



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of Buildings' Response and Follow-up to Complaints

MD19-122A

November 20, 2020

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the Department of Buildings (DOB) to determine whether the agency has adequate controls in place to ensure it is responding to and following up on complaints, especially for hazardous conditions, in a timely manner. We perform audits such as this as a means to increase accountability and to help promote public safety.

The audit concluded that DOB's controls over its handling of complaints need improvement, specifically with regard to its timeliness in responding to and following up on complaints at every stage of its process. DOB did not consistently perform initial and second inspection attempts of complaints, as well as inspections of hazardous conditions that it previously identified, in a timely manner. In addition, when DOB received Certificates of Correction (C of Cs) from respondents—stating that the violations have been corrected—the agency did not perform the required reviews timely. Finally, DOB did not ensure that random audit re-inspections, which are performed on a sample of the C of Cs to determine their accuracy, were performed timely, if at all.

To address these and other issues, the audit made 11 recommendations, including that DOB should: assess its current efforts to identify areas where improvements can be made to ensure that it attempts to inspect *all* complaints timely in accordance with its existing internal time frames; establish written procedures detailing the required internal time frames for its personnel to respond to each individual complaint, by priority code, and monitor compliance with those procedures; establish written time frames for second inspection attempts; ensure that it re-inspects hazardous violations within 60 days and every 60 days thereafter when required; ensure that C of Cs are reviewed timely; and ensure that audit re-inspections are performed timely.

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

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

Sincerely,

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

Scott M. Stringer

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Audit Findings and Conclusion	2
Audit Recommendations.....	3
Agency Response.....	4
AUDIT REPORT	5
Background	5
Objective.....	6
Scope and Methodology Statement.....	6
Discussion of Audit Results with DOB	7
FINDINGS AND RECOMMENDATIONS.....	10
Deficiencies with Complaint Inspections.....	11
Complaint Inspections Not Performed Timely	11
No Established Time Frames to Ensure that Second Inspection Attempts Are Performed Timely.....	13
Recommendations	15
Deficiencies with Class 1 Violations.....	17
Hazardous Conditions Not Re-inspected Timely.....	17
Respondents Do Not Submit C of Cs Timely	19
Recommendations	22
C of Cs Not Reviewed Timely.....	23
Recommendation	24
C of C Audit Re-inspections Not Performed	24
Recommendation	25
DETAILED SCOPE AND METHODOLOGY.....	26
ADDENDUM	

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EXECUTIVE SUMMARY

The Department of Buildings (DOB) promotes the safety of all people who build, work, and live in New York City (the City or NYC) by regulating the lawful use of over one million buildings and construction sites across the five boroughs.

Members of the public can report illegal and unsafe construction work and improper building use to DOB by filing a complaint through 311 by phone or online. DOB also receives complaints from other City agencies and internally from DOB inspectors while they perform inspections. Each complaint DOB receives is routed to the appropriate DOB unit for inspection. Depending on the type and severity of a complaint, DOB assigns it one of four priority codes: A, B, C, or D. Priority A complaints are hazardous and present an imminent risk to public safety (e.g., shaking building), and should be inspected within 24 hours. Priority B complaints are serious (e.g., illegal conversion, inadequate sidewalk shed or scaffolding, and work without a permit) but do not present an imminent risk to public safety in DOB’s judgment and should be inspected within 40 days. Priority C complaints allege violations that DOB considers non-hazardous (e.g., building without certificate of occupancy), while priority D complaints involve quality-of-life problems (e.g., illegal curb cuts).¹ Although DOB has not established required time frames for its inspection of priority C and D complaints, its internal goal is to inspect them within 60 and 90 days, respectively.

When an inspection reveals a code violation within DOB’s enforcement authority, DOB may issue an Office of Administrative Trials and Hearings violation/summons (OATH violation) and/or a DOB violation. An OATH violation is issued when a property does not comply with a provision of the NYC Construction Codes and/or Zoning Resolution. A DOB violation is a notice that a property is noncompliant with a cited provision of law and includes the DOB Commissioner’s order to the responsible party to correct the violating condition.

¹ We excluded priority D complaints from our testing because they are quality-of-life type complaints rather than more immediate safety issues.

OATH violations are more commonly issued than DOB violations and consist of three classes: Class 1 (Immediately Hazardous), Class 2 (Major), and Class 3 (Lesser).² To resolve an OATH violation, respondents must: (1) correct the condition cited and certify its correction with DOB by submitting a certificate of correction (C of C), including a notarized statement specifying how the violation was corrected and, when applicable, supporting documents (e.g., photographs, work receipts, permits, etc.) evidencing the correction; (2) admit the violation or contest it at an OATH hearing; and (3) pay any applicable penalties.

DOB must re-inspect Class 1 OATH violations that have not been certified as corrected (i.e., where no C of C was submitted) within 60 days of the violation's being served, and every 60 days thereafter until the condition has been corrected, as required by § 28-219.2 of the NYC Administrative Code.³ DOB's system of record for tracking the history of all complaints, including the inspections performed and the violations issued, is DOB's Buildings Information System (BIS).

DOB received a total of 150,812 unduplicated complaints during Fiscal Year 2019.⁴ For purposes of DOB's public reporting in the Mayor's Management Report (MMR), the agency reports whether DOB's average response time was within 1 work day for priority A complaints and within 40 work days for priority B complaints.⁵

Audit Findings and Conclusion

DOB's controls over its handling of complaints need improvement, specifically with regard to its timeliness in responding to and following up on complaints at every stage of its process.

Our review found that DOB met its MMR *reporting* benchmarks, which are measured as an average of work days. Based on the BIS data DOB provided as of October 18, 2019, *on average*, DOB responded to priority A and priority B complaints in 0.7 and 13.4 work days respectively, well within its MMR reporting benchmarks of 1 and 40 work days.

However, when we examined the performance times of responses to individual complaints, we found that DOB missed its internal *performance* targets—to respond to each priority A complaint within 1 day, each priority B complaint within 40 calendar days, and each priority C complaint within 60 calendar days—in a significant number of cases. For complaints DOB received during Fiscal Year 2019, its initial inspection attempts for 16.9 percent of priority A complaints, 17.7 percent of priority B complaints, and 30.3 percent of priority C complaints—thousands of complaints altogether—were late by periods that ranged from 1 to 348 days based on its internal time frames. In addition, when inspectors are unable to gain access to the property on their initial inspection attempt, DOB requires that they make a second attempt, but the agency has not set a target time frame in which they must do so. Using as benchmarks the internal time frames DOB established for the initial inspection attempts, we found that a significant percentage of the

² Class 1 (Immediately Hazardous) – those specified as such by the NYC Construction Codes, or those where the violating condition 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) – those specified as such by the NYC Construction Codes, or those where the violating condition affects life, health, safety, property, or the public interest but does not require immediate corrective action.

Class 3 (Lesser) – those where the violating condition has a lesser effect than a Class 1 or Class 2 violation on life, health, safety, property, or the public interest.

³ DOB refers to these as “hazardous re-inspections.”

⁴ Because of the way in which DOB's computer software reporting tool B-Smart extracts data from BIS, complaints are listed multiple times. In addition, if a complaint received multiple inspections, the file will show multiple records with the same complaint number. DOB provided a total of 291,163 complaint records from BIS for Fiscal Year 2019.

⁵ In its MMR reporting, DOB counts Monday through Friday (weekdays) except public holidays as work days; however, the agency performs inspections seven days per week.

required second attempts were also untimely, including for 24.9 percent of the priority A complaints—the most serious category.

With respect to DOB’s efforts to re-inspect substantiated safety hazards, our review found that after DOB issued Class 1 violations for “immediately hazardous” conditions, it failed to attempt 56 percent of the legally mandated *initial* “hazardous re-inspections” either timely or, in some cases, at all. Furthermore, DOB did not attempt 53 percent of the required *follow-up* “hazardous re-inspections” within 60 days of the previous attempt. By not performing or attempting to perform the required “hazardous re-inspections” timely, DOB diminishes its enforcement ability to require correction of the hazardous conditions, which increases the risk that they will remain uncorrected and places public safety at risk.

We also found that respondents did not submit C of Cs timely:

For Class 1 violations, which are supposed to be corrected and certified “forthwith,” we found that DOB received the C of Cs on average 71 days after it served the violations. Consequently, DOB has no assurance that the violating conditions were corrected in a timely manner.

With respect to Class 2 and 3 violations, the 40-day period for correction and certification that DOB requires is met in roughly half the cases. Specifically,

- DOB received 51 percent of the C of Cs for Class 2 violations late; and
- DOB received 43 percent of the C of Cs for Class 3 violations late.

Furthermore, when DOB receives C of Cs, it does not review them timely. Of the 9,895 C of Cs that were either dropped off or submitted by mail between July 1, 2018 and October 18, 2019, DOB did not review 5,659 (57 percent) of them within the required 21 days. Failing to review C of Cs timely increases the risk that DOB will not promptly detect violations that were not corrected appropriately and thereby allow the violating conditions to remain unresolved.

In addition, DOB does not ensure that random audit re-inspections of violating conditions are performed timely, if at all. DOB did not conduct timely re-inspections for 73 percent of the C of Cs it selected for audit, including some that received no re-inspections for at least 639 days as of June 17, 2020, the date we received updated data from DOB.

Audit Recommendations

Based on the audit, we make 11 recommendations, including:

- DOB should assess its current efforts, including the performance of managers, supervisors, and inspectors, to identify areas where improvements can be made to ensure that it inspects or attempts to inspect the conditions reported in *all* complaints timely in accordance with its existing internal time frames.
- DOB should establish written procedures detailing (a) the required internal time frames for its personnel to respond to each individual complaint, by priority code, and (b) the specific responsibilities of inspectors, supervisors, and managers for meeting those requirements, and should monitor all units’ compliance with those procedures.
- DOB should establish, disseminate, and require all personnel to comply with written time frames for second inspection attempts when initial inspection attempts are unsuccessful.

