

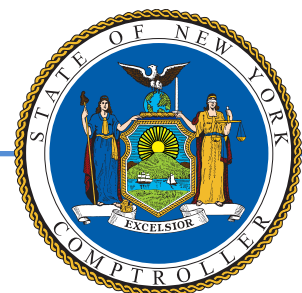
New York City Department of Buildings

Oversight of Building Construction Site Safety

Report 2021-N-3 | September 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the New York City Department of Buildings (DOB) adequately monitors New York City (NYC) building construction sites to ensure compliance with applicable codes, laws, and rules for construction site safety. The audit covered the period from January 2018 through December 2021.

About the Program

DOB is responsible for regulating the safe and lawful use of more than 1 million buildings and construction sites in NYC through enforcement of, among other laws and rules, the NYC Building Code (Building Code). This requires construction managers, contractors, and subcontractors engaged in construction or demolition operations to institute and maintain safety measures necessary to safeguard the public and property. DOB inspectors respond to incidents and complaints and perform inspections to enforce compliance.

As the DOB website states, “construction is a dangerous business.” From 2018 through 2020, 26% of all worker deaths in NYC were construction related. DOB reported that 2,003 building construction-related incidents occurred between January 1, 2018 and May 15, 2021. These incidents resulted in 36 fatalities and 2,066 injuries; 75% of the fatalities occurred in Manhattan and Brooklyn.

Key Findings

We found DOB’s oversight of building construction sites, including construction site inspections and safety, and enforcement activity need to be improved. Such oversight and enforcement seek to address safety issues that could potentially result in fatalities, personal injury, and property damage.

Between June 10, 2021 and August 31, 2021, we visited 43 construction sites located in all five boroughs of NYC. Eighteen of these sites were actively under construction at the time of our visits, and 16 of the 18 sites (89%) had a total of 77 safety issues, including: not having a site safety manager; missing or incomplete site safety logs and daily inspection records; and no documentation of workers completing required site safety training or attending mandatory safety meetings. While DOB followed up and issued summonses at some of these sites, generally, it does not effectively prioritize which sites are inspected.

Generally, DOB inspections were performed after an incident had occurred or a complaint had been received, even though its prior enforcement actions and contractors’ safety history are data sets that could be used to help identify high-risk construction sites. In addition, DOB’s enforcement activities provide limited assurance that immediately hazardous conditions identified by DOB are addressed in a timely manner. When DOB inspectors issue a summons for an immediately hazardous condition, the building owner or contractor must correct the condition immediately. However, DOB did not issue a violation for failure to timely certify correction for 10,890 (60%) of the 18,072 summonses issued for immediately hazardous conditions that were open for more than 30 days.

Lastly, DOB has inadequate procedures to identify incidents and report injuries and fatalities at building construction sites. We found that DOB was not always aware of building construction-related incidents; three fatalities and six injuries reported by the Occupational Safety and Health Administration (OSHA) between January 2018 and May 2021 were not reported by DOB.

Key Recommendations

- Create and implement policies and procedures to issue DOB Violations for failure to certify corrections of immediately hazardous conditions in a timely manner.
- Use DOB inspection, violation, and accident data as well as publicly available data to identify high-risk contractors and sites to proactively inspect.
- Develop and implement procedures, including coordinating with OSHA and other relevant agencies, to identify building construction site incidents.



Office of the New York State Comptroller Division of State Government Accountability

September 1, 2022

Eric Ulrich
Commissioner
New York City Department of Buildings
280 Broadway
New York, NY 10007

Dear Commissioner Ulrich:

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 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 Buildings entitled *Oversight of Building Construction Site Safety*. 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 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
Building Code	New York City Building Code	<i>Regulation</i>
DOB	New York City Department of Buildings	<i>Auditee</i>
DOB Violation	A notice that a property is not in compliance with some provision of applicable law and includes an order from the Commissioner of the Department of Buildings to correct the violating condition	<i>Key Term</i>
OATH	New York City's Office of Administrative Trials and Hearings	<i>Agency</i>
OATH Summons	Summons issued by DOB when a property does not comply with the New York City Construction Code	<i>Key Term</i>
OSHA	Occupational Safety and Health Administration	<i>Agency</i>
SST	Site safety training	<i>Key Term</i>
SWO	Stop Work Order	<i>Key Term</i>

Background

The New York City Department of Buildings (DOB) is responsible for regulating the safe and lawful use of more than 1 million building and construction sites in New York City (NYC or City). This includes enforcing provisions of the NYC Administrative and Building Codes, the Rules of the City of New York, and NYC Local Laws in order to promote the safety of all people who visit, live, and work in NYC. In part, these provisions entail promoting worker safety through inspections of construction sites and review and approval of building plans, permits, and licenses.

DOB is responsible for enforcing the NYC Building Code (Building Code), which requires construction managers, contractors, and subcontractors engaged in construction or demolition operations to institute and maintain safety measures necessary to safeguard the public and property. DOB inspectors respond to incidents and complaints and perform inspections to enforce compliance. In 2017, NYC enacted two laws designed to improve construction site safety. Consequently, all construction workers are now required to obtain a certain number of hours of site safety training (SST), depending on their job responsibilities. In addition, all incidents where construction work is subject to DOB permitting must be reported if they result in an injury or fatality.

