



# City of New York

## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## MANAGEMENT AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Audit Report on the Department of  
Buildings' Controls over the Processing  
of Construction Permits

MG15-112A

June 17, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
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NEW YORK, NY 10007

SCOTT M. STRINGER  
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June 17, 2016

To the Residents of the City of New York:

My office has audited the New York City Department of Building's (DOB) controls over the processing of its professionally certified construction permit applications. We audit City entities such as DOB as a means of increasing accountability and ensuring that City programs operate as intended and in the best interest of the public.

The audit found that the controls established by DOB for the processing of professionally certified construction permit applications are generally implemented on a consistent basis. However, the audit found weaknesses in DOB's system that increase the risk that permits are granted for work that does not comply with City law and rules. In particular, the audit found that DOB did not follow its own procedures and did not conduct audits of 20 percent of professionally certified permit applications for which permits have been issued. Consequently, DOB's failure to conduct the targeted percentage of audits may hinder its ability to ensure that applicants comply with applicable laws and also reduces the agency's ability to identify instances of non-compliance and take corrective action as warranted, potentially increasing the risk to public safety.

The audit makes three recommendations to DOB, including that it should ensure that the required follow-up action is taken in all instances where professionally certified permits are found not in compliance with required guidelines and that it should review its revisions of the professionally certification audit goals (implemented in the wake of this audit) to ensure that it fully takes into account the potential risks to public safety from the rate and types of non-compliance in professionally certified permit applications that have been observed in its audits.

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](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Audit Report on the Department of Buildings' Controls over the Processing of Construction Permits

MG15-112A

### EXECUTIVE SUMMARY

The New York City Department of Buildings (DOB) is charged with ensuring the safe and lawful use of over 1,000,000 buildings and properties located in New York City (the City) by enforcing the City's Building Code, Electrical Code, Zoning Resolution, the New York State Labor Law and the New York State Multiple Dwelling Law. Among other things, DOB performs plan examinations, issues construction permits, inspects properties, license trades, issues Certificates of Occupancy, and Place of Assembly permits. Most of the permit applications require a New York State licensed professional engineer (PE) or registered architect (RA) to prepare construction drawings (plans) that are included in the applications submitted to DOB for approval.

Work permit applications may be submitted either directly by the property owner or by a PE or RA on the property owner's behalf through DOB's Professional Certification Program. Work permit applications submitted by property owners undergo a review by a DOB plan examiner to ensure compliance with applicable building and construction rules and regulations. However, work permit applications submitted by PEs or RAs do not undergo a plan examiner review so long as they are certified by one of those licensed professionals as compliant with the applicable rules and regulations. To monitor the compliance of the professionally certified applications, during the audit scope period DOB required the weekly audits of 20 percent of the professionally certified applications for which permits were issued that week to verify that all necessary documents had been provided, as well as that the application was in compliance with applicable building and construction rules and regulations.<sup>1</sup>

The objective of this audit was to determine whether the controls established by DOB for the processing of professionally certified construction applications are implemented on a consistent basis.

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<sup>1</sup> In addition to ensuring that the proper documents are submitted, the focus of these internal DOB audits is a review of the following: 1) zoning regulations and the accuracy of calculations; 2) fire protection and occupant safety; 3) egress requirements; 4) access for persons with disabilities; and 5) appropriateness of plan work application fees.

## Audit Findings and Conclusions

The audit found that the controls established by DOB for the processing of professionally certified construction applications are generally implemented on a consistent basis, including that there is an appropriate segregation of duties; that there is an adequate application tracking system; and that DOB verifies that the registration of the license of the professional affiliated with the construction work and associated permit is current. However, the audit found weaknesses in DOB's implementation of its procedures that increase the risk that permits are granted for work that does not comply with City law and rules. In particular, we found that DOB did not conduct audits of 20 percent of professionally certified applications in accordance with its own requirements, but rather conducts just over half that amount.

In April 2016, DOB revised its internal audit requirements for audits of professionally certified applications, and replaced the 20 percent sample size with a "representative" sample based on a revised risk paradigm. However, we have concerns about DOB's implementation of this new policy. First, DOB has not completed its revision of the risk paradigm upon which this new policy is based, so the agency cannot be assured that the "representative" samples being selected under this policy take into account all appropriate risk factors. Second, DOB does not indicate how this likely lower number of audits will be used to provide a level of audit coverage that is comparable to what the previous policy was intended to provide. Decreasing the targeted percentage of applications to be audited increases the risk that issues related to the other applications that would have otherwise been audited will remain undetected.

