hazardous Re-Inspection Program when, as a result of the Hazardous Re-Inspection ECB Violation Program, DOB determined that some properties with multiple hazardous violations may require additional specialized attention. Rather than simply issuing additional ECB violations, other types of enforcement may be required, such as obtaining criminal court summonses, monitoring unsafe buildings, and issuing vacate orders. SEU identifies properties that meet the selected criteria. For round one, the criteria were: three or more still-open hazardous violations issued between September 2003 and December 2004 for failure to maintain building interior and/or failure to maintain exterior building wall. SEU then turns the property information over to DOB's lawyers who assume control of the enforcement effort, determining and coordinating the appropriate enforcement procedures.

This audit reviewed the 14 buildings included in round one of the Multi-Hazardous Re-Inspection Program. Our review of DOB's files found that the violations had been corrected in 8 of the 14 buildings. Violations in 6 of the 14 have yet to be resolved. Our review of case records revealed that in two cases, criminal court actions were taken: in one, the repairs were

made and the condition remedied; in the other, a fine was paid but the condition was not corrected. As of March 2008, DOB had not taken any action since at least April 2007 (11 months) for five of these six buildings; for one of these buildings, the last recorded action in the files was a letter sent to the owner on October 3, 2005 (2 ½ years ago). The remaining building became a part of the Neighborhood Restore Development Fund program for abandoned buildings administered by the Housing Preservation and Development Corporation.

DOB officials stated that these are the worst cases and enforcing them is very difficult, noting that these cases take a lot of time and that some may never get resolved. After meeting with DOB officials regarding the status of these buildings, they indicated that they would send an inspector to check on the status of the buildings.

Recommendations

4. DOB should make timely use of its resources and intensify its efforts to ensure that violations in buildings in the Multi-Hazardous Re-Inspection Program are resolved.

DOB's Response: "The Department agrees and has already taken steps to strengthen its efforts in this area."

5. SEU should follow up with its legal staff regarding the status of these cases and determine additional steps that may be necessary to perform on a regular basis.

DOB's Response: "This was done. A recent inspection and review of the six (6) remaining properties referred to in the audit were completed. Of those, the violating conditions on five (5) properties had been corrected. Upon further inspection, the violations in the sixth property were determined to be non-hazardous."

The Certificate of Correction Audit Program Needs Improvement

DOB did not assess compliance for 33 percent of the 1,628 CCs submitted by respondents that were randomly selected by SEU for audit. Of the 31 cases whose violations DOB determined were not in fact corrected, DOB took no further action against 17 (55%).

DOB's Certificate of Correction Audit Program: was established to help ensure the integrity of the CC process. As in the case of the Hazardous Re-inspection Program, DOB's inspectors are often not able to gain access to properties to complete the re-inspection. In addition, the issuing units do not even visit some properties to re-inspect them within the required time frame. Taken together, one-third of the re-inspections were not performed. Again, while DOB lacks the authority to require access to properties to re-assess the violating condition, it should enhance its measures to follow up these violations. In addition, it should take steps to ensure that all the requested inspections are completed.

DOB's "Certificate of Correction Audit Program: Program Protocol 8/23/06" requires that each month SEU randomly select 10 percent of all CCs approved during the month for re-inspection. The SEU forwards the CCs to the unit that issued the violation for re-inspection.

The issuing unit's re-inspection determines whether or not the violating condition has actually been resolved as stated in the CC and is in compliance with applicable provisions of law. SEU sends a cover letter to each DOB unit requesting that re-inspection results be returned to it within 90 days.

Our review of the 1,628 CCs selected for audit by SEU for January through June 2007 revealed that inspectors assessed compliance for 1,083 (67%) of the CCs. The remaining 545, fully one third of the sample, were not re-inspected. Of the 1,083 CCs for which re-inspections were completed, inspectors found that 1,052 (97%) CCs were in compliance—the violations were corrected. Inspectors found 17 CCs for which the violation was not corrected, but no further action was taken, and no False Certification violations were issued. In 14 cases, a CC had been approved by DOB based on false information provided by the respondent. In these 14 cases, a new violation for the condition was issued; also, a False Certification violation was issued. A False Certification violation is a criminal misdemeanor punishable by up to six months in prison and a fine of up to \$5,000.