- DOB should ensure that it re-inspects hazardous violations within 60 days and every 60 days thereafter until the violation has been found upon inspection to be corrected or until the respondent certifies it as such.
- DOB should consider re-negotiating with City officials and stakeholders to modify the Administrative Code to establish a specific time frame for certifying Class 1 violations.
- DOB should work with the City to develop legislation that would authorize and require DOB to issue violations and fines for Class 2 and Class 3 violations that are not properly certified as corrected within the required time frame.
- DOB should create and disseminate written procedures detailing the time frame requirements for personnel to review C of Cs and ensure that C of Cs are reviewed timely.
- DOB management should ensure that audit re-inspections are performed timely and in accordance with all applicable procedures, including the proper use of LS-4 notices.⁶

Agency Response

In its response, DOB agreed to implement four recommendations (#5, #6, #10, and #11), partially agreed to one (#1), and disagreed with six recommendations (#2, #3, #4, #7, #8, and #9). DOB also disagreed with some of the report's findings and conclusions relating to the agency's time targets for attempting inspections, the submission and review of C of Cs, and the posting of LS-4 notices. After carefully reviewing DOB's arguments, we find no basis to alter any of the report's findings or conclusions.

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

⁶ An LS-4 notice is a document DOB inspectors post on-site when they are unable to gain access to a property. It notifies the property owner to call DOB to arrange for an inspection.

AUDIT REPORT

Background

DOB promotes the safety of all people who build, work, and live in the City by regulating the lawful use of over one million buildings and construction sites across the five boroughs. DOB enforces the City's Construction Codes, Zoning Resolution, and the New York State Multiple Dwelling Law. DOB enforces compliance with these regulations and promotes worker and public safety through its review and approval of building plans, permitting and licensing functions, and inspections.

Members of the public can report illegal or unsafe construction work and improper building use to DOB by filing a complaint through 311 by phone or online. DOB also receives complaints from other City agencies and internally from DOB inspectors while they perform inspections. Once a complaint is submitted, it is routed to the appropriate unit within DOB for inspection. Depending on the type and severity of a complaint, DOB assigns it one of four priority codes: A, B, C, or D. Priority A complaints are hazardous and present an imminent risk to public safety and should be inspected within 24 hours. Priority B complaints are serious but do not present an imminent risk to public safety in DOB's judgment and should be inspected within 40 days. Priority C complaints allege violations that DOB considers non-hazardous, while priority D complaints involve quality-of-life problems. Although DOB has not established required time frames for its inspection of priority C and D complaints, its internal goal is to inspect them within 60 and 90 days, respectively.

If a DOB inspector is unable to gain access to a property on the first inspection attempt, DOB requires a second attempt by that or another inspector; if an inspector is unable to gain access on both attempts, the complaint is closed. After each no access attempt, inspectors must post an LS-4 notice on site, notifying the property owner to call DOB to arrange for an inspection. When an inspection of a complaint reveals a code violation within DOB's enforcement authority, DOB may issue an OATH violation and/or a DOB violation.

An OATH violation is issued when a property does not comply with a provision of the NYC Construction Codes and/or Zoning Resolution. These violations are returnable to the Office of Administrative Trials and Hearings. A DOB violation is a notice that a property is not in compliance with a cited provision of applicable law and includes an order from the Commissioner of DOB to correct the violating condition. The violation is entered against the property in BIS. To resolve a DOB violation, the respondent (usually the owner or person in charge of the property) must correct the condition(s) cited and provide supporting documentation that shows the work has been performed to the DOB unit that issued the violation.

DOB most commonly issues OATH violations. There are three classes of OATH violations: Class 1, Class 2, and Class 3. According to the NYC Administrative Code § 28-204.2 and the Rules of the City of New York (RCNY) §102-01, Class 1 violations must be corrected and certified "forthwith." Accordingly, DOB requires that Class 1 violations be certified "immediately" via submission of a C of C. According to DOB, Class 2 and 3 violations must be corrected and certified within 40 days of the issuance of the violation.

To resolve an OATH violation, respondents must: (1) correct the condition cited on the violation and certify correction with DOB by submitting a C of C, which must include a notarized statement attesting to how the violation was corrected and, when applicable, supporting documents

evidencing that the condition has been corrected; (2) admit the violation or attend an OATH hearing to contest it; and (3) pay any applicable penalties.

DOB's Administrative Enforcement Unit (AEU) is responsible for processing OATH violations and for receiving, reviewing, and approving or otherwise determining the sufficiency or insufficiency of all C of Cs. AEU reviews and determines the sufficiency of C of Cs that a respondent presents in-person at the AEU office that same day. For C of Cs that are dropped off or submitted by mail, AEU's internal goal is to review and determine whether the C of C is acceptable within 21 days of receipt.

DOB must re-inspect Class 1 OATH violations that have not been certified as corrected within 60 days of the violation's being served, and every 60 days thereafter until the condition has been corrected, as required by § 28-219.2 of the Administrative Code. DOB issues a Hazardous Civil Penalty of \$1,500 for Class 1 violations that have not been certified as corrected for more than 80 days after the violation was served. There are no such penalties for Class 2 and Class 3 violations.⁷ In addition, according to its Certificate of Correction Audit Program, DOB audits a sample of approved C of Cs by performing re-inspections of the properties or conditions within them cited in the violations to ensure (1) that the conditions were in fact corrected and (2) that respondents' C of Cs were not approved based on the submission of false documentation to DOB.

DOB utilizes *DOB NOW: Inspections* to record the inspections its inspectors perform. All OATH violations issued by DOB inspectors are recorded in AEU's OATH Violation database, while all C of Cs submitted are recorded in the C of C database. However, DOB's system of record for tracking the history of all complaints, including the inspections performed and the violations issued, is BIS.

During Fiscal Year 2019, DOB received a total of 150,812 unduplicated complaints. For purposes of DOB's public reporting in the MMR, the agency has set goals for priority A and priority B complaints. Regarding priority A complaints, the MMR reports whether DOB's average response time was within 1 work day and, for priority B complaints, whether its average response time was within 40 work days.

Objective

To determine whether DOB has adequate controls in place to ensure it is responding to and following up on complaints, especially for hazardous conditions, in a timely manner.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

⁷ Although there are monetary penalties associated with the *issuance* of Class 2 and Class 3 violations, there are no additional penalties for failing to timely certify these violations as corrected.

The scope of this audit was from July 1, 2018 through June 17, 2020.

Discussion of Audit Results with DOB

The matters covered in this report were discussed with DOB officials during and at the conclusion of this audit. A preliminary draft report was sent to DOB and discussed at an exit conference held on September 3, 2020. On October 5, 2020 we submitted a draft report to DOB with a request for comments. We received a written response from DOB on October 20, 2020. In its response, DOB agreed with four recommendations (#5, #6, #10, and #11), partially agreed to one (#1), and disagreed with the remaining six recommendations (#2, #3, #4, #7, #8 and #9).

In its response, DOB disagreed with the criteria used in the report for determining the agency's timeliness in responding to complaints. DOB stated:

Rather than using as criteria the mandated service level requirements that DOB repeatedly stated it uses as a performance measure, and that it consistently meets and exceeds, the audit instead chose to use what it stated was DOB's internal goal for complaint response: to inspect each complaint within 1 calendar day for A complaints, 40 calendar days for B complaints, and 60 calendar days for C complaints. However, as repeatedly noted to the auditors, though DOB makes every effort to respond to Priority A complaints as soon as practicable upon receipt, including on weekends, DOB measures its response times as dictated in the MMR, that is in work days, not calendar days. This alone reduces the number of complaint responses deemed untimely by more than 9,000 complaints. The audit's depiction of complaints responded timely and not timely is, therefore, inaccurate in two ways: First in that it neglected to use as criteria the mandate to which DOB is actually held the MMR, second in that the unit of measurement used to assess the incorrectly chosen criteria was, itself, incorrect.

DOB's claim that it "repeatedly" noted that it measures its response time *only* in work days—and not in calendar days—is incorrect. The criteria used in this report were confirmed *in writing* with DOB on both July 25, 2019 and February 25, 2020.

Moreover, the agency had multiple opportunities throughout the audit to raise any concerns regarding those criteria—most notably, in March 2020, when we shared our findings with DOB officials at the conclusion of fieldwork, and again after DOB received the preliminary draft of this report on August 14, 2020, and finally at the exit conference held on September 3, 2020—but did not do so on any of those occasions. In fact, DOB did not claim that its time targets are based on work days rather than calendar days until one week *after* the exit conference, when it stated that its earlier confirmation "was a misstatement on DOB's part," and that "response times are calculated in work days."

However, when we followed up with DOB on the matter, the agency acknowledged that it performs inspections of priority A and priority B complaints 7 days a week—the agency also receives complaints 7 days a week. Furthermore, the agency explicitly contradicted its "work day" claim with regard to priority A complaints at that time and does so again in its response, stating that it responds to such complaints "as soon as practicable upon receipt, including on weekends." This policy is confirmed by DOB's own complaint inspection data, which reveals that for priority A complaints it received on Saturdays and Sundays during Fiscal Year 2019, DOB attempted inspections for almost 70 percent of those complaints during the same weekend it received them. In addition, overall, during Fiscal Year 2019, regardless of when the complaint was received, DOB

conducted inspections for 16 percent of priority A complaints and 8 percent of priority B complaints on weekends.

In light of the facts outlined above, and in consideration of the risk to public safety for priority A complaints (categorized as immediately hazardous) and priority B complaints (categorized as serious), we do not give credence to DOB's belated claim that its internal response time targets are based on work days rather than calendar days.

Moreover, throughout its response it appears that DOB does not recognize the distinction between a target and a performance indicator as benchmarks for measuring timeliness. While a time-based target relates to the timeliness of an individual activity, a time-based performance indicator looks at that activity in the aggregate and assesses the degree to which the agency meets its target over a period of time.