## Audit Recommendations

To address the issues raised by this audit, we make three recommendations, including that DOB should:

- Ensure that the required follow-up action is taken in all instances where permits are not in compliance with required guidelines.
- Continue to seek additional staff to handle the increased work load due to the increase in the number of professionally certified applications.
- Review its revisions of the professionally certified application audit goals for the agency to ensure that it fully takes into account the potential risks to public safety from the rate and types of non-compliance that have been observed in its audits. This review should include the completion of its risk paradigm so as to enable DOB to identify the specific characteristics of its representative samples.

## Agency Response

In their response, DOB officials agreed with two of the audit's three recommendations, stating that they have already taken action to begin implementing them, and partially agreed with the remaining recommendation.

# AUDIT REPORT

## Background

DOB is charged with ensuring the safe and lawful use of over 1,000,000 buildings and properties by, among other things, enforcing the City's Building Code, Electrical Code, Zoning Resolution, New York State Labor Law and New York State Multiple Dwelling Law. DOB performs plan examinations, issues construction permits, inspects properties, license trades, issues Certificates of Occupancy, and Place of Assembly permits. Anyone who intends to demolish, build an addition, or erect a new structure must obtain a building permit from DOB to ensure that the resulting property structure complies with applicable laws.

The primary construction permit applications processed by DOB are:

- New Building (NB),
- Type-1 (ALT1) Alterations,
- Type-2 (ALT2) Alterations, and
- Type-3 (ALT3) Alterations.<sup>2</sup>

Work permit applications for construction permits can be submitted either in person at a DOB borough office or electronically via NYC Development Hub, an online system that allows for the electronic processing of applications.<sup>3</sup> For all work permit applications except ALT3s, a New York State licensed PE or RA is required to prepare construction drawings (plans) that are included in the applications submitted to DOB for approval.

Work permit applications may be submitted directly by the property owner. In those cases, the applications undergo a review by a DOB plan examiner to ensure compliance with applicable building and construction rules and regulations. Where issues are found during that review, the applicant is given an opportunity to submit a revised plan in order to obtain the permit.

Work permit applications may also be submitted by a PE or RA through DOB's Professional Certification Program. In such instances, PEs and RAs must certify that the plans being filed with DOB are in compliance with applicable rules and regulations. These plans do not undergo a plan examiner review, effectively reducing the amount of time that a property owner has to wait for a permit. During our audit period, 50,685 (54 percent) of the 94,428 permit applications received by DOB were professionally certified.

During the audit scope period, in lieu of the plan examination review, DOB's policy required weekly audits of 20 percent of the professionally certified applications for which permits were issued that week to verify that all necessary documents have been provided, as well as that the application is in compliance with applicable building and construction rules and regulations. These audits were to be conducted within 10 business days of the permits being issued. At the completion of the job, DOB issues either a Final Certificate of Occupancy (for NB and ALT1 jobs) or a Letter of Completion (for ALT2 and ALT3 jobs). Applicants can review the status of their applications through DOB's Building Information System (BIS) website.

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<sup>2</sup> NB – Construction of new structures; ALT1 – Major alterations that will change use, egress or occupancy; ALT2 – Multiple types of work, not affecting use, egress or occupancy; ALT3 – One type of minor work, not affecting use, egress or occupancy.

<sup>3</sup> This is the initial application for the construction permit process.

## Objective

To determine whether the controls established by DOB for the processing of professionally certified construction applications are implemented on a consistent basis.

## 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. 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.

The primary scope of this audit was Fiscal Year 2015 through November 12, 2015.<sup>4</sup> Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests conducted.

## Discussion of Audit Results with DOB

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 discussed at an exit conference held on May 13, 2016. We submitted a draft report to DOB on May 19, 2016, with a request for comments. We received a written response from DOB on June 3, 2016. In their response, DOB officials agreed with two of the audit's three recommendations, stating that they have already taken action to begin implementing them, and partially agreed with the remaining recommendation.

