

New York City Department of Transportation

Street Construction-Related Permits

Report 2020-N-6 | June 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine whether the New York City Department of Transportation (DOT) ensures that all street construction permittees have complied with the application requirements and permit conditions, including completing the project by the scheduled permit expiration date. We also determined whether DOT coordinates with other entities planning to perform work at the same site to ensure minimal disruptions. The audit covered the period from July 2018 through November 2020.

About the Program

DOT issues 150 different types of sidewalk and roadway construction permits that cover activities such as street openings, sidewalk construction, and installation of canopies over sidewalks. Street opening permits are required for excavations or other work on a city street or sidewalk that may cause damage to or compromise the street surface. These permits are issued to entities that need access to subsurface infrastructure, including utility companies and contractors such as licensed master plumbers.

DOT's Bureau of Permit Management and Construction Control is responsible for overseeing all construction-related permitting. The Bureau is comprised of two offices. The Office of Permit Management (Permit Office) provides customer service for all applicants, registers permittees, reviews and approves applications, and reviews appropriate fees for both online and in-person applications. There is a central permit office in Manhattan and borough permit offices in each of the other boroughs.

The Office of Construction Mitigation and Coordination (OCMC) reviews all construction permit applications and develops permit construction activity stipulations for the work performed on the streets to mitigate disruptions to City businesses, residents, and visitors caused by street construction.

DOT developed and implemented the NYCStreets Permit Management System (NYCStreets), an online application. An applicant must first register by submitting a completed permittee registration application and supporting documentation to the Permit Office. Once the permittee is registered, they can apply for a permit to do work and pay the permit fees.

A street is placed in protected status for 5 years from the date it was last resurfaced or reconstructed. Permit requests to perform work on protected streets are subject to additional review and, according to DOT's Street Works Manual, DOT will review an application for a street opening permit only when the applicant can demonstrate that the work could not have been reasonably anticipated prior to the street resurfacing/reconstruction.

Highway Inspections and Quality Assurance (HIQA) is DOT's enforcement unit, which operates 24 hours a day, 7 days a week and has an office in all five boroughs. HIQA conducts construction site inspections to ensure permittees comply with the laws, regulations, and permit specifications and stipulations. Inspectors may issue Corrective Action Requests (CARs), Notices of Immediate Corrective Action (NICAs, or priority CARs), and Notices of Violation (NOVs). An NOV carries a monetary fine and places the issue under the jurisdiction of the Environmental Control Board. According to DOT, the New York City Department of Finance collects the fines. A permittee must perform repairs within 30 days of receiving a CAR. Corrective action is required within 3 hours of the issuance of a NICA by telephone call or email.

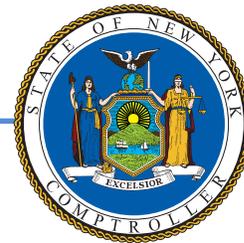
Key Findings

We found that DOT did not always ensure that permittees were in compliance with the street permit requirements. Among the issues we identified were the following:

- DOT did not perform all required inspections to verify that permittees complied with permit conditions. We determined that 41,761 (14%) of 299,933 street opening permits not inspected should have been inspected. Street construction sites that are left uninspected may lead to work not being performed in accordance with the permit requirements, potentially creating a safety risk to the public.
- There is no set time frame for HIQA inspectors to return to reinspect after issuance of a CAR/NICA, and as a result, DOT has no assurance the conditions were corrected by the permittee within the specified time frames. We found 21 CARs that were reinspected more than 3 months after issuance, including one that was reinspected more than 1 year after the 30-day time frame that permittees have to perform corrective actions.
- Seventy-three of 75 reinspections following issuance of a CAR were passed by a HIQA inspector and approved by a HIQA supervisor but did not contain supporting documentation to show the condition or work was corrected. Further, eight of the 73 (11%) passed reinspection, but the HIQA inspectors' remarks stated that the condition still exists. As such, supervisors approved passed inspections without assurance that the CARs were correctly passed by inspectors.
- DOT did not ensure that applicants complied with registration and permit application requirements, including ensuring that permittees had proof of sufficient insurance.
- DOT did not ensure that only emergency work was performed within protection periods (streets that had been resurfaced or reconstructed within the prior 5 years).
- DOT did not provide records to support its communication and coordination with other entities, including other City agencies, for street construction projects.

Key Recommendations

- Ensure all required inspections are assigned and performed on a timely basis.
- Develop and implement a written policy requiring the results of all inspections to be supported and documented.
- Establish a time frame for reinspection following issuance of a CAR/NICA and ensure inspectors reinspect the condition within the established time frame.
- Ensure potential and current permittees comply with rules and regulations when they register with DOT and apply for permits.
- Increase the level of communication and coordination with other entities, including City agencies, pertaining to street construction projects, and schedule and document coordination meetings before street opening work commences.



**Office of the State Comptroller
Division of State Government Accountability**

June 13, 2022

Ydanis Rodriguez
Commissioner
New York City Department of Transportation
55 Water Street
New York, NY 10041

Dear Commissioner Rodriguez:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York City Department of Transportation entitled *Street Construction-Related Permits*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

| Term | Description | Identifier |
|---------------|--|-------------------|
| CAR | Corrective Action Request | <i>Key Term</i> |
| DASH | HIQA's Dynamic Access System | <i>System</i> |
| DDC | New York City Department of Design and Construction | <i>Agency</i> |
| DEP | New York City Department of Environmental Protection | <i>Agency</i> |
| DOT | New York City Department of Transportation | <i>Auditee</i> |
| Highway Rules | Rules of the City of New York, Title 34, Chapter 2 | <i>Law</i> |
| HIQA | DOT's Highway Inspections and Quality Assurance enforcement unit | <i>Unit</i> |
| Manual | DOT's Street Works Manual | <i>Key Term</i> |
| NICA | Notice of Immediate Corrective Action | <i>Key Term</i> |
| NOV | Notice of Violation | <i>Key Term</i> |
| NYCStreets | DOT's Permit Management System | <i>System</i> |
| OCCM | DOT's Office of Construction Mitigation and Coordination | <i>Unit</i> |
| Permit Office | DOT's Office of Permit Management | <i>Unit</i> |
| SOP | Standard Operating Procedures | <i>Key Term</i> |

Background

The New York City Department of Transportation's (DOT) mission is to provide for the safe, efficient, and environmentally responsible movement of people and goods in New York City (City) and to maintain and enhance the transportation infrastructure crucial to the economic vitality and quality of life of the City's residents. DOT is responsible for over 6,000 miles of streets and highways, 12,000 miles of sidewalk, and 794 bridges and tunnels.

Entities that perform work on City streets, including utility companies making repairs, contractors replacing roadways, and homeowners performing their own sidewalk repairs, must obtain a permit issued by DOT. The agency issues 150 different types of sidewalk and roadway construction permits that cover activities such as street openings, sidewalk construction, and installation of canopies over sidewalks.

The laws and regulations that govern street work and permits are found in New York City Administrative Code, Title 19, Chapter 1, Subchapter 1 (Construction, Maintenance, Repair, Obstruction and Closure of Streets) and the Rules of the City of New York, Title 34, Chapter 2 (Highway Rules). These laws and regulations cover permits for street construction; schedules of fees; requirements for construction activity and sidewalk, curb, and roadway work; as well as rules regarding street openings and excavations. In addition, DOT's Street Works Manual (Manual) describes policies governing work on City streets and presents procedures for notice, approval, and execution of such work.

DOT's Office of Construction Mitigation and Coordination (OCMC) reviews all construction permit applications and develops construction activity stipulations (i.e., specific requirements) to allow for work to occur with minimal disruption to businesses, motorists, bicyclists, and pedestrians and to avoid conflicts with other construction projects and special events. OCMC also interacts with project engineers, City agencies, community boards, elected officials, and the public to resolve construction issues related to mobility and provide information about all active permits to community boards and district officials.

A street is placed in protected status for 5 years from the date it was last resurfaced or reconstructed. Permit requests to perform work on protected streets are subject to additional review and, according to the Manual, DOT will review an application for a Street Opening Permit only when the applicant can demonstrate that the work could not have been reasonably anticipated prior to the street resurfacing/reconstruction. Permittees can check whether a street is protected by searching a publicly available listing of protected streets in the City, which is published daily on DOT's website.

