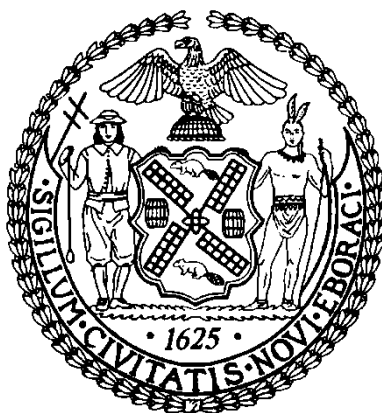


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

MANAGEMENT AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on Fire Department Controls
Over the Laboratory Unit's Inspections of
Establishments That Contain Hazardous
Materials**

MH10-088A

October 14, 2010



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

October 14, 2010

To the Residents of the City of New York

My office has audited the New York City Fire Department (FDNY) controls over its Laboratory Unit's (Lab Unit's) inspections of establishments that contain hazardous materials. We conduct these audits as a means of ensuring that City agencies are operating in a manner that promotes public safety.

There are many types of hazardous materials and, depending on their quantities and use, the establishments containing them may be required to obtain annual permits issued by FDNY. Included in these establishments are high schools, colleges, hospitals, and nursing homes. The Lab Unit is responsible for inspecting these establishments.

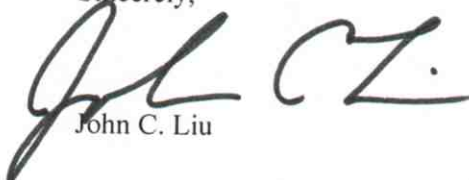
The audit found that FDNY lacks adequate controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials. The establishments for 27 of the 30 sampled accounts were operating with expired permits during at least one of the three fiscal years reviewed. Also, supervisors of the Lab Unit failed to comply with their oversight responsibilities for supervisory and post inspections. Additionally, a number of important inspection procedures are not included in the Lab Unit's procedural manual, and those requirements that are included are not all being followed. Finally, the record-keeping and reporting practices of the Lab Unit are inadequate. The inspection data entered in FDNY's Fire Prevention Information Management System appears unreliable; and the number of inspections reported for Fiscal Year 2009 as having been conducted by the Lab Unit in the Laboratory Inspection Unit Field Activity Report and the number in *The Mayor's Management Report Fiscal 2009* are inconsistent.

The audit made 15 recommendations, including that FDNY: ensures that the Lab Unit takes steps to reduce the backlog of permit renewal and follow-up inspections; ensures that adequate written procedures are developed and implemented for the Lab Unit inspectors to follow in carrying out inspections of establishments containing hazardous materials; and requires that officials responsible for internal and external statistics regarding the number of inspections conducted by the Lab Unit attest that the data is adequately supported and that it has been reviewed for accuracy and completeness.

The results of the audit have been discussed with FDNY 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,



John C. Liu

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*The City of New York
Office of the Comptroller
Management Audit*

**Audit Report on Fire Department Controls
Over the Laboratory Unit's Inspections of
Establishments that Contain Hazardous Materials**

MH10-088A

AUDIT REPORT IN BRIEF

Our audit determined whether the New York City Fire Department (FDNY) has adequate controls over the Laboratory Inspections Unit's (the Lab Unit) inspections of establishments that store, handle, and use hazardous materials to ensure that inspections and their results are properly recorded and reported, and that the inspections are performed in a timely manner.

There are many types of hazardous materials. Depending on their quantities and use, the establishments containing them may be required to obtain annual permits issued by FDNY. These establishments include but are not limited to high schools, colleges, hospitals, and nursing homes. The Lab Unit is responsible for inspecting these establishments. If no violations are found, the inspection will be approved. If violations are found, the Lab Unit issues a Violation Order (VO) if an imminent hazard exists; if no imminent hazard exists, the Lab Unit issues a Notice of Violation (NOV). Conditions cited on a VO must be corrected within 30 days of issuance and requires a follow-up inspection. The conditions cited on a NOV must be corrected within 35 days of issuance. The establishments must file a self-certification with FDNY attesting that conditions were corrected.

During Fiscal Year 2009, the Lab Unit consisted of a Deputy Chief Inspector, a Supervising Inspector, five inspectors, and a clerk. According to FDNY's Fire Prevention Information Management System (FPIMS), as of December 2009, a total of 5,967 inspections were recorded as having been conducted by the Lab Unit from July 1, 2008, through June 30, 2009.

Audit Findings and Conclusions

FDNY lacks adequate controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials. FDNY management's insufficient controls resulted in some type of problem in virtually every area we examined. FDNY's shortcomings cited in this report have potentially dangerous consequences for the safety of the public, since the establishments contain hazardous materials, including flammable liquids and solids, corrosive acids, and compressed gases.

We found that the establishments for 27 of the 30 accounts in our sample were operating with expired permits during at least one of the three fiscal years of our review. The audit also found that the supervisors of the Lab Unit failed to comply with their oversight responsibilities regarding supervisory and post inspections. Additionally, a number of important inspection procedures are not included in the Lab Unit's procedural manual, and those requirements that are included are not all being followed. Finally, the record-keeping and reporting practices of the Lab Unit are inadequate. The inspection data entered in FPIMS appears unreliable, and the number of inspections reported for Fiscal Year 2009 as having been conducted by the Lab Unit in the Laboratory Inspection Unit Field Activity Report and the number in *The Mayor's Management Report Fiscal 2009* (MMR) are inconsistent.

