



City of New York

OFFICE OF THE COMPTROLLER

John C. Liu
COMPTROLLER



MANAGEMENT AUDIT

Tina Kim

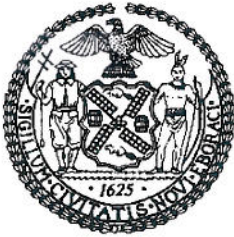
Deputy Comptroller for Audit

Audit Report on the Issuance and
Processing of Notices of Violation
by the Department of Buildings

MG12-132A

October 28, 2013

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

October 28, 2013

To the Residents of the City of New York:

My office has audited the controls of the Department of Buildings (DOB) over its processing of Notices of Violations (NOVs). We audit City entities such as this to increase accountability and ensure compliance with regulations.

The audit concluded that DOB has adequate controls over the processing of NOVs but needs to improve its recordkeeping. DOB has no procedures to reconcile NOVs that are issued with those that are voided, leading to inadequate and inconsistent recordkeeping. The audit also found that DOB does not enforce its policy pertaining to supervisory inspection reviews, hindering management's ability to ensure that personnel understand their responsibilities and are provided feedback regarding their performance.

To address these issues, the audit recommended that DOB: require that supervisors perform a periodic reconciliation of NOVs to ensure that all NOVs are accounted for; modify its procedures to require supervisors to sign the voided NOVs as an indication they have been reviewed; and ensure that supervisors conduct the required number of Training Inspections and Quality Assurance Review Inspections.

The results of the audit have been discussed with DOB officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Liu".

John C. Liu

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the Issuance and Processing of Notices of Violation by the Department of Buildings

MG12-132A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Buildings (DOB): (1) has adequate controls in place to ensure that Notices of Violations (NOVs) are properly processed and (2) has made adequate efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process.

DOB is responsible for the safe and lawful use of more than 975,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, New York State Multiple Dwelling Law, and other laws applicable to the construction and alteration of buildings. DOB conducts inspections in response to complaints and requests for inspections that come from the public, community boards, or City agencies. If it is determined upon inspection that a property does not comply with applicable laws, the inspector issues an NOV, citing the reasons for the violation.

An NOV can be primarily issued by directly serving the respondent with the NOV or by posting it in a conspicuous and visible location. Documents associated with the NOVs that have been issued and served are required to be reviewed by the unit supervisor and then forwarded to DOB's Administrative Enforcement Unit (AEU) for processing and entry into the Environmental Control Board's (ECB's) computer system, the Automated Information Management System (AIMS).

During Fiscal Years 2011 and 2012, ECB reported \$87 million and \$106 million, respectively, in revenue received from the issuance of fines, of which more than \$25 million (29 percent) and \$34 million (32 percent) was attributed to fines issued by DOB.

Audit Findings and Conclusions

This audit concluded that DOB has adequate controls over the processing of NOVs. However, its recordkeeping needs to be improved. Currently, DOB has no procedures to annually reconcile issued NOVs and compare them to voided NOVs, thereby hindering its ability to account for all NOVs. This has led to inadequate and inconsistent record keeping, as key steps in the tracking of NOVs are not documented and are left to the discretion of the various units and inspectors. As a result, DOB is unable to ensure that all NOVs are accounted for.

Regarding its efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process, DOB has implemented a number of controls, which our tests revealed are operational and utilized on an ongoing basis.

However, we were unable to assess the degree to which these controls were effective in reducing dismissals based on issuance deficiencies. This was due to the fact that there was not a significant decrease in the number of dismissals. Even in those instances where there was a reduction there may have been other variables that contributed to the reduction. As such, although we have noted that DOB has made efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process, we cannot render an opinion as to the adequacy of those efforts.

In addition, DOB does not enforce its policy pertaining to supervisory inspection reviews, which is an integral part of internal controls whereby management can ensure that goals and objectives are achieved and that personnel understand their responsibilities and obtain feedback about their performance. In addition, DOB does not have adequate oversight to ensure that voided NOVs are reviewed by supervisors to ensure that correct determinations were made when voiding the NOV.

Audit Recommendations

To address these weaknesses, we make four recommendations, including that DOB should:

- Require that supervisors perform a periodic reconciliation of NOVs to ensure that all NOVs, those that have been issued, as well as those that remain unissued, are accounted for.
- Ensure that the supervisors conduct the required number of Training Inspections and Quality Assurance Review Inspections in accordance with its guidelines.
- Modify its procedures to require supervisors to sign the voided NOVs as an indication they have been reviewed and to require supervisors to perform spot checks of voided NOVs to ensure that replacements are issued, when warranted.