However, DOB's response also includes several inaccurate statements. In particular, DOB states,

The Comptroller's Office never provided the Department of Buildings with a well-defined audit scope, which gave it the capability to expand the scope as it felt necessary; ultimately, targeting the Professional Self-Certification Application Program, contrary to the title of the audit report. Perhaps, this is why your audit does not point out that in addition to Random Audits, the Department also performs Zoning Reviews and Special Audits as part of its monitoring of the Professional Self-certification Application Program. When considered as a whole, these activities far exceed the twenty percent Department mandated audit target, of which your audit is focused. This should be mentioned.

DOB's response reflects a fundamental misunderstanding of the audit process. An audit is intended to identify the risks in an entity's operations. DOB officials themselves informed us that work permit applications certified by licensed professionals do not receive the same degree of scrutiny prior to the issuance of the permits as work permit applications submitted by property owners. Hence, this is the area appropriately focused on in this audit. Additionally, DOB argues that Zoning Reviews and Special Audits should have been included in a determination of whether the 20 percent target for random reviews has been met. However, under DOB's procedures,

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<sup>4</sup> We extended our initial scope of Fiscal Year 2015 through November 12, 2015 to test the most recently professionally certified applications that were audited by DOB and that were available at the time of our audit.

these other reviews were separate from and in addition to the random review requirement. According to DOB's procedures, its 20 percent target was applicable to the random reviews only. Consequently, we find this claim without merit.

In its response, DOB also cites procedural changes that were not in effect during the scope period of our audit but that were instituted near the conclusion of our audit testing. Furthermore, a number of these procedures—specifically regarding the selection of professionally certified applications for audit—are still in the developmental stage. Consequently, we cannot assess the degree to which these efforts adequately address the issues discussed in this report. It is, however, noteworthy that the additional measures cited by DOB throughout its response reflect an acknowledgement by the agency that it needed to impose additional precautionary measures over the Professional Self-Certification Application Program, which is the central finding of the audit.

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



## FINDINGS AND RECOMMENDATIONS

The audit found that the controls established by DOB for the processing of professionally certified construction applications are implemented on a consistent basis, including that there is an appropriate segregation of duties; that there is an adequate application tracking system; and that DOB verifies that the registration of the license of the professional affiliated with the construction work and associated permit is current. However, the audit found weaknesses in DOB's system that increase the risk that permits are granted for work that does not comply with City law and rules. In particular, we found that DOB did not conduct audits of 20 percent of professionally certified applications for which permits have been issued in accordance with its own procedures, but rather conducted just over half that amount. Officials cited insufficient resources as the primary reason for their failing to meet their own goals. These DOB internal audits are a key control to mitigating the risk of improper professional certifications. Consequently, DOB's failure to conduct the targeted percentage of audits may hinder its ability to ensure that applicants comply with applicable laws. Further, it reduces DOB's ability to identify instances of non-compliance and take corrective action as warranted and as a result, may potentially increase the risk to public safety.

The details of these findings are discussed in the following sections of this report.

### **Controls Over the Processing of Construction Permit Applications Were Generally Implemented on a Consistent Basis, With Some Exceptions for Professionally Certified Applications**

With regard to the DOB's overall procedures for receiving and processing construction permit applications, the audit found that DOB has established the following controls for the processing of these applications, including those that are professionally certified:

- Segregation of the responsibilities for approving applications, examining plans, issuing construction permits, and performing inspections among various persons.
- Promulgation of written policies and procedures specific to the roles, functions and responsibilities of personnel responsible for processing the permit applications.
- Development of an electronic tracking system to ensure that all applications are accounted for. BIS automatically generates a job number upon receiving an application and using this number, the applicant can view the status of the application online.
- Verification that the general contractor (GC) has the required insurance covering disability, workers compensation and overall general liability prior to the permit's issuance.
- Verification that the registration of the license of the professionals (GC, PE, and RA) affiliated with the construction permits is current.<sup>5</sup>

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<sup>5</sup> We verified the validity of the registered licenses for 160 professionals affiliated with the 79 professionally certified applications we sampled. These professionals were comprised of 37 RAs and 27 PEs who certified that the applications and plans filed with DOB complied with all applicable laws, as well as 96 GCs responsible for obtaining permits to conduct construction-related work. We found that the licenses for 158 (99%) of the 160 professionals were valid (We found no record for one GC and the license for another was invalid.)

Based on our walkthroughs, observations, and review of sampled applications, we found that the above-mentioned controls were in operation and appeared to be followed on a consistent basis. However, we also found that DOB does not consistently revoke the permits where deficiencies are not followed up on and cured by the licensee.