Audit Recommendations

Based on our findings, we make 15 recommendations, including that FDNY:

- Ensures that the Lab Unit takes steps to reduce the backlog of permit renewal and follow-up inspections.
- Ensures that Lab Unit personnel comply with the procedures outlined in the Lab Unit Manual, including but not limited to those relating to the issuing of VOs for conditions posing imminent hazards; the conducting of post inspections within the required time frame; the scheduling of inspections by supervisors; and the implementation of an annual rotation program.
- Ensures that adequate written procedures are developed and implemented for the Lab Unit inspectors to follow in carrying out inspections of establishments containing hazardous materials.
- Ensures that the Lab Unit takes steps to reduce the backlog in entering inspection data in FPIMS.
- Requires that officials responsible for the preparation and review of internal and external statistics regarding the number of inspections conducted by the Lab Unit attest that the data is adequately supported and that it has been reviewed for accuracy and completeness.

In their response, FDNY officials stated that they agreed with and intend to implement all of the audit's recommendations, noting that they have already begun to take steps to do so.

INTRODUCTION

Background

The New York City Fire Department (FDNY) responds to fires, medical emergencies, disasters, and terrorist acts to protect lives and property in New York City (City). FDNY's Bureau of Fire Prevention (the Bureau) is responsible for identifying and monitoring conditions and equipment that pose a hazard to life or property within the City. Accordingly, the Bureau conducts public safety activities, such as inspections of hazardous materials, range hoods, sprinklers and standpipes, high rise buildings, public buildings, and fire alarm systems.

There are various units involved with the inspections of hazardous materials, including the Bulk Fuel Safety Pipelines Inspections Unit, the Explosives Inspections Unit, the District Office Organization Unit, and the Laboratory Inspections Unit (the Lab Unit). This audit focuses only on FDNY controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials.

There are many types of hazardous materials; however, depending on their quantities and use, the establishments containing them may be required to obtain annual permits issued by FDNY. These establishments include but are not limited to high schools, colleges, hospitals, nursing homes, manufacturing facilities, and factories.

In general, the Lab Unit becomes aware of establishments that are required to have permits through referrals from FDNY engine companies, letters and complaints from the general public, referrals from other units within the Bureau, and the establishments themselves. Once the Deputy Chief Inspector of the Lab Unit determines that an establishment needs a permit, an inspector is assigned to schedule and conduct an initial inspection. If no violations are found, the inspection will be approved. If violations are found, the Lab Unit issues a Violation Order (VO) if they pose an imminent hazard; if no imminent hazard exists, the Lab Unit issues a Notice of Violation (NOV).

Conditions cited on a VO must be corrected within 30 days of issuance. On rare occasions, and depending on the severity of the conditions, the Lab Unit will issue a VO that must be corrected forthwith (usually within one to two days of issuance). A VO requires a follow-up inspection by the Lab Unit (at a rate of \$210 per hour) to ensure that the conditions cited have been corrected within the allotted time period. If not corrected, the Lab Unit will issue a criminal summons.

The conditions cited on a NOV must be corrected within 35 days of issuance. The establishments must file a self-certification with FDNY attesting that the conditions have been corrected. If the self-certification is not submitted within the allotted time period, the Lab Unit is not required to follow up, but the establishments must appear at an Environmental Control Board hearing.

Initial inspection documentation prepared by the inspector is reviewed by the Lab Unit's Supervising Inspector. Upon approval, the documentation is given to a Lab Unit clerk to enter in the Bureau's Fire Prevention Information Management System (FPIMS) to create a new account and

generate an account number. The folder containing the inspection documentation for the account is then filed by the clerk.

A permit will not be issued to an establishment unless the inspection has been approved and the permit fee is paid, which is generally either \$105 or \$210 but can be more depending on the quantities and use of the hazardous materials. As of June 29, 2009, certain establishments such as City Mayoral agencies, religious institutions, and private and City institutions providing education to children from kindergarten to 12th grade, are exempt from paying permit fees and follow-up inspection fees.

Approximately 105 days prior to the expiration of a permit, FPIMS automatically generates an Inspection Order which is provided to the Deputy Chief Inspector, who is responsible for handing Inspection Orders out to his inspectors once a month; the inspectors then schedule inspections to renew the permits.

During Fiscal Year 2009, the Lab Unit consisted of eight employees—a Deputy Chief Inspector, a Supervising Inspector, five inspectors, and a clerk. Inspectors perform field assignments four days a week and, according to FPIMS, conduct between five to nine inspections per day. On the fifth day, the inspectors come into the office to take care of administrative work, which includes preparing Projected and Actual Field Activity Reports. The Supervising Inspector is responsible for reviewing the Projected and Actual Field Activity Reports and maintaining statistics on the number of inspections performed based upon these reports. These statistics are used to prepare the Laboratory Inspection Unit Field Activity Report (Internal Field Report).

According to FPIMS, as of December 2009, a total of 5,967 inspections were recorded as having been conducted by the Lab Unit from July 1, 2008, through June 30, 2009. Table I, following, shows the results of the inspections.