Agency Response

DOB officials generally agreed with all four of the audit's recommendations, but stated that they are already in compliance with two of them (requiring that inspectors issue NOVs in sequential order and ensuring that supervisors conduct the required QA inspections). Because we did not find that DOB was in compliance during the period covered by our audit tests, we stand by our audit findings.

INTRODUCTION

Background

DOB is responsible for the safe and lawful use of more than 975,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, New York State Multiple Dwelling Law, and other laws applicable to the construction and alteration of buildings.

DOB conducts inspections in response to complaints and requests for inspections that come from the public, community boards, or City agencies. If it is determined upon inspection that a property does not comply with applicable laws, the inspector issues an NOV, citing the reasons for the violation. Currently, 19 of DOB's 24 units¹ are authorized to perform inspections and, if warranted, to issue violations. NOV's are adjudicated by ECB, a neutral administrative tribunal where hearings on tickets issued by City agencies are held. Penalties resulting from the issuance of an NOV are paid to ECB or to the Department of Finance.

An NOV can be primarily issued by directly serving the respondent with the NOV or by posting it in a conspicuous and visible location². The following are examples of details that, if not completed accurately, can lead to dismissal of the NOV during ECB hearings:

- Time and place of inspection
- Violating condition
- Section of the law that the violation pertains to
- Violation class³
- Inspector's signature

Documents associated with the NOV's that have been issued and served are required to be reviewed by the unit supervisor and then forwarded to DOB's AEU for processing and entry into ECB's computer system, AIMS. This is the process whereby ECB is alerted to the fact that NOV's are required to be adjudicated. The status of the violations adjudicated by ECB during the day is updated nightly on DOB's Buildings Information System (BIS) mainframe computer application via a download from AIMS. DOB's AEU is then responsible for tracking and monitoring NOV dispositions and dismissals as well as compiling data that depicts DOB's performance in various reports, including the Mayor's Management Report.

During Fiscal Years 2011 and 2012, ECB reported⁴ \$87 million and \$106 million, respectively, in revenue received from the issuance of fines, of which more than \$25 million (29 percent) and \$34 million (32 percent) was attributed to fines issued by DOB. In addition, according to the Fiscal Year 2011 OATH⁵/ECB Monthly Agency Reports, also known as the "Green Book," ECB received 63,376 violations issued by DOB, representing 11 percent of the total violations ECB received from City agencies. Similarly, during Fiscal Year 2012, ECB processed 56,755

1 The top five units that issued the most NOV's during Fiscal Year 2012 were: Special Operations, Elevator Division, Queens Construction, Quality of Life, and Brooklyn Construction.

2 The inspector must first attempt to serve an individual before using the second option.

3 Class 1 NOV's are classified as Immediately Hazardous violations, Class 2 are classified as Major Violations, and Class 3 are classified as Lesser Violations.

4 This was reported in the Comptroller's Annual Financial Report.

5 OATH is an acronym for Office of Administrative Trials and Hearings.

violations issued by DOB, representing 10 percent of the total violations ECB received from City agencies.

Objectives

The objectives of this audit are to determine whether DOB: (1) has adequate controls in place to ensure that NOV's are properly processed, and (2) has made adequate efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives except for the lack of data that would have allowed us to determine if DOB had made adequate efforts to reduce the number of NOV dismissals based on deficiencies in the issuance process (see the following paragraph). This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

DOB receives data from ECB regarding the reasons for NOV dismissals. However this data does not correlate directly with the controls that DOB has implemented in its efforts to reduce the rate of NOV dismissals due to deficiencies in the issuance process. Furthermore, data on the changes in NOV dismissal rates is not conclusive.

The scope of this audit covers Fiscal Years 2011 and 2012 (July 1, 2010, through June 30, 2012).

Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

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 and was discussed at an exit conference held on August 23, 2013. We submitted a draft report to DOB officials on September 23, 2013, with a request for comments. We received a written response from DOB officials on October 7, 2013.

In their response, DOB officials generally agreed with all four of the audit's recommendations, but stated that they are already in compliance with two of them (requiring that inspectors issue NOV's in sequential order and ensuring that supervisors conduct the required QA inspections). Because we did not find that DOB was in compliance during the period covered by our audit tests, we stand by our findings.