As the DOB website states, “construction is a dangerous business.” From 2018 through 2020, 26% of all worker deaths in NYC were construction related. DOB reported that 2,003 building construction-related incidents occurred between January 1, 2018 and May 15, 2021. These incidents resulted in 36 fatalities and 2,066 injuries; 75% of the fatalities occurred in Manhattan and Brooklyn.

According to a June 2021 New York State Comptroller’s [Report](#), construction is a diverse industry and offers employment opportunities to many workers who have not earned a college degree. In 2019, over 56% of workers had no college experience, higher than in any other sector. Immigrants held more than half (53%) of the construction jobs in the City – much higher than in the rest of the State (18%) and the nation (24%). Hispanics made up the largest share of workers in the industry (39%), a higher share than in the rest of the State (16%) and the nation (30%).

The COVID-19 pandemic caused the construction industry to slow down – more than half the construction job losses in the State were in NYC. However, in 2021, the number of construction permits issued increased in the City. As construction activities increase, so too do the risks to worker safety.

Audit Findings and Recommendations

We found DOB's oversight of building construction sites, including construction site inspections, and enforcement activity need to be improved. Such oversight and enforcement seek to address safety issues that could potentially result in fatalities, personal injury, and property damage.

DOB needs to enhance its efforts to ensure that owners, contractors, and other responsible parties report all building construction site incidents and comply with the codes, rules, and regulations that govern construction site safety. Furthermore, DOB's enforcement activities provide limited assurance that immediately hazardous conditions identified by DOB are addressed in a timely manner. DOB did not consistently issue violations for failure to certify correction of an immediately hazardous condition. DOB officials indicated that DOB often generates these violations almost 3 months after inspection despite the requirement that these conditions be corrected immediately – issuing a follow-up violation approximately 3 months after issuing a summons for an immediately hazardous condition defeats the purpose of this enforcement action. DOB officials explained that the ultimate responsibility for site safety lies with contractors and building owners. However, DOB is responsible for enforcing compliance at construction sites.

In addition, DOB does not prioritize which sites should be proactively inspected for safety conditions. Generally, DOB inspections were performed after an incident had occurred or a complaint had been received even though its prior enforcement actions and contractors' safety history are data sets that could be used to help identify high-risk construction sites.

Construction Site Safety Requirements

DOB does not provide adequate oversight of building construction sites to ensure contractors and building owners are complying with site safety requirements. Construction sites with unsafe conditions that are not identified and addressed have resulted in personal injuries and fatalities.

The Building Code sets forth requirements to ensure construction site safety, including the presence of safety managers, construction superintendents, or a designated competent person to conduct daily inspections of building construction sites. In addition, permit holders (owners and contractors) at building sites that require a site safety manager, site safety coordinator, or construction superintendent must ensure that each construction worker takes part in a documented pre-shift safety meeting to review the safety concerns and risks associated with the specific work at the site.

The Building Code also requires that permit holders at building sites ensure each construction worker has completed SST and received an SST card. Permit holders must ensure that each site safety manager, site safety coordinator, construction superintendent, or a competent person has an SST supervisor card. In addition, permit holders are responsible for maintaining a daily log identifying each worker and including a copy of their SST card.

DOB did not take adequate steps to ensure that property owners and contractors conducted required site safety inspections. Between June 10, 2021 and August 31, 2021, we visited a sample of 43 sites in all five boroughs of NYC where DOB had issued building construction permits. Of the 43 sites, 18 had active construction in progress at the time of our visit. Eight of the 18 are classified as major building construction sites (generally, 10 or more stories tall or a building footprint of 100,000 square feet or more). We found that 16 of the 18 sites (89%) had a total of 77 safety issues, including: not having a site safety manager; missing or incomplete site safety logs and daily inspection records; and no documentation of workers completing required SST or attending mandatory safety meetings.

DOB officials stated that they can only take enforcement actions for conditions that are observed by a DOB inspector at the time of inspection. Officials added that while DOB has issued summonses and taken other enforcement actions where appropriate, ensuring that those violating conditions are corrected is the responsibility of the contractor, the property owner, or other responsible parties. Prior to our site visits, DOB inspectors issued 49 Office of Administrative Trials and Hearings (OATH) Summonses for unsafe conditions at 10 of the 16 sites – some of which appeared to mirror the conditions we observed. That these types of safety conditions were identified during our site visit indicates DOB's enforcement efforts did not achieve the goal of compliance with the Building Code.

In response to our findings at site visits, DOB sent inspectors to those locations and issued 24 summonses for nine of the 16 sites. Violations included having missing SST cards and inadequate pre-shift meeting records and construction superintendent safety logs. Inspectors also issued three partial Stop Work Orders (SWOs) and two full SWOs. DOB officials indicated that they did not issue summonses at the remaining seven sites because inspectors found no issues at five sites, construction was completed at one site, and the construction job was released from the site safety program at another site.

According to DOB, the failure to implement construction safeguards and follow basic safety regulations, such as ensuring workers received SST, leads to deaths and injuries. For example, this risk was realized in February 2020, when a partial building collapse occurred, and debris fell onto two workers. One of the workers died and the second worker suffered severe injuries. According to DOB, the demolition operation did not follow sequence, and there was also a lack of site safety logs at the site. In another incident in October 2020, a worker fell and suffered multiple injuries. According to a DOB inspector, the worker did not possess a valid SST card and did not participate in a site safety meeting.