DOT's Highway Inspections and Quality Assurance (HIQA) enforcement unit operates 24 hours a day, 7 days a week and has offices in all five boroughs. HIQA inspectors inspect work sites for compliance with Title 19 of the NYC Administrative Code, Highway Rules, DOT's specifications, and permit stipulations. HIQA performs inspections during active construction through its completion and up to the end of the guarantee period. HIQA may also inspect emergency street openings and excavations and utility access cover openings. If, upon inspection, the HIQA inspector finds a violation, depending on its severity, they may issue a Corrective

Action Request (CAR) or a Notice of Immediate Corrective Action (NICA) to require the repair of the condition within a specified time frame. HIQA inspectors can also issue a Notice of Violation (NOV) – which carries a monetary fine as provided in DOT’s Penalty Schedule – and place the matter under the jurisdiction of the New York City Environmental Control Board, which is part of the New York City Office of Administrative Trials and Hearings. According to DOT, the New York City Department of Finance collects the fines.

DOT also submits permit and inspection data to the NYC Open Data portal, a public interface that contains data published by New York City agencies, including all of DOT’s active and expired street construction permits and inspection data.

Audit Findings and Recommendations

We found that DOT did not always ensure that permittees were in compliance with the permit stipulations. Among the issues we identified were the following:

- DOT did not perform required inspections to verify that all permittees complied with permit conditions. We determined that 41,761 (14%) of 299,933 street opening permits not inspected should have been inspected. Street construction sites that are left uninspected may lead to work not being performed in accordance with the permit requirements, potentially creating a safety risk to the public.
- Sites that received CARs were not reinspected on a timely basis – often more than 3 months after their issuance, including one that was more than 1 year after the 30-day time frame that permittees have to perform corrective action.
- DOT did not ensure that documents submitted by the permittees met all the requirements and were complete upon application and registration. This included ensuring that permittees had sufficient insurance in place to cover any liability related to the costs of repairs and any potential damages.
- DOT did not ensure that only emergency work was performed on protected streets (streets that had been resurfaced or reconstructed within the prior 5 years). Our review of 114 permit applications found that permits were issued for non-emergency work on 13 protected locations, including one permit issued 2 months after the street work was completed.

Moreover, we concluded that DOT could improve its communication and better coordinate street construction projects with other City agencies and entities planning to perform work at the same site. DOT could not provide records to support its coordination efforts.

Street Construction Work

The HIQA unit inspects street construction sites for compliance with Title 19 of the NYC Administrative Code, as well as DOT rules and regulations, specifications, and permit stipulations.¹ It performs inspections to check if restoration on City streets complies with these standards during active construction through completion and up to the end of the guarantee period (see Exhibit). HIQA may also inspect emergency street openings, excavations, and utility access cover openings. However, according to DOT officials, DOT's policy is not to inspect sites with certain types of permits (e.g., permit type 159 – Economic Development Corporation reconstruction) and not to assign HIQA inspectors to inspect contract work permits because these jobs already have inspectors or consultants hired by the City. HIQA provided a list of 84 permit types not assigned to HIQA inspectors.

The inspectors record inspection information using tablets equipped with HIQA's Dynamic Access System (DASH), an application that receives information directly

¹ Stipulations are limitations such as limiting work around a school, blocking school buses, or limiting work to certain hours or days of the week.

from NYCStreets and contains inspector assignments and information for each assigned site, such as all permits for the site, summonses, and inspection history. In addition, HIQA inspectors can view all issued permit-related information grouped by location. An inspector can be assigned between 20-40 sites a day, depending on the type of work, such as complaints and protected streets that have not been inspected.

Inspections

We found that DOT did not perform all required inspections. Our review of the 635,001 permits with work end dates after June 30, 2018 and the file of inspections performed between July 1, 2018 and September 1, 2020 identified 299,933 permits without inspections. Excluding the 84 permit types that are not assigned for inspection resulted in 87,935 permits that should have been inspected but were not.

In response to our preliminary findings, DOT officials indicated there were additional permits that HIQA is not required to inspect. After several discussions and our thorough review of all the information DOT provided, we accepted 46,174 consisting of additional permit types that did not have to be inspected and permits that were outside the period the original inspections file covered. We concluded that the total number of permits that were not reported in the files as inspected at any time but should have been inspected was 41,761 (87,935 - 46,174).

We note, however, that we received differing information from HIQA officials at separate meetings (in August 2020 and October 2020) as to their inspection process. Some of this information did not match requirements detailed in the Manual, which states that the HIQA unit should inspect work sites for compliance with laws and regulations as well as DOT specifications and permit stipulations that permittees must comply with while construction work is taking place. Further, the Manual states “HIQA unit performs inspections during active construction through its completion, and up to the end of the guarantee period.”

For 30,318 permits where DOT indicated inspections were performed before July 1, 2018 or after September 1, 2020, our analysis of when the inspections were performed found that sites for only 1,610 permits (5%) were inspected during the work period (between the work start and end dates on the permit).

We also found that, from a sample of 268 permits, only 160 permits (59.7%) were inspected. Of the 108 permits (40.3%) not inspected, 66 did not require inspection and 42 did require inspection. After further review and information from DOT, we removed 20 permits; however, there are still 22 of 268 permits (8.2%) that should have been assigned and inspected.

Street construction sites left uninspected may lead to work not being performed in accordance with the permit specifications and stipulations and potentially create unsafe conditions.

For example, an emergency permit was issued on November 11, 2019 that resulted in a cut on a protected and heavily trafficked street in Staten Island. Two inspections were conducted – one right after issuance on November 12, 2019 and another on

July 13, 2020 – with a “Pass result.” A portion of the resurfaced cut subsequently broke, resulting in a pothole that created a hazardous condition. A complaint was made on March 8, 2021. An inspector went to the location and issued a CAR to the permittee to repair the defect.

An inspector returned on May 11, 2021 and determined that the condition was still not repaired (Figure 1, *top*). The inspector documented the condition and issued an NOV. We went to this location on July 26, 2021 and determined that the condition was still not repaired (Figure 1, *bottom*).



Figure 1. (*Top*) Condition not repaired as of May 11, 2021 in front of 150 Bay Street, Staten Island. Source: DASH. (*Bottom*) Condition not repaired as of July 26, 2021. Source: OSC.

Lack of sufficient monitoring to ensure that all required inspections are assigned and performed may result in unrepaired conditions, potentially endangering public safety.

Moreover, a lack of documentation may hinder management’s efforts to verify the accuracy of the information in the inspection reports. Without written procedures for inspectors to follow, inspectors may not document the inspection results adequately.

Inspection Scheduling

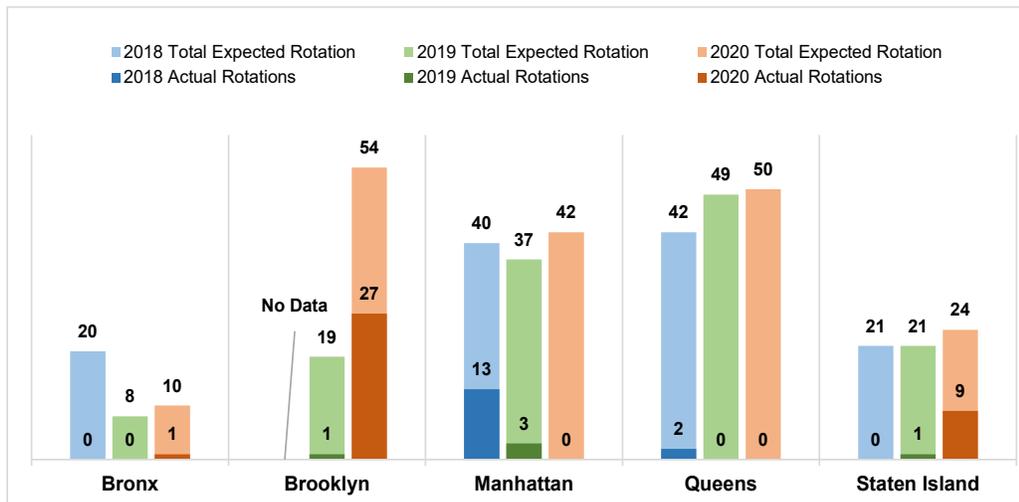
DOT officials stated that, for purposes of HIQA inspections, each borough is divided into multiple sectors, with inspectors being assigned to work in a sector for a period of 3–4 months and then rotating to a different sector. Rotation of personnel in this manner helps to ensure an independent assessment of the work performed by contractors.

We reviewed a sample of 160 permits with 232 completed inspections and found that, although some boroughs rotated their inspectors every 3–4 months, other boroughs did not always rotate their inspectors. For example:

- HIQA officials stated that Brooklyn offices did not have inspector schedules in 2018; therefore, the Brooklyn office did not start rotating its inspectors until January 2019. Brooklyn rotated its inspectors once in 2019 and twice in 2020. Inspectors covered the same area for 8 months in 2019.
- Bronx inspectors rotated twice in 2018 but dropped to once in both 2019 and 2020. Inspectors covered the same area for 5 months from May 2019 to October 2019 and for 7 months from February 2020 to August 2020.