Table I

Number of Inspections Recorded in FPIMS
During July 1, 2008, through June 30, 2009, and
Whether They Resulted In an Enforcement Decision

# of Inspections	Enforcement Decision	Results of Inspections
3,411	Yes	Approvals
1,214	Yes	Issuance of only VOs
443	Yes	Issuance of only NOVs
39	Yes	Issuance of both VOs and NOVs
Total 5,107	Complete Inspections Resulting in an Enforcement Decision	
85	No	Inspectors unable to gain access to establishments
271	No	Partial inspections
317	No	Establishments no longer required permits
18	No	Establishments out of business or buildings were demolished
140	No	Violations were in progress of being corrected
29	No	Miscellaneous
Total 860	Incomplete Inspections Resulting in No Enforcement Decision	
Total 5,967		

Objective

To determine whether FDNY has adequate controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials to ensure that inspections and their results are properly recorded and reported, and that the inspections are performed in a timely manner.

Scope and Methodology

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

The audit scope period was July 2006 through May 2010.

To obtain an understanding of the responsibilities, goals, and regulations governing FDNY with respect to the inspections of hazardous materials, we reviewed and used as audit criteria:

- Title 29 of the City Administrative Code (City Fire Code effective July 1, 2008),
- Title 3 of the Rules of the City of New York,
- FDNY, *Bureau of Fire Prevention D.O. 27 High Hazard Monitoring Laboratories Procedural Manual* (Lab Unit Manual),
- FDNY, *Fire Prevention Information Management System Inquiry Guide*,
- FDNY, *Field Personnel Activity Reporting Oversight Requirements*,
- City Comptroller's Directive #1, "Principles of Internal Control," as well as Directive #1's required Agency Financial Integrity Statement and Checklist, completed by FDNY for calendar year 2008, and
- *The Mayor's Management Report Fiscal 2009* (MMR).

In addition, we interviewed FDNY officials, including the Assistant Chief of the Bureau; the Hazard Control Manager/Chief Inspector of the Bureau (Hazard Manager); the Deputy Chief Inspector of the Lab Unit; the Supervising Inspector of the Lab Unit; the clerk of the Lab Unit; all five Lab Unit inspectors; the Computer Specialist—FPIMS Programmer (Computer Specialist); the Assistant Commissioner of the Bureau; the Director of the Management Analysis and Planning Unit; the Deputy Director of the Management Analysis and Planning Unit; and the Quality Assurance (QA) Analyst from the Bureau.

To obtain an understanding of how inspections are performed, we accompanied three of the five Lab Unit inspectors, each on different days—December 29 and 30, 2009, and January 5,

2010—and observed the inspectors conducting initial inspections, conducting inspections to renew permits, and conducting inspections to follow up on VOs.

We also reviewed the personnel files and the City’s Payroll Management System (PMS) for the eight employees who worked for the Lab Unit during Fiscal Year 2009 to determine whether these employees were qualified for their job in the civil service titles that they held.

Reliability of FPIMS Inspection Data for the Lab Unit

FDNY provided us with a report containing data in electronic format as of December 2009 for the 5,967 inspections (corresponding to 4,962 accounts) that were reported as conducted by the Lab Unit from July 1, 2008 through June 30, 2009. The general data for each account included, among other information, the account number, name and address of the establishment, permit expiration date, date and status of each inspection, and the yearly permit fee. To test the reliability of the data, we determined whether any fields lacked information or contained irrelevant information, and whether any account numbers appeared more than once. We also judgmentally selected hard-copy files for six accounts and determined whether the accounts were recorded in FPIMS.

We randomly selected 30 inspections (and their corresponding accounts) for testing as follows: 10 (out of 1,214) inspections that resulted in the issuance of only VOs, 10 (out of 3,411) inspections that resulted in approvals, and 10 (out of 482) inspections that resulted in either the issuance of only NOVs or the issuance of both VOs and NOVs. To determine whether the Lab Unit was entering timely inspection data in FPIMS, we requested that FDNY provide us with another report that included the date of the inspection, the date the inspection was entered in FPIMS, and the number of days that elapsed between these two dates.

We obtained read-only access to FPIMS pertaining to the inspection histories for three fiscal years (July 1, 2006, through June 30, 2009) and requested to review the hard-copy inspection files for the 30 sampled accounts to determine whether they contained the required information to support the inspection information recorded in FPIMS.¹

Monitoring of Establishments Classified in FPIMS as Inactive and Closed

We determined whether the Lab Unit has adequate controls over the monitoring of accounts that no longer require permits for hazardous materials and have therefore been classified in FPIMS as closed (transferred into the history file) or inactive (pending closure and not yet transferred into the history file). We obtained data for 5,605 accounts classified as closed and 1,079 accounts classified as inactive and randomly selected 30—20 closed and 10 inactive—to determine whether they were classified appropriately.

For the 30 accounts, we attempted to telephone representatives of the establishments to inquire about the work performed by the establishments and whether they store, handle, or use hazardous materials. We were unable to speak with representatives for 12 of the accounts, or we received vague or questionable responses from them. During a period of four days—May 12, 17,

¹Since the Bureau’s Enforcement-Compliance Review Unit is primarily responsible for handling NOVs and maintains them in its own files, we excluded those NOVs from this test.

19, and 25, 2010—we visited the establishments for these 12 accounts to determine whether they contained hazardous materials.

Timeliness of Performing Permit Renewal and Follow-Up Inspections

We reviewed the inspection histories during the three fiscal years for the 30 randomly selected accounts and determined whether the permit renewal inspections were performed in a timely manner, either on or before the permit expiration dates. For any permit renewal and follow-up inspections that resulted in VOs being issued, we calculated the number of days between the dates that the VOs were issued and the dates that the inspectors conducted their follow-up inspections to determine whether these inspections took place soon after the 30th day of the issuance of the VOs. Lastly, we determined whether summonses were issued for those conditions cited on VOs that were not corrected.