Insufficient Enforcement

DOB relies on its enforcement actions to ensure unsafe conditions are corrected timely by building owners and contractors; however, their enforcement actions proved to be insufficient in achieving compliance and ensuring violating conditions were corrected. When these conditions are not corrected, the DOB-identified hazards continue to exist.

DOB's Enforcement Authority

DOB has the authority to issue OATH Summonses and DOB Violations when a property or construction site does not comply with codes, regulations, and rules. DOB inspectors can issue OATH Summonses for the following types of violations:

- **Class 1. Immediately Hazardous Violation:** A violating condition that poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.
- **Class 2. Major Violation:** A violating condition that affects the life, health, safety, property, or other public interest but does not require immediate corrective action.
- **Class 3. Lesser Violation:** A violating condition that has a lesser effect than Class 1 or Class 2 violations on life, health, safety, property, or other public interest.

A building owner or contractor who receives a Class 1 OATH Summons must immediately correct the violating conditions and submit a Certificate of Correction to DOB for evaluation. If they do not submit a Certificate of Correction for a Class 1 OATH Summons in a timely manner, DOB's policy is to issue a DOB Violation for failure to certify correction. To remove a DOB Violation from a property record, the condition must be corrected, and proof of that correction must be provided to DOB.

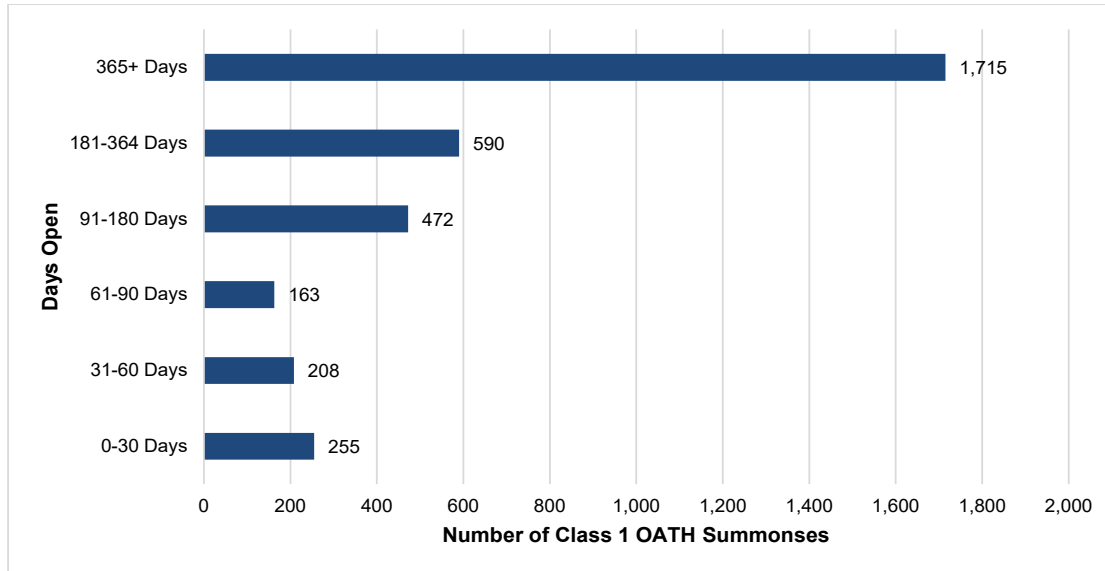
DOB may also issue SWOs at sites with unsafe conditions to protect workers, residents, the public, and buildings and other properties. To rescind a SWO, owners and/or contractors should correct and request a re-inspection from DOB to verify that all the violating conditions have been corrected.

OATH Summonses

DOB's enforcement actions, including the issuance of OATH Summonses, proved to be inadequate for ensuring that the violating conditions were corrected timely. The vast majority of Class 1 OATH Summonses we reviewed remained open more than 30 days after being issued. While a summons remains open, DOB has no assurance that the hazardous condition has been corrected.

Between January 1, 2018 and December 31, 2021, DOB issued 31,701 building construction-related OATH Summonses. As of December 31, 2021, 24,451 of the 31,701 summonses (77%) were Class 1 OATH Summonses, which remained open for an average of 170 days – 3,403 of the 24,451 had been open for an average of 488 days. Figure 1 depicts the extent to which Class 1 OATH Summonses, which warrant immediate corrective action due to the severe threat that the unsafe conditions pose, remained open.

Figure 1 – Open Class 1 OATH Summonses Issued Between January 1, 2018 and December 31, 2021



Furthermore, we determined that DOB did not properly identify overdue Certificates of Correction. As of August 15, 2021, there were 4,486 open OATH Summonses that had been issued since January 1, 2018. However, 3,167 summonses that should have been flagged as overdue were not. The remaining 1,319 summonses were appropriately labeled. We asked DOB officials why the outstanding compliance was not categorized consistently. Officials indicated that OATH assigns the status of overdue summonses, and DOB does not know OATH’s status criteria. Officials also explained that DOB will replace “Overdue Compliance” with “No Compliance Recorded.” It is not clear how DOB would make this change as DOB officials stated they do not control how the status is categorized. They also stated that “No Compliance Recorded” is better suited as it indicates that a violation has not been corrected within applicable time frames. We question this approach as there is a difference between an uncorrected condition that still has more time to be corrected versus an uncorrected condition that should have already been corrected. By labeling all summonses as “No Compliance Recorded,” DOB will not be readily identifying those where corrections are overdue.