With regard to priority A and priority B complaints, DOB calculates and publicly reports in the MMR—as its “performance indicator”—the “average number of work days it took DOB to conduct a field visit” in response to both priority A and priority B complaints over a 12-month period. However, that performance indicator does not reveal the actual number, or percentage, of complaints that DOB responded to timely during that period. That information, which can be determined from DOB's records, but is *not* publicly reported, is also important in assessing the timeliness of DOB's responses to complaints that DOB itself classifies as immediately hazardous or serious. As stated later in this report, DOB's responses to *thousands* of individual complaints—even when applying DOB's work day MMR-reporting standard—were late, sometimes substantially late.

Regarding our finding that respondents do not submit C of Cs timely, DOB stated:

The report noted that respondents did not submit Certificates of Correction timely. It is critical to note, however, that responsibility for correcting violating conditions and certifying correction of those conditions lies exclusively with the respondent, which can be a building owner, permit holder, or other responsible party. The Department's powers to ensure that owners and other responsible parties correct conditions and maintain safety of their properties and sites is fundamentally limited by owners, who after repeated notices of violation, refuse to take action. While DOB can and does order these individuals and entities to fulfill their legal obligations and correct violating conditions, DOB does not have the ability to use emergency contractors to perform the work, or directly compel owners to do so and certify correction of the condition.

The report acknowledges that the responsibility for correcting violating conditions remains with respondents. However, based on its response during the audit, it appears that DOB's solution for widespread noncompliance by respondents responsible for certifying the correction of Class 2 and 3 violations is to wait for someone to submit another complaint for the same condition. That approach is inefficient and potentially allows the violating condition that DOB *already identified* to remain uncorrected indefinitely. As noted in the report, C of Cs for a significant percentage of violations were submitted over 100 days after the violations were issued.

With regard to our finding that DOB did not review C of Cs timely, DOB stated:

The report noted that DOB did not review some Certificates of Correction within 21 days. The Department makes, and will continue to make, every effort to provide our customers with the highest levels of service. Given that, we have a goal of

reviewing Certificates of Correction within 21 days. However, there are no mandates or legislative directives that require this level of service. It is also important to note that the Department does not penalize applicants for any time the Department needs to review the materials.

The absence of a mandate or legislative directive does not absolve DOB from meeting its own internally-developed goals. As stated in the report, DOB's 21-day goal is intended to help ensure the agency's timely review of respondents' self-reported corrections of known violations. Failing to review C of C's timely increases the risk that DOB will not promptly identify existing conditions that have not been corrected appropriately, allowing the violating conditions to remain unresolved.

Regarding our finding on posting LS-4s, DOB stated:

The audit report noted that the data provided did not indicate that a Notice to Call for Inspection (LS-4) was posted for some certificate of correction audit inspection attempts. It subsequently suggested that this meant that no LS-4 was posted for those attempts; it apparently concluded that because inspectors' written comments for some inspection attempts noted that an LS-4 was posted, lack of comments to that effect meant that an LS-4 was not posted. This is not a logical or accurate conclusion. Proper use of LS-4 notices is already required under inspection unit protocols and inspectors post LS-4s for no access inspection attempts.

Under DOB policy, inspectors, when unable to gain access to perform an inspection, are required to post an LS-4 notice at the premises. While the report makes no definitive conclusion that LS-4 notices were not posted, we note that for 61 percent of the instances where inspectors were unable to gain access, the C of C audit inspection data provided by DOB contained no record of inspectors having posted LS-4 notices at the premises. (Conversely, in the remaining 39 percent of qualifying audit re-inspections, the inspection data *did* report the posting of LS-4 notices.) Further, although it had multiple opportunities to do so, DOB provided no evidence (e.g., copies of LS-4 notices) for the cited instances to contend that notices were, in fact, posted and that inspectors simply failed to record it. DOB appears to be arguing that absent any supporting evidence, the mere requirement that a notice must be posted constitutes sufficient evidence that it was posted. We find this argument unconvincing.

After carefully reviewing DOB's arguments, we find no basis to alter any of the report's findings or conclusions. The full text of DOB's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOB's controls over its handling of complaints need improvement, specifically with regard to its timeliness in responding to and following up on complaints at every stage of its process. These stages include DOB's initial and second attempts to inspect the conditions complainants report, the re-inspections DOB conducts after it issues Class 1 violations, DOB's receipt and review of property owners' C of Cs stating the violations were corrected, and the audit-re-inspections DOB performs on a sample of the C of Cs to determine their accuracy.

DOB met its MMR *reporting* benchmarks for its initial responses to priority A and priority B complaints, which are measured as an average of work days. Based on the BIS data DOB provided as of October 18, 2019, *on average*, DOB responded to priority A and priority B complaints in 0.7 and 13.4 work days respectively, well within its MMR reporting benchmarks of 1 and 40 work days.

However, when we examined the performance times of responses to individual complaints, we found that DOB missed its internal *performance* targets—to respond to each priority A complaint within 1 day, each priority B complaint within 40 days, and each priority C complaint within 60 days—in a significant number of cases. For complaints DOB received during Fiscal Year 2019, its initial inspection attempts for 16.9 percent of priority A complaints, 17.7 percent of priority B complaints, and 30.3 percent of priority C complaints—thousands of complaints altogether—were late by periods that ranged from 1 to 348 days as measured against the agency's internal time frames.

In addition, when inspectors are unable to gain access to the property on their initial inspection attempt, DOB requires that they make a second attempt, but the agency has not set a target time frame in which they must do so. Using as benchmarks the internal time frames DOB established for the initial inspection attempts, we found that a significant percentage of the required second attempts were also untimely, including for 24.9 percent of the priority A complaints—the most serious category.

Turning to DOB's timeliness in following up on the complaints it substantiates, our review found that after DOB issued Class 1 violations for “immediately hazardous” conditions, it failed to attempt 56 percent of the legally mandated *initial* “hazardous re-inspections” either timely or, in some cases, at all. Furthermore, DOB did not attempt 53 percent of the required *follow-up* “hazardous re-inspections” within 60 days of the previous attempt. By not performing or attempting to perform the required “hazardous re-inspections” timely, DOB diminishes its enforcement ability to require correction of the hazardous conditions, which increases the risk that they will remain uncorrected and places public safety at risk.

We also found that respondents did not submit C of Cs timely:

For Class 1 violations, which are supposed to be corrected and certified “forthwith,” we found that DOB received the C of Cs on average 71 days after it served the violations. Consequently, DOB has no assurance that the violating conditions were corrected in a timely manner.

With respect to Class 2 and 3 violations, the 40-day period for correction and certification that DOB requires is met in roughly half the cases. Specifically,

- DOB received 51 percent of the C of Cs for Class 2 violations late; and
- DOB received 43 percent of the C of Cs for Class 3 violations late.

DOB cited two factors that compromise its ability to enforce the C of C deadlines: first, the statutory time frame in which an owner must certify the correction of a Class 1 violation—“forthwith”—is not defined or quantified; and second, DOB is not empowered to assess a penalty for an owner’s failure to timely certify correction of a Class 2 or 3 violation. Nevertheless, the agency has not explored possible legislative solutions.

Furthermore, when DOB receives C of Cs, it does not review them timely. Of the 9,895 C of Cs that were either dropped off or submitted by mail between July 1, 2018 and October 18, 2019, DOB did not review 5,659 (57 percent) of them within the required 21 days. Failing to review C of Cs timely increases the risk that DOB will not promptly detect violations that were not corrected appropriately and thereby allow the violating conditions to remain unresolved.

In addition, DOB does not ensure that random audit re-inspections of violating conditions are performed timely, if at all. DOB did not conduct timely re-inspections for 73 percent of the C of Cs it selected for audit, including some that received no re-inspections for at least 639 days as of June 17, 2020, the date we received updated data from DOB.

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

Deficiencies with Complaint Inspections

Complaint Inspections Not Performed Timely

According to DOB’s Assistant Commissioner of the Division of Enforcement Inspections, staff should attempt to inspect priority A complaints within 24 hours of receipt and priority B complaints within 40 calendar days of receipt. It is also DOB’s goal to attempt an inspection of priority C complaints within 60 calendar days of receipt.⁸ Based on those internal time frames, DOB’s initial inspection attempts were untimely for 16.9, 17.7, and 30.3 percent, respectively, of the priority A, B, and C complaints, as detailed below.

Of the 14,787 priority A complaints DOB received during Fiscal Year 2019, its initial inspection attempt was timely for 12,286 (83.1 percent), while inspections for the remaining 16.9 percent were late by anywhere from 1 to more than 10 days. Some priority A complaints—alleging immediately hazardous conditions—went uninspected for more than 20 and for up to 348 days. Those cases are discussed later in this section.

Of the 57,990 priority B complaints received during Fiscal Year 2019, DOB’s initial inspection attempt was timely for 47,723 (82.3 percent), while the remaining 17.7 percent were late. Finally, of the 12,985 priority C complaints received during Fiscal Year 2019, DOB’s initial inspection attempt was timely for 9,048 (69.7 percent) and late for the remaining 30.3 percent. These results, based on the dates the complaints were received, are shown in Table I below.

⁸ DOB stated that each complaint is entered in its computer system on the date it is received.