According to FPIMS, 85 inspections resulted in no enforcement decision because the inspectors could not gain access to the establishments. We randomly selected 15 inspections (pertaining to 14 accounts) and determined whether there were any other attempts to conduct the inspections, and if so, the timeliness of those attempts.

Review of Actual Field Activity Reports and Field Inspectors Call-In Record

We randomly selected one day for each month during Fiscal Year 2009 and obtained the Field Inspectors Call-In Record (Call-In Record) corresponding to these dates to determine whether each of the five inspectors contacted the office at least two times from the establishment's phone as required. We also checked whether the Actual Field Activity Reports reflected these contacts made on the days we selected. In addition, we generated from PMS the leave usage and accruals of compensatory time and paid overtime for the five inspectors during the same period and determined whether they were in agreement with the Actual Field Activity Reports and the Call-In Record.

Review of Supervisory and Post Inspections

We determined whether the Deputy Chief Inspector and Supervising Inspector conducted the required one supervisory inspection each quarter for each inspector and one post inspection each month for each inspector. We reviewed any available supervisory and post inspection reports for Fiscal Year 2009 as well as the corresponding Projected and Actual Field Activity Reports. We determined whether the post inspections were conducted timely (within 72 hours of an inspector's previous field inspection) and whether inspection and activity reports were submitted to QA for review, as required.

In addition, we analyzed the Call-In Record for Fiscal Year 2009 and determined whether there were any dates recorded pertaining to supervisory and post inspections performed by the Deputy Chief Inspector and Supervising Inspector. Next, we compared these dates to the dates indicated on the supervisory and post inspection reports we received and noted any discrepancies.

On January 14, 2010, we visited a hospital with several laboratory units that contained hazardous materials and that had been previously inspected on December 16, 2009. We met

with the establishment's Fire Safety Specialist of Environmental Health and Safety (Specialist) and verified that the inspector was present the day that was indicated on his Actual Field Activity Report and obtained customer service feedback.

Reporting of Inspections Conducted by the Lab Unit

We obtained supporting documentation for the inspection information for Fiscal Year 2009 reported for internal purposes in the Internal Field Report and for external purposes in the MMR to determine whether the number of inspections reported as having been conducted by the Lab Unit in both of these reports was accurate.

The test results of our various samples, while not projected to their respective populations, provided a reasonable basis for us to determine whether FDNY has adequate controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials to ensure that inspections and their results are properly recorded and reported, and that the inspections are performed in a timely manner.

Discussion of Audit Results

The matters covered in this report were discussed with FDNY officials during and at the conclusion of this audit. A preliminary draft report was sent to FDNY officials and was discussed at an exit conference held on August 16, 2010. On September 7, 2010, we submitted a draft report to FDNY officials with a request for comments. We received a written response from FDNY officials on September 20, 2010. In their response, FDNY officials stated that they agreed with and intend to implement all of the audit's recommendations, noting that they have already begun to do so.

The full text of the FDNY response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

FDNY lacks adequate controls over the Lab Unit's inspections of establishments that store, handle, and use hazardous materials. FDNY management's insufficient controls resulted in some type of problem in virtually every area we examined. FDNY's shortcomings cited in this report have potentially dangerous consequences for the safety of the public, since the establishments contain hazardous materials, including flammable liquids and solids, corrosive acids, and compressed gases.

The following include the areas of concern we identified:

- The establishments for the majority of the 30 accounts in our sample (27 out of the 30) were operating with expired permits during at least one of the three fiscal years of our review.
- The supervisors of the Lab Unit failed to comply with their oversight responsibilities regarding supervisory and post inspections.
- A number of important procedures pertaining to inspectors when performing field assignments are not included in the Lab Unit Manual. In addition, those requirements that are included are not all being followed.
- The record-keeping practices of the Lab Unit are inadequate.
- The number of inspections reported for Fiscal Year 2009 as having been conducted by the Lab Unit in the Internal Field Report and in the MMR is inconsistent.
- The inspection data entered in FPIMS appears unreliable.

FDNY needs to take immediate action in strengthening its controls over inspections of hazardous materials throughout the City. It should also provide clearer guidance to the Lab Unit so that it can perform its duties more effectively and efficiently.

FDNY Response: "The Department has partnered with IBM on a four-year, \$25 million project to develop technological solutions that address many of the issues illustrated in the Audit. We are currently embarking on the second phase of this Coordinated Building Inspection & Data Analysis System (CBIDAS) project. During this phase we will conduct a comprehensive business requirements analysis for each of the 20 inspection units in the Bureau of Fire Prevention, including the Lab Unit. We will also develop a plan to replace the Department's antiquated legacy system, FPIMS, and expand on the Building Risk Model developed during the first phase."

Timely Permit Renewal and Follow-Up Inspections Not Conducted

We found that the establishments for 27 (90 percent) of the 30 accounts in our sample were operating with expired permits during at least one of the three fiscal years in our scope period. In fact, one of the establishments containing hazardous materials, a science laboratory unit within a college, was operating with an expired permit during all three years of our review and even in years prior to the beginning of our scope period.