As noted in the Background section of this report, in lieu of a pre-approval plan examination of each application, for those applications that are certified by certain categories of licensed professionals, each week the DOB Technical Compliance Unit audits a randomly selected sample of applications for which permits have been issued. Our review of 79 of the 1,786 applications audited during our scope period found that DOB found issues which required follow-up action with 54 (68 percent) of them.<sup>6</sup> Examples of these issues included failure by the PE or RA to provide a realistic cost total, flood map panels that were not readable, and a failure to submit a detailed tenant safety plan that will be in place when the existing stairs are not available. For two of the 54 applications, the issues cited were resolved the same day and no further action was required. DOB issued noncompliance notices for the remaining 52 applications:

- 22 applications were issued a Notice of Objection, meaning that non-compliance issues needed to be corrected;
- 23 applications were issued a 10-Day Revocation Notice, meaning that the applicant was given 10 days to respond to the notice of objection and remedy the non-compliance; and
- 7 applications were issued a Stop Work Order, meaning that the applicant was notified to stop all work on the project as a result of a failure to remedy the non-compliant issues.

We found evidence that DOB generally took action in instances of non-compliance and followed up with the applicant. However, for four of the permit applications for which DOB issued a Notice of Intent to Revoke Approval(s) and Permit(s), the applicants had not scheduled appointments to remedy the non-compliance, and nonetheless, DOB had not revoked these permits at the time of our review. In these four instances, DOB had issued the Notices of Intent to Revoke between three to nine months prior to our review. In response to our inquiries regarding these applications, DOB stated “[s]ince the last action date indicated in BIS, the Department did not take any action. The Department acknowledges this as a flaw in our system, and is presently taking action to address and correct the existing problem.” DOB stated that there is an ongoing investigation for one of the four applications.

Although we found evidence that DOB generally followed up on issues identified during those audits, the agency nevertheless did not perform the targeted percentage of audits called for by DOB’s procedures, as discussed in more detail below.

## **DOB Conducted Audits of Approximately Half of the Targeted Percentage of Certified Applications**

In accordance with DOB’s Operations Policy and Procedures Notice (OPPN) #1/04, DOB’s standard during our audit period, DOB was required to audit 20 percent of the professionally certified applications for which permits were issued. However, our review found that DOB audited only 10.9 percent—1,786 out of 16,323—of these applications processed during our scope period. DOB attributed this failure to an increase in the use of the professional certification program, while the number of auditors remained the same or decreased.<sup>7</sup> DOB officials stated that they are in

<sup>6</sup> Our 79 samples consisted of 50 randomly selected and 29 judgmentally selected audited applications.

<sup>7</sup> In Fiscal Year 2004, there were 26,711 professionally certified applications whereas in Fiscal Year 2015 there were 54,012 professionally certified applications.

the process of hiring additional plan examiners; during the period covering June 2015 through February 2016, DOB hired a total of 47 plan examiners, assistant plan examiners and plan examiner trainees.<sup>8</sup> DOB officials also stated that they are in the process of revising their risk paradigm. Accordingly, DOB intends to target low and high-risk permit applications when creating the audit percentages that will fall under the newly revised plan.

On April 8, 2016, DOB released Building Bulletin 2016-010 that supersedes OPPN #1/04 and revised the requirements regarding the audit of professionally certified applications, calling for a representative sample of the professionally certified applications. The new guidelines also require audits of zoning compliance for all NB and ALT1 applications, as well as targeted audits that are based on complaints received or at the discretion of the Commissioner.

We are unable to determine the effectiveness of this new policy because it was instituted subsequent to our audit scope period and after the completion of our audit fieldwork. However, we have some concerns about DOB's implementation of this policy. Preliminarily, DOB has instituted this new policy although the risk paradigm upon which this new policy is based is still being revised. As a result, DOB cannot be assured that the "representative" samples selected under this policy take into account all appropriate risk factors.