In 300 of the remaining 545 instances in which CCs were not re-inspected, inspectors were unable to gain access to the property. The program protocol does not include guidelines regarding re-inspections for CCs for which there is no-access to properties; however, various DOB officials informed us that if inspectors are unable to gain access during their first attempt, they are not required to attempt a re-inspection again. No action was taken to determine whether these 300 CCs were not falsely certified after the initial fruitless attempt because DOB does not require another attempt and lacks the authority to require access to buildings for re-inspections. In another 15 instances, DOB's BIS database did not contain enough information in the comments field for us to establish whether the CCs were in compliance. The remaining 230 re-inspections from the sample remain to be performed. While SEU reminds the issuing unit that these re-inspections remain to be completed, there is no assurance that the re-inspections will take place. If units do not conduct timely re-inspections and forward the results to SEU, there is no other way to determine whether respondents are falsifying their CCs, thereby allowing unsafe conditions to continue to exist.

In addition, our review of the SEU's "Awaiting Audit Results" report as of November 29, 2007, revealed there were 809 outstanding CC re-inspections and that 542 re-inspections were past the 90-day due date. These re-inspections were outstanding anywhere from 3 to 961 days, even though SEU sends a monthly reminder to the DOB units responsible for re-inspecting these CCs. Without these re-inspections, the integrity of the CCs may be called into question.

SEU provided us with a draft report of an assessment that DOB conducted on the Certificate of Correction Audit Program, "Update and Recommendations for Program Changes, 1/25/2006." It identified areas of concern similar to the findings of this audit. The assessment questioned whether the program is accomplishing its goals since there is a "low rate of non-compliance and number of False Certification/Failure to Certify violations issued . . . and a relatively high rate of no-access." The report outlines further program limitations. For instance, it states, "The program does not necessarily find the 'bad guys,' and when False Certification violations are issued, close to 50% are dismissed in the ECB court for various reasons." Moreover, the report recognizes that "due to heavy workloads of the issuing units . . . depending

on the unit, the audit inspections cannot be conducted promptly, and sometimes not at all.” This report made eight recommendations to improve the program; however, SEU officials stated that the report was never finalized and that there was no implementation plan based on the recommendations made.

As was stated earlier in this report, there is little incentive on a respondent’s part to allow DOB access to the premises if a cited violation has not been corrected. Accordingly, DOB’s decision not to attempt re-inspection of properties to which the inspectors did not gain access diminishes the effectiveness of the program and increases the risk that falsely filed CCs may go undetected. Considering the risk that falsely filed CCs present, DOB must enhance its efforts to ensure that a representative sample of CCs are inspected. DOB must also enhance its supervisory review of inspectors to ensure that reasonable efforts are made to gain access to properties to determine whether violations have been corrected.

Recommendations

DOB should:

6. Ensure that CCs selected as part of its Certificate of Correction Audit Program are actually re-inspected.

DOB’s Response: “The Department continues our aggressive efforts to strengthen this program and similar ones.”

7. Take additional measures, such as scheduling appointments, to gain access to properties to verify that violations were corrected as reported in CCs.

DOB’s Response: “The Department will consider additional procedural efforts and measures in an attempt to increase access to properties to verify that violations were corrected.”

8. Ensure that CCs are re-inspected and returned to SEU in a timely manner.

DOB’s Response: “The Department makes a good faith effort to inspect and return to the Special Enforcement Unit all Certificate of Corrections in a timely manner.”

Management Efforts

DOB has identified barriers to and weaknesses in its efforts to enforce the violations it issues. DOB is in the process of implementing different strategic plans to address these issues. However, while looking into different alternatives, DOB should be more aggressive in the use of its resources to avoid or diminish the risks associated with uncorrected violating conditions that threaten public safety.

DOB’s 2006-2009 Strategic Plan has set a goal of ensuring that contractors, architects, and engineers are held accountable for unsafe work. DOB, after identifying areas of concern,

requested changes in City and State laws and regulations so that architects and engineers who falsely certify that building plans comply with building code and zoning resolutions lose professional certification privileges.

DOB, in its proposal to the Office of Management and Budget for additional staff, stated, regarding the Certificate of Correction Audit Program, that it recognized the need to “1) increase the number of audits both in the office and in the field to determine if the certificate of correction is fraudulent, and 2) identify architects and owners who are fraudulently certifying that work has performed bringing properties into compliance.” Further, DOB stated: “To increase our access rate, we are currently working with the Law Department to allow the Department to issue ECB penalties and infractions to owners for failure to allow entry to inspect permitted work. . . . We are also considering asking for legislation that would allow penalties to accrue daily for no access. The final result would be that this program would be a pre-audit program and we would not accept the Certificate of Correction as valid and lift the violation until the inspection has proven the correction was performed according to code and all penalties have been paid.”