There were several reasons for establishments operating with expired permits. Officials cited reasons such as the failure to pay permit fees or correct the violating conditions on the part of the establishments, and the untimely entry of inspection data in FPIMS on the part of the Lab Unit. We believe that one of the main reasons for establishments operating with expired permits was that the Lab Unit has not developed an adequate tracking system so management can ensure that inspections are conducted in a timely manner, as required. Another major reason we noted was a lack of procedures for the timely follow-up of violations. The Lab Unit has a procedure requiring that establishments correct the conditions cited on a VO within 30 days of issuance. However, it does not have a time frame within which inspectors should perform follow-up inspections after a VO is issued. Lab Unit officials stated that due to a lack of resources, they “usually follow up on VOs 60-90 days after issuance.” As a consequence, uncorrected conditions can remain unaddressed by establishments for periods longer than 30 days. This may pose a risk to the health and safety to the public.

According to the Lab Unit Manual, indicators for each major step in the inspection process should be part of an information-tracking system. Inspections should be performed in a timely manner and all reports of inspections, including follow-up inspections, should be submitted promptly, and their results promptly recorded in that system.

As a result of the inadequate tracking system, we found that the Lab Unit did not perform timely inspections. During the three fiscal years included in our review, 33 (59%) of the 56 permit renewal inspections performed for the sampled accounts took place between 7 days and 848 days (a little over two years) after the permit expiration dates. In fact 18 inspections took place more than six months after the permits expired. In addition, for the period under review, we found that of the 28 VOs issued, the Lab Unit did not follow up on one that was issued on June 11, 2009 to a research laboratory unit containing flammable liquids. We brought this matter to the attention of the Deputy Chief Inspector who was unaware that the VO had not been followed up and stated he would look into the matter.

Of the remaining 27 VOs issued, all were followed up. But there was a wide range of time in which the follow-up inspections took place. The time between the dates that the VOs were issued and the dates of the follow-up inspections ranged from 29 days to 358 days (almost a year) after the 30-day time period for the establishments to make corrections to violations had elapsed. In fact, 14 VOs were followed up more than three months after the 30-day time period for establishments to remedy problems cited had elapsed.

Lab Unit officials have informed us that they consider FPIMS to be their tracking system to record inspection information. However, this system does not contain all of the data necessary to adequately track the entire inspection process. For example, there are fields in FPIMS

containing data for each account including the date of inspection and the result of the inspection. However, there are no fields in FPIMS containing data such as: the date when a follow-up inspection must take place (if applicable); whether the follow-up inspection actually takes place by the established date; and whether a permit renewal inspection actually takes place either on or before the permit expiration date.

Recommendations

FDNY should:

1. Determine the feasibility of using FPIMS with appropriate fields for tracking inspections. In the interim, the Lab Unit should create a database with appropriate fields for tracking inspections.

FDNY Response: FDNY agreed and stated, “The FPIMS system only partially meets the Lab Unit’s inspection tracking requirements. As a result, the FDNY has taken steps to identify the Unit’s requirements and create a comprehensive inspection tracking system that meets those requirements.”

2. Develop formal procedures governing the length of time it should take to follow up on VOs and ensure that follow-ups take place within this time period.

FDNY Response: FDNY agreed and stated, “The length of time to follow-up on Violation Orders is established by the FDNY’s Standard Form of Orders (SFO), which provides guidance on compliance with relevant sections of the NYC Charter and the Administrative Code. The FDNY will ensure that timely follow-ups are conducted.”

3. Ensure that the Lab Unit takes steps to reduce the backlog of permit renewal and follow-up inspections.

FDNY Response: FDNY agreed and stated, “The Department intends to increase staffing to address the backlog. One clerical position has been filled and interviews have been conducted for two additional positions. The FDNY anticipates these positions will be filled sometime in October.”

Supervisory Inspections Not Performed and Post Inspections Not Adequately Performed

According to the Lab Unit Manual, supervisors must conduct two types of inspections to monitor field activities and ensure quality control: (1) a supervisory inspection that is a direct arranged or unannounced observation of an employee’s field skills and techniques, and (2) a post inspection to follow up an inspector’s field visit within 72 hours for quality assurance and customer feedback. Either the Deputy Chief Inspector or Supervising Inspector is required to perform one supervisory inspection per quarter for each of the five inspectors and one post inspection per month for each of the five inspectors.

Supervisory Inspections Not Performed

A review of records and interviews with FDNY officials showed that for Fiscal Year 2009, the Lab Unit supervisors failed to comply with their oversight responsibilities regarding these inspections. We found that none of the 20 supervisory inspections required for Fiscal Year 2009 had been performed. In addition, we found no evidence of QA follow-up to determine why the Lab Unit had not submitted any supervisory inspection reports.

The Deputy Chief Inspector stated that he was unaware of the supervisory inspection requirement, but added that when new inspectors are hired and begin work, they are “field trained by senior inspectors.” He believes that this field training is equivalent to a supervisory inspection, although it is not documented as such. While field training by senior inspectors may be valuable in helping to develop new inspectors, it does not provide assurance that all of the Lab Unit inspectors (both new and veteran inspectors) are consistently following proper inspection procedures. Supervisory inspections allow supervisors, as well as management, the opportunity to formally assess whether this is being done.

Post Inspections Not Adequately Completed and Reviewed

Regarding the post inspections, we have some concerns regarding when the reports FDNY provided to us for review were actually completed. In addition, we found no evidence that the reports were forwarded to QA for monitoring of inspectors’ performance as required.