Table I

Timeliness of Initial Inspection Attempts

Priority A Complaints			Priority B Complaints			Priority C Complaints		
# of Days	# of Complaints	%	# of Days	# of Complaints	%	# of Days	# of Complaints	%
within 1 day	12,286	83.1%	within 40 days	47,723	82.3%	within 60 days	9,048	69.7%
1-5 days late	2,295	15.5%	1-10 days late	5,513	9.5%	1-10 days late	416	3.2%
6-10 days late	126	.9%	11-50 days late	4,676	8.1%	11-50 days late	1,227	9.4%
Over 10 days late	80	.5%	Over 50 days late	78	.1%	Over 50 days late	2,294	17.7%
Total	14,787	100%	Total	57,990	100%	Total	12,985	100%

DOB has not developed written procedures to document its internal time frames for its personnel to respond to complaints by inspecting, or attempting to inspect, the conditions that complainants report. When we asked DOB for the written procedure indicating the time frames for responding to priority A and B complaints, officials simply stated that the established MMR service levels for average complaint response times are within 1 day for priority A complaints and 40 days for priority B complaints. Furthermore, DOB officials stated that the agency “does not see the need” to create such written procedures. However, according to Comptroller’s Directive #1, “Internal controls should be documented in management administrative policies or operating manuals.” Without written procedures that include the required time frames for responding to complaints, it may be difficult for DOB to hold employees accountable in instances of noncompliance.

Moreover, as a consequence of applying its prescribed time frames only to *average*, but not individual, complaint responses, DOB’s MMR reporting may paint a misleading picture. Although complaint response times are *on average* within the established time frames, its responses to thousands of individual complaints are late, sometimes substantially late. Even when applying DOB’s *work day* MMR reporting standard we found that thousands of individual priority A complaints and priority B complaints are late, again sometimes substantially late. Although DOB stated that staff should attempt to inspect priority A complaints within 24 hours of receipt and priority B complaints within 40 calendar days of receipt, on average, DOB does not track the degree to which its internal time frames are being met. DOB informed us that it is always looking for ways to improve its handling of complaints; however, we found no evidence that management has made efforts to improve the number (and percentage) of complaints that are investigated timely.

When *each* inspection is not performed in a timely manner, the risk that a violating condition will go undetected and uncorrected increases, thereby also increasing the risk to public safety. This

risk is particularly acute for priority A complaints, which DOB classifies as hazardous and presenting imminent safety risks.

For example, although DOB performed an initial inspection attempt for 83.1 percent of priority A complaints within one day, the remaining 16.9 percent that were *not* addressed within a day included eight priority A complaints categorized as “Building Shaking/Vibrating/Structure Stability Affected.” In those eight instances, DOB did not attempt its initial inspection until anywhere from 20 to 186 days after it received the complaints. In seven of the eight instances, DOB inspected the locations between 20 and 31 days after it received the complaints, none of which resulted in a violation. However, the eighth complaint—where DOB found and issued a violation—took 186 days for DOB to inspect. In addition, we found an instance where a priority A complaint for “Suspended (Hanging) Scaffolds - No PMT/LIC/Dangerous/Accident” was inspected 26 days after DOB received it, and that inspection also resulted in a violation being issued.

In all cases, whether or not it ultimately issues a violation, DOB cannot know whether the condition that any individual complainant alleges exists in fact until it inspects the location. Accordingly, until that inspection occurs, the risk associated with *each* complaint, based on the hazard level DOB assigns, must be treated as real. DOB should therefore apply the standard it set for an appropriate average response time to *each* case. Moreover, DOB should use its aging reports to methodically track *all* open complaints in real time to (1) identify aging complaints, (2) require its managers, supervisors, and inspectors to ensure that *all* complaints, especially those that involve potential safety risks, are investigated timely, and (3) prevent the kinds of excessive delays that occurred in the nine abovementioned complaints, all of which alleged immediately hazardous conditions. In our judgment, it will be difficult for DOB to achieve that level of performance and accountability—and minimize public safety risks—without written procedures that include deadlines for complaint inspections.

No Established Time Frames to Ensure that Second Inspection Attempts Are Performed Timely

According to the *DOB NOW: Inspections Mobile User Manual*, before a complaint can be closed due to inspectors being unable to gain access to the property (i.e., “no access”), two inspection attempts are required. However, for instances when its first inspection attempt is unsuccessful, DOB has not established a time frame in which the required second inspection attempt must take place.

Section 4.5 of Comptroller’s Directive #1 states: “A sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations. ... It should include appropriate measurements on regular management and supervisory activities, comparisons, reconciliations, and other actions taken by employees in performing their duties.”

DOB’s overall goal (when access to a property is obtained) is to determine whether a violating condition exists so that corrective measures can be taken and, according to the agency’s website, “protect the safety of all New Yorkers.” Accordingly, to ascertain whether DOB attempted second inspections, when required, within a reasonable amount of time, we used, for our testing, the timeliness standard that DOB established for the initial attempt—1 day for priority A complaints, 40 days for priority B complaints, and 60 days for priority C complaints. We measured these periods from the date of DOB’s initial attempt, not the date it received the complaint. Consequently, we considered the second attempt timely when it occurred within 1, 40, or 60 days

of the initial attempt, even if that period exceeded those time frames when measured from the date DOB received the complaint.

DOB received 28,549 complaints during Fiscal Year 2019 that (1) resulted in no access on DOB's first inspection attempt and (2) received a second inspection attempt, according to the updated data DOB provided on June 17, 2020. Of these, 2,415 were priority A complaints, 22,761 were priority B complaints, and 3,373 were priority C complaints.

Of the 2,415 priority A complaints for which inspectors were initially unable to gain access, 1,814 (75.1 percent) received a second inspection attempt within 1 day of the initial attempt. Of the 22,761 priority B complaints for which inspectors were unable to gain access, 19,148 (84.1 percent) received a second inspection attempt within 40 days. Finally, of the 3,373 priority C complaints for which inspectors were unable to gain access, 2,990 (88.6 percent) received a second inspection attempt within 60 days. The results of the timeliness of the second inspection attempt from the date of the initial attempt for each priority code are shown in Table II below.

Table II
Timeliness of Second Inspection Attempt

Priority A Complaints			Priority B Complaints			Priority C Complaints		
# of Days After Initial Inspection Attempt	# of Complaints	%	# of Days After Initial Inspection Attempt	# of Complaints	%	# of Days After Initial Inspection Attempt	# of Complaints	%
within 1 day	1,814	75.1%	within 40 days	19,148	84.1%	within 60 days	2,990	88.6%
2-5 days	539	22.3%	41-50 days	927	4.1%	61-70 days	71	2.1%
6-10 days	40	1.7%	51-90 days	1,434	6.3%	71-90 days	117	3.5%
Over 10 days	22	.9%	Over 90 days	1,252	5.5%	Over 90 days	195	5.8%
Total	2,415	100%	Total	22,761	100%	Total	3,373	100%

In addition, 11 priority B complaints were still without a second inspection attempt as of June 17, 2020; at that point they ranged in age from 337 to 644 days from the date of the first inspection attempt, and 384 to 691 days from the date DOB received the complaint.

Without a time standard for second inspection attempts, DOB is hindered in ensuring that they are performed timely. Consequently, the risk that violating conditions may remain undetected for an extended period of time is increased, likewise increasing the risk to public health and safety. In fact, when we calculated the time frames between the date DOB received the complaints and the date it attempted the second inspections, we found that priority A complaints averaged 3 days

before receiving a second inspection attempt, ranging from 0 to 197 days; priority B complaints averaged 48 days before receiving a second inspection attempt, ranging from 0 to 371 days; and priority C complaints averaged 98 days before receiving a second inspection attempt, ranging from 0 to 420 days.

Recommendations

1. DOB should assess its current efforts, including the performance of managers, supervisors, and inspectors, to identify areas where improvements can be made to ensure that it inspects or attempts to inspect the conditions reported in *all* complaints timely in accordance with its existing internal time frames.

DOB Response: “DOB partially agrees with this recommendation. DOB meets complaint service level requirements and has done so for multiple consecutive years. The Department is always continually assessing its efforts and looking for ways to improve its handling of complaints. While the current system is strong we believe it can always be better and work continuously to accomplish that end. However, the Department has established service levels for average complaint response times and will continue to adhere to those service levels. It will not be making any additions or changes to its response time targets at this time.”

Auditor Comment: As stated in the *Discussion of Audit Results* section, it appears that DOB is confusing time-based targets with time-based performance indicators. Average response time is a performance indicator applicable to an aggregate number of complaints; it is not a time-based target. We continue to recommend that DOB take steps to ensure that *each* complaint is inspected in accordance with existing target time frames. As we note in this report, DOB’s inspection data reveals that for one priority A complaint—classified by DOB as hazardous and presenting an imminent safety risk—it took the agency 348 days to attempt an initial inspection. Unless it takes steps to ensure that it responds timely to *all* complaints, DOB will continue to incur the risk that hazardous and serious conditions reported to it will go uninspected for unacceptably long periods. We therefore urge DOB to fully implement this recommendation.

2. DOB should establish written procedures detailing (a) the required internal time frames for its personnel to respond to each individual complaint, by priority code, and (b) the specific responsibilities of inspectors, supervisors, and managers for meeting those requirements and should monitor all units’ compliance with those procedures.

DOB Response: “DOB disagrees with this recommendation. The Department has established, publicly available service level targets for average complaint response times and will continue to adhere to those targets. It will not be making any additions or changes to its response time targets at this time.”

Auditor Comment: It is concerning that DOB disagrees with this recommendation and that it will not establish written procedures to help ensure that its employees are aware of the standards they are being held to and for which DOB may hold employees accountable, especially considering that DOB’s

responses to thousands of individual complaints are late, sometimes substantially so. We therefore urge DOB to reconsider and implement this recommendation.

3. DOB should clarify its procedures to ensure that its inspectors attempt to inspect, at least once, the location associated with *each* individual complaint within its internal time frames (24 hours for priority A complaints, 40 calendar days for priority B complaints, and 60 calendar days for priority C complaints).

DOB Response: “DOB disagrees with this recommendation. The Department has established, publicly available service level targets for average complaint response times and will continue to adhere to those targets. It will not be making any additions or changes to its response time targets at this time.”