When we totaled the number of expected rotations for each inspector per year, we found 57 instances when HIQA inspectors did not rotate to a new sector after a schedule change. Figure 2 presents instances of lack of rotation per borough. This lack of rotations increased significantly in 2020 in Brooklyn and Staten Island, where 27 of 54 and 9 of 24 required rotations, respectively, were not done.

Figure 2 – Number of Total Expected Rotations vs. Number Not Rotated per Borough



There are no written policies for borough offices to follow regarding inspector rotations, resulting in inconsistencies in rotation practices among the boroughs. DOT officials stated that, due to a staff shortage, inspector assignments require flexibility to meet operational needs. They added that, during sector assignment periods, inspectors are moved to areas that require coverage for various reasons, including coverage of sectors when an inspector is out on leave, complaint assignments, or larger workloads in non-assigned sectors relative to lesser workloads in the assigned sector. DOT also explained that rotations in 2020 were curtailed due to the COVID-19 pandemic, which also made it necessary to reassign inspectors to other locations throughout the City due to outdoor dining and COVID cluster testing. These factors affected inspectors' assignments related to street construction inspections.

In response to our preliminary findings, DOT indicated that the HIQA unit is working to develop and implement a written plan to periodically rotate inspectors while still affording flexibility based on workloads and staffing resources.

DOT Enforcement Efforts

Highway Rules Section 2-02(d) and the Manual describe the rules pertaining to CARs and NICAs. A CAR may be served either personally, by mail, and/or by e-mail to the permittee responsible for the work and/or the condition that requires correction. Any required corrective action has to be performed within 30 days of the issuance of the CAR, unless such issuance is protested within 14 days after the date of mailing of the CAR or the CAR specifies a different time frame. If a protest is submitted and granted by DOT, the CAR fee will be waived, and the corrective action is not required. If a protest is denied, any corrective action required by the CAR has to be performed within 30 days after the date of such denial.

Where a condition exists that creates an imminent danger to pedestrians or vehicles, DOT may issue a priority CAR, or NICA, which requires corrective action to be taken within 3 hours of its issuance by phone call. If the NICA is issued via email, a follow-up phone call must be placed to the permittee.

If a permittee does not address the problem in the allotted time, an inspector may issue an NOV (summons), which carries a monetary fine, and place the matter under the jurisdiction of the New York City Environmental Control Board.

Corrective Action Requests/Notices of Immediate Corrective Action

We reviewed 77 CARs, and found DOT reinspected conditions for 75 CARs. We found that 21 CARs were reinspected more than 3 months after the 30-day time frame that permittees have to perform corrective actions, with one reinspection occurring more than 1 year after the 30-day time frame. Consequently, DOT has no assurance the conditions were corrected in a timely manner. In response to our preliminary findings, DOT officials replied that 11 of the 21 CARs were reinspected more than 3 months after the 30-day time frame because of the winter moratorium.²

For the two remaining CARs, DOT accepted permittee protests and did not reinspect the site. One of the permittees that protested stated it did not perform work at the location for which a CAR was issued. However, there is no assurance any corrective action was taken by DOT to correct the condition on the street after accepting the protest. There are no updates or comments in DASH of what happens to the condition after the permittee is no longer responsible.

² DOT officials explained there are periods during the year where CARs are not reinspected because many of the concrete plants and asphalt plants are closed for winter maintenance, preventing contractors from permanently repairing street restorations. Therefore, not all CARs are reinspected during the winter moratorium period, which typically starts December 1 and ends March 31 of the following year.

HIQA inspectors passed 73 of the 75 CARs upon reinspection. The remaining two CARs have not passed reinspection and have received NOVs because the condition has not been repaired by the permittee. One CAR was issued on September 8, 2020 for a missing gas valve cover/cap on a permanent gas cut. Inspectors returned on April 17, 2021 and again on June 29, 2021, and the permittee failed the CAR reinspection both times. We visited the location on August 4, 2021, and the condition was not repaired (see Figure 3).

The second CAR was issued on August 6, 2020 for missing tan granular paint on a pedestrian plaza, as specified would be done in the permit. We visited the location a year later, on August 10, 2021, to determine if the condition was corrected, and observed that it still had not been corrected by the permittee (see Figure 4).

According to DOT officials, it is their policy to attach photos to the inspection report before a CAR receives a supervisor's approval. However, we found that none of the 73 CARs that passed reinspection and were approved by a HIQA supervisor contained supporting documentation to show the condition or work was corrected. In addition, for eight of the 73 (11%) CARs that passed reinspection, the HIQA inspectors' remarks stated that the condition still exists. As such, supervisors have approved passed inspections without assurance that inspectors correctly passed the sampled CARs.

Additionally, we reviewed 18 NICAs, and DOT reinspected the conditions for all 18 NICAs in our sample. As with CARs, it is DOT's policy to attach photos to the inspection report before a CAR or NICA receives supervisor approval. However, we found three NICAs that were passed by a HIQA inspector and approved by a HIQA supervisor but did not contain documentation to show the condition was corrected. Given that a NICA is issued for conditions that create an imminent danger, it is especially important for DOT to confirm if the condition was accurately corrected.

Although the permittee is required to take corrective action within 3 hours of issuance of a NICA, for one of the 18, an inspector did not return until 4 days later. Therefore, DOT has no assurance the condition was corrected within the required time frame. Further, the NICA indicated the condition was a trip hazard because there was a 1–2" depression along the sidewalk (see Figure 5). This could have created a significant safety risk for pedestrians on the sidewalk during the 4-day period where the site was left uninspected.



Figure 3. Permanent gas cut still missing a gas valve cover after almost a year.



Figure 4. Photo of tan granular paint missing from pedestrian plaza.



Figure 5. 1–2" depression causing a trip hazard on the sidewalk.

As there is no set time frame for inspectors to return after issuing a CAR or NICA, there is no assurance that safety risks have been fixed within the mandated time frame, and public safety might be adversely impacted.

In response to our preliminary findings, DOT officials stated that they are working with DOT's Information Technology & Telecom unit to allow a permittee to submit the date they repaired the condition(s) in DASH and to create an alert function to notify the HIQA inspector and supervisor that a CAR or NICA is due for reinspection.

DOT officials also stated that DASH does not currently provide the opportunity to upload photos for any inspections that passed, and they are addressing this issue with DOT's Information Technology & Telecom unit to make it possible.

Notice of Violations

In total, we reviewed 59 NOVs that were issued for 29 CARs/NICAs. The permittees paid the fine for 42 of 59 (71.2%) NOVs. Four of the remaining 17 NOVs were dismissed after the completion of a hearing, and the remaining 13 NOVs have not been paid, with a total outstanding balance of \$16,722.

In response to our preliminary findings, DOT officials indicated that the responsibility of the collection of fines lies with the New York City Department of Finance.

Recommendations

1. Ensure all required inspections are assigned and performed on a timely basis.
2. Develop an official list, in writing, of permit types that are not subject to inspection, along with justification; maintain and periodically update this list.
3. Develop and implement a written procedure to periodically rotate inspectors and ensure that inspector rotation practices are consistent among the borough offices.
4. Develop and implement a written policy requiring the results of all inspections to be supported and documented.
5. Establish a time frame for reinspection following the issuance of a CAR/NICA and ensure inspectors reinspect the condition within the established time frame.

Permit Process

DOT is responsible for ensuring all entities that are going to perform street work construction meet all requirements for registration and permit approval. We found that there was inadequate monitoring to ensure that all parties performing work had insurance to cover their liability for the cost of all work and repairs and that, wherever possible, work was not performed on protected streets.

Permittee Registration

To apply for a permit, an applicant must first register with DOT by submitting a complete, notarized Permittee Registration Application, along with the following supporting documentation:

- Proof of commercial general liability insurance
- Proof of workers' compensation insurance
- A copy of the Employer Identification Number or Tax ID, as provided by the Internal Revenue Service, or a Certificate of Authority from the Department of Taxation and Finance

DOT requires that, at a minimum, addresses be the same on the Permittee Registration Application form and all insurance documents submitted at the time of registration.

To determine whether DOT ensured that permittees complied with the registration procedure requirements, we reviewed 50 registration application files that were approved by DOT from July 1, 2018 to November 17, 2020.

We found that 30 companies had different addresses on various documents in DOT's files when they initially submitted their registration applications, including three with different addresses on either their general liability insurance certificate or policy, workers' compensation policy, or location bond. For one company, both the general liability and workers' compensation insurance documents had different addresses than on the application and other documents. For another, the workers' compensation certificate had a different address than on the application and other documents.

Further, the Manual states that companies must include in their general liability insurance a 30-day insurance cancellation clause providing notification to DOT 30 days prior to the cancellation of the insurance. DOT's website also provides information about the required cancellation clause. Although there was a standard cancellation clause included in the registration documents, for 48 of 50 companies, it was not written as required by DOT.