At the time of our initial request in November 2009, Lab Unit officials only provided 25 of the 60 post inspection reports that were required for Fiscal Year 2009. It was not until March 2010—four months after our initial request—that we were provided with another 30 post inspection reports. None of the 55 reports we were provided (five of the required 60 had not been completed) were signed by either the Deputy Chief Inspector or the Supervising Inspector who conducted the post inspection as required. In addition, none of the reports containing unsatisfactory ratings were signed by the Hazard Manager as required. Signatures are part of internal controls as they attest that the post inspections have actually taken place and they attest to the results of the post inspections. The inspection reports are also forwarded to QA to assist in monitoring the quality of the inspections. However, QA officials informed us that they had not received any of the 55 post inspection reports as required. As a result, we question whether the documents had been completed at the time of the post inspections or whether they were created subsequent to our request.

Post inspections are intended to be a tool to help ensure that inspections are conducted in accordance with FDNY procedures. Accordingly, it is important to properly record the results of post inspections (in the form of the post inspection reports) and forward the reports to the appropriate parties so that corrective action can be taken to address any deficiencies identified. Failing to complete the post inspection reports in a timely manner and to forward them to QA as required greatly diminishes the value of the post inspections. It should be noted that although there is no record of QA’s receiving any of the required post inspection reports, we found no evidence of QA follow-up to determine why the Lab Unit had not submitted them. Based on these observations, we question the extent to which anyone within FDNY, including Lab Unit and QA officials, monitors the inspectors’ performance.

In January 2010, we visited several laboratory units within a hospital that had previously been inspected by one of the Lab Unit's inspectors on December 16, 2009, to see firsthand what information can be gathered regarding the performance of an inspector. The establishment's Specialist accompanied us, and we verified that the inspection performed by the inspector actually took place and that the inspector was diligent, cooperative, and thorough.

However, we observed a number of potential violations during our visit that were confirmed by the establishment's Specialist, including the following: clutter containing combustible material stacked too close to the ceiling (within 24 inches); a refrigerator labeled as having "no flammables" that contained 100 percent ethanol (highly flammable); and no evidence that the doors to the laboratory unit were fire-rated. These conditions appeared to have existed for a period of time and should have been noted by the inspector during the December 2009 inspection. However, the inspector did not report any of these conditions. We brought this matter to the attention of the Deputy Chief Inspector, who agreed to investigate it further.

Conducting post inspections is an important and basic way to monitor the inspection process, as it confirms that inspections are actually taking place and verifies the results of inspections. If management does not continuously monitor field activities of the inspectors, it cannot be assured of the quality and integrity of their work.

Recommendations

FDNY should ensure that:

4. Supervisors of the Lab Unit are familiar with their responsibilities regarding supervisory inspections as outlined in the Lab Unit Manual.

FDNY Response: FDNY agreed and stated, "FDNY Lab Unit Supervisors' responsibilities regarding supervisory inspections will be reinforced during in-service training."

5. Lab Unit supervisors follow procedures outlined in the Lab Unit Manual with regard to performing post inspections.

FDNY Response: FDNY agreed and stated, "The FDNY intends to increase staffing to meet post inspection goals outlined in the Lab Unit Manual."

6. An inspection is conducted by the Lab Unit at the establishment in which we found potential violations of one of its laboratory units during our own post inspection.

FDNY Response: FDNY agreed and stated, "FDNY Lab Unit Inspectors conducted an inspection of the establishment and no violations were noted."

Failure to Follow Procedures Outlined in the Lab Unit Manual

Officials are not following all of the procedures that are contained in the Lab Unit Manual. In some cases, inspectors were unaware of the formal procedures. In other cases, the

inspectors were aware of the formal procedures, but believed they were no longer practical and used their own discretion whether to follow the procedures. If certain procedures outlined in the Lab Unit Manual are indeed no longer practical to implement, the decision to revise them must be made, and a revised manual must be published. Inspectors cannot use their own discretion as to which procedures they will follow during inspection and post inspection activities.

Inconsistent Use of VOs and NOVs by Inspectors

According to the Lab Unit Manual, a VO is only to be issued for violating conditions presenting an imminent hazard that is required to be followed up by the Lab Unit to ensure compliance. A NOV is to be issued for violating conditions that do not pose an imminent hazard. A summons is issued for noncompliance with a VO. However, when violations are found during inspections, the inspectors use their own discretion as to whether to issue a VO, an NOV, or even a summons. This is a serious matter since there could be potentially dangerous consequences for the safety of the public based solely at the discretion of the inspector.

For example, a few inspectors stated that they initially issue a VO to an establishment for conditions that pose an imminent hazard. They said they will only issue an NOV rather than the required summons if during a follow-up inspection they find the conditions were not corrected. Other inspectors said that they initially issue a NOV rather than a VO for conditions that pose an imminent hazard. The inspectors said they are so backlogged in conducting inspections they do not have time to follow up as is required with the issuance of a VO.

A consequence of issuing NOVs in lieu of VOs or summonses is the public may be at risk, since NOVs require the establishments only to submit self-certifications to FDNY attesting that the conditions have been corrected. Likewise, there are fewer safeguards to ensure that the conditions have been corrected after the issuance of NOVs, since NOVs do not require a follow-up inspection by the Lab Unit or an appearance at criminal court.

During the exit conference, the Deputy Chief Inspector stated that there are three types of hazards that can be found upon inspections—a low hazard, moderate hazard, and an imminent hazard. He stated that VOs could be issued for all three types of hazards. NOVs are usually issued for low hazards, but can also be issued for moderate hazards. However, this practice followed by the Deputy Chief Inspector is not consistent with the formal procedures in the Lab Unit Manual.