DOB officials also told us that they have instituted a policy of rotating staff among the five boroughs. The goal is to rotate 20 percent of staff (including chiefs, inspectors, and supervisors) within five years. While the rotation is primarily a protection against corruption, they state that it fosters “good change” within the units.

In August 2007, New York State law was changed to allow DOB to refuse applications from professionals who have previously filed false or fraudulent documents. In addition, 67 new staff lines were created to support DOB’s enforcement efforts.

Recommendation

9. DOB should continue to seek ways to improve and enhance its efforts to follow up hazardous violations and ensure that conditions are corrected.

Agency Response: “The Department will continue to improve and enhance its efforts.”

DOB Has Not Used the Denial of Permits to Enforce the Correction of Violations

During the course of the audit, DOB officials maintained that they lacked the authority to ensure that the violations they issue are corrected. However, when we discussed with those officials the feasibility of using the department’s role as issuer of permits to enforce the correction of violations and the payment of related penalties, they acknowledged that they had not assessed this concept and that they had looked into DOB’s authority when we brought it to their attention. While DOB officials agreed that denying permits to individuals or contractors with outstanding violations would be effective in enforcing the collection of fines and the correction of violating conditions, they emphasized that DOB does not have adequate legal power to deny permits based on outstanding violations or outstanding ECB fines.

In December 2007, DOB responded to our inquiries about its powers relating to issuing permits, stating that the agency had not “fully analyzed the contours” of its power and that its authority to withhold permits is limited to the circumstances provided in the New York City Administrative Code. More recently, in April 2008, DOB officials provided us with an internal memo that lays out the argument that DOB does not have the authority under the New York City Charter and the Administrative Code to withhold permits based on outstanding ECB fines. The memo makes special mention of the Department of Transportation (DOT), which is granted explicit authority under the Charter and the Administrative Code to refuse to issue permits to parties with outstanding fines.

Other than the above-mentioned memos, we have not received any documentation regarding work done by DOB to determine its authority to withhold permits based on outstanding violations. In the April 2008, memo, DOB refers to a case in which the court held that it was improper for DOB to revoke a permit based on outstanding violations that were under the jurisdiction of another agency and that DOB’s duties “deal ‘exclusively’ with structural and technical matters.” However, the memo is not clear about whether it would be improper for DOB to revoke a permit for outstanding violations issued under its own jurisdiction.

In the memo, there is acknowledgment that DOB opposed legislation in the past that would require the payment of fines prior to the issuance of a permit. For example, in 2004, two bills were introduced before the City Council that would require owners to pay outstanding fines and clear violations before being allowed to obtain a permit from DOB, with exception being made for an applicant needing a permit specifically to correct a violation or unsafe condition and for that applicant to enter into a payment agreement for unpaid fines. DOB took the position that withholding permits based on outstanding *fines* would encourage illegal construction and compromise compliance and safety, but it took no position on the proposed requirement that *violations* be corrected before it issued permits.

We are concerned that DOB has not made significant efforts to take advantage of its potential to require that outstanding violations be cured (and fines paid) before it issues new permits. As stated earlier, DOB officials acknowledged that the withholding of permits may be an effective way to compel respondents to correct outstanding violations. However, there is little evidence of DOB’s efforts to determine how it might use this method of enforcement. If new legislation is needed, DOB should be actively seeking legislative approval for changes in the City Charter and Administrative Code to enhance its authority. In light of the difficulties DOB has acknowledged that it faces in attempting to compel respondents to correct violations and pay fines, it is imperative that DOB explore every possible method that it can use for this purpose.

The above-mentioned memo discusses current efforts to compel respondents to pay outstanding fines. Various City agencies, including DOB and DOT, have begun limiting company name changes for licensed plumbers who owe significant penalties to the City. This action will help to limit the ability of plumbers with outstanding fines to obtain DOT permits. Additionally, the memo mentions two enforcement mechanisms that will be available to DOB under the new Construction Code (effective July 1, 2008). Under the Code, DOB will be authorized to revoke or suspend plumbers’ licenses based on any outstanding monies owed in relation to the performance of their trade, and to withhold final Certificates of Occupancy based

on penalties attached to properties. This Construction Code change may possibly offer a blueprint for DOB in any legislative attempts it might make to enhance its enforcement powers.