The Permit Office manually enters initial registration information, increasing the potential for data entry errors. One company's general liability and workers' compensation insurance expiration dates shown in NYCStreets were incorrect and not supported by documentation; however, two permits were issued during the period. In addition, even though DOT requires that all registration applications be complete before being processed, we found incomplete applications in our review, including an application without an Employer Identification Number letter or Certificate of Authority.

In response to our preliminary findings, DOT officials disagreed with our observations. DOT officials stated that all registration documents for those

companies are on file and that “while occasional human or electronic errors may possibly occur, periodic reports and staff observations detect and address potential errors.”

Inadequate monitoring may result in permittees being registered without proper insurance coverage and other required documents. If such permittees are issued permits to conduct street construction work, there is a risk of individuals who may be injured not being compensated.

Permit Applications

According to the Highway Rules, permittees shall comply with all applicable sections of these rules, the Standard Specifications, the Standard Detail Drawings, and all other applicable laws or rules.

Registered permittees may apply for permits online and, along with the permit application, must provide information regarding work for which the permit is requested (e.g., location, size of proposed work, work start and end dates, detailed work zone sketch). In addition, applicants must obtain all applicable original permits and/or approvals from any other government agencies prior to applying for a permit with DOT (e.g., a plumber applying for a street opening permit to repair a water main must also submit to DOT a valid professional license issued by the New York City Department of Environmental Protection [DEP]). If the applicant intends to work on a contract that has been awarded by a government agency or authority, the applicant must provide a copy of the contract, Letter of Work Order, Notice to Proceed, or Letter of Authorization.

We reviewed a sample of 114 permit applications, containing 268 permits, and determined permits were issued to businesses that did not submit the required information or insurance coverage. Among the exceptions were three permittees (four permits) that did not maintain valid insurance coverage during the proposed work period.

According to documents on file, two of the three permittees were self-insured entities; however, there was no valid insurance on file for one of the permittees when the permit was issued. The letter of self-insurance, dated March 30, 2015, was uploaded to the system on April 10, 2020, while the permit under review was issued in 2019. Since 2015, there were also no updated registration applications for this permittee in the system. The second permittee had a number, but it was not documented in the permit application. Based on the permittee’s name, it appeared to be affiliated with (doing business as) a well-known utility company; however, this was not documented under this specific permittee name for which the permits were issued. In response to our preliminary findings, DOT officials stated that, for a few major City franchise utility companies, permittee registration information in the NYCStreets system regarding qualification and insurance is slightly different due to the size and resources required to meet federal, State, and City regulations. However, these differences are not mentioned in the Manual or noted in NYCStreets.

We also found:

- One permit that was issued on April 4, 2019 to a plumber permittee with a work start date of April 9, 2019, but the DEP permit for this work expired April 8, 2019. Further, this permittee’s workers’ compensation insurance expired on March 15, 2019.
- The work location in the application for 14 of the permits did not match the supporting documentation, despite the application requirement. The permit application states that a diagram of the proposed work location for which they are requesting a permit must be provided. Two of the 14 permits were issued for work in Brooklyn, but the work zone sketch submitted was for a location in Queens.
- Fifty permits did not provide a detailed work zone sketch. In 11 instances, permittees provided a screenshot of a map or other documents; however, the screenshot only showed a general location of where the work would take place and did not provide any detail of the work to be done.
- One case where a dummy PDF document was uploaded stating “all supporting documentation for this NYCStreets permit application is on file in the applicable borough office.”
- Other instances of required documents that were missing, including lack of required work approvals from other divisions or entities to perform work and three permits missing Landmark Commission approval. In response to our preliminary findings, DOT officials indicated those approvals are included in other supporting documents the project manager received. However, DOT did not include those documents in its response.

DOT officials also indicated in their response that, due to the large number of permits issued for different situations, they need to be flexible and allow some nuances from time to time. They also stated that files will always contain documentation to reflect the relevant circumstances and context used to issue a permit record. Nevertheless, our review of the permit applications identified missing documentation and incorrect work information that may result in permits issued without proper support.

Permits for Protected Streets

According to DOT rules, to maintain the integrity of a new street surface, a street is protected for 5 years from the date it was last resurfaced or reconstructed, and no work should be performed on these streets, with several exceptions such as emergency work. Further, an application for a street opening permit on a protected street is automatically placed on a Street Arterial Maintenance hold if the proposed work is to start within 18 months of the street being resurfaced or reconstructed. The hold is to review the proposed work and set conditions for the work and/or the street restoration. Permittees and others can determine whether a location is protected by checking DOT’s website for a daily updated list of protected streets and their completion date.

The Manual states that only in circumstances where the applicant can demonstrate that the work could not have been reasonably anticipated prior to the street resurfacing or reconstruction will an application for a street opening permit on a protected street be reviewed.

For the 114 permit applications we reviewed, 48 were for street openings on protected streets. However, only 22 of those were on the protected street listing. We found no documents in NYCStreets to justify the need for the non-emergency work for 20 of the 22 protected streets, while the other two permits were renewals of the emergency permits previously issued.

In response to our preliminary findings, DOT officials indicated that they consider urgent work as an emergency (e.g., water or sewer house connection repairs or other critical utility connections) that will affect life and property or cause unreasonable hardship if not addressed within a finite time during the 5-year protected status. They added that work on a protected street doesn't have to always be an emergency. DOT's response introduced the term "urgent work," which is not documented in its files or in the Manual. As such, DOT should require work be done in compliance with the requirements for protected streets to avoid impacting streets that were resurfaced or reconstructed within the past 5 years.

Moreover, 71 of the permittees had a new (subsequent) permit issued for the same location, including 65 for street openings and six for different work. Of these 71 new permits, 56 were issued to a different permittee than the previous permittee, and 15 were issued to the same permittee. We also determined that, of the 65 new street opening permits, 48 were still designated as protected but only four were issued for emergency work. The remaining 44 were regular street opening permits; however, only 22 of those were on the protected street listing.

We noted that there was a lack of coordination efforts between DOT and other entities to ensure only emergency work was performed within protection periods. For example, construction was done twice on the same protected street about a year and a half apart. A Protective Street Opening Permit was issued for a Brooklyn street protected until October 24, 2021 to install gas safety valves, with a work start date of May 16, 2019 and a work end date of June 14, 2019. According to the information in the files, the work was finished in October 2019 and was related to the mandated New York City Department of Buildings Local Law 30 program. We noted another permit was issued to a different company under contract with DOT to install traffic signals on the same street starting April 1, 2021 and ending May 31, 2021 – also within the same protection period. Repeated construction work on protected streets may result in compromising the integrity of a new street surface, increased need of repairs, and reduced number of years the pavement would otherwise be expected to remain in good or excellent condition.

Permit Duration

According to the Highway Rules and the Manual, DOT issues street opening permits for a period ranging from 15 to 90 days. There is a separate permit fee for each additional permit, excluding work performed for a government contract

We reviewed 114 applications, consisting of 268 permits, and noted that DOT reissued permits to the same construction sites multiple times – in one case up to 26 times. Even if a permit was issued for a short period of time, due to the total number of permits issued for the particular site, the overall time of construction (calculated from the start date of the first permit issued to the end date of the last permit issued for the particular site) was as long as 1 year – and in some cases over 3 years.

Further, we reviewed 59 applications, consisting of 190 permits, based on the application type (amend and reissue, reissue, renew, and extend) to determine whether those permits were renewed timely and whether gaps existed during those renewals. We noted 26 of 190 permits were reissued or renewed more than 10 times. In addition, we found 23 instances where gaps existed between sampled permits and previous permits, ranging from 1 to 30 days.

While there is no limit of how many times a permit can be reissued or renewed, continued renewals of permits are an inconvenience to the public and a potential safety concern, and may also delay the benefits to the City. Responding to our preliminary findings, DOT officials indicated they reach out to a permittee for an explanation if the work is not progressing. Prolonged street closings may adversely impact businesses and the public. Access to the streets may be restricted, reducing foot traffic on these streets and contributing to delays for the public.

Recommendations

6. Ensure future and current permittees comply with the laws, rules, and regulations when they register with DOT and apply for permits.
7. Increase the level of coordination between DOT and other entities to prevent non-emergency work on protected streets.

Street Construction Coordination

According to the Manual, regular coordination meetings allow decision makers to share information and to discuss project difficulties and constraints. The Manual also states that DOT should host borough-level meetings to discuss the scheduling of upcoming resurfacing projects with potential street excavators, and routinely meet with utility companies and others who perform street excavations to inform them of upcoming events and major construction projects. OCMC's Standard Operating Procedure (SOP) states, among other things, that the unit should coordinate construction on the local roadway system to minimize the impacts associated with ongoing construction, review and regulate roadway construction activities, evaluate

maintenance and protection of traffic, coordinate with appropriate agencies and utilities, and attend meetings for construction projects.