In addition, DOB officials took issue with a statement in the report's Scope and Methodology that the data received from ECB regarding the reasons for NOV dismissals does not correlate directly with the controls that DOB has implemented to reduce the rate of NOV dismissals. Officials argue that "DOB is able to extract pertinent information to focus its future trainings and corrective briefings." However, the controls identified by DOB for reducing the rate of NOV

dismissals occur at the stage when NOVs are issued. Conversely, the data reported by ECB is as of the date that the NOVs are adjudicated, which may be several months after the NOVs were issued. For example, NOVs adjudicated in June 2012 may include NOVs issued both as recently as April 2012 and as far back as December 2011. DOB did not provide information on how NOVs issued during specific periods of time, such as when DOB has instituted additional controls in its NOV issuance process, were eventually adjudicated. Consequently, the absence of such data precludes us from being able to determine the impact that DOB modifications have had on reducing the rate of NOV dismissals.

The full text of DOB's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOB has adequate controls over the processing of NOV's with the exception of its recordkeeping, which needs to be improved. Currently, DOB has no procedures to periodically reconcile issued NOV's and compare them to voided NOV's, thereby hindering its ability to account for all NOV's. This has led to inadequate and inconsistent recordkeeping, as key steps in the tracking of NOV's are not documented and are left to the discretion of the various units and inspectors. As a result, DOB is unable to ensure that all NOV's are accounted for.

Regarding its efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process, DOB has a number of controls, which our tests revealed are operational and utilized on an ongoing basis. These controls include the following:

- tracking and monitoring status of NOV's
- segregation of duties
- training
- production of management indicators

However, we were unable to assess the degree to which these controls were effective in reducing dismissals based on issuance deficiencies. This was due to the fact that there was not a significant decrease in the number of dismissals. Even in those instances where there was a reduction, there may have been other variables that contributed to the reduction. As such, although we have noted that DOB has made efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process, we cannot render an opinion as to the adequacy of those efforts.

In addition, DOB does not enforce its policy pertaining to supervisory inspection reviews, which is an integral part of internal controls whereby management can ensure that goals and objectives are achieved and that personnel understand their responsibilities and obtain feedback about their performance. In addition, DOB does not have adequate oversight to ensure that voided NOV's are reviewed by supervisors to ensure that correct determinations were made when voiding them. These weaknesses are discussed in detail in the following sections of this report.

Inadequate Oversight over the Issuance of NOV's

DOB lacks written policies and procedures pertaining to the maintenance of its NOV's, which in turn has resulted in inadequate recordkeeping. Because there is no requirement to periodically reconcile issued NOV's and compare them to voided NOV's, DOB is hindered in its ability to account for all NOV's. In addition, DOB lacks basic policy and procedures for the management of voided NOV's. This has resulted in one unit within DOB operating in a manner that was inconsistent with the other units. The fact that reconciliations are not performed led DOB officials to be unaware of the inconsistent practices.

Inadequate Recordkeeping

DOB does not have adequate procedures in place to ensure that all NOV's are accounted for. Upon our review of the 108,362 NOV's issued during Fiscal Years 2011 and 2012, we identified gaps in otherwise sequentially issued NOV's, ranging from one missing NOV number to as many

as 2 million missing NOV numbers. DOB officials cited the different numbering sequences used by each of the agency's units as the reason for the larger gaps in numbers. We randomly selected a sample of 20 gaps⁶ in NOVs for the two fiscal years and determined that there were a total of 286 missing NOVs. Upon further review of DOB's database, we found 226 of the NOVs had either not been issued sequentially or had been issued up to two years later (both are acceptable practices under DOB guidelines). DOB officials were eventually able to identify the disposition of another 35 NOVs: 25 were either voided or written in error; six were not yet issued by the inspector; and four were issued during Fiscal Year 2013. During audit fieldwork, DOB had been unable to locate the remaining 25 NOVs.

After the exit conference—more than three months after our initial request for documentation regarding the disposition of these NOVs—DOB officials provided us with information on their disposition. DOB provided documentation indicating that three of the NOVs were purportedly issued in June 2011. However, DOB did not provide a credible explanation as to why these NOVs were not recorded as such in the database the agency had provided to us. Regarding the remaining 22 NOVs, DOB stated that they had not been issued. However, they did not provide us with the pre-numbered unused NOVs as corroborating evidence.