Furthermore, DOB did not issue DOB Violations when building owners or contractors failed to certify that immediately hazardous conditions had been corrected. According to the Rules of the City of New York, “a certification acceptable to the Department must be received by the Department forthwith” (i.e., without delay). As of August 15, 2021, DOB did not issue DOB Violations for failure to timely certify correction for 10,890 of the 18,072 Class 1 OATH Summonses (60%) that were open for more than 30 days. Moreover, DOB has not established a specific definition of the term “forthwith.” We selected 30 days as a period to reasonably illustrate the number of immediately hazardous conditions that were not corrected and where DOB did not issue DOB Violations for failure to certify correction. According to DOB, it generates

these violations between 80 and 94 days after issuing OATH Summonses, including Class 1 OATH Summonses. However, issuing a follow-up violation approximately 3 months after issuing a summons is not effective in ensuring compliance of time-sensitive conditions. DOB also indicated that it does not have any policies and procedures to address when owners or contractors do not submit Certificates of Correction in a timely manner for Class 2 and 3 OATH Summonses.

In some instances, building owners or contractors did not correct immediately hazardous conditions despite receiving summonses and DOB Violations for failure to certify correction. While DOB has the authority to issue a SWO, officials did not always escalate enforcement over non-compliance by issuing SWOs when immediately hazardous conditions were not addressed. Of the 2,645 construction sites where there was an open Class 1 OATH Summons (as of August 15, 2021) and a violation was issued for a failure to certify correction, DOB did not issue a SWO at 798 sites (30%). DOB officials responded that not all situations call for a SWO and inspectors must make site-specific determinations. However, while not all situations call for a SWO, such conditions and site-specific conclusions are not clearly documented or indicated.

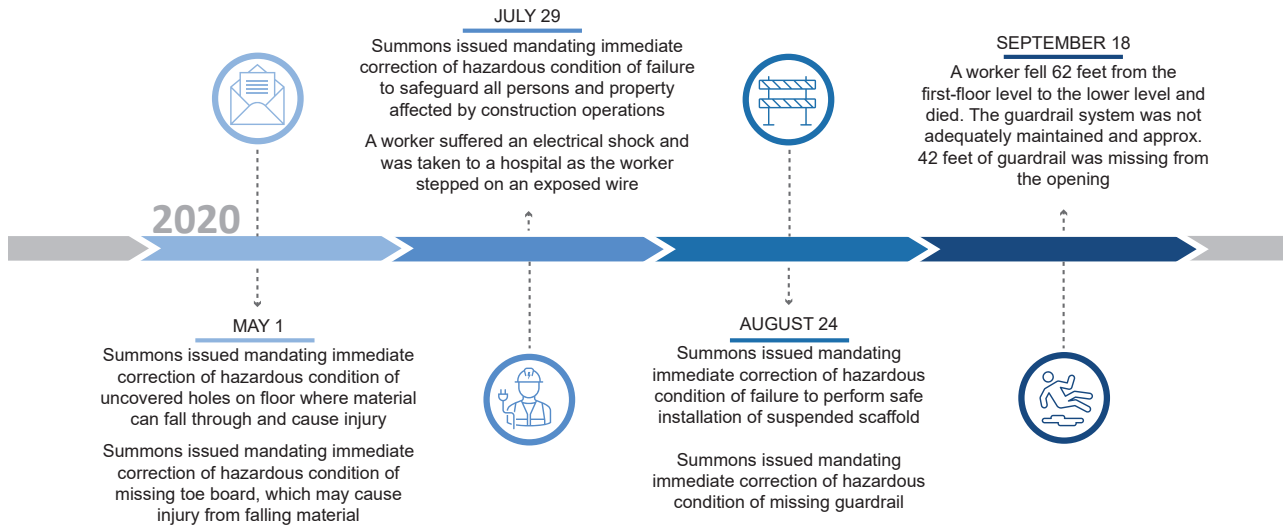
Lack of Adequate and Timely Risk Identification

DOB is responsible for enforcing the Building Code and other rules related to construction. Personal and property risks exist when safety requirements are not followed and enforced. Based on prior safety incidents, summonses, and contractor history, DOB should proactively identify and monitor high-risk construction sites. Otherwise, these risks can be realized, as shown in the following examples.

Example 1

On September 18, 2020, at a building construction site in Manhattan, a worker fell approximately 62 feet and died. According to DOB, approximately 42 feet of guardrail was missing from the opening where the worker fell. DOB issued a summons for missing guardrails just 25 days before the incident (see Figure 2). Accordingly, while the summons was open at the time of the incident, DOB officials explained the summons was for a different section of guardrails. Furthermore, this construction site exhibited a pattern of safety concerns – a worker stepped on an exposed electrical wire at this site on July 29, 2020 (51 days before the guardrail incident) and was taken to a hospital. According to DOB, the electrical wire was not inspected for defects, and there were no safety measures instituted for this type of work. Thirteen additional injuries were reported between May 15, 2018 and April 8, 2021, and DOB issued OATH Summonses at this site. Considering this, DOB should have identified this site as high risk and used additional enforcement actions that could have ensured outstanding violations were corrected timely.