Auditor Comment: Again, DOB fails to differentiate between performance indicators and time targets. We acknowledge in the report that DOB has met its established MMR-reporting benchmarks for average response times. Nevertheless, DOB’s data also indicates that the agency did not respond to thousands of *individual* complaints within those time frames. We therefore urge DOB to reconsider its response and implement this recommendation.

4. DOB should establish, disseminate, and require all personnel to comply with written time frames for second inspection attempts when initial inspection attempts are unsuccessful.

DOB Response: “DOB disagrees with this recommendation. There are a variety of factors that affect when a second inspection attempt is attempted, including the nature of the complaint, the type of investigation being conducted, the discipline or expertise required, and other operational considerations such as workload and resource availability. Given these considerations, DOB does not believe that establishing a set number of days between the first access attempt and subsequent attempts is practical and will not do so at this time.”

Auditor Comment: We find DOB’s argument unpersuasive. The same variety of factors affect both first and second inspection attempts, but DOB has response time frames only for the former. DOB does not suggest that the timeliness of its second attempt to inspect a given location in response to a complaint is less important than that of its first attempt. Consequently, considering that some of DOB’s second inspection attempts were not made for hundreds of days after the initial attempt, we urge DOB to reconsider its response and implement this recommendation.

5. DOB should generate reports to help line managers, supervisors, and inspectors identify complaints that require a second inspection attempt, and senior management should monitor agency-wide progress in completing those attempts.

DOB Response: “DOB agrees with this recommendation. The Department currently generates reports on and monitors inspection access attempts and access rates. We agree that reviewing reports on initial and subsequent attempts for those inspections that require them contribute to our continuing efforts to improve access rates.”

Deficiencies with Class 1 Violations

Hazardous Conditions Not Re-inspected Timely

The NYC Administrative Code § 28-219.2 provides, “Where an immediately hazardous condition has been identified as posing a threat of imminent danger to public safety or property and a [Class 1] violation has been issued, [DOB]...shall reinspect the condition...within 60 days of the date of the notice of a violation, unless . . . [a] certification of the correction of the condition has been filed in the manner and form prescribed by [DOB].” In addition, § 28-219.2.2 requires DOB to “continue to reinspect [such] condition [i.e., follow-up re-inspection attempts] every 60 days.”

However, DOB has not consistently and continually re-inspected unresolved “immediately hazardous” conditions within the 60-day time frames required by City statute. During Fiscal Year 2019, DOB received 21,018 complaints that resulted in the issuance of a Class 1 violation. However, we found that re-inspections of these hazardous conditions, where required, were not performed timely, if at all. Of the 6,381 hazardous Class 1 violations that required, and were assigned for, an initial re-inspection, DOB made a timely re-inspection attempt in 2,799 cases (44 percent).⁹ The re-inspection attempts for the remaining 3,582 violations (56 percent) were either late or not conducted at all. The breakdown is as follows:

- For 2,986 violations (47 percent) DOB first attempted a re-inspection after the required 60 days. Of the 2,986 violations:
 - 1,056 (35 percent) received an inspection attempt between 61-70 days after the violation served date.
 - 1,578 (53 percent) received an inspection attempt between 71-100 days after the violation served date.
 - 292 (10 percent) received an inspection attempt between 101-200 days after the violation served date.
 - 60 (2 percent) received an inspection attempt over 200 days after the violation served date.
- For 596 violations (9 percent) DOB did not attempt the required re-inspection as of the date we received its updated data (June 17, 2020).
 - 531 of the 596 violations should have been re-inspected because no C of C was submitted or, in some cases, it was submitted after the re-inspection should have been performed or attempted.
 - According to subsequent data provided by DOB, 48 of those 531 violations were dismissed; however, the dismissals occurred *after* the 60-day time frame during which the hazardous re-inspection should have *already* been performed; and
 - According to subsequent data provided by DOB, 37 re-inspections of the violating conditions were canceled because the C of C was approved;

⁹ DOB is required to make additional re-inspection attempts if the first re-inspection attempt is unsuccessful or reveals that the condition has not been corrected.

however, the C of C in those cases was approved *after* the 60-day time frame during which the hazardous re-inspection should have *already* been performed.

- 65 of the 596 violations should have been re-inspected because the C of C was submitted more than 60 days from the violation served date, ranging anywhere between 63-455 days after the violation was served.

DOB stated that these 65 violations “were removed from hazardous re-inspections after the certification was approved.” However, DOB provided evidence for only 28 of the 65 violations in question. Moreover, DOB received those 28 C of Cs more than 60 days after the violations were served, and therefore should have already re-inspected the violating conditions within the 60-day time frame from the violation served date, as required.

Of concern, the required re-inspections that DOB either failed to perform or attempt or performed late all involved conditions that it had already determined were “immediately hazardous.” For example, we identified 5 instances where the initial re-inspections were performed between 100-137 days from the violation served date. All five instances were related to a failure to maintain building wall(s) or other element of a property that resulted in an “immediately hazardous” condition. In two of the five cases the records showed eventual compliance by the owner, but in the remaining three cases the DOB inspector was unable to gain access and therefore was unable to perform a re-inspection.

We also identified 7 instances where the initial re-inspections were performed between 100-204 days from the violation served date for an “immediately hazardous” condition related to “unlawfully continued work while on notice of a stop work order.” Although in 5 cases the records showed eventual compliance, for three of them the unlawful work continued well past 60 days after the violation was served, ranging from 91-169 days. Had DOB performed a timely re-inspection, these continuing hazardous violations could have been detected sooner. In the remaining two cases, inspectors were unable to gain access and therefore were unable to perform a re-inspection.

In addition, of the 3,418 immediately hazardous violations for which a *follow-up* re-inspection attempt was performed, 1,819 (53 percent) of those attempts were performed more than 60 days after the previous attempt, ranging anywhere between 61-108 days.¹⁰

After we shared our findings with DOB, the agency provided us with new data on June 17, 2020 regarding re-inspections of Class 1 violations, and claimed that while our audit was in progress, it had performed an additional 491 follow-up re-inspections (pertaining to violations recorded in the data DOB had already provided on October 18, 2019) of which 57 (12 percent) were late, having been performed anywhere between 61 and 126 days after the previous re-inspection attempt. The substantial improvement DOB has apparently made recently in performing timely follow-up re-inspections raises the question of why DOB did not ensure that it performed the same kind of follow-up re-inspections timely during the original audit scope period (July 1, 2018 – October 18, 2019). In addition, although DOB reported that it performed these follow-up re-inspections *on average* 60 days after the previous attempt, DOB is required to perform *each* re-inspection within 60 days of the previous inspection attempt.

¹⁰ This data relates to violations issued during Fiscal Year 2019 and follow-up re-inspections DOB attempted through October 18, 2019.

DOB stated that the volume of Class 1 violations eligible for re-inspection has grown significantly over the past several years, making re-inspection within the 60-day time frame increasingly challenging. Nonetheless, in the absence of effective, sustained efforts to help ensure that re-inspections are consistently performed timely, DOB incurs an increased risk that these immediately hazardous conditions will remain uncorrected and continue to compromise public safety.

Respondents Do Not Submit C of Cs Timely

Under NYC Administrative Code § 28-204.2, Class 1 violations—the most serious of the three classes in that they are deemed “immediately hazardous”—must “be corrected forthwith,” and, according to the RCNY §102-01, “a certification acceptable to [DOB] must be received by [DOB] forthwith.” In addition, DOB requires that Class 1 violations be certified “immediately” via submission of a C of C. Neither the statute nor the rule defines “forthwith.” According to DOB, all Class 2 and Class 3 violations must be certified as corrected with the submission and receipt of an acceptable C of C by DOB within 40 days of the violation served date.

Despite their “immediately hazardous” designation requiring “forthwith” correction, however, Class 1 violations remain uncorrected and uncertified, at times, for longer periods than the 40-day limit DOB established for Class 2 and 3 violations. Of the 11,911 Class 1 violations DOB served during our original scope period (July 1, 2018 – October 18, 2019), C of Cs were received by DOB on average 71 days after the violations were served. See Table III below for the ranges of the number of days it took respondents to submit C of Cs for Class 1 violations.¹¹

¹¹ Our analysis did not take into account whether the initial C of C that was submitted was acceptable/approved, so in some instances the time frame for acceptable C of Cs could be greater.

Table III

Number of Days Between Violation
Served Date and C of C Received
Date for Class 1 Violations

Class 1 Violations		
# of Days	# of C of Cs	%
0-10 days	486	4.1%
11-50 days	5,167	43.4%
51-100 days	4,023	33.8%
101-200 days	1,585	13.3%
201-300 days	477	4.0%
Over 300 days	173	1.4%
Total	11,911	100%

DOB stated that the responsibility for timely correction remains with respondents and that DOB cannot ensure timely filing. Moreover, DOB is hindered in holding respondents accountable to submit the C of C within a measurable time frame because neither the Administrative Code provision nor the applicable RCNY rules establish one. Instead, DOB waits up to 80 days before it assesses a civil penalty for a respondent's failure to submit an acceptable C of C for an immediately hazardous condition.

When we asked DOB officials whether they ever considered or had discussions with other City officials about modifying the existing legislation to establish a specific time frame, rather than or in combination with "forthwith," for correcting and certifying Class 1 violations, DOB stated that "this language was the result of negotiations across the spectrum of stakeholders when it was first made in the 2008 code revision and related rule making." However, because of the severity of Class 1 violations, DOB should revisit the issue and the language that now dates back 12 years and, at least, work with City officials to articulate and attempt to enact a specific, enforceable time frame for the required certification of Class 1 violations.

With respect to Class 2 and Class 3 violations, the 40-day period for certification that DOB established is met in roughly half the cases. Of the 10,113 Class 2 violations DOB issued during our original scope period (July 1, 2018 – October 18, 2019), DOB received C of Cs for 5,146 (51 percent) late by an average of 107 days. Finally, of the 1,200 Class 3 violations, DOB received C of Cs for 510 (43 percent) late by an average of 105 days. Table IV below shows the numbers of the Class 2 and Class 3 violations that respondents certified were corrected (within and after the required 40-day period), measured from the dates DOB served the violations to the dates it received the C of Cs.