While following up on the voided NOVs, we learned that the practice of the Sign Unit⁷ was to shred the voided violations and the corresponding log sheets rather than return the voided documents and the accompanying log sheets to the General Services area, as was the common practice of other DOB units. This was discovered by the director of AEU during our audit testing. He subsequently called for the practice to be stopped. We asked DOB officials whether anyone periodically performed reconciliations of the NOVs, and they responded that it would be "impractical" to do so, but did not elaborate. In reviewing their procedures, we identified a number of deficiencies which would hinder DOB's ability to reconcile its NOVs:

- DOB has no requirement that inspectors must issue NOVs in sequential order. Instead, it is left up to the discretion of each inspector in terms of the order that the violations are issued. Consequently, inspectors can conceivably use the NOVs from all three booklets interchangeably and in random order.
- DOB has no policy to record the unused numbers. When an inspector leaves DOB's employment, the unissued NOVs originally assigned to that inspector are not recorded.
- When voided NOVs need to be replaced, the replacement NOVs are not required to be uploaded into DOB's database for further tracking. It is left to the discretion of the individual units how to account for the voided NOVs and for their replacements.

As a result of DOB's current policies as indicated above, it would be virtually impossible for DOB to perform any form of a meaningful reconciliation of its NOVs or to be aware of missing NOVs, as was the case with the 25 missing NOVs from our sample. While missing NOVs may include unused NOV forms that were lost, they may also include NOVs that were inappropriately voided or issued NOVs that were never entered in the system. By not periodically tracking and reconciling NOVs, the risk that inappropriately voided NOVs may go undetected or that issued NOVs may not be forwarded to ECB is increased. In addition to a respondent not paying a fine because an NOV is not submitted to ECB, there is an increased risk that the violations related to that NOV may go unresolved.

⁶ The 20 gaps ranged from 10 missing numbers to 20 missing numbers.

⁷ This particular unit is responsible for issuing violations for illegal signs, usually pertaining to outdoor advertisements. The violations range from the building owners not having a permit through to violations of the New York City Zoning Resolution. The NOVs for this unit are drafted by the clerks in the office and signed off on by the inspector.

Recommendations

DOB should:

1. Require that supervisors perform a periodic reconciliation of NOV's to ensure that all NOV's-- those that have been issued as well as those that remain unissued-- are accounted for.

DOB Response: "The Department agrees with this recommendation. The Department has developed and implemented a new Standard Operating Procedure (SOP) which formally requires all supervisors to review Inspectors' NOV log sheets upon completion. This will further ensure accountability for NOV forms issued to them."

2. Require its inspectors to issue NOV's in sequential order and to fully utilize one NOV booklet before going on to the next booklet.

DOB Response: "The Department partially agrees with this recommendation. This has always been general Department practice and, in cases where this audit found it not practiced, these were exceptions, which have been addressed in our new SOP."

Auditor Comment: DOB's statement contradicts what officials told us throughout the audit and what our audit testing confirmed--namely, that the inspectors were *not* required to issue NOV's in sequential order. Nevertheless, we are pleased that DOB has now formalized this requirement in its new SOP.

Inadequate Reviews by Supervisors

Insufficient Number of Training and Reviews Conducted by Supervisors

DOB supervisors are not consistently performing the Training Inspections and Quality Assurance Review Inspections as required by DOB guidelines. Without sufficient supervision and oversight, there is a risk that inspectors may not be performing their responsibilities adequately and that NOV's will be dismissed based on errors in the issuance process.

Inspection supervisors are required to conduct bi-monthly supervisory inspections (one Training Inspection and one Quality Assurance Review Inspection every other month, for a total of 12 per year) for each inspector. Training Inspections consist of a joint inspection conducted by a supervisor to train or observe an inspector during a field inspection. The inspection offers an opportunity for the supervisors to provide feedback to the inspectors regarding their performance and assist the supervisors in identifying future training or performance opportunities that may be required. The Quality Assurance Review Inspection is a supervisory follow-up inspection performed on the same day that a field inspection is completed to review the work of the inspector and to assess compliance with agency requirements. These inspections allow the supervisors to assess the accuracy, reliability, and integrity of the work completed in the field. Upon the conclusion of each inspection, supervisors are required to provide the inspectors with a rating.

Supervisors were required to perform 1,134 Training Inspections and 1,134 Quality Assurance Review inspections for the 189⁸ inspectors employed at DOB throughout Fiscal Year 2012. Upon further review, we found that 80 (42 percent) of the 189 inspectors had less than the required Quality Assurance Reviews during the year, (ranging from 0-5 inspections) and 82 (43 percent) of the 189 inspectors had less than the required Training Inspections during the year (ranging from 0-5 inspections). When analyzed aggregately, we found that 89 (47 percent) of the 189 inspectors were missing either required amounts of the Quality Assurance Reviews and/or the Training Inspections.

