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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 10, 2023

James S. Oddo
Commissioner
New York City Department of Buildings
280 Broadway
New York, NY 10007

Re: Oversight of Building Construction
Site Safety
Report 2023-F-32

Dear Commissioner Oddo:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Buildings to implement the recommendations contained in our initial audit report, *Oversight of Building Construction Site Safety* (Report [2021-N-3](#)).

Background, Scope, and Objective

The New York City Department of Buildings (DOB) is responsible for regulating the safe and lawful use of more than 1 million buildings and construction sites in New York City (NYC). This includes enforcing provisions of the NYC Administrative and Building Codes, the Rules of the City of New York, and NYC Local Laws in order to promote the safety of all people who visit, live, and work in NYC. This requires construction managers, contractors, and subcontractors engaged in construction or demolition operations to institute and maintain safety measures necessary to safeguard the public and property. DOB inspectors respond to incidents and complaints and perform inspections to enforce compliance.

During fiscal year 2022, DOB regulated more than 40,000 active construction sites, and issued over 168,000 construction permits. DOB reported 732 building construction-related incidents that occurred between September 1, 2022 and September 30, 2023, resulting in 11 fatalities and 774 injuries.

According to the NYC Building Code, all construction workers are required to obtain a certain number of hours of site safety training depending on their job responsibilities. In addition, all incidents where construction work is subject to DOB permitting must be reported if they result in an injury or fatality.

DOB has the authority to issue Office of Administrative Trials and Hearings (OATH) Summonses and DOB Violations when a property or construction site does not comply with codes, rules, and regulations. A building owner or contractor who receives a Class 1 OATH Summons must immediately correct the violating conditions and submit a Certificate of

Correction to DOB for evaluation. If they do not submit a Certificate of Correction for a Class 1 OATH Summons in a timely manner, DOB's policy is to issue a DOB Violation for failure to certify corrections. DOB may also issue Stop Work Orders at sites with unsafe conditions to protect workers, residents, the general public, buildings, and other properties.

The objective of our initial audit report, issued on September 1, 2022, was to determine whether DOB was adequately monitoring NYC building construction sites to ensure compliance with applicable codes, laws, and rules for construction site safety. The audit, which covered the period from January 2018 through December 2021, found that DOB's oversight of building construction sites – including construction site inspections and safety – and enforcement activity needed to be improved. Additionally, DOB needed to enhance its efforts to ensure that owners, contractors, and other responsible parties report all building construction site incidents and comply with the codes, rules, and regulations that govern construction site safety. Further, DOB's enforcement activities provided limited assurance that immediately hazardous conditions identified by DOB are addressed in a timely manner.

We also found that DOB did not prioritize which sites should be proactively inspected for safety conditions. Generally, DOB inspections were performed after an incident had occurred or a complaint had been received even though its prior enforcement actions and contractors' safety history are data sets that could be used to help identify high-risk construction sites. In addition, DOB had inadequate procedures for incident and fatality reporting and was not always aware of building construction-related incidents.

The objective of our follow-up was to assess the extent of implementation, as of November 30, 2023, of the six recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOB made limited progress in addressing the issues identified in our initial audit report. Of the initial report's six audit recommendations, two were implemented, one was partially implemented, and three were not implemented.

Follow-Up Observations

Recommendation 1

Ensure that the site inspection issues we identified are corrected.

Status – Implemented

Agency Action – In response to our initial report, DOB issued 24 summonses for nine of the 16 sites where the audit team found safety issues. DOB officials indicated that they did not issue summonses at the remaining seven sites because inspectors found no issues at five sites, construction was completed at one site, and the construction job was released from the site safety program at the other site. We reviewed DOB's OATH Summons records and found that DOB ensured the conditions cited in the 24 summonses were either corrected or appropriately addressed.

Recommendation 2

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

Status – Not Implemented

Agency Action – As noted in the initial audit report, DOB still does not issue DOB Violations for failure to certify corrections of immediately hazardous conditions in a timely manner. DOB officials stated they generate these violations approximately 80 days after issuing Class 1 OATH Summonses. However, DOB did not provide the requested data to support this claim. Furthermore, issuing a follow-up violation almost 3 months after issuing a summons is not effective in ensuring compliance of time-sensitive conditions. A new law, effective July 2022, generally prevents DOB from issuing DOB Violations for failure to certify corrections of immediately hazardous conditions at certain construction sites, such as one- to four-family homes. However, DOB can still issue these violations at larger construction sites.

Recommendation 3

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

Status – Not Implemented

Agency Action – In response to our initial audit report, DOB officials agreed with this recommendation and stated they would explore the technical practicalities of implementation. However, DOB did not demonstrate that overdue summonses are appropriately identified. According to the Rules of the City of New York, DOB must receive the Certificate of Correction for Class 1 summonses forthwith and Class 2 and Class 3 summonses within 60 days. If no Certificate of Correction is received within the prescribed period, DOB can issue a violation for failure to certify correction and impose civil penalties. DOB does not readily identify corrections that are overdue and, therefore, does not issue DOB Violations for failure to certify correction in a timely manner.

Recommendation 4

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

Status – Not Implemented

Agency Action – DOB does not analyze available data to proactively identify high-risk contractors and construction sites to inspect. DOB claims that it uses a data-driven approach to promote the safety of all New Yorkers by monitoring activity throughout all agency units. However, it is unclear how many proactive construction inspections have been performed because, despite our requests, DOB did not provide all construction-related inspection data.

DOB provided information for two instances where it inspected high-risk sites in 2023: a contractor that received the most Class 1 OATH Summonses and another contractor where a fatality had occurred at one of its sites. These two examples illustrate instances where DOB performs inspection sweeps. As noted in the initial audit report, DOB must inspect certain construction sites that have site safety programs (i.e., construction sites with a site safety manager, site safety coordinator, or a construction superintendent). DOB’s Construction Safety Compliance unit selects the sites that should be inspected first primarily based on due dates instead of using risk-based measures, such as

identifying contractors and building construction sites with the most safety incidents. DOB should be using its inspection, violation, and accident data as well as publicly available data to identify high-risk contractors and sites to proactively inspect. We note that, as of October 12, 2023, DOB's Construction Safety Compliance unit, which conducts proactive inspections, has 61% less inspections staff compared to 2 years ago.

Recommendation 5

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

Status – Partially Implemented

Agency Action – DOB provided monthly meeting minutes, agendas, and attendance records documenting DOB's meetings with federal Occupational Safety and Health Administration (OSHA) officials and discussion of the status of various building construction site incidents. However, despite these meetings with OSHA, DOB officials were not aware of five construction-related incidents that resulted in injuries between September 1, 2022 and March 31, 2023 until we informed them. We identified these additional injuries based on readily available public data. Once informed of these incidents, DOB took enforcement actions at all of these sites for failure to report an injury or fatality to DOB.

Recommendation 6

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

Status – Implemented

Agency Action – DOB meets with OSHA officials monthly to discuss injuries and fatalities at building construction sites, including following up on the conditions of injured construction workers. DOB provided monthly meeting minutes, agendas, and attendance records to support these meetings.

Major contributors to this report were Saviya Crick, Faisal Nadeem, and Lillian Fernandes.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of DOB for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,



David Schaeffer
Audit Manager

cc: Kerry Castro, NYC Department of Buildings
Doug Giuliano, NYC Mayor's Office of Risk Management and Compliance
Marjorie Landa, NYC Mayor's Office of Risk Management and Compliance