Moreover, DOB does not indicate how these audits will be used to provide a level of audit coverage that is comparable to what the previous policy was intended to provide. Deficiencies found in applications as a result of DOB's audits are case-specific and cannot be extrapolated to other permit applications of a similar nature that were not audited. However, the percentage of applications that would be audited under this new policy would, in all likelihood, be significantly lower than the 20 percent called for in the previous policy (or even the 11 percent that were audited during our scope period). We note that professionally certified applications comprise 54 percent of the 94,428 applications during our scope period. As stated earlier, 68 percent of the internal audits in our sample found deficiencies on the professionally certified applications; of these, more than half resulted in DOB either issuing a stop work order or requiring that the applicant contact the agency within 10 business days and begin corrective actions or risk having its permit revoked. Further, our review of the summary data associated with the audits conducted by DOB found that the agency found issues with a significant percentage of the applications that were audited—42 percent of the 1,786 audited applications had one or more findings. If this percentage is representative of the population of certified applications as a whole, decreasing the targeted percentage of applications to be audited increases the risk that issues related to the other applications that would have otherwise been audited will remain undetected.

## Recommendations

1. DOB should ensure that the required follow-up action is taken in all instances where permits are not in compliance with required guidelines.

**DOB Response:** "The Department agrees with this recommendation. Steps have already been taken to strengthen controls. Those actions have included: Creation of a periodic report to track and highlight projects which have not been resolved within the allotted timeframe, or for which the applicant has not followed up to resolve the audit comments...."

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<sup>8</sup> DOB officials stated that the agency's goal is to hire 159 plan examiners over a two-year period.

2. DOB should continue to seek additional staff to handle the increased work load due to the increase in the number of professionally certified applications.

**DOB Response:** “The Department agrees with this recommendation. As the Department begins its implementation of **Building One City**, the Department’s action plan, DOB has begun hiring additional plan examiners to handle any increased workload, including assigned auditing duties for professionally certified applications.”

3. DOB should review its revisions of the professionally certification audit goals for the agency to ensure that it fully takes into account the potential risks to public safety from the rate and types of non-compliance in professionally certified permit applications that have been observed in its audits. This review should include the completion of its risk paradigm so as to enable DOB to identify the specific characteristics of its representative samples.

**DOB Response:** “The Department partially agrees with this recommendation. The Department acknowledges that it needs to look more closely at its professional certification audit goals; however, limited studies of the apparent risk factors found little correlation between audits of professionally certified applications on a random selection basis, and a risk to public safety. Furthermore, the majority of the objections characterized as non-compliance were minor. For that reason, the Department has modified its audit policy, and believed it will better serve the public in this regard.”

**Auditor Comment:** In its response, DOB refers to “limited studies” that found little correlation between audits of professionally certified applications and risk to public safety. However, DOB did not share those studies with us, nor did they complete their own risk paradigm that would justify or provide a basis for their representative sample selection. However, as stated in this report, our review of 52 sampled applications for which DOB issued non-compliance notices revealed that 58 percent were issued either a 10-Day Revocation Notice or a Stop Work Order, which are not actions taken in response to minor objections.<sup>9</sup> While we are pleased that DOB has agreed, at least in part, to implement this recommendation, we urge the agency to comply with the recommendation in its entirety and to complete the risk paradigm as part of its review process.

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<sup>9</sup> As indicated in the report, 23 applications were issued a 10-Day Revocation Notice and 7 applications were issued a Stop Work Order.

## 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. 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

The primary scope of this audit was Fiscal Year 2015 through November 12, 2015.

To obtain an understanding of the construction permit application process and to evaluate DOB's internal controls over this process, we interviewed the following individuals: the Manhattan and Brooklyn Borough Managers charged with the overall operation of each respective borough office; the Director of the Development Hub charged with the administrative aspects of applications processed from all five boroughs through the Hubs; the Manhattan Deputy Borough Commissioner, formerly the Manhattan Chief Plan Examiner, charged with applications appeal reviews, negotiations and interpretation of the rules for the removal of objections issued, interpretation of regulations, determination of formal request submitted by applicants for Construction Code and or Zoning Resolution Determination; and the Director of Applications and Business Support charged with providing support to DOB staff, and external users (the public) on various aspects of BIS and BIS web portal.

To obtain an understanding of the work flow from the point that applications are submitted to the issuance of work permits, we met with the Intake Staff, the Data Entry and Research (DEAR) unit staff, and Plan Examiners. We also met with the Technical Compliance Unit (TCU) auditors charged with auditing professionally certified applications after the permits have been issued. Furthermore, we conducted an observation of the TCU Random professionally certified applications selection process. To assess the controls and security measures in place for the safeguarding of data in DOB's BIS system, we interviewed the Chief Information Officer (CIO) responsible for the operational aspects of BIS, and working with the New York City Department of Information & Technology Telecommunications (DOITT) to maintain the network connectivity.