We found that DOT's communication related to street construction projects and its efforts to coordinate with other entities needing to perform work at the same site could be improved. DOT doesn't maintain a system where documents of meetings and other correspondence to support street construction coordination efforts are available. Further, NYCStreets did not contain sufficient documentation indicating that communication and coordination between City agencies related to a project we researched took place.

On February 20, 2021, we observed that a recently paved street in Staten Island, with protected street status until December 4, 2023, was cut and a metal plate installed (Figure 6). After searching NYCStreets and other available resources, we identified another City agency's project to rebuild a park adjacent to this street, and a permit was issued for a water-related repair. We determined that the project's design phase was completed in February 2018, before the street was milled and paved in December 2018. We did not find any documents indicating that the agencies communicated with each other to coordinate work for these two projects. In response to our preliminary findings, DOT officials stated that the project in Staten Island involved work within the park's property, and the sponsoring agency never notified DOT about the project because the scope and focus of the work was mostly off-street. As a result, pavement that was recently resurfaced and reconstructed was cut across and had to be repaired and patched.



Figure 6. Jefferson Street, Staten Island (east).
Source: OSC.

Further, in response to our request for all records of coordination meetings DOT held with other entities, including street excavators, utility companies, and developers between July 1, 2018 and December 3, 2020, DOT officials replied that our request was not feasible; however, they did not offer any alternative such as providing meeting documents for part of the period. Subsequently, DOT officials shared selected email correspondence with one utility company and meeting minutes recorded and held by another City agency. During this period, our sample of 268 permits was comprised of 152 permits issued to utility companies and 85 permits for contract work – including 15 permits for DEP and 34 permits for New York City Department of Design and Construction (DDC) major reconstruction work – for which such meetings would have been required and another 31 permits for plumber and general contractor work.

While the Manual and SOP contain information about coordination and indicate when coordination meetings should take place with certain entities, including street excavators and utility companies, they do not indicate how the records of those meetings should be documented and kept. Lack of effective communication and coordination might result in unnecessary re-work on the streets after they have been

repaired. Creating and maintaining a comprehensive system of coordination records could help DOT improve its coordination efforts.

Recommendations

- 8.** Establish better communication pertaining to street construction projects with other entities, including City agencies, and schedule and attend coordination meetings with other entities and City agencies before street opening work commences.
- 9.** Revise the SOP to require documentation of all coordination meetings with other entities and maintain the records of such meetings.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether DOT ensures that all street construction permittees have complied with the application requirements and permit conditions, including completing the project by the scheduled permit expiration date. We also determined whether DOT coordinates with other entities planning to perform work at the same site to ensure minimal disruptions. The audit covered the period from July 2018 through November 2020.

To accomplish our objectives and to assess relevant internal controls, we interviewed DOT officials to gain an understanding of procedures regarding permit application process, issuance, and inspection of street construction permits. We reviewed permittee registration applications, permit applications, and dates of inspections. We also checked whether permittees submitted all required documentation in accordance with the Permit Office's procedures. Due to the COVID-19 pandemic, the meetings were conducted remotely, except for two that were conducted in person. The review of the records was conducted remotely.

We met with OCMC to determine how it coordinates with other entities, including street excavators, utility companies, and developers. In addition to OCMC, we met with DDC and New York City Department of Buildings officials to gain an understanding of the coordination processes between these agencies and DOT as it relates to street construction.

On August 14, 2020, we downloaded DOT's Street Construction Permits data from NYC Open Data and filtered it to include street opening permits with issued work end dates from July 1, 2018 through November 27, 2020, resulting in 635,001 permits that were associated with 292,547 permit applications. From the population of 292,547 permit applications, which was derived by summarizing the permits file on the application field, we selected a random sample of 114 permit applications based on an expected rate of occurrence not over 5%, confidence level of 95%, and precision of $\pm 4\%$. The sample included six permit application types: Emergency, New, Amend and Reissue, Reissue, Renew, and Extend. It included four permit statuses: Issued and Printed, Expired under Guarantee, Delinquent Confirmation, and Voided after Issue. In addition, the sample included permits issued for work to be performed on both unprotected and protected streets.

We obtained DOT's file of 816 approved registration applications for the period from July 1, 2018 through November 17, 2020. We selected a random sample of 50 approved registration applications for review. The sample consisted of 43 corporations and seven limited liability companies.

On September 21, 2020, we also downloaded DOT Street Construction Inspections and Corrective Action Requests data as of September 1, 2020 from NYC Open Data. The period covered by the downloaded file included inspections conducted from July 1, 2018 through September 1, 2020. In addition to the Open Data, we requested street opening permit inspections files from DASH, which was provided on October 19, 2020 and covered the period from July 1, 2018 through October 12, 2020. We also requested and reviewed all inspector schedules for the five boroughs to support

the permit inspection data. We counted the number of rotations in each calendar year as follows: four schedules in a year resulted in three rotations in that year.

We obtained two separate files from HIQA of all CARs and NICAs from July 1, 2018 through October 12, 2020. We combined both files to determine the population of unique permit numbers. From the population of 69,301 unique permits, we selected a random sample of 81 permits based on an expected rate of occurrence not over 5%, confidence level of 90%, and precision of $\pm 4\%$. For our sample, we reviewed all the associated CARs, NICAs, and NOVs.

Our samples were not intended to be projected to the population.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

As is our practice, we notified DOT officials at the outset of this audit that we would be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to affirm that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They further affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at DOT have informed us that, as a matter of policy, the agency officials will not provide representation letters in connection with our audits. As a result, we lack assurance from DOT that all relevant information was provided to us during the audit.

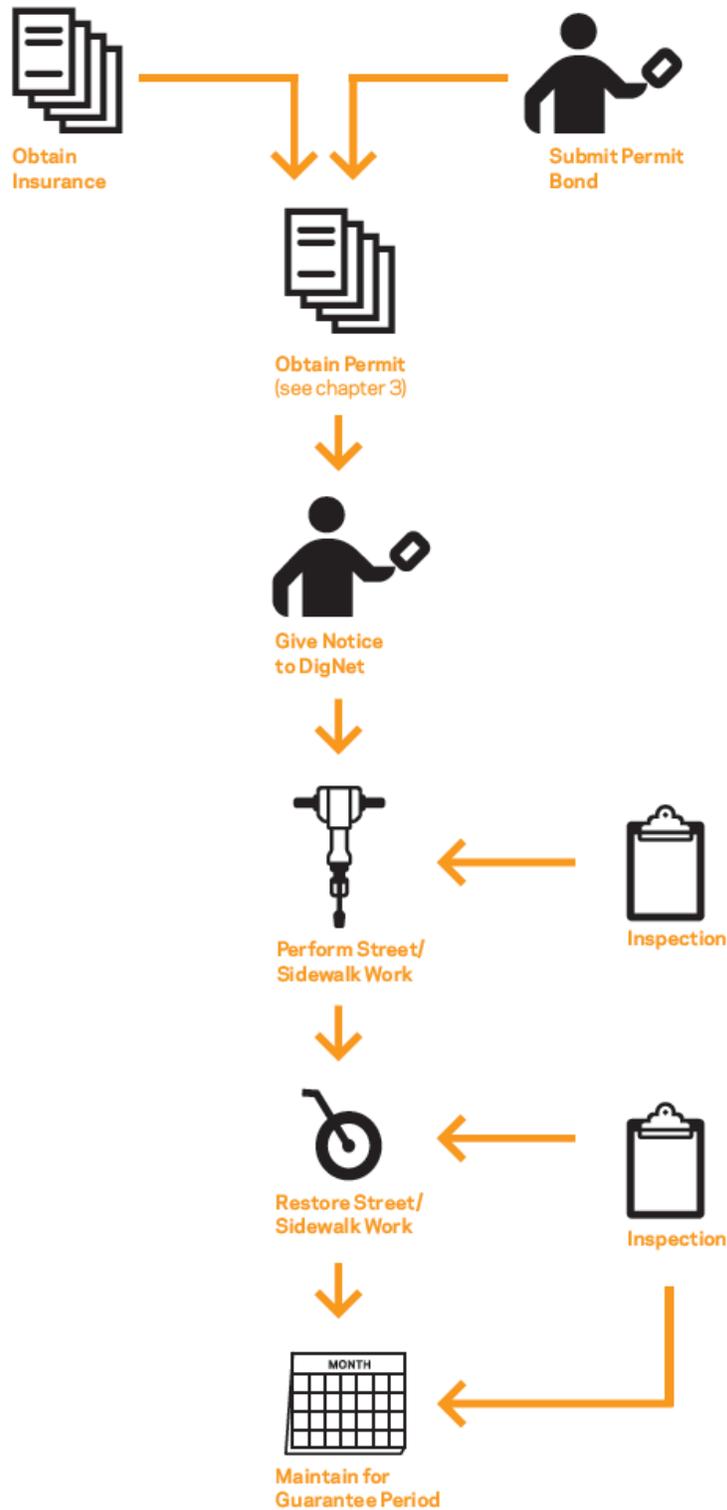
Reporting Requirements

We provided a draft copy of this report to DOT officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. DOT officials did not agree with our findings and conclusions. They stated that they were already in compliance with three of the nine recommendations in the report. They agreed with two recommendations and partially agreed with the remaining four recommendations. While they stated that their responses to the preliminary findings were not considered in preparing the draft report, this was not the case. Rather, the audit team thoroughly reviewed DOT's response to our preliminary findings and revised the results where it was warranted. Our State Comptroller's Comments addressing certain DOT remarks are embedded within DOT's response.