In addition, we found that the number of inspections and reviews were provided in a disproportionate manner, whereby 77 (41 percent) of the 189 inspectors received a total of 490 inspections in excess of the required amounts. These inspectors received more than the required 12 inspections during the year, ranging from 13 inspections to 33 inspections for the year (an excess of 1 through 21 excess inspections). While we are not criticizing the provision of extra training, especially in instances when warranted, it should not be at the expense of others, as was the case with the 89 inspectors who received less than the required 12 inspections during the year. DOB has a mechanism in place—monthly monitoring reports—to monitor whether inspectors are receiving the required number of inspections during a year. These reports are sent to the supervisors to inform them of the status of the training received by the inspectors, thereby alerting them about additional training that may be required. We reviewed the monitoring reports for the scope period to determine whether a sample of 20 inspectors with insufficient training (as reported in the QA inspection database) were noted in the monitoring reports as not having received the required training. Our review found that five of the 20 inspectors were not listed on the monthly monitoring reports. If the monitoring reports are not up-to-date and accurate, DOB supervisors will be hindered in their efforts to use the reports for the intended purpose of ensuring that the inspectors receive all of the required training.

DOB Response: “...internal analysis showed that our inspectorial staff completed nearly 93% of the 2,028 Agency required Quality Assurance inspections during Fiscal Year 2012.”

Auditor Comment: We respectfully disagree with the numbers cited by DOB. DOB does not indicate the methodology it used to arrive at its figure of 2,028 required QA inspections. As we state in this report, the 189 inspectors employed during Fiscal Year 2012 were required to have a total of 2,268 QA inspections during the year (189 times 12 inspections). Moreover, DOB's claim that there was a 93 percent completion rate of QA inspections is misleading because it includes excess training provided to inspectors who had already received the required 12 inspections for the year, apparently at the expense of one or more required QA inspections that was not provided to almost half (47 percent) of the agency's inspectors.

According to data maintained by DOB, failure to complete an NOV properly is one of the reasons why violations are dismissed at the ECB hearing. When we conducted an analysis of the population of NOVs issued during Fiscal Year 2012 and identified the inspectors with more than 100 dismissals, we found that five out of the 11 inspectors who had more than 100 dismissals also had less than the required number of inspection reviews during the fiscal year. The five inspectors had between four and 11 inspection reviews during the year instead of the 12 that were required⁹. Our analysis of the NOVs dismissed by ECB during Fiscal Years 2009-

⁸ According to DOB guidelines, supervisors must complete on a bi-monthly basis one Training Inspection and one Quality Assessment Review for each inspector. This amounts to 6 annual Training Inspections x 189 inspectors = 1134 Inspections and 6 annual Quality Assessment Reviews x 189 inspectors = 1134, for a total of 2268 inspections and reviews.

⁹ We verified the length of time the inspectors were working for DOB and found that none of the inspectors were new. In fact, all five of the inspectors had been with DOB for many years, with the newest inspector starting in September 2008.

2012 revealed that more than 50 percent of them were categorized as “No Violation – Dismissal on Merit.” According to DOB officials, “this is usually a field supervisor training issue for the inspector in identifying a violating condition.”

In reviewing the reasons that NOVs were dismissed, we identified three additional categories—“Defective NOV,” “Defective Service,” and “Improper Party Cited”—that appear to be indicative, at least in part, of deficiencies on DOB’s part. During the audit scope period (Fiscal Years 2011 and 2012), approximately 16 percent of the NOVs issued by DOB were dismissed for the four reasons stated below. Table I shows a breakdown by category.

Table I
NOVs Dismissed for DOB-related Reasons
Fiscal Years 2011-2012

Fiscal Year	Categories				Total	NOVs Issued by DOB	% of Total NOVs Issued by DOB that Were Dismissed ¹⁰
	Defective NOV	Defective Service	Improper Party Cited	No Violation - Dismissed on Merit			
2011	742	440	1,304	7,436	9,922	63,376	15.7%
2012	560	575	1,258	6,625	9,018	56,755	15.9%

Performing the required supervisory inspections throughout the year would provide the supervisors with more opportunity to evaluate the inspectors’ performance and provide constructive feedback to reduce the number and percentage of dismissals in the above-mentioned categories.