Failure to Conduct Post Inspections within the Required Time Frame

Our review found that none of the 55 post inspections indicated on the inspection reports were conducted within 72 hours of an inspector's field inspection as required by FDNY procedures. The number of days between the dates of the post inspections and the dates of the previous inspections ranged from 7 days to 49 days. The Deputy Chief Inspector stated that it is not "practical for this Unit" to conduct post inspections within the time frame stated in the Lab Unit Manual. He believes that a more practical time frame would be 15 days from the previous inspection once the Lab Unit is "up and running" with proper staffing. However, using post inspections for monitoring is less effective if it is not performed soon after the actual inspections are conducted. The longer it takes to conduct the post inspection, the less likely supervisors are to find the same conditions that were identified by the inspectors on the initial inspection because

establishments might have corrected any violating conditions or there may be new violating conditions. If the Lab Unit finds the 72-hour time frame not to be feasible, it should develop one that is more practical for monitoring purposes and ensure that post inspections are conducted within the required time frame.

Supervisors Fail to Schedule Inspections

The Lab Unit Manual states that the supervisor is to “schedule, for each inspector, the sites to be visited, ensuring that the routes planned makes efficient use of the inspector’s time.” However, the inspectors themselves schedule the inspections, and we found no evidence that supervisors review the schedules to ensure that the routes are planned for efficiency. Lab Unit officials stated that they were unaware of any such requirement and that having the inspectors schedule their own inspections “may not fit the flowchart model but it works.” However, as previously discussed, a significant percentage of permit renewal and follow-up inspections are not performed in a timely manner. That being the case, we believe that supervisors should take a more active role in the scheduling of inspections to help ensure that inspectors’ time is being used as efficiently as possible.

Failure to Implement an Annual Rotation Program

According to the Lab Unit Manual, management is required to implement a rotation program annually, which must be designed to rotate “Supervisors every 5 years, Examiners every 3 years, and field inspectors every year.” The program is to include a rotation of the assignments of inspectors to prevent inspectors from continuously conducting inspections in the same community. However, our review has found that the Lab Unit has no such annual rotation program in place. The Deputy Chief Inspector was unaware that there was a rotation requirement. FDNY officials stated that since there is only one Supervising Inspector, who is also the Examiner, he cannot be rotated. The Deputy Chief Inspector stated that “inspectors tend to rotate upon attrition.” Nevertheless, he believes that it is best to keep the same inspectors assigned to the same establishments since “a good relationship is created with the establishments” and that the frequent turnover of personnel at the establishments is in itself “an indirect or reverse form of rotation.”

When inspectors are assigned to the same routes or establishments for a long period of time, relationships can form between the inspectors and the representatives of the establishments. This can create an environment in which the risk of corruption is increased. Periodic rotation of inspectors by reassignment to different geographic areas or establishments minimizes the risks of repeated contacts by inspectors with those subject to inspections.

Recommendations

FDNY should:

7. Ensure that Lab Unit personnel comply with the procedures outlined in the Lab Unit Manual, including but not limited to those relating to the issuing of VOs for conditions posing imminent hazards; the conducting of post inspections within the required time frame; the scheduling of inspections by supervisors; and the implementation of an annual rotation program.

FDNY Response: FDNY agreed and stated, “FDNY Lab Unit Supervisors’ responsibilities will be reinforced during in-service training to ensure consistency with official policies and procedures outlined in the Lab Unit Manual. In addition, Lab Unit Management will monitor to ensure compliance and evaluate the feasibility of rotating inspectors in this small specialized unit.”

8. Review the existing procedures in the Lab Unit Manual to determine whether they reflect what is practical. If deemed impractical, then the Lab Unit Manual needs to be updated with the approval of upper management.

FDNY Response: FDNY agreed and stated, “The FDNY’s Lab Unit Manual will be reviewed and revised where necessary. The Department anticipates an updated Lab Unit Manual will be issued sometime in March 2011.”

Inadequate Procedures for Inspectors When Performing Field Assignments

The procedures that inspectors follow when performing their assignments are contained in the Lab Unit Manual. We found that the Lab Unit Manual contains inadequate written procedures. As such, it does not detail the procedures or provide sufficient guidance for inspectors to follow in carrying out their responsibilities. In the absence of clearly defined written procedures, FDNY management cannot ensure that Lab Unit inspectors understand, consistently follow, and accomplish all the tasks necessary to carry out their responsibilities. Our interviews with various officials and our observations of inspectors conducting their field assignments led us to identify the following procedures that are currently lacking in the Lab Unit Manual.

For instance, inspectors are not provided with a checklist of steps to follow when performing their inspections. A checklist would help formally direct the inspector to all items that need to be inspected and would minimize the gathering of subjective data. During an observation we conducted with one of the inspectors on December 29, 2009, we noted that he failed to count the 55 gallon drums containing flammable ink in a warehouse and verify that the total matched the 30 indicated on the Inspection Order. Instead, he gave the warehouse a cursory review. We independently counted the number of drums and arrived at approximately 70 drums. After we brought our count to the inspector’s attention, the inspector issued a VO to the establishment.

Additionally, representatives from establishments are not required to sign VOs or Inspection Orders after Lab Unit inspectors complete their inspections. Requiring representatives to sign these documents would be part of sound internal controls as it would attest to the presence of the inspectors at the sites and to the acknowledgment of the inspection results by the establishments.