Figure 2 – Timeline of Events at Manhattan Site Where Fatality Occurred

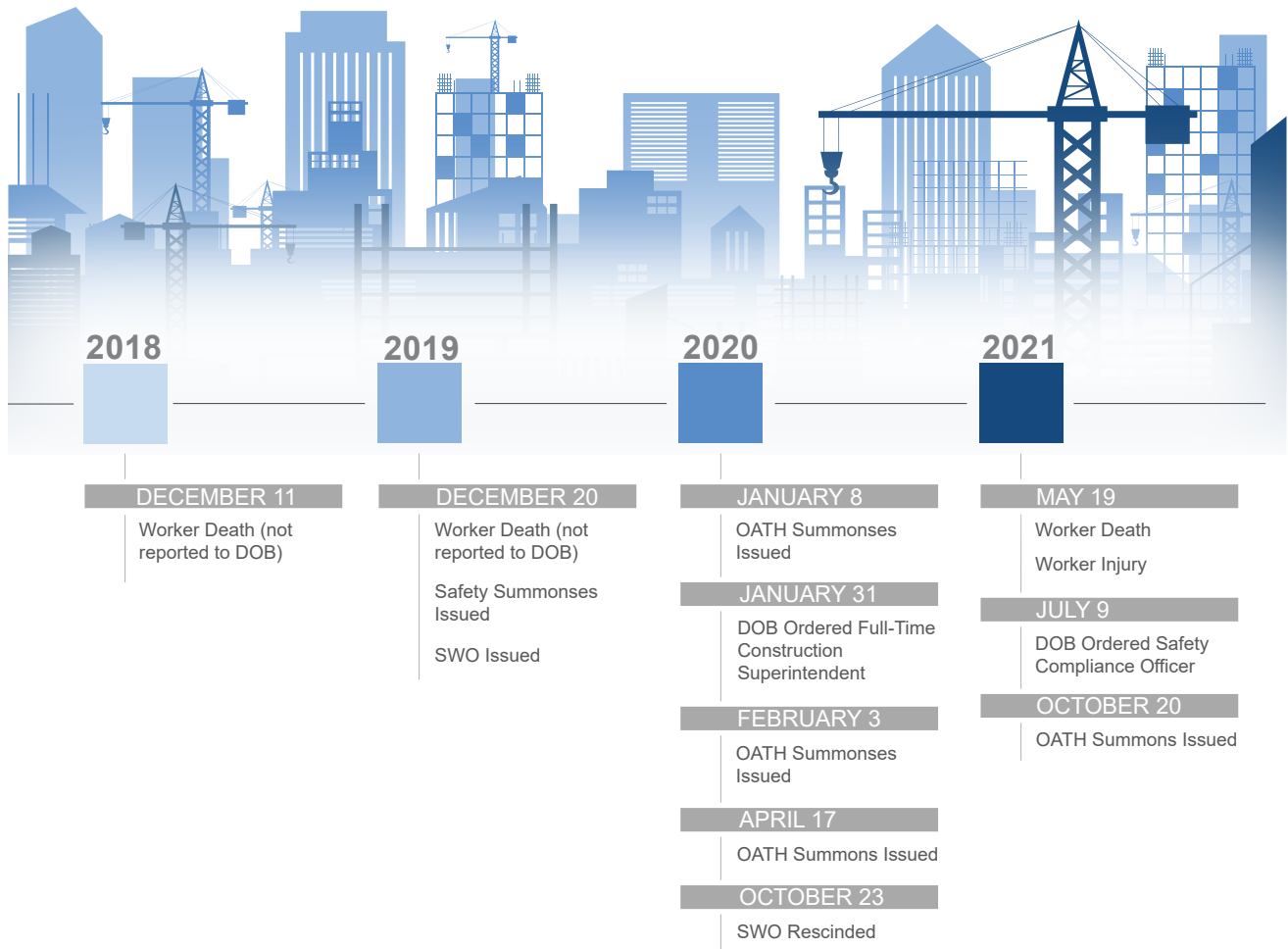


Example 2

A building construction site in the Bronx had three fatality-causing incidents between 2018 and 2021 (see Figure 3), as follows:

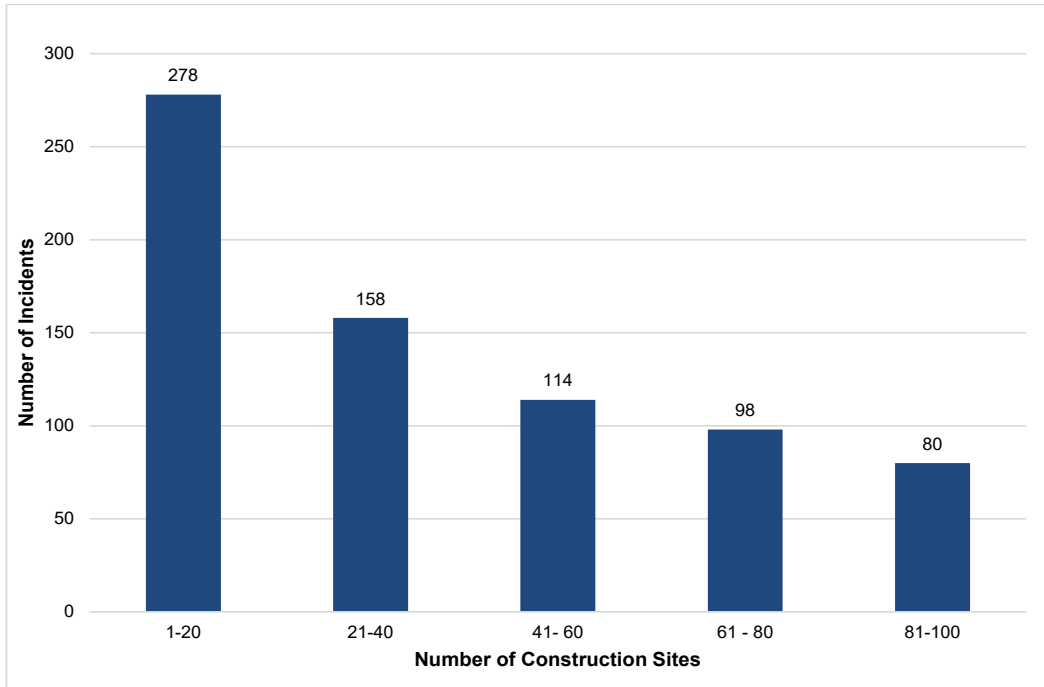
- On December 11, 2018, a worker operating a scissor lift was caught between the lift and the ceiling and died as a result. DOB was not aware of this incident until we informed them. Subsequently, DOB issued four OATH Summonses, including failure to immediately notify DOB of the incident.
- On December 20, 2019, a worker fell approximately 18 feet and later died in the hospital. On that day, DOB issued a full SWO and two OATH Summonses for failure to institute adequate safety measures and immediately notify DOB of an incident that resulted in an injury, as DOB was notified by the New York Police Department rather than the contractor. DOB ordered that the site retain a full-time construction superintendent via a Commissioner’s Order issued on January 31, 2020. DOB rescinded the SWO on October 23, 2020.
- On May 19, 2021, one worker died and another was injured when the elevator they were traveling in, which was carrying construction debris, fell from the fifth floor to the ground floor due to a mechanical failure. On July 9, 2021, DOB designated any construction or demolition work at this site as work on a major building, and ordered the contractor to engage a safety compliance officer because of the immediately hazardous conditions.

Figure 3 – Timeline of Events at Bronx Site Where Fatality Occurred



DOB did not use quantifiable measures, such as identifying contractors and building construction sites with the most safety incidents, to select sites that should be inspected. According to DOB, its Construction Safety Compliance unit conducts proactive inspections of sites throughout the City to promote site safety and take enforcement actions, including issuing OATH Summonses and SWOs for non-compliance. DOB also contends that it proactively inspects active permit sites that require a site safety manager, site safety coordinator, or construction superintendent on a 9-month cycle. DOB could not describe how it prioritizes which sites get inspected first. Of the 2,003 building construction incidents between January 1, 2018 and May 15, 2021, five sites had a total of 94 incidents, resulting in 93 injuries and one fatality. Further, 278 (14%) of the 2,003 incidents occurred at only 20 sites, and accounted for 280 injuries and two fatalities. DOB did not utilize this information to identify high-risk sites to prioritize for inspection. To illustrate, Figure 4 provides a breakdown of the number of incidents for the top 100 sites with the most construction incidents between January 1, 2018 and May 15, 2021.

Figure 4 – Breakdown of Number of Incidents for Top 100 Sites With the Most Construction Incidents, January 1, 2018–May 15, 2021



Also, five contractors were responsible for construction work at sites where 13% of the 2,003 incidents occurred, resulting in 269 injuries and one fatality. Further, 20 contractors were responsible for construction work at sites where 30% of the incidents occurred, resulting in 621 injuries and two fatalities. DOB did not use the information available to it in order to identify high-risk contractors.

DOB indicated that its proactive inspections ensure that contractors maintain safety and follow all rules and codes. According to DOB's Building Information System, DOB issued new building and alteration construction-related initial permits at 39,021 unique sites between January 1, 2018 and December 31, 2020 but performed proactive inspections at only 4,684 (12%) of these sites. It is unclear why DOB does not analyze available data for a more targeted approach to inspecting building construction sites. Further, we asked DOB officials if they perform proactive inspections at sites where a site safety manager, site safety coordinator, or construction superintendent is not required, but they did not provide an answer. DOB should use available inspection, violation, and accident data to help identify high-risk contractors and sites for inspection.

Recommendations

1. Ensure that the site inspection issues we identified are corrected.
2. Create and implement policies and procedures to issue DOB Violations for failure to certify corrections of immediately hazardous conditions in a timely manner.
3. Ensure that overdue summonses are categorized as “Overdue Compliance” immediately after the summonses become overdue.
4. Use DOB inspection, violation, and accident data as well as publicly available data to identify high-risk contractors and sites to proactively inspect.

Injury and Fatality Incident Reporting

The NYC Administrative Code requires that, within 3 business days, the owner or contractor report every incident where construction work resulted in a fatality or injury (requiring transport by emergency medical services or immediate emergency care at a hospital or off-site medical clinic). In addition, DOB is required to report these incidents monthly on its website. Further, the Occupational Safety and Health Act of 1970 requires that all private sector employers must report all work-related fatalities within 8 hours and all work-related inpatient hospitalizations within 24 hours to the Occupational Safety and Health Administration (OSHA).