Within 180 days of the release of our final report, we request the Commissioner of the Department of Transportation report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Exhibit

Process of Performing Work in the Street



Source: NYC DOT Street Works Manual

Agency Comments and State Comptroller's Comments



Department of Transportation

Ydanis Rodriguez, Commissioner

April 13, 2022

Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane - 21st Floor
New York, NY 10038

Re: Draft Audit Report 2020-N-6, Issued February 22, 2022, New York City Department of Transportation - Street Construction-Related Permits.

Dear Ms. Maldonado:

The New York City Department of Transportation (DOT) is in receipt of the Office of the State Comptroller's (OSC) draft report (2020-N-6) regarding its audit of the New York City Department of Transportation - Street Construction-Related Permits.

Please accept the following as the Agency's written response to the draft audit report:

On behalf of Ydanis Rodriguez, Commissioner of the New York City Department of Transportation ("DOT"), DOT generally disagrees with the results of the draft audit report's findings, recommendations, and conclusions. DOT reached this conclusion because the methodology used to meet the audit objectives is flawed. Upon review of the draft audit report, we have concluded that most of the findings were unfounded because they are based on inaccurate, partially correct or incomplete information, including a lack of understanding of DOT's permitting and inspection process, which affects the validity of the analysis and report findings. It should be noted that despite good faith efforts to express our concerns regarding the factual accuracy of the report findings, including specific and detailed rebuttals of the audit team's assertions, no substantive revisions were ultimately made. The draft audit report fails to incorporate any of the information that DOT provided to refute these claims.

State Comptroller's Comment – Auditors understood DOT's processes. However, DOT apparently does not understand the audit process. Our audit was conducted in accordance with generally accepted government auditing standards and is supported by sufficient and appropriate evidence. While DOT provided supporting documentation, this documentation often did not meet the requirements of its own Manual and procedures. While an agency's practices may differ from their requirements, auditors must base their testing on the criteria currently in place. Moreover, auditors thoroughly reviewed the totality of DOT's responses to our preliminary findings, sought input from DOT officials, and revised our audit findings based on documentation, where appropriate. For example, our initial conclusion was that 87,935 inspections were not done. DOT provided additional information, and the number was then

revised to 41,761. DOT's comments about the findings, conclusions, and recommendations are thus without merit.

It should also be noted that the majority of this audit was conducted at the height of the COVID-19 pandemic when DOT and OSC staff were still working from home. This sometimes proved to be a limitation because access to certain files were not available and the usual in-person interaction of an audit between DOT and OSC staff could not occur due to social distancing protocols.

State Comptroller's Comment – We recognize the value of in-person meetings and review of documents and look forward to it in the future. However, while the conditions were not ideal, all findings and conclusions are nonetheless supported by sufficient and appropriate evidence.

Background:

The New York City Administrative Code and the Rules of the City of New York require that a permit be issued by DOT for any work done on City streets such as utilities making repairs, contractors replacing roadways, and homeowners performing their own sidewalk repairs. The laws and rules that govern the permitting process, the street work, and the inspection process are found in NYC Administrative Code, Title 19, Chapter 1, Subchapter 1 (Construction, Maintenance, Repair, Obstruction and Closure of Streets) and the Rules of the City of New York, Title 34, Chapter 2 (Highway Rules).

The Office of Construction Mitigation and Coordination (OCMC) within DOT reviews all construction permit applications and develops construction activity stipulations to allow for work to occur with minimal disruption to businesses, motorists, bicyclists and pedestrians, and avoid conflicts with other construction projects and special events. OCMC processes approximately 700,000 permits overall per year. OCMC routinely interacts with project engineers, city agencies, community boards, elected officials and the general public to resolve construction issues related to mobility.

Permit applicants must register and submit proof of all required supporting documentation, including insurance certificates, to DOT's permit system, NYCStreets Permit Management System (NYCStreets). The NYCStreets system will not process a permittee's registration if the required information is missing nor will it issue a permit if the proper insurance is not on file at the time of application.

When a street is resurfaced, it is designated as a protected street. This status generally prevents any street opening-related permits for five years in order to preserve the quality of the roadway. In addition to emergency work that starts out as an emergency permit, DOT considers emergency work to include urgent work such as water or sewer house connections repairs or other critical

utility connections that will affect life and property or unreasonable hardship if not addressed within a finite period of time within the five year protected status.

Exceptions are made for emergency work, or where the applicant can demonstrate that the work could not have been reasonably anticipated prior to the street resurfacing or reconstruction. In cases where the applicant demonstrates that the work could not have been reasonably anticipated prior to resurfacing or reconstruction, OCMC will review for appropriateness and issue a permit where appropriate.

Permittees are responsible for the permanent restoration and maintenance of street openings and excavations for a period of three years on unprotected streets, and up to five years on protected streets commencing on the restoration completion date.

The Department of Transportation's Highway Inspection and Quality Assurance (HIQA) division is a citywide operation with offices in each of the five boroughs. HIQA has 150 inspectors who enforce City laws, rules, regulations and policies relating to work on the City's streets. This work includes sidewalks, roadways, and highways. HIQA's inspection staff monitors work sites for compliance with permit stipulations, safety, maneuverability, ensuring that in-progress inspections of street construction are monitored for quality, and when necessary, issue summonses for noncompliance with these rules and regulations.

Key Finding:

DOT did not perform all required inspections to verify that permittees complied with permit conditions. We determined that 41,761 (14%) of a total of 299,933 street opening permits should have been inspected but were not. Street construction sites that are left uninspected may lead to work not being performed in accordance with the permit requirements, potentially creating a safety risk to the public.

Response:

We disagree with the report findings. HIQA inspects work sites during the time permits are active but HIQA is not mandated to do all of them. This work is usually assigned to inspectors during inclement weather (snow) where finding a street cut (post inspection) is difficult. Post inspections are scheduled and assigned to the inspectors regularly. Many of the permits that the audit found as not being inspected are still under guarantee and subject to a future inspection.

State Comptroller's Comment – DOT's states that the finding is incorrect by noting that some of the required inspections were assigned during inclement weather (snow) where finding a street cut (post inspection) is difficult and therefore will be performed later. However, the report states that these inspections were required and not performed – nothing in DOT's response

seems to contradict this. DOT simply adds that, due to the conditions present at the time, they will be performed later, even though some of these required inspections date back from over 3 years ago and the most recent dating back more than 1½ years. Moreover, as stated in the draft report, inspections should be performed while work is in progress to ensure that construction was done in accordance with permit requirements.

While we do not routinely assign active permits, HIQA’s standard operating procedure for active permit inspections is to inspect any visibly active construction site in addition to inspector’s daily assignment. Many of the summonses HIQA issues are for working without a permit or not complying with the permit stipulation(s), both rule violations apply to active construction work.

Additionally, DOT does not agree with the presentation of the following two results in this section:

- “We found that DOT did not perform all required inspections. Our review of the 635,001 permits with work end dates after June 30, 2018 and the file of inspections performed between July 1, 2018 and September 1, 2020 identified 299,933 permits without inspections. Excluding the 84 permit types that are not assigned for inspection resulted in 87,935 permits that should have been inspected but were not. In response to our preliminary findings, DOT officials indicated there were additional permits that HIQA is not required to inspect. After several discussions and our thorough review of all the information DOT provided, we accepted 46,174 additional permit types that did not have to be inspected. We concluded that the total number of permits that were not reported in the files as inspected at any time but should have been inspected was 41,761 (87,935–46,174).”
- “We also found that, from a sample of 268 permits, only 160 permits (59.7%) were inspected. Of the 108 permits (40.3%) not inspected, 66 did not require inspection and 42 did require inspection. After further review and information from DOT, we removed 20 permits.”