Recommendations

DOB should:

10. Work with the Law Department to expand DOB's authority to deny permits when there are outstanding violations and fines.

Agency Response: "... the Department will continue to work with the Law Department, and other City agencies, to define the parameters of DOB's authority for withholding permits, and expand it either under current law or by implementing necessary legislation."

11. If necessary, seek a change in legislation to allow it to deny permits when there are outstanding violations and fines.

Agency Response: "The Department is continuing to explore what changes in legislation are feasible to expand its authority for withholding permits where appropriate."



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June 6, 2008

Mr. John Graham
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The City of New York Office of the Comptroller
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New York, NY 10007-2341

RE: Final Audit Report Draft (MG07-125A)
Audit on the Follow-up of Violations Issued by the
Department of Buildings

Dear Mr. Graham:

Thank you for the opportunity to respond to the recommendations of the above-mentioned final audit report. I am pleased to note, as described further below, that the Department is in the process, or has implemented, all of the recommendations contained in the report.

As your report indicates, the objective of the Office of the Comptroller audit was to determine the adequacy of the Department of Buildings' efforts to follow-up issued violations to ensure that conditions are corrected. The audit, which covered Fiscal Year 2007, resulted in eleven (11) preliminary recommendations made by the Comptroller's Office. The content of these recommendations has helped the Department review and strengthen our procedures.

Attached is the Department's response to these specific eleven (11) recommendations, along with references to points that were addressed during the audit process itself and during the Exit Conference with your team.

Response to Recommendations

Department of Buildings' Re-Inspection of Open Hazardous ECB Violations is Lacking

Recommendation 1: Immediately implement a program of re-inspection of hazardous violations for those properties in which inspectors did not gain access and no LS4 forms, requesting property owners to call DOB and schedule and appointment for re-inspection, were left at the premises.

Agency Response: While your recommendation has some validity, the Department contends that the existing program meets this objective. We re-inspect all hazardous conditions three months after the original violation is issued in order to determine if the violating condition has been corrected, regardless of whether the respondent defaulted by failing to appear at an ECB hearing.

When our inspectors cannot access a property, an LS-4 is left at the premises and may result in an additional follow-up inspection, requested by the responsible party.

In response to the Findings of the Audit regarding the claim that no LS-4 was left in 66% of the instances reviewed by the auditors, the Department contends that there is no evidence to support the audit findings and subsequent recommendation. We agree that at the time of the audit, the database had no capacity for tracking whether an LS-4 was posted. Although some Department inspectors may occasionally indicate that they left an LS-4 in their comment section of the re-inspection form, this requirement has never been in our inspection protocol and therefore can not yield verifiable data.

In order to substantiate and duplicate the findings contained in the audit, during the exit conference the Department requested the auditors' relevant working papers that formed the basis of the conclusion that the Department had not left LS-4's in 66% of the reviewed cases. This request was refused. When told that such provision was appropriate under GAGAS, the response was "I have to ask my Director." No further response was provided and the Department believes this lack of transparency is contrary to the spirit of GAGAS.

However, we do agree that our procedures should be updated to reflect the fact that an LS-4 was left at the property. Going forward, this will occur both on the paperwork, and subsequently entered into the database.

Our own research shows that 60% of the no access re-inspections were related to original violations issued for occupancy infractions, specifically Single Room Occupancy (SRO) and Certificate of Occupancy (C of O) violations. Anecdotal evidence indicates that the respondents receiving this type of violation are the least likely to allow entry for a re-inspection and not likely to call for an appointment even if an LS-4 is posted or left. However, see Agency Response, below, to Recommendation 3 as to further steps the Department is taking with regard to this issue.

Recommendation 2:

Ensure that inspectors leave LS4 form letters at all properties to which they are not able to gain access to conduct a re-inspection.

Agency Response:

Please refer to the above response. The Department will consider the issuance of an updated procedure that includes documenting the issuance of an LS-4 and related operations.

Recommendation 3: Track all LS4 form letters and implement a program of phone calls or other forms of communication to follow up with property owners if they fail to call for a re-inspection appointment.

Agency Response: We have implemented an LS-4 tracking mechanism in the database that will cover those premises where a hazardous violation was issued in January 2008 and beyond. No access re-inspections will be conducted beginning in May 2008.