Table IV

Number of Days Late - Violation
Served Date and C of C Received
Date for Class 2 and Class 3
Violations

Class 2 Violations			Class 3 Violations		
# of Days	# of C of Cs	%	# of Days	# of C of Cs	%
within 40 days	4,967	49.1%	within 40 days	690	57.5%
1-7 days late	833	8.2%	1-7 days late	115	9.6%
8-50 days late	2,066	20.4%	8-50 days late	171	14.3%
51-100 days late	1,064	10.5%	51-100 days late	112	9.3%
101-200 days late	808	8.0%	101-200 days late	81	6.7%
201-300 days late	271	2.7%	201-300 days late	17	1.4%
Over 300 days late	104	1.1%	Over 300 days late	14	1.2%
Total	10,113	100%	Total	1,200	100%

DOB's enforcement ability is limited in that it has no legal authority to assess penalties if a respondent fails to certify correction within a specific time frame for Class 2 and Class 3 violations. DOB officials stated they have not had discussions with other City officials (e.g., Mayor's Office, City Council, etc.) regarding assessing penalties in such circumstances, and that if "a complaint is received, that will trigger a new inspection. Any violating condition observed will result in the issuance of a summons with associated penalties."

Based on DOB's response, it appears that its solution for widespread noncompliance (by respondents) with the required deadline for certifying correction of Class 2 and 3 violations is to wait for someone to submit another complaint for the same condition. At that point, the agency will attempt to inspect it again and, if a condition is observed, issue a new violation including any related penalties. However, aside from its inefficiency, this approach leaves much to chance, starting with DOB's inability to predict or affect whether it will in fact receive another complaint for the same condition, or whether it receives such a complaint substantially later. In either case, reliance on a repeat complaint allows the violating condition DOB *already identified* to remain uncorrected indefinitely absent any independent intervention on DOB's part. Furthermore, even if another complaint is submitted for the same condition, there are no assurances that DOB's

inspectors will be able to gain access to conduct an inspection. For these reasons, simply waiting for a new complaint to be submitted is not a sufficient alternative to issuing a penalty for a respondent's failure to timely certify correction of a known violation.

When respondents do not submit C of Cs timely, DOB has no assurance that the violating condition was corrected timely. Failure to do so increases the risk to public safety, especially for Class 1 violations, which are immediately hazardous.

Recommendations

6. DOB should ensure that it re-inspects hazardous violations within 60 days and every 60 days thereafter until the violation has been found upon inspection to be corrected or until the respondent certifies it as such.

DOB Response: "DOB agrees with this recommendation. DOB is required to complete these inspections as a matter of law."

7. For hazardous re-inspections that remain outstanding, DOB should prioritize re-inspections of the violations that have remained uncorrected for the longest periods of time.

DOB Response: "DOB disagrees with this recommendation. The legal requirement is to re-inspect all Class 1 violations every 60 days, regardless of the age of the violation. All are of equal legal priority."

Auditor Comment: We acknowledge that the legal requirement is to re-inspect all Class 1 violations that have not been certified as corrected every 60 days, regardless of the age of the violations. Unfortunately, DOB is not in compliance with this requirement and needs to develop and implement a plan to address that fact. DOB's records reveal that hundreds of these re-inspections were never performed, and some were delayed for hundreds of days. Considering that DOB has already determined that the conditions involved were "immediately hazardous," the longer it takes for DOB to re-inspect them, the greater the risk that these immediately hazardous conditions will remain uncorrected and continue to compromise public safety. Therefore, we urge DOB to implement this recommendation.

8. DOB should consider re-negotiating with City officials and stakeholders to modify the Administrative Code to establish a specific time frame for certifying Class 1 violations.

DOB Response: "DOB disagrees with this recommendation. As previously noted, the language in the current code was the result of negotiations across the spectrum of stakeholders when it was first made in the 2008 code revision and related rule making."

Auditor Comment: DOB has not explained why it disagrees with our recommendation. Instead, it reiterates what the report already states—that the language in the Administrative Code resulted from negotiations in 2008 (12 years ago). However, as explained in the report, that language lacks a definitive time

frame in which respondents must certify the correction of Class 1 violations, which in turn makes it difficult for DOB to enforce the rule requiring certification of correction of the hazardous condition within a measurable time frame. Accordingly, we recommend that DOB consider *re-negotiating* with City officials to attempt to revise the language to establish a specific, enforceable time frame for the “forthwith” certification the law already requires.

9. DOB should work with the City to develop legislation that would authorize and require DOB to issue violations and fines for Class 2 and Class 3 violations that are not properly certified as corrected within the required time frame.

DOB Response: “DOB disagrees with this recommendation. Issuance of an OATH summons is a clear notice to the respondent that there is a violating condition that the respondent is required to correct. Given that these violations could be issued to owners of one and two family homes or other small properties, the Department does not want to place undue burdens on these owners through the issuance of additional violations and penalties in excess of the [*sic*] those already levied. Additionally, given practical realities with regard to staffing levels and DOB’s multiple, competing priorities and mandates, including but not limited to following up on Class 1 OATH summonses, DOB does not find pursuing this initiative to be an efficient use of agency resources at this time.”

Auditor Comment: Although DOB states that it “does not want to place undue burdens on these owners,” it nevertheless issued summonses to them because of violating conditions that pose potential risks to the public, and it established time frames for the owners to certify the correction of those conditions. The audit showed that DOB’s certification time frames are met in only half the cases. Without additional penalties for Class 2 and 3 violations that remain uncorrected beyond those time frames, and which may pose risks to public safety, DOB has limited recourse, and property owners have limited incentive, to ensure their correction. Accordingly, we urge DOB to re-consider its stance and work with the City to establish appropriate penalties to encourage timely correction of the conditions noted in the violations DOB issues.

C of Cs Not Reviewed Timely

According to DOB, its internal goal is to review C of Cs that respondents drop off or submit by mail within 21 days after DOB receives them. Of the 9,895 C of Cs that were either dropped off or submitted by mail, DOB reviewed 4,170 (42 percent) timely (within 21 days). However, of the remaining 5,725, DOB reviewed 5,659 (57 percent of the total) late, ranging from 22 to 328 days after DOB received them, while 66 were not reviewed at all.

Furthermore, based on the data DOB provided on June 17, 2020, we found 29 of the 66 unreviewed C of Cs were for violations that were dismissed over 21 days after DOB received the C of Cs, ranging from 22-215 days. Because the violations were dismissed subsequent to DOB’s 21-day time frame for review, the C of Cs should have been reviewed before those dismissals occurred. Regarding the remaining 37 C of Cs, DOB stated that 32 of them had been erroneously entered into AEU’s system as “pending” and that the records are being corrected. The remaining 5 C of Cs are still being investigated.

DOB also stated that no mandate or legislative directive requires that C of Cs be reviewed within 21 days and that they see no need to create a written procedure to document the agency's internal goal. However, according to Comptroller's Directive #1, "Internal controls should be documented in management administrative policies or operating manuals." DOB's 21-day goal is intended to function as an internal control to help ensure the agency's timely review of respondents' self-reported corrections of known violations. Without written procedures delineating *any* time frame for reviewing C of Cs, however, DOB's ability to hold itself and its employees accountable in instances of noncompliance is hindered.

DOB did not identify any obstacles preventing its staff from reviewing the C of Cs in a timelier manner. When C of Cs are not reviewed timely, DOB incurs an increased risk that violations may not have been corrected appropriately and that the lack of an appropriate correction may not be promptly detected, allowing the violating conditions to remain unresolved and continue to pose a threat to public safety and/or property.

Recommendation

10. DOB should create and disseminate written procedures detailing the time frame requirements for personnel to review C of Cs and ensure that C of Cs are reviewed timely.

DOB Response: "DOB agrees with this recommendation."

C of C Audit Re-inspections Not Performed

DOB has an internal goal to audit 11 percent of approved C of Cs to ensure that the violating condition has been corrected by performing an audit re-inspection. According to DOB, it expects audits to be completed within 90 days of being assigned. However, DOB meets that goal in only 27 percent of the cases it assigns for audit.

Between July 16, 2018 and July 15, 2019, 1,002 C of Cs were selected and assigned for an audit re-inspection more than 90 days prior to the date we received DOB's original data (October 18, 2019). As of June 17, 2020, DOB re-inspected or attempted a re-inspection for 273 (27 percent) of them within the 90-day goal. Of the remaining 729 C of Cs:

- DOB re-inspected or attempted to re-inspect 456 (46 percent of the total 1,002 C of Cs) after the 90-day goal, ranging from 93 to 412 days after they were assigned. We identified three Class 1 violations categorized as 'Demolition-Unsafe/Illegal/Mechanical Demo' that received a re-inspection between 205 and 227 days after it was assigned.
- 273 (27 percent of the total 1,002 C of Cs) had not been re-inspected as of the date we received DOB's updated data (June 17, 2020). The age of these cases ranged between 338 and 639 days after they were assigned for audit. Of these C of Cs, 175 (64 percent) were related to Class 1 violations. Three of these Class 1 violations were categorized as 'Demolition-Unsafe/Illegal/Mechanical Demo' and had not received a required re-inspection as of June 17, 2020; by then they ranged in age from 338 to 366 days after they were assigned.

Although DOB sends monthly notifications to inspection units of assigned inspections that have not been completed, we found instances where notifications identifying the same outstanding inspections were sent to the units for up to seven months in a row, indicating that the units were

consistently failing to conduct these inspections timely.¹² DOB did not identify any obstacles preventing its staff from performing these inspections in a timelier manner. In the absence of evidence that re-inspections occurred, including for 175 immediately hazardous Class 1 violations, DOB has limited assurance that these violations were addressed appropriately or addressed at all, increasing the risk to public safety.