To assess the adequacy of DOB's internal controls as they relate to our audit objective, we evaluated information obtained from the agency's website, walkthroughs, and interviews conducted with DOB officials responsible for various aspects of the construction permit process. We used the following DOB materials as audit criteria:

- How to File an Application and Get a Permit;
- NYC Buildings PW1 Users Guide (Revised 12/14) – How to Read the PW1 (Plan/Work) application;
- Operations Policy and Procedures Notices – OPPN #01/04 -for the Professional Certification of Applications and Plans;
- Flow Chart of the Construction Permits Process;
- Flow Chart of the Development Hub Process;
- 4887\_001-Initial Filing to Letter of Completion – Non-Directive 14 and Directive 14 – Flow Chart Process for Non Certified and Certified Application.

To determine the accuracy of the professionally certified audits conducted by DOB, we stratified the population of 1,786 job numbers audited by DOB from July 1, 2014, to November 12, 2015, by those job numbers accepted by DOB, for a total of 1,039. We then randomly selected and reviewed 25 of the 1,039 job numbers that were accepted by DOB to ascertain whether adequate and sufficient evidence existed to support the audits conducted, as well as the audit results. Additionally, to determine whether DOB took follow-up action for audits on professionally certified applications that required some form of action, we stratified the population of 1,786 DOB audited job numbers by issues for a total of 747. We then randomly selected a sample of 25 of the 747 job numbers for review. From the remaining 722 job numbers we judgmentally selected all 29 job numbers for which a 10-Day Letter or a Stop Work Order was issued to applicants.<sup>10</sup>

We also determined the validity of the registered licenses of the professionals who certified the applications for the construction permit process, as well as the contractors responsible for obtaining permits for the construction related work. For each of the 160 professionals affiliated with the sampled job numbers, we verified their license status.<sup>11</sup> We obtained the license issuance and expiration dates for the PEs and RAs from the New York State Department of Education Office of the Professions website for Professions Online Verifications, and for the GCs from DOB's BIS website. We then compared each professional license number to the affiliated job number to determine whether the license issuance date had been valid at the time of the application pre-file date, and whether the permit issuance date was before the license expiration date.

Furthermore, to determine whether DOB conducted audits of the professionally certified applications for which permits were issued in compliance with its Operations Policy and Procedure Notice, we compared the entire population of 1,786 job numbers audited by DOB from July 1, 2014, through November 12, 2015, to the population of 16,323 job numbers selected, of which 20% should have been audited by DOB.

It should be noted that determining whether all elements of a construction permit application are in compliance with all applicable laws and regulations requires the expertise of a PE or RA. Per above, for professionally certified applications, a PE or RA certifies that the plans (drawings) filed with DOB comply with all applicable laws, including DOB rules. Further, the PE or RA guarantees to bring into compliance any construction found not to comply with applicable laws and regulations. In contrast, non-professionally certified applications are subject to DOB's plan examination review process. The audits of professionally certified applications, which occur after permits have been issued, include reviews of plans submitted by the property owners' PE or RA. Technical expertise is required to determine with accuracy and assurance that these projects are in compliance with all applicable rules and regulations. No PE or RA from the Comptroller's office worked on this audit.

As a result of the above limitation, the audit does not assess 1) whether construction permit applications were processed in compliance with all applicable laws, rules and regulations; 2) whether adequate and sufficient evidence exists to support the audits conducted by DOB; and 3) the appropriateness of the follow-up action taken for issues of non-compliance with applicable rules and regulations that were identified in DOB's audits.

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<sup>10</sup> Either the applicant is given 10 days to respond to the notice of objection to remedy the non-compliance or the applicant is ordered to stop all work on the project.

<sup>11</sup> Status included Active, Inactive, Expired, and Suspended/Revoked.



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June 3, 2016

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**Re: Audit Report (MG15-112A)**  
Audit Report on the Department of Buildings' Controls over the  
Processing of Construction Permits

Dear Ms. Landa:

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 objective of the audit was to obtain an understanding of the construction permit application process and to evaluate the Department of Buildings' internal controls over this process. We appreciate the opportunity to address your audit findings and concerns, and will use it as a guide to further improve our policies and procedures.

Following are the Department's responses to the three (3) recommendations, as well as clarifying comments in reference to points that were addressed during the audit process with your team.