Inadequate Reviews for Voided NOVs

DOB does not have adequate oversight to ensure that voided NOVs are reviewed by supervisors and, if necessary, replaced, thereby creating an environment where errors can occur and remain undetected. Currently, if an inspector realizes that a mistake was made during the course of preparing an NOV¹¹, the inspector is required to void the violation and bring it back to the office for supervisory review. The supervisor reviews the voided NOV to determine whether it had been correctly voided and to ascertain whether a replacement NOV should be issued prior to sending it to AEU for entry into DOB’s database. Although the supervisory review is critical in ensuring that a correct determination was made regarding the voided NOV, DOB has no formal policy regarding supervisory reviews of voided NOVs.

We randomly selected a sample of 40 voided NOVs and found that 15 (38 percent) of the NOVs had no evidence of supervisory review. If a voided NOV is not properly reviewed and

¹⁰ These numbers reflect the percentage of dismissals that are a result of possible DOB deficiencies.

¹¹ The NOV contains various sections that must be completed at the time of issues, indicating among other things, the time and place of the inspection, the violating condition, the section of the building code the violation pertains to, the violation class, a description of the violating condition, and the course of action the respondent needs to take to be in compliance with applicable regulations.

subsequently replaced with the correct NOV, there is an increased risk that the condition will not be corrected and that potentially hazardous conditions can remain in existence. As such, in instances where the inspector is required to void the NOV because of an error on the form and issue a replacement NOV, supervisors should exercise due care in reviewing voided NOVs to ensure that they were properly voided and that the voided NOV is followed up with a replacement NOV. Without proof of supervisory reviews, we have limited assurance that these voided NOVs were reviewed to ensure that a proper course of action had been taken by the inspectors.

Recommendations

DOB should:

3. Ensure that the supervisors conduct the required number of Training Inspections and Quality Assurance Review Inspections in accordance with its guidelines.

DOB Response: “The Department partially agrees with this recommendation. Quality Assurance Inspections are performed at the inspector level and, as your audit stated, in many cases we performed excessive amounts of Quality Assurance (QA) Inspections.

While the Department will continue to give new inspectors additional QA inspections as needed, we do agree that at a minimum, all inspectors need to receive the required number of QA inspections as per our established guidelines. ...we disagree with the assertion that one missed Quality Assurance Inspection directly correlates to NOV issuance problems.”

Auditor Comment: The audit makes no assertion that one missed QA inspection *directly* correlates to NOV issuance problems. At the same time, we do not believe that DOB can make the counter assertion that it has *no* impact on possible issuance problems. Notwithstanding DOB’s response to our recommendation, we are pleased that DOB agrees that its inspectors should receive the required number of QA inspections.

4. Modify its procedures to require supervisors to sign the voided NOVs as an indication they have been reviewed and to require supervisors to perform spot checks of voided NOVs to ensure that replacements are issued, when warranted.

DOB Response: “The Department agrees with this recommendation. Within our aforementioned SOP, we have included strict directions to supervisors to verify voided NOV forms and to inspectors to note replacement NOV numbers on voided forms, as well as on the Inspector’s NOV log sheet. In addition, our SOP allows for the Department to ‘pursue appropriate disciplinary action against any employee responsible’ for a breach of any of the above procedures.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives except for the lack of data that would have allowed us to determine if DOB had made adequate efforts to reduce the number of NOV dismissals based on deficiencies in the issuance process (see the following paragraph). This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

DOB receives data from ECB regarding the reasons for NOV dismissals. However this data does not correlate directly with the controls that DOB has implemented in its efforts to reduce the rate of NOV dismissals due to deficiencies in the issuance process. Furthermore, data on the changes in NOV dismissal rates is not conclusive.

The audit scope was Fiscal Years 2011 and 2012.

To gain an understanding of the policies and procedures for issuing and processing NOVs and to determine whether DOB has adequate controls in place, we conducted walk-throughs and observations of several DOB units and interviewed DOB officials and personnel involved with the process.

To further understand the policies, procedures, and regulations governing the NOV process, we reviewed the information provided by DOB. The following were used as audit criteria:

- New York City Department of Buildings Standard Operating Procedure: How to Prepare an ECB Violation, SOP No. 20060906, version No. 3.0.0, which sets forth the guidelines for the preparation and review of the NOV in order to avoid ECB dismissal.
- Inspector Training Academy, Administrative Enforcement Session No. 6, which provides a step-by-step approach and instruction for writing effective and successful notices of violation.
- Master New Code ECB Penalty Schedule, which outlines the penalties associated with each class of violation.
- Local Law 11 of 1998 reissued June 23, 2004, which addresses periodic inspection of the exterior walls and appurtenances of buildings greater than six stories in height.
- AEU Written In Error (WIE) Procedures, dated September 28, 2007, which provide direction for processing violations which are determined to have been written in error.
- Quality Assurance inspection guidelines, issued in 2006 and updated on January 31, 2011, used primarily to assess the accuracy, reliability, and integrity of the work of inspectors on a bi-monthly basis.