In addition, for the 275 C of Cs for which an inspection was conducted, 69 (25 percent) resulted in “no access” and required an LS-4 notice to be posted. We found that the data provided did not indicate that an LS-4 was posted for 42 (61 percent) of these 69 inspection attempts.¹³ Without posting an LS-4, DOB wastes the opportunity it has—while its inspector is physically at the location—to inform the respondent that DOB needs to inspect the reportedly-corrected condition. By wasting that opportunity DOB diminishes its ability to determine whether the violating condition has been corrected.

Recommendation

11. DOB management should ensure that audit re-inspections are performed timely and in accordance with all applicable procedures, including the proper use of LS-4 notices.

DOB Response: “DOB agrees with this recommendation.”

¹² For example, an audit re-inspection with a 90-day completion target would be untimely after three months.

¹³ The numbers represented are as of the date of our original dataset provided on October 18, 2019. The updated data provided by DOB on June 17, 2020 did not include the two key data fields required to determine whether any additional LS-4s were posted.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of the audit was from July 1, 2018 through June 17, 2020.

To evaluate DOB's controls over its handling of complaints and its responsibilities with regards to the processing and correction of violations, we interviewed the Deputy Commissioner of Enforcement, the Assistant Commissioner of the Division of Enforcement Inspections, the Chief Inspector of Emergency Operations, and the Executive Director of the Administrative Enforcement Unit.

To assess the adequacy of DOB's internal controls as they related to our audit objective, we evaluated information obtained from our interviews of agency officials and reviewed the agency's policies and procedures. We reviewed and used as criteria the following:

- Chapter 100 Administration of *The Rules of the City of New York*;
- Chapter 2 Enforcement of *The New York City Administrative Code*;
- Comptroller's Directive #1, *Principles of Internal Control*;
- DOB's *Certificate of Correction Instructions* form;
- DOB's *Resolving Violations Fact Sheet*;
- DOB's *Complaint Category Description* and *BIS Complaint Disposition Codes*;
- New York City Council Investigation Division's report on DOB's response to complaints;
- *DOB NOW: Inspections Operational & Technical Policies*;
- *DOB NOW: Inspections Mobile User Manual*;
- *Certificate of Correction Audit Program SOP*; and
- the *Resolving OATH Violations* and *Resolving DOB Violations* pages on DOB's website.

To determine the number of days it took for DOB to perform an inspection of complaints received during Fiscal Year 2019, we compared the number of days between the date the complaint was entered into BIS to the date when the first inspection was performed. From a population of 291,163 complaints found in BIS, we removed 71,870 complaints with a "Complaint Disposition Description" that did not reflect an initial inspection attempt (e.g., referrals, no access second attempts, administrative closures, etc.). Then we removed 57,170 priority D complaints. Next, we removed 353 complaints that, as per the "Inspector's Comments" field, were "taken as notification" and do not rise to the level of requiring an inspection. Then we removed 6,643 SEP complaints,

which are internally generated to track audit selections and inspections and are not subject to inspection requirements. Next, we removed 15,283 complaints that are handled exclusively by inspectors assigned to the Mayor’s Office of Special Enforcement. Then we removed 76 complaints with a “Complaint Category Description” of “request for deck safety inspection” or “request for retaining wall safety inspection,” which are offered by DOB to the public as no penalty inspections to assess whether those structures are maintained in accordance with the NYC Construction Codes, and are not subject to inspection requirements. Then we removed 51,931 duplicate complaints and 3 complaints without an inspection date. Next, we removed 2,062 complaints that were inspected prior to being recorded (this can be caused by data entry errors or data entry delays for manually entered complaints. In addition, inspectors may identify a condition in the field that is not associated with the original purpose of the site visit, conduct the inspection first, and record the complaint afterward). Finally, we removed 10 complaints that were referred to DOB by another agency or entity that already mitigated the condition, resulting in 85,762 remaining complaints (14,787 priority A complaints, 57,990 priority B complaints, and 12,985 priority C complaints).

To determine whether DOB met its MMR reporting benchmarks for responding to priority A complaints and priority B complaints, we calculated the number of work days between the date the complaint was entered into BIS and the date when the first inspection was performed.

To determine whether complaints that resulted in “no access” received timely second inspection attempts, we compared the date of the initial no access inspection to the date of the second inspection attempt. From a population of 291,163 complaints recorded in BIS, we removed 64,504 priority D complaints. Next, we removed 140,448 complaints that did not contain at least one record with a “Complaint Disposition Description” reflecting a first no access attempt. Then we removed 3,597 complaints that did not correspond to an actual inspection attempt. Next, we removed 81 complaints that had the initial inspection performed prior to Fiscal Year 2019, 1 complaint that had a blank inspection date, and 416 complaints that had only one inspection attempt. Then we removed 20,058 duplicate complaints (excluding the second inspection attempt with a “Complaint Disposition Code” other than an initial no access attempt). Next, we removed 66 complaints that had a *re-inspection* attempt with a “Complaint Disposition Code” reflecting an initial no access attempt. Then we removed 1,938 SEP complaints, which are internally generated to track audit selections and inspections. Next, we removed 2,914 complaints that were assigned or referred to the Mayor’s Office of Special Enforcement, which is not under DOB operational control. Finally, we removed 42 complaints with a “Complaint Category Description” of “request for deck safety inspection” or “request for retaining wall safety inspection”—which are inspection requests from the public, not complaints, and are not subject to inspection requirements—resulting in 57,098 complaints (including 28,549 initial attempts and 28,549 re-inspection attempts). In addition, we calculated the time frames between the date the complaint was received and the date of the second inspection attempt.

To determine whether complaints that resulted in “no access” received second inspection attempts, we compared the date of the initial no access inspection to the date of the updated data received on June 17, 2020.

To determine whether the initial hazardous re-inspection was performed timely, we used the OATH Violation data provided and compared the “Violation Served Date” to the inspection date of the first hazardous re-inspection performed for each violation. If no inspection date was indicated, we compared the “Violation Served Date” to the cutoff date of the data (October 18, 2019). For our testing, when no inspection date was indicated, we determined (1) whether the violation was served more than 60 days prior to the cutoff date of our data, and (2) whether a C

of C was submitted. If the C of C was submitted, we determined whether it was submitted more than 60 days after the “Violation Served Date.” From a population of 10,451 hazardous re-inspections, we removed 3,976 duplicate violation numbers in order to isolate the first inspection attempt for each violation. Then we removed five inspections with a “Violation Served Date” that was prior to Fiscal Year 2019; two inspections with a “Reinspected Date” that was prior to the “Violation Served Date”; and two inspections with no “Violation Served Date.” Next, we removed 46 inspections with a “Violation Served Date” that was within 60 days of the cutoff date of our data and 37 inspections with a C of C “Received Date” that was within 60 days of the “Violation Served Date”. Finally, we removed 2 inspections that had the violation dismissed within 60 days of the “Violation Served Date,” resulting in 6,381 remaining inspections.

In addition, to determine whether follow-up hazardous re-inspections were performed timely, we compared the “Reinspected Date” for each violation that had multiple hazardous re-inspections to each subsequent “Reinspected Date.”

To determine the number of days it took for respondents to submit C of Cs, we compared the “Violation Served Date” to the C of C “Received Date” as reflected in the C of C data. From a population of 29,625 C of Cs, we removed 6,222 duplicate violation numbers in order to isolate the first time a C of C was submitted for each violation. We then removed 20 violations where the C of C “Received Date” was prior to the “Violation Issued Date” and 5 violations where the C of C “Received Date” was prior to the “Violation Served Date,” as reflected in the OATH Violation data. Next, we removed 120 violations from the C of C data that did not appear in the OATH Violation data. Finally, we removed 30 violations with a “Violation Served Date” that was prior to Fiscal Year 2019; three violations with no “Violation Served Date” indicated in the OATH Violation data; and one violation with no violation class indicated, resulting in 23,224 remaining C of Cs.

To determine whether C of Cs that were “mailed” or “dropped off” were reviewed timely, we compared the C of C “Received Date” to the C of C “Reviewed Date.” From a population of 29,625 C of Cs, we removed 19,314 C of Cs that were submitted in person or emailed. We then removed 269 “mailed” or “dropped off” C of Cs with a blank “Reviewed Date” that were received within 21 days of the cutoff date of our original data (October 18, 2019) and were not required to be reviewed. Next, we removed 15 C of Cs that were received prior to Fiscal Year 2019 and one C of C that was reviewed prior to being received. Finally, we removed 13 C of Cs that were dismissed prior to the C of C “Received Date,” 117 C of Cs that were dismissed within 21 days of the C of C “Received Date,” and one C of C that was found to be in compliance prior to the C of C being submitted, resulting in 9,895 remaining C of Cs.

To determine whether C of Cs selected for audit re-inspection received an inspection, we reviewed the “Inspection Date” and the “Date Sent to Unit” fields from the C of C Audit data. From a population of 1,528 C of Cs selected by DOB for audit re-inspection, we removed 521 C of Cs that were not required to be inspected because they were assigned within 90 days of the date we received the original data (October 18, 2019). We then removed one C of C with no “Date Sent to Unit” indicated, three C of Cs with an “Inspection Date” that was prior to the “Date Sent to Unit,” and one C of C with a “Date Sent to Unit” that was prior to Fiscal Year 2019, resulting in 1,002 remaining C of Cs. For our test to determine whether LS-4 notices were posted, when required, if the “Inspection Date” field contained a date, we reviewed the “Inspection Status” field to determine whether access was obtained; if no access was obtained, we reviewed the comments to determine whether an LS-4 was posted.

To assess the reliability of the datasets for audit testing purposes, we ran various sorts and queries on the various datasets to identify potential anomalies, including duplicate complaint and violation numbers, gaps between complaint and violation numbers, and reviewed the data for any blank records. Based on the results of our tests, we determined that the data was sufficiently reliable for the purposes of our audit testing.