We request that the final report not include changes in statistics based on clarification with the auditee. Keeping the figures which were subsequently revised contain unnecessary and unrelated data in the draft audit report. As written, this could lead the reader to assume there was an issue with the permits that were initially deemed an exception but, after clarification were not found to be an issue.

State Comptroller’s Comment – DOT states that its feedback was not considered; the included statistics demonstrates that is not correct. As DOT continues to insist this in its response, despite all evidence to the contrary, inclusion of these statistics is appropriate. Furthermore, this data demonstrates DOT’s haphazard approach to providing information. DOT officials did not provide a comprehensive list of permits that were excluded from inspection when initially requested. Rather, they added additional permit types after auditors provided their initial results to DOT. This required auditors to redo their analysis again.

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Inspection Scheduling (Page 11):

We agree with the report findings that we must improve on following the rotation schedule, documenting the rotation properly, and writing these procedures in our SOP. All of these recommendations are currently being reviewed and where appropriate will be implemented.

However, it should be noted that some of the dates OSC choose for this report were dates when HIQA was allocating inspectors to sites relating to the Open Restaurants Program and COVID cluster testing during the pandemic which did not allow for set assignment of sectors. This information was previously provided to OSC in June 2021, however, this information is not included in the draft audit report.

State Comptroller's Comment – While we have included this information in the report at DOT's request, we have no support that either of these factors influenced inspections because DOT did not provide it. DOT continues to fail to understand that audits require sufficient and competent evidence to support conclusions and that their verbal assertions without any support are insufficient evidence.

Key Finding:

Sites that received CARs were not re-inspected on a timely basis – often more than 3 months after their issuance, including one that was more than 1 year after the 30-day time frame that permittees have to perform corrective action.

Response:

Page 13 of the draft report states “... there is no assurance any corrective action was taken by DOT to correct a condition on the street after accepting a protest”. We disagree with this statement. If a CAR protest is accepted, DOT then issues a new CAR to the correct party and holds them responsible.

State Comptroller's Comment – Although a new CAR was issued to the correct party, DOT provided no evidence that corrective actions were taken by the responsible party. DOT continues to fail to understand that audits require sufficient and competent evidence to support conclusions.

Key Finding:

DOT did not ensure that only emergency work was performed on protected streets (streets that had been resurfaced or reconstructed within the prior 5 years). Our review of 114 permit applications found that permits were issued for non-emergency work on 13 protected locations, including one permit issued 2 months after the street work was completed.

Response:

Upon review of the draft audit report, DOT disagrees with the findings relating to the permitted work on protected streets, permit applications, and street construction coordination. It should be noted that, despite our previous efforts to express our concerns regarding the factual accuracy of the report findings, including specific and detailed responses to draft audit findings, no substantive revisions were ultimately made to the final draft report.

State Comptroller's Comment – DOT replied that, despite its response to our preliminary findings regarding protected streets, permit applications and construction coordination, no substantive changes were made to the draft report. We did not make substantive changes because DOT cited conditions where work could be done on a protected street in a non-emergency that were not in DOT's procedures and Manual. In addition, the non-emergency work was not thoroughly documented in NYCStreets even though DOT told auditors that the system contained all the information for each permittee registration and permit.

In addition, later in its response (p.32 of the report), DOT states there isn't a "one size fits all" approach for any work on a protected street for up to 5 years and, as a result, "reasonable discretion is part of the equation since property owners are also a part of DOT's public service responsibilities." The audit does not state there is only one method to addressing work that has to be done on City streets. However, it is important that the actions taken are properly documented.

DOT's response also indicates that permit requirements were followed with no exceptions. However, we noted that three businesses did not submit the Location Permit Bond when they applied for street construction permits. In addition, 48 companies did not include a 30-day cancellation clause to notify DOT 30 days prior to the insurance cancellation.

We have identified inconsistent descriptions of the permit process, specifically concerning rules and requirements over work performed on protected streets. We are, again, providing the following information in order to clarify discrepancies in the draft audit report. Work on a protected street does not have to always be an emergency. During the first 18 months of the SAM hold (i.e. 18 months after which a street is repaved), DOT may deny the permit request or require a more robust and expensive restoration. For the remaining 42 months, the extra permit fee to cover the cost of having a HIQA inspector on site during the final backfill and restoration is the price that has to be paid if the work cannot be put off for months or years such as water or sewer house connection issues that may occur.

The report states, "For the 114 permit applications we reviewed (containing 268 permits), 48 were for street openings on protected streets. However, only 22 of those were on the protected street listing." The list of protected streets is current and is updated every day to add newly paved or

constructed streets and remove streets that expire from the 5 year protected status. As such, the report failed to consider this process when determining whether the current list of protected streets was appropriate in this comparison with previously issued permits on protected streets. For example, some of those streets were repaved / reconstructed 7 or 8 years ago and were still listed as protected in 2018 and 2019, however, at the time of the audit sample in 2020 or 2021, many of those streets would correctly no longer be listed as protected.

State Comptroller's Comment – DOT has made an incorrect assumption of our methodology. We did not check the list for protected streets that were past the 5-year protected status.

The preliminary draft report provided on August 18, 2021 incorrectly stated that DOT inaccurately allowed non-emergency work on protected streets. During our exit conference with OSC, we pointed out what we had previously communicated at earlier meetings that extenuating circumstances would result in the approval of non-emergency work on protected streets and/or the permittee agreeing to cover the cost of a more significant surface restoration well beyond their work site. But what is confounding to us is that the response from OSC staff during the meeting was that DOT had not previously informed OSC that more than just emergency work can sometimes be approved on protected streets and therefore the OSC statement that DOT's policy only allows emergency work on protected streets will not be removed from the findings.

It should be noted that a “one size fits all” approach for any work on a protected street for up to 5 years or adding significant cost such as curb to curb milling and paving restoration would most often impact the adjacent small property owner who are not generally responsible for repairs or upgrades to house connections. It is the home owner's contractor or the utility company who are familiar with DOT's processes, guidelines and schedules who will either pass the additional cost onto the property owner or simply not do the work leaving the property owner with the hardship. Therefore, reasonable discretion is a part of the equation since property owners are also a part of DOT's public service responsibilities.

Key Finding:

DOT did not ensure that documents submitted by the permittees met all the requirements and were complete upon application and registration. This included ensuring that permittees had sufficient insurance in place to cover any liability related to the costs of repairs and any potential damages.

Response:

We disagree with the conclusion that DOT does not reasonably and effectively require that permittees maintain compliance with registration and permit application requirements. The audit sampled 114 permit applications which reported exceptions that the supporting information were

either included in previous applications or already included with some of the other 114 applications or with some of the other total 268 permits within those applications since most work sites require more than one permit type or separate applications during their phases of construction.

It should be noted that if the supporting document file was too large to attach as a PDF directly in NYCStreets, then it would be stored on site.

The documentation and review process for the permittee registration is separate and distinct from the permit application process as evidenced by section 2-02 of the Highway Rules. OSC has incorrectly and repeatedly combined and conflated these two separate subject matters and processes. It should be noted that the distinction between these two had been previously communicated to the audit team.

The reference to compliance with the initial registration and appropriate insurance are related to the permittee profile information we require (and keep on file) before DOT issues the permittee a unique permittee account ID. That ID then allows the permittee to apply for only specific permit types based on the type of work authorized.

For example, the NYCStreets system will automatically cross check the permittees profile in the system and allows a plumber who has a Master Plumber's license on file to apply for only certain permit types such as Water and Sewer permits. The system automatically blocks a plumber from other permit types such as permits to work on electrical infrastructure.

OSC previously listed companies that did not have the full proper insurance on file. We responded that the private contractors they flagged did only sidewalk work which does not require as much insurance as contractors who are authorized to do street excavation. Yet OSC continues include this inaccurate information.

OSC also mentioned that documents on file indicated two out of three permittees were self-insured and one had no valid insurance on file. We explained that liability of all three these major utilities are covered by the separate franchise agreements. The one utility was still covered by the Franchise Agreement and the technical record update in our system was purposely on hold until ongoing litigation was settled between the city and National Grid (NG) regarding NG, also including the title of "Doing Business As" (DBA) Brooklyn Union Gas (BUG) who was the original franchisee. The Permit Office had no control over this. However, OSC's focus on this one of thousands active permittee is still in the report as if we made a mistake.

OSC mentions that the DOT Street Works Manual does not mention the different insurance requirements for utilities. We explained that the Manual is designed to be a fairly comprehensive guide for the general public. It purposely excluded utility company permit processes in order to

not confuse the average person since utilities are specialized and not part of the typical and permit processes. We do not even list the permit types in the manual that only utilities are authorized to apply for. The reference to compliance with a permittee applying for individual permits is different and work site specific.