Currently the Department is also considering the introduction of a duplicate computer generated LS-4 to be issued every time the Special Operations Unit does not gain access to a hazardous re-inspection property. This duplicate LS-4 will be mailed to the owner's address to increase the likelihood that an owner who does not live at the hazardous re-inspection address will receive the notice. Duplicate computer copies of the LS-4 are currently issued when a complaint results in a field visit that does not result in access to the premises.

Multi-Hazardous Re-Inspection Program's Efforts Need To Be More Aggressive

Recommendation 4: DOB should make timely use of its resources and intensify its efforts to ensure that violations in buildings in the Multi-Hazardous Re-Inspection Program are resolved.

Agency Response: The Department agrees and has already taken steps to strengthen its efforts in this area. We re-inspect all hazardous conditions three (3) months after the original violation is issued. The Department reasserts that only building owners and other responsible parties can ultimately ensure that all violations are resolved. The Department's inspection and enforcement efforts can only act as a deterrent to recidivist behavior for violators who do not meet their statutory obligation.

Recommendation 5: SEU should follow up with its legal staff regarding the status of these cases and determine additional steps that may be necessary to perform on a regular basis.

Agency Response: This was done. A recent inspection and review of the six (6) remaining properties referred to in the audit were completed. Of those, the violating conditions on five (5) properties had been corrected. Upon further inspection, the violations on the sixth property were determined to be non-hazardous.

That said, in addition in March 2008, twenty five (25) additional buildings were identified as having three (3) or more open hazardous violations and were inspected. Of these, nineteen (19) buildings were issued DOB violations, and six (6) buildings were found to have either already corrected the violating conditions or the building was demolished, and no longer pose

a threat to public safety. Of the nineteen (19) buildings that received DOB violations, one (1) was issued a full vacate order, one (1) was issued an emergency declaration ordering the demolition of the building, and two (2) have come into compliance. The remaining sixteen (16) buildings that received DOB violations, have been re-inspected, and Criminal Court summonses will be issued shortly.

The Certificate of Correction Audit Program Needs Improvement

Recommendation 6: **Ensure that CCs selected as part of its Certificate of Correction Program are actually re-inspected.**

Agency Response: The Department continues our aggressive efforts to strengthen this program and similar ones. These have been ongoing and pre-date this audit. For example, Phase III of the Department's new Special Enforcement Program (SEP) was conceived in July 2007 and has been funded in the Mayor's 2009 Executive Budget. As part of this program, a new 8 person team has been funded to focus exclusively on violation re-inspections and will include inspections and audits of CCs.

Recommendation 7: **Take additional measures, such as scheduling appointments, to gain access to properties to verify that violations were corrected as reported in CCs.**

Agency Response: The Department will consider additional procedural efforts and measures in an attempt to increase access to properties to verify that violations were corrected.

Recommendation 8: **CCs are re-inspected and returned to SEU in a timely manner.**

Agency Response: The Department makes a good faith effort to inspect and return to the Special Enforcement Unit all Certificate of Corrections in a timely manner. The Department's inspectors employ numerous enforcement tools that require an immediate response (Stop Work Orders, Vacates, and Emergency Declarations) for those conditions that require them.

Management Efforts

Recommendation 9: **DOB should continue to seek ways to improve and enhance its efforts to follow up hazardous violations and ensure that conditions are corrected.**

Agency Response: The Department will continue to improve and enhance its efforts. See agency response #6.

Department of Buildings Has Not Used the Denial of Permits to Enforce the Correction of Violations

Recommendation 10: Work with the Law Department to expand DOB's authority to deny permits when there are outstanding violations and fines.

Agency Response: DOB has had ongoing discussions with the Law Department on this issue pre-dating the audit. The Department provided the auditors with a detailed legal memorandum describing the current law in this area, and the limitations it places on the Department's ability to withhold permits where there are outstanding violations and fines. However, the Department will continue to work with the Law Department, and other City agencies, to define the parameters of DOB's authority for withholding permits, and expand it either under current law or by implementing necessary legislation.

Recommendation 11: If necessary, seek a change in legislation to allow it to deny permits when there are outstanding violations and fines.

Agency Response: See agency response #10. The Department is continuing to explore what changes in legislation are feasible to expand its authority for withholding permits where appropriate.

Thanks you once again for giving us the opportunity to respond to the draft report. We look forward to receiving your final version.

Yours truly,



Robert LiMandri
Acting Commissioner

cc: Marilyn King Festa
 George Davis III
 Richard Bernard
 Sandra Nicholson