These results provide a reasonable basis for us to determine whether DOB has adequate controls in place to ensure it is responding to and following up on complaints in a timely manner.



Melanie E. La Rocca
Commissioner

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October 20, 2020

Marjorie Landa
Deputy Comptroller for Audit
NYC Office of the Comptroller
One Centre Street, Room 1100N
New York, NY 10007

**Re: Department of Buildings' Response and Follow-up to Complaints
(MD19-122A)**

Dear Ms. Landa:

Thank you for the opportunity to respond to the recommendations in the above-captioned report. As you noted in your report, the Department has consistently met and exceeded service level requirements for complaint response and will continue to hold itself to that stringent standard. It will also continue to work to the best of its ability to fulfill its other legal mandates with the same dedication and professionalism that it brings to each of its undertakings.

That being said, we believe that there can always be room for improvement, and we will continue to look for opportunities to do such. The audit noted that DOB did not conduct some re-inspections of Class 1 OATH summonses timely. It is important to reiterate, however, that the volume of Class 1 OATH summonses eligible for re-inspection has grown significantly over the past several years; Class 1 summons issuance has increased from approximately 23,000 issued in 2015 to nearly 48,000 issued in 2019, an over 100% increase. While this dramatic increase in summons issuance underscores DOB's rigorous enforcement of the code and continued commitment to holding code violators accountable, it also makes re-inspecting all eligible Class 1 summonses within the 60-day timeframe increasingly challenging.

Despite these challenges, the Department makes every effort to balance its multiple, competing priorities to build on its successes where it is meeting and exceeding its mandates and make improvements where required. DOB will continue to work tirelessly to provide first in class service, rigorously investigate all alleged violations of code and law, and bring tough enforcement measures to bear to hold respondents accountable and keep all New Yorkers safe.



Below are the Department's clarifying comments and responses to the eleven audit recommendations:

Clarifying Comments

The audit determined that DOB did not perform complaint inspections timely. In truth, however, DOB consistently meets and exceeds its mandated complaint response time targets and has done so for multiple consecutive years. DOB is strongly committed to rigorously investigating all complaints and allegations expeditiously. This is evidenced by the fact that the vast majority of complaints both on average and individually are inspected well under the required averages despite most complaints having no legally or otherwise mandated requirement to that effect.

Rather than using as criteria the mandated service level requirements that DOB repeatedly stated it uses as a performance measure, and that it consistently meets and exceeds, the audit instead chose to use what it stated was DOB's internal goal for complaint response: to inspect each complaint within 1 calendar day for A complaints, 40 calendar days for B complaints, and 60 calendar days for C complaints. However, as repeatedly noted to the auditors, though DOB makes every effort to respond to Priority A complaints as soon as practicable upon receipt, including on weekends, DOB measures its response times as dictated in the MMR, that is in work days, not calendar days. This alone reduces the number of complaint responses deemed untimely by more than 9,000 complaints. The audit's depiction of complaints responded timely and not timely is, therefore, inaccurate in two ways: First in that it neglected to use as criteria the mandate to which DOB is actually held, the MMR, second in that the unit of measurement used to assess the incorrectly chosen criteria was, itself, incorrect.

The report noted that respondents did not submit Certificates of Correction timely. It is critical to note, however, that responsibility for correcting violating conditions and certifying correction of those conditions lies exclusively with the respondent, which can be a building owner, permit holder, or other responsible party. The Department's powers to ensure that owners and other responsible parties correct conditions and maintain safety of their properties and sites is fundamentally limited by owners, who after repeated notices of violation, refuse to take action. While DOB can and does order these individuals and entities to fulfill their legal obligations and correct violating conditions, DOB does not have the ability to use emergency contractors to perform the work, or directly compel owners to do so and certify correction of the condition.

The report noted that DOB waits up to 80 days before assessing civil penalties for failure to submit a Certificate of Correction. It is important to note, however, that this is out of practical necessity. AEUHAZ violations are issued approximately 80 days after the service of the summons to allow for hearings on the initial violation. This is to avoid the potential for added costs and inefficiencies resulting from respondents paying for summonses that may later be dismissed by OATH.



The report noted that DOB did not review some Certificates of Correction within 21 days. The Department makes, and will continue to make, every effort to provide our customers with the highest levels of service. Given that, we have a goal of reviewing Certificates of Correction within 21 days. However, there are no mandates or legislative directives that require this level of service. It is also important to note that the Department does not penalize applicants for any time the Department needs to review the materials.

The audit report noted that the data provided did not indicate that a Notice to Call for Inspection (LS-4) was posted for some certificate of correction audit inspection attempts. It subsequently suggested that this meant that no LS-4 was posted for those attempts; it apparently concluded that because inspectors' written comments for some inspection attempts noted that an LS-4 was posted, lack of comments to that effect meant that an LS-4 was not posted. This is not a logical or accurate conclusion. Proper use of LS-4 notices is already required under inspection unit protocols and inspectors post LS-4s for no access inspection attempts.

Response to Recommendations

Recommendation 1: DOB should assess its current efforts, including the performance of managers, supervisors, and inspectors, to identify areas where improvements can be made to ensure that it inspects or attempts to inspect the conditions reported in all complaints timely in accordance with its existing internal timeframes.

DOB's Response: DOB partially agrees with this recommendation. DOB meets complaint service level requirements and has done so for multiple consecutive years. The Department is always continually assessing its efforts and looking for ways to improve its handling of complaints. While the current system is strong we believe it can always be better and work continuously to accomplish that end. However, the Department has established service levels for average complaint response times and will continue to adhere to those service levels. It will not be making any additions or changes to its response time targets at this time.

Recommendation 2: DOB should establish written procedures detailing (a) the required internal timeframes for its personnel to respond to each individual complaint, by priority code, and (b) the specific responsibilities of inspectors, supervisors, and managers for meeting those requirements and should monitor all units' compliance with those procedures.

DOB's Response: DOB disagrees with this recommendation. The Department has established, publicly available service level targets for average complaint response times and will continue to adhere to those targets. It will not be making any additions or changes to its response time targets at this time.



Recommendation 3: DOB should clarify its procedures to ensure that its inspectors attempt to inspect, at least once, the location associated with each individual complaint within its internal timeframes (24 hours for priority A complaints, 40 calendar days for priority B complaints, and 60 calendar days for priority C complaints).

DOB's Response: DOB disagrees with this recommendation. The Department has established, publicly available service level targets for average complaint response times and will continue to adhere to those targets. It will not be making any additions or changes to its response time targets at this time.

Recommendation 4: DOB should establish, disseminate, and require all personnel to comply with written timeframes for second inspection attempts when initial inspection attempts are unsuccessful.

DOB's Response: DOB disagrees with this recommendation. There are a variety of factors that affect when a second inspection attempt is attempted, including the nature of the complaint, the type of investigation being conducted, the discipline or expertise required, and other operational considerations such as workload and resource availability. Given these considerations, DOB does not believe that establishing a set number of days between the first access attempt and subsequent attempts is practical and will not do so at this time.

Recommendation 5: DOB should generate reports to help line managers, supervisors, and inspectors identify complaints that require a second inspection attempt, and senior management should monitor agency-wide progress in completing those attempts.

DOB's Response: DOB agrees with this recommendation. The Department currently generates reports on and monitors inspection access attempts and access rates. We agree that reviewing reports on initial and subsequent attempts for those inspections that require them contribute to our continuing efforts to improve access rates.

Recommendation 6: DOB should ensure that it re-inspects hazardous violations within 60 days and every 60 days thereafter until the violation has been found upon inspection to be corrected or until the respondent certifies it as such.

DOB's Response: DOB agrees with this recommendation. DOB is required to complete these inspections as a matter of law.

Recommendation 7: For hazardous re-inspections that remain outstanding, DOB should prioritize re-inspections of the violations that have remained uncorrected for the longest periods of time.



DOB's Response: DOB disagrees with this recommendation. The legal requirement is to re-inspect all Class 1 violations every 60 days, regardless of the age of the violation. All are of equal legal priority.

Recommendation 8: DOB should consider re-negotiating with City officials and stakeholders to modify the Administrative Code to establish a specific timeframe for certifying Class 1 violations.

DOB's Response: DOB disagrees with this recommendation. As previously noted, the language in the current code was the result of negotiations across the spectrum of stakeholders when it was first made in the 2008 code revision and related rule making.

Recommendation 9: DOB should work with the City to develop legislation that would authorize and require DOB to issue violations and fines for Class 2 and Class 3 violations that are not properly certified as corrected within the required timeframe.

DOB's Response: DOB disagrees with this recommendation. Issuance of an OATH summons is a clear notice to the respondent that there is a violating condition that the respondent is required to correct. Given that these violations could be issued to owners of one and two family homes or other small properties, the Department does not want to place undue burdens on these owners through the issuance of additional violations and penalties in excess of the those already levied. Additionally, given practical realities with regard to staffing levels and DOB's multiple, competing priorities and mandates, including but not limited to following up on Class 1 OATH summonses, DOB does not find pursuing this initiative to be an efficient use of agency resources at this time.

Recommendation 10: DOB should create and disseminate written procedures detailing the timeframe requirements for personnel to review C of Cs and ensure that C of Cs are reviewed timely.

DOB's Response: DOB agrees with this recommendation.

Recommendation 11: DOB management should ensure that audit re-inspections are performed timely and in accordance with all applicable procedures, including the proper use of LS-4 notices.

DOB's Response: DOB agrees with this recommendation.



Sincerely,

A handwritten signature in black ink, appearing to read "Melanie E. La Rocca".

Melanie E. La Rocca
Commissioner

cc: Florim Ardolli
Brady Hamed
Constadino Sirakis
Germain Difo
Kerry Castro