**Clarifying Comments:**

The Comptroller's Office never provided the Department of Buildings with a well-defined audit scope, which gave it the capability to expand the scope as it felt necessary; ultimately, targeting the Professional Self-Certification Application Program, contrary to the title of the audit report. Perhaps, this is why your audit does not point out that in addition to Random Audits, the Department also performs Zoning Reviews and Special Audits as part of its monitoring of the Professional Self-certification Application Program. When considered as a whole, these activities far exceed the twenty percent Department mandated audit target, of which your audit is focused. This should be mentioned.

Even though the audit recognized that the Department's controls over the processing of construction permit applications were generally implemented on a consistent basis, your positive comments seem to be mitigated by your repeated statements that the Department did not conduct a 20 percent Random Audit of professionally certified applications in accordance with its own procedures.



## 1. Audit Findings and Conclusion

### **Audit: DOB's new policy might pose a risk to public safety**

During your Audit, the Department finalized significant changes to its enforcement of the Professionally Self-certified Applications Program. In a bulletin issued on April 8, 2016, the Department revised its operational procedures for the Professional Self-certification Application Program. The Department believes that modification of the audit selection protocol to identify and audit projects in areas of high-risk, will exceed the previous OPPN – 1/04 by promoting safety, and relying less on random selection of filings.

Stated in this new bulletin, the Department will perform audits of the following applications, including Post Approval Amendments, without any percentage targets:

- **Zoning Audits:** Prior to acceptance, all professionally certified New Building, Alteration Type 1, enlargement alteration applications and zoning-related PAAs, are subject to a Zoning Audit.
- **Program Audits (formerly Random Audits):** A representative sample of professionally certified applications, including PAAs, will be selected for audit upon issuance of permit(s).
- **Targeted Audits:** The Department may perform a targeted audit of professionally certified applications based upon receipt of a complaint, evidence of non-compliance, or at the discretion of the Commissioner.
- Professional Certification Program and Limitations
- Project Responsibility and withdrawal
- Excluded work

Furthermore, by participating in the Professionally Self-certified Applications Program, the applicant acknowledges his or her obligation to comply with the construction documents and submission requirements set forth in sections AC 28-104.7 and 28-104.8; Building Code section 107; Mechanical Code section 106; Fuel Gas Code section 106; Plumbing Code section 106; and Fire Code section 105.

## **RESPONSE TO RECOMMENDATIONS:**

### **Recommendation #1:**

**DOB should ensure that the required follow up action is taken in all instances where permits are not in compliance with required guidelines.**

**Agency Response:** The Department agrees with this recommendation. Steps have already been taken to strengthen controls. Those actions have included:

- Creation of a periodic report to track and highlight projects which have not been resolved within the allotted timeframe, or for which the applicant has not followed up to resolve the audit comments.
- Modification of the audit selection protocol to identify and audit projects in areas of high-risk.





**Recommendation #2:**

**DOB should continue to seek additional staff to handle the increased workload due to the increase in the number of professionally certified applications.**

*Agency Response:* The Department agrees with this recommendation. As the Department begins its implementation of **Building One City**, the Department's action plan, DOB has begun hiring additional plan examiners to handle any increased workload, including assigned auditing duties for professionally certified applications.

**Recommendation #3:**

**DOB should review its revisions of the professionally certification audit goals for the agency to ensure that it fully takes into account the potential risks to public safety from the rate and types of non-compliance in professionally certified permit applications that have been observed in its audits. This review should include the completion of its risk paradigm so as to enable DOB to identify the specific characteristics of its representative samples.**

*Agency Response:* The Department partially agrees with this recommendation. The Department acknowledges that it needs to look more closely at its professional certification audit goals; however, limited studies of the apparent risk factors found little correlation between audits of professionally certified applications on a random selection basis, and a risk to public safety. Furthermore, the majority of the objections characterized as non-compliance were minor. For that reason, the Department has modified its audit policy, and believes it will better serve the public in this regard.

In addition, all professionally certified applications are subject to audit, and an audit may be conducted at any time.

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

Sincerely,

A handwritten signature in blue ink that reads "Rick D. Chandler".

Rick D. Chandler, P.E.  
Commissioner

cc: George Davis III  
Archana Jayaram  
Timothy Martin  
Joshua Florsheim  
Kerry Castro