We interviewed the Executive Director of AEU, who provided an overview of the issuing and processing of NOVs. We also interviewed the Deputy Director of Enforcement Analysis to gain firsthand knowledge of how NOV dismissals are tracked and reported.

To obtain an understanding of the inspector's responsibilities in issuing NOVs, we interviewed six inspectors and six inspector supervisors from the following units: Elevators, Quality of Life,

Buildings Enforcement Safety Team (BEST), Manhattan Construction, and Plumbing. We also accompanied three field inspectors from three different units authorized to issue NOVs to observe their daily work activities (e.g., conducting inspections, writing and serving violations, performing re-inspections.) To obtain an understanding of the processing of NOVs, we interviewed the AEU clerk who enters the information from the NOV into AIMS and the supervisor of the unit who is responsible for conducting spot checks to ensure the data is accurately entered. We reviewed an organizational chart indicating agency lines of responsibility for the issuance and processing of NOVs and ensured that there was adequate segregation of duties in the processing of NOVs.

To obtain an understanding of BIS, we met with officials from the Information Technology (IT) unit and we reviewed documentation of record layouts and field names for the database. We also obtained a statement from IT officials attesting to the fact that the population of NOVs for the two fiscal years satisfied the request for the complete population of NOVs.

We reviewed the population of 108,362 NOVs issued by the inspectors during Fiscal Years 2011 and 2012 and tested the consistency and reasonableness of the data by reviewing the supporting documents for any inconsistencies found. We checked whether the NOVs were sequentially numbered and asked DOB to explain the reasons that gaps exist. To test the accuracy of the data in DOB's database, we randomly selected a sample of 30 NOVs (15 for each of the two fiscal years) and compared the information entered in BIS for each NOV to the information captured in DOB's manual files. We also randomly selected a sample of 30 NOVs from the manual files (15 for each of the two fiscal years) and tested for the completeness and accuracy of the information contained in BIS.

To determine whether DOB's supervisory personnel are conducting the required number of Quality Assurance inspections, we obtained a listing of 205 DOB inspectors and omitted 16 who had been employed for only part of Fiscal Year 2012. We then obtained and analyzed an electronic file containing all the QA inspections and reviews performed for the remaining 189 inspectors employed at DOB throughout Fiscal Year 2012. To determine the units with the most dismissals, we sorted the population of NOVs and identified all the NOVs that were dismissed. Then we sorted the dismissals by dismissal type, infraction code, inspector, dollar amount, and aggravated offense level. Additionally, we obtained the start date of the inspectors who issued the most dismissed NOVs as well as the training classes they attended during Fiscal Year 2012.

We obtained and reviewed an electronic file containing all the NOVs that were voided during the two fiscal years to determine whether any of the NOVs required replacement NOVs to be issued. We also reviewed a random sample of 40 hard copies of the voided NOVs and compared them to the electronic listing to determine whether the database was complete. For each of the fiscal years, we selected a random sample of 10 numbering gaps in the population of NOVs issued to determine whether the gaps resulted from voided NOVs or whether the NOVs were returned to General Services because they were unused. We then obtained the completed inspector log sheets corresponding to the break in sequence to determine whether the gaps were accounted for. If the NOV was issued, we obtained a printout of the violation details from BIS. If the NOV was voided, we obtained a copy of the voided NOV, when available.

The results of the above tests of the various samples, while not projectable to their respective populations, provided a reasonable basis to assess the adequacy of DOB's controls over the processing and issuance of the NOVs and its effort to reduce the number of NOVs dismissed based on deficiencies in its issuance process.



Robert D. LiMandri
Commissioner
rlimandri@buildings.nyc.gov

280 Broadway
7th Floor
New York, NY 10007
nyc.gov/buildings

+1 212 393 2001 tel
+1 212 566 3785 fax

October 7, 2013

Ms. Tina Kim
Deputy Comptroller
City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

**Re: Audit Report on the Issuance and Processing of Notices of Violation by
the Department of Buildings – MG12-132A**

Dear Deputy Comptroller Kim:

Thank you for the opportunity to respond to the recommendations in the above mentioned audit report. We view your input as assistance in furthering our commitment to providing quality public service while maximizing our resources.