DOB has inadequate procedures for incident and fatality reporting, and is not always aware of building construction-related incidents. Between January 1, 2018 and May 15, 2021, DOB reported 2,003 construction-related incidents that resulted in 36 fatalities and 2,066 injuries. We compared construction fatalities reported by OSHA with DOB’s construction incident reports, and found that DOB did not report three construction-related fatalities reported by OSHA. DOB reported one of these incidents as an injury instead of a fatality and did not report the other two incidents at all. In addition, DOB did not report six construction-related incidents that resulted in injury; however, OSHA reported these incidents as severe injuries. After we informed DOB of these discrepancies, DOB indicated that it took enforcement actions for failure to report an injury or fatality to DOB for four of the nine sites. DOB did not take any action at four sites because there were no construction activities being performed at the time of DOB’s inspections of these sites. DOB officials did not respond to our inquiry about the remaining site.

DOB relies on the building owner or contractor to report construction injuries and fatalities. DOB can utilize other data sources, such as information maintained by OSHA or reports from other City agencies, to identify underreported construction injuries and fatalities. Without knowledge of incidents at construction sites, DOB may not be able to ensure that building owners and contractors fix hazardous conditions that cause incidents.

In addition, DOB's data on fatalities may be incomplete as DOB is unaware of injuries that become fatalities. DOB officials stated that if a worker is injured and then dies in the hospital, the hospital or Office of the City Medical Examiner is not required to report this information to DOB.

Recommendations

- 5.** Develop and implement procedures, including coordinating with OSHA and other relevant agencies, to identify building construction site incidents.
- 6.** Follow up on incidents to ensure accurate reporting of injuries and fatalities at building construction sites.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if DOB adequately monitors NYC building construction sites to ensure compliance with applicable codes, laws, and rules for construction site safety. The audit covered the period from January 2018 through December 2021.

To achieve our audit objective and assess relevant internal controls, we interviewed DOB officials and reviewed relevant laws, codes, and rules as well as DOB's guidance related to building construction site safety. DOB utilizes two information systems, DOB NOW and Buildings Information System (BIS), to record and process data related to construction site safety. Throughout the course of our audit, we utilized the Building Information Search function, DOB's online query system within BIS, and DOB NOW's Public Portal.

To determine if DOB took reasonable steps to monitor that building owners and contractors maintained safe construction sites, conducted required site safety inspections, and ensured that each construction worker took required training, we selected a random sample of 33 sites with active New Building and Alteration Type 1 permits. We also selected a judgmental sample of 10 sites that had assigned active site safety professionals. To select our judgmental sample, we considered factors such as the size and location of the construction sites. Representatives for two of these sites did not cooperate with us; therefore, we were unable to conduct our review at these sites. Our samples were not designed to be projected to the entire population. In addition, we used construction-related accident data provided by DOB to identify sites and contractors with the highest number of construction incidents from January 1, 2018 to May 15, 2021.

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 of the General Municipal Law.

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

As is our practice, we notify agency officials at the outset of each audit that we will 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 assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They 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 the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from DOB officials that all relevant information was provided to us during the audit.

Reporting Requirements

We provided a draft copy of this report to DOB 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. DOB officials generally agreed with the audit recommendations and indicated that certain actions have been and will be taken to address them. We address certain portions of their response as State Comptroller's Comments.

Within 180 days after final release of this report, we request that the Commissioner of the New York City Department of Buildings 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.

Agency Comments



Eric A. Ulrich,
Commissioner

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August 15, 2022

Ms. Tina Kim
Deputy Comptroller
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: New York City Department of Buildings' (DOB) Oversight of Building Construction Site Safety (2021-N-3)

Dear Ms. Kim:

Thank you for giving us the opportunity to respond to the above referenced draft audit report. The Department appreciates effort that you and your staff dedicated to performing this audit. We also appreciate the opportunity to address your audit findings and concerns and will use it as a guide to further improve our policies and procedures.

The Department of Buildings promotes the safety of all people that build, work, and live in New York City by regulating the lawful use of over one million buildings and construction sites across the five boroughs. We therefore agree that it is critical that site safety personnel, contractors, and owners treat their responsibility for ensuring construction site safety with the utmost seriousness and that they work with the Department of Buildings to instill a culture of safety at construction sites.

As your report indicates, the objective of the audit was to determine if the New York City Department of Buildings (DOB) adequately monitors New York City (NYC) building construction sites to ensure compliance with applicable codes, laws, and rule for construction site safety.

Below are the Department's responses to the six (6) specific recommendations that were made, as well as clarifying comments.

Clarifying Comments:

With respect to the condition described in your key findings that DOB should identify high risk sites and use additional enforcement actions that could have ensured outstanding violations were corrected timely, it is important to note that the onus is on

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contractors and site safety professionals. These professionals are responsible for safety at their sites; nonetheless, the Department will continue to take various measures, including pro-active site safety inspections, complaint inspections, training, and outreach, to provide consistent reminders to responsible parties of their duty to adhere to safety requirements. When non-compliance is identified on a site, the Department will always take enforcement actions to hold responsible parties accountable.