OSC's references to sample permits they reviewed, however, as we previously mentioned, the specific permits they referenced were either vague or not specifically included for DOT to check. Other times they were buried in convoluted spreadsheets that contained so many columns with titles that we often could not understand the meanings and or how they came up with their conclusions. We offered to meet with OSC to obtain additional clarification of their charts and spreadsheets, however, there was no response from OSC.

State Comptroller's Comment – DOT claims that the information provided in the preliminary findings was too vague to identify the permittee. However, we advised DOT officials that they could contact us for any information they required to respond to the preliminary findings. Where information was requested, it was provided. We also note that DOT officials told us that the records on NYCStreets are complete. As such, with the permittee or permit number in hand, they should have been able to locate the record.

It is clear that after several Zoom meetings to discuss preliminary findings where DOT was not provided any written documentation in advance of the meeting making such meetings very inefficient and unproductive, OSC still fails to understand the complexity of DOT's permit and inspection processes and operations.

State Comptroller's Comment – Preliminary meetings are provided as a courtesy to DOT. The goal of the meeting is to provide an overview of the findings so that DOT can better understand the written findings and to give the agency an opportunity to identify any issues that the auditors may not have considered. Written preliminary findings with detailed schedules documenting the findings, to which DOT has an opportunity to respond in writing, can then be reviewed in an informed manner by the agency. A subsequent meeting is then held so that outstanding issues can be resolved.

As previously stated, where DOT provided comments to explain the actions taken, it was reflected in the draft report. There are other comments that did not have merit and were not reflected in the draft report.

OSC even acknowledged in their final draft report that we previously responded and pointed the above clarification regarding these original findings. Unfortunately, OSC has apparently not followed up and is keeping their original conclusions.

Permit Duration (Page 20):

The report states: “While there is no limit of how many times a permit can be reissued or renewed, continued renewals of permits are an inconvenience to the public, a potential safety concern, and may also delay the benefits to the City.”

DOT concurs with the audit observation. Currently we only have the ability to charge the minimal administrative fee for permits that are issued. Unfortunately, since the cost is inexpensive, it is not a cost prohibitive factor to permittees.

DOT is exploring ways to either obtain additional staff that will give us the ability to follow up with more site specific details of a contractor’s construction phases and whether there is truly a continued need for a DOT permit. This includes modifying permit fees to cover both the additional costs as well as an economic disincentive to frivolously request permit renewals if they are not really necessary or complete the work more expeditiously.

Key Finding:

DOT’s communication related to street construction projects and its efforts to coordinate with other entities needing to perform work at the same site could be improved.

Response:

We disagree with the conclusion that DOT should improve its communication and better coordinate street construction projects with other City agencies and entities planning to perform work at the same site.

“DOT provided records to support its communication and coordination with other entities, including other City agencies, for street construction projects.”

Significant follow up documentation was provided to OSC relating to earlier specific locations that OSC flagged such as the NYC DDC capital reconstruction project in DUMBO Brooklyn.

A notable example of our concern is identified in the draft report relating to a location identified where a New York City Department of Parks and Recreation (DPR) contractor cut into a protected street on Staten Island. Since virtually all DPR work is off street on their property, DOT does not typically reach out and coordinate with DPR unless they alert us to a project that they know will extend in to the street. It is extremely rare for DPR work to extend beyond the curb and into the street. As such, this DPR capital project was for a building well within DPR property and was already nearing completion when they first reached out to DOT for a permit because the new building also needed an upgraded water connection to the water main in the street. DPR nor their contractor had reached out to DOT until shortly before the work was required. Therefore, this is

an unusual and rare example that OSC should not have used in its report. DOT could not have known this specific detail of a DPR project taking place within the park. There was no reasonable way DOT could deny the permit request that would have resulted in delaying the opening of the public facility for 4 more years. This issue is also covered in our response under “Key Findings” and provided in our previous responses over the last year and a half.

However, it should be noted that DOT took issue with OSC’s follow up request for all correspondence relating to agency coordination over a 2.5 year period. While it is common for DOT to gather this type of information in other circumstances, such as FOIL requests, OSC’s request posed challenges considering the a voluminous amount of documentation from various file locations.

OSC was offered an option to randomly pick a sample size of some projects for us to research background or supporting documents in order to reduce the workload on the Permit Office. OSC did not accept this offer.

OSC’s finding implies that all permits and backup records should be filed in one place or system. However, this is not feasible since the wide range of hardware and software (and formats) that various agencies, utilities and private contractors utilize make it impossible for a single comprehensive system that allows simple transfer or upload of all kinds of documents or other data. Plus cyber security adds yet another important layer of complexity.

DOT continually strives for and has made significant advancements in updating its permit and inspection systems. For example, a recent improvement has greatly reduced separate emails outside our online system. NYCStreets now includes the ability to have electronic conversations between DOT Project Managers and Permittees directly within an application which speeds up processing and also saves it as a record. Another earlier improvement allows applicants to attach PDF documents directly to their application which keeps much more information on file directly within the NYCStreets system.

State Comptroller’s Comment – DOT claims that it coordinates with other City agencies and utilities regarding street construction projects. We were advised that our request for all records during our audit period was unreasonable. Instead, DOT provided emails with one utility company for multiple permits at one site and one City agency, which does not support its statements about continuous coordination. As pointed out in our report, from July 1, 2018 to December 3, 2020, our sample of 268 permits contained 152 permits issued to utility companies and 85 for contract work – including 15 permits for DEP and 34 for DDC. It is reasonable to expect DOT could have located minutes from a larger number of meetings.

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Recommendation 1:

Ensure all required inspections are assigned and performed on a timely basis.

Response: Agree. HIQA is working with DOT's IT Team to develop new inspection assignment algorithms in DASH to ensure that all the required permits as identified by HIQA management are inspected as a post audit.

Recommendation 2:

Develop an official list, in writing, of permit types that are not subject to inspection, along with justification; maintain and periodically update this list.

Response: Partially agree. HIQA currently has a list of permits that we are required to inspect but will consider creating an official list of those permits that are not inspected along with the justification.

Recommendation 3:

Develop and implement a written procedure to periodically rotate inspectors and ensure that inspector rotation practices are consistent among the borough offices.

Response: Agree. HIQA will consider writing the rotation schedule and procedures into our SOP.

Recommendation 4:

Develop and implement a written policy requiring the results of all inspections to be supported and documented.

Response: Partially agree. HIQA already has procedures documenting all failed inspections with photos and other documents, but we will consider developing these same procedures for inspections that pass. We are working with our IT DASH team to make this addition.

Recommendation 5:

Establish a time frame for reinspection following the issuance of a CAR/NICA and ensure inspectors reinspect the condition within the established time frame.

Response: Partially agree. The Highway Rules already define the time frame CAR's (30 days) and NICA's (3 hours) should be reinspected. We are considering making improvements needed to adhere to this schedule.

Recommendation #6:

Ensure future and current permittees comply with the laws, rules, and regulations when they register with DOT and apply for permits.

Response: Disagree. Permittees are currently not granted a permit if they are not in compliance with applicable laws, rules, and regulations when they register with DOT and apply for permits. This requirement was in place during the audit scope and remains in effect.

Recommendation #7:

Increase the level of coordination between DOT and other entities to prevent non-emergency work on protected streets.

Response: Disagree. As mentioned above, during the first 18 months of the protected street status, non-emergency work is only permitted on protected streets after additional review and it is determined that the applicant can demonstrate that the work could not have been reasonably anticipated prior to the street resurfacing/reconstruction, or other extenuating situations where work needs to get done for the greater good of the public.

It should be noted that DOT's Roadway Repair and Maintenance Division already hosts monthly coordination meetings with the major utilities. DOT's planned street resurfacing and/or reconstruction work is also shared directly with utilities and is also available on the Agency website. As noted in OSC's draft audit report after a street is resurfaced or reconstructed: "Permittees and others can determine whether a location is protected by checking DOT's website for a daily updated list of protected streets and its completion date." As such, coordination between DOT and other entities to prevent non-emergency work on protected streets occurs regularly. The example cited in the audit report occurred due to lack of outreach by other entities to DOT.

Recommendation #8:

Establish better communication pertaining to street construction projects with other entities, including City agencies, and schedule and attend coordination meetings with other entities and City agencies before street opening work commences.

Response: Disagree. Despite all our feedback to questions, OSC seems to not grasp the technical, operational and political complexities of the many variable and constantly many moving parts within all types of construction work and maintenance that is scattered throughout the city on any given day. DOT is one part of the overall permit process which

requires coordination and communication from external entities. The requisite communication is performed by DOT.

Recommendation #9:

Revise the SOP to require documentation of all coordination meetings with other entities and maintain the records of such meetings.

Response: Partially Agree. DOT will consider expanding our current SOP to establish documentation requirements of coordination meetings with other entities.

Sincerely,

Vincent P. Maniscalco

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