As your report indicates, the objectives of the audit were to determine whether the Department of Buildings (DOB): (1) has adequate controls in place to ensure that Notices of Violations (NOVs) are properly processed, and (2) has made adequate efforts to reduce the number of NOV dismissals based on deficiencies in its issuance process. The audit, which covered Fiscal Years 2011 and 2012, resulted in four (4) recommendations made by the Comptroller's Office. The content of these recommendations has helped the Department to critically review and strengthen its procedures.

The Department of Buildings is committed to ensure that Notices of Violation comply with program policies that are meant to safeguard the public. The Department develops and monitors the supervisory oversight of inspections and documentation, which are integral parts of internal controls.

While your recommendations have validity, we believe it is important to comment on, and clarify, some of the statements made.

Clarifying Comments:

Scope and Methodology Statement

a). The report indicates that the data received from ECB does not correlate directly with the controls that the Department has implemented in efforts to reduce the rate of NOV dismissals due to deficiencies in the issuance process. Although ECB data may not accurately reflect dismissal reasons, DOB is able to extract pertinent information to focus its future trainings and corrective briefings. Furthermore, DOB's Administrative Enforcement Unit attorneys review every dismissed violation to ascertain whether an appeal is in order. Otherwise, the information is shared with the issuing unit to address any errors, and if warranted, reissue the violation. When systemic issues have been identified, those are transmitted to inspection units via quarterly training sessions.

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Findings and Recommendations

b). *DOB does not enforce its policy pertaining to supervisory inspection reviews.* In order to substantiate and duplicate these findings, DOB would need to have been given the opportunity to examine the auditors' working papers. However, internal analysis showed that our inspectorial staff completed nearly 93% of the 2,028 Agency required Quality Assurance inspections during Fiscal Year 2012.

Inadequate Recordkeeping

c). *The report stated that there were gaps of over 2 million missing NOV numbers.* Inclusion of this statement is both inaccurate and misleading. DOB communicated to the auditors multiple times, that violation numbers are not in one sequence, and therefore, should not be categorized as missing. NOVs are ordered with differing sequence numbers according to different inspectorial units. As the audit pointed out, there were only 22 NOV forms not located – ones that were most likely never processed.

Following are the Department's responses to the four (4) 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:

Recommendation #1: Require that supervisors perform a periodic reconciliation of NOVs to ensure that all NOVs-- those that have been issued as well as those that remain unissued-- are accounted for.

Agency Response: The Department agrees with this recommendation. The Department has developed and implemented a new Standard Operating Procedure (SOP) which formally requires all supervisors to review Inspectors' NOV log sheets upon completion. This will further ensure accountability for NOV forms issued to them.

Recommendation #2: Require its inspectors to issue NOVs in sequential order and to fully utilize one NOV booklet before going on to the next booklet.

Agency Response: The Department partially agrees with this recommendation. This has always been general Department practice and, in cases where this audit found it not practiced, these were exceptions, which have been addressed in our new SOP.

Recommendation #3: Ensure that the supervisors conduct the required number of Training Inspections and Quality Assurance Review Inspections in accordance with its guidelines.

Agency Response: The Department partially agrees with this recommendation. Quality Assurance Inspections are performed at the inspector level and, as your audit stated, in many cases we performed excessive amounts of Quality Assurance (QA) Inspections.

While the Department will continue to give new inspectors additional QA inspections as needed, we do agree that at a minimum, all inspectors need to receive the required number of QA inspections as per our established guidelines. In addition, while 1,014 Review and 1,014 Training Inspections were required of our inspectorial staff during Fiscal Year 2012, on average, our inspectors received greater than five of each type during that timeframe. Furthermore, we disagree with the assertion that one missed Quality Assurance Inspection directly correlates to NOV issuance problems.

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Recommendation #4: Modify its procedures to require supervisors to sign the voided NOVs as an indication they have been reviewed and to require supervisors to perform spot checks of voided NOVs to ensure that replacements are issued, when warranted.

Agency Response: The Department agrees with this recommendation. Within our aforementioned SOP, we have included strict directions to supervisors to verify voided NOV forms and to inspectors to note replacement NOV numbers on voided forms, as well as on the Inspector's NOV log sheet. In addition, our SOP allows for the Department to "pursue appropriate disciplinary action against any employee responsible" for a breach of any of the above procedures.

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

Sincerely,



Robert D. LiMandri
Commissioner

cc: George Davis III
Donald Ranshte
Renaldo Hylton
Joshua Florsheim
Kerry Castro