[Comment 1](#)

With regards to the finding that DOB did not issue additional violations when owners failed to certify that an immediately hazardous condition has been corrected, it is important to note that this is not an action that DOB takes as a matter of course where a violation is open for more than 30 days. It is also important to note that 30 days is neither the legal standard for conducting re-inspection of Class 1 conditions that have not been corrected, nor the policy standard for issuance of DOB violations for failure to certify correction. Further, it is important to note that it is not always appropriate to issue a Stop Work Order each time a Class 1 OATH summons is issued.

[Comment 2](#)

Your audit noted that you visited a sample of 43 sites in all five boroughs of NYC and noted that 16 sites had 77 safety issues. We find these assertions to be inaccurate. It should be noted that no DOB staff was present during those visits. As we stated to the auditors, DOB inspectors can only take enforcement actions for conditions that are observed by a DOB inspector at the time of inspection. Additionally, it should be noted that site conditions are also inherently transitory in nature; they may change on a daily, or even hourly basis; therefore, the types of conditions that the auditors noted may not be present at the time of DOB's inspection. Again, DOB conducts pro-active and complaint-based inspections at building construction sites and takes enforcement actions upon identifying non-compliance.

[Comment 3](#)

[Comment 4](#)

DOB Responses to Recommendations

Recommendation 1:

“Ensure that the site inspection issues we identified are corrected.”

DOB's Response: *DOB agrees with this recommendation. DOB will perform site inspections or administrative reviews to confirm if the issues raised during your audits have been corrected.*

Recommendation 2:

“Create and implement policies and procedures to issue DOB Violations for failure to certify corrections of immediately hazardous conditions in a timely manner.”

DOB's Response: *The Department of Buildings has policies and procedures in place to facilitate the issuance of DOB Violations for failure to certify correction of immediately hazardous conditions consistent with Administrative Code Section 28-219 which requires re-inspections for certain Class 1 summonses and the issuance of the civil penalty at an appropriate interval.*

[Comment 5](#)

Recommendation 3: “Ensure that overdue summonses are categorized as “Overdue Compliance” immediately after the summonses become overdue.”



DOB's Response: *DOB agree with this recommendation and will explore the technical practicalities of implementation.*

Recommendation 4:

“Use DOB inspection, violation, and accident data as well as publicly available data to identify high-risk contractors and sites to proactively inspect.”

DOB's Response: *DOB partially agrees with this recommendation. DOB continues to conduct pro-active and complaint-based inspections at building construction sites and takes enforcement actions upon identifying non-compliance with site safety regulations and Chapter 33 of the Building Code.*

[Comment 6](#)

Recommendation 5:

“Develop and implement procedures, including coordinating with OSHA and other relevant agencies to identify building construction site incidents.”

DOB's Response: *DOB agrees with this recommendation and will continue to work with OSHA and other NYC Agencies to identify building construction site incidents. In addition, DOB is organizing monthly meetings with OSHA to coordinate NYC incidents. Representatives from OSHA's regional offices that are overseeing New York City will also be invited.*

Recommendation 6:

“Follow up on incidents to ensure accurate reporting of injuries and fatalities at building construction sites.”

DOB's Response: *DOB agrees with this recommendation. DOB will continue to follow up with injuries and fatalities; however, while DOB does in fact have procedures in place to follow up on injuries and fatalities, including with inter-agency and other governmental partners, there are practical limitations that at times prevent DOB from becoming aware of deaths that occur after an incident or accident has occurred at a construction site.*

Thank you for your consideration regarding our responses.

Sincerely,

Eric A. Ulrich, Commissioner
Department of Buildings

- cc: Mark Sanabria, Department of Buildings
Kerry Castro, Department of Buildings
Kenrick Sifontes, Office of the NYS Comptroller
Doug Giuliano, Mayor's Office of Operations

State Comptroller's Comments

1. DOB is required to enforce construction site safety regulations. Our audit identified many situations where DOB did not pursue additional enforcement actions for contractors/building owners, such as issuing violations for failure to certify corrections when immediate hazards were not addressed. When DOB is aware of a pattern of non-compliance (such as unaddressed safety issues), it should escalate enforcement actions. Furthermore, as indicated on page 13 of the report, DOB did not use quantifiable measures, such as identifying contractors and building construction sites with the most safety incidents, to select sites that should be inspected.
2. As stated on page 10, the Rules of the City of New York specify that “a certification acceptable to the Department must be received by the Department forthwith” (i.e., without delay). Our analysis used a 30-day period as a reasonable time frame to illustrate the timeliness of DOB’s issuance of violations for failure to certify correction.
3. As we stated on page 11, we agree that not all situations call for a SWO; however, DOB did not clearly document or indicate the basis for its decisions.
4. It is unclear how can DOB can assert that our field observations are inaccurate as DOB was not present during our visits. However, we informed DOB of our observations. Furthermore, as reported on page 8, DOB’s subsequent inspections confirmed non-compliance with safety regulations at the majority of the sampled sites.
5. DOB has not provided written policies and procedures that specify when DOB would issue a DOB Violation for failure to certify. Furthermore, without a Certificate of Correction, which must be provided to DOB forthwith, DOB has no assurance that the immediately hazardous conditions have been corrected. While DOB can re-inspect such conditions within 60 days, our analysis identified 10,890 open immediately hazardous violations that were not certified to be corrected within 30 days. These conditions pose a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.
6. We encourage DOB to use its own data and publicly available data to prioritize its proactive inspections based on risk.

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