With regard to inspections, some inspectors conduct unannounced inspections while others call the establishments in advance to announce their inspections. The Lab Unit Manual does not provide any direction as to which is the preferred method of inspection: announced or

unannounced. This method is left to the discretion of the respective inspector. During the exit conference, the Deputy Chief Inspector stated that ideally, inspections should be unannounced. Inspectors, however, tend to announce their inspections of the larger establishments to ensure availability of safety personnel to accompany the inspectors. In practice, the element of surprise in conducting inspections should be the preferred method, since it would be more effective in revealing conditions and work practices during normal operation of the establishment.

Finally, we found that the Lab Unit Manual does not provide direction to inspectors about when to make a second attempt to gain access to an establishment after they have been unable to do so initially. For 3 (20 percent) of the 14 accounts in our sample for which inspectors were unable to gain access for inspections, inspectors made no further attempts to inspect the establishments. In these 3 cases, the initial attempts had been performed more than a year ago. In addition, for 6 of the 14 accounts, there was a wide range of time during which the second attempts took place, ranging from 28 days to 154 days (over five months) after the initial inspection attempts. The Deputy Chief Inspector stated that there are no procedures on “how to handle a no access instance,” but added that he expects the inspectors to return within 30 days to attempt access after a first no-access inspection.

Recommendation

9. FDNY should ensure that adequate written procedures are developed and implemented for the Lab Unit inspectors to follow in carrying out inspections of establishments containing hazardous materials. At a minimum, the procedures should include:
 - Providing detailed instructions (e.g., checklists) for inspectors to use when conducting field inspections;
 - Requiring representatives from the inspected establishments to sign documentation including VOs and Inspection Orders after Lab Unit inspectors complete their inspections; and
 - Instructions regarding unannounced inspections and follow-up inspections for no access instances.

FDNY Response: FDNY agreed and stated, “The FDNY’s Lab Unit Manual will be reviewed and revised where necessary. The updated manual will include written procedures on all of the items contained in this recommendation. The Department anticipates an updated Lab Unit Manual will be issued sometime in March 2011.”

Inadequate Record-keeping Practices

The Lab Unit did not maintain supporting documentation for pending and completed inspections either securely or in an organized manner, contrary to Lab Unit Manual procedures. As a result, there is an increased risk that required and essential inspection documents (Inspection Orders, VOs and Inspection Report A-324 Forms) that support the hazardous material inspections reported as having been conducted by the Lab Unit may be misplaced or lost.

When we initially requested the hard-copy inspection files for the 30 accounts in our sample, we obtained only 29 files because the Lab Unit was unable to find one of the inspection files for a laboratory unit at a medical college. In addition, for each of the three fiscal years of our review, the files for the majority of the accounts that had received inspections each lacked one or more of the inspection documents. Our initial review found that of 112 inspection documents that should have been in the files, the Lab Unit could not account for 99 (88%) of them.

We brought the lacking inspection documents to the attention of the Deputy Chief Inspector. He consulted with his staff to try and find the documents. As a result in March 2010, two months after our initial request for the files, and then again in May 2010, four months after our initial request for the files, the Deputy Chief Inspector provided us with many, but not all, of those documents. In total, FDNY could not account for 15 (13%) of the 112 inspection documents that should have been in the files.

Throughout the audit, we were told by FDNY officials that there are inspection documents dating back at least two years that have not been filed in the inspection files for the respective accounts. This backlog we were told was due to the fact that the Lab Unit has only one clerk assigned to perform multiple tasks, including the entering of inspection data in FPIMS and the filing of the associated inspection documents. FDNY officials informed us that the clerk did not have enough time to complete all his tasks.

We used a report generated from FPIMS that indicated that 6,028 inspections were conducted in Fiscal Year 2009. The data revealed that 33 percent of the inspections were entered into FPIMS 60 or more days after the inspections took place. Even after results of an inspection are entered in FPIMS, it may be a long time before the hard-copy documents are filed. Our review of batches of unfiled inspection documents revealed one for which data had been entered in FPIMS on March 3, 2003, more than seven years after they should have been filed in the accounts' inspection files.

Having good filing practices optimizes the maintenance of records, reduces the potential for the misplacement of essential documents—intentional or otherwise, and ensures the files are properly secured and that the information is readily available to support the operations of the Lab Unit.

Recommendations

FDNY should:

10. Ensure that the Lab Unit takes steps to reduce the filing backlog of inspection documents to assure a productive workflow. All records pertaining to the inspection process should be maintained in an organized manner.

FDNY Response: FDNY agreed and stated, “The Department intends to increase staffing to address the backlog. One clerical position has been filled and interviews have been conducted for two additional positions. The FDNY anticipates these positions will be filled sometime in October.”

11. Ensure that the Lab Unit takes steps to reduce the backlog in entering inspection data in FPIMS. Once addressed, supervisors should ensure that they monitor the timeliness of data entry in FPIMS so that it is completed by the 15th of the following month, as required by the Lab Unit Manual.

FDNY Response: FDNY agreed and stated, “The Department intends to increase staffing to address the backlog. Supervisors will be held accountable to ensure compliance with FPIMS data entry deadlines. The Lab Unit Manager will monitor employee compliance with these standards.”

Inconsistent Reporting of Inspections Conducted by the Lab Unit

The number of inspections reported for Fiscal Year 2009 as having been conducted by the Lab Unit in the Internal Field Report and the number in the MMR are inconsistent. We believe that this is due to management’s insufficient oversight and inadequate controls regarding the reporting of FDNY statistics. The reporting and maintenance of accurate statistics is essential as a means of measuring how effective and efficient the agency has been in carrying out inspections of hazardous materials and helps in the planning and budgeting of resources.

According to inspection data in FPIMS for Fiscal Year 2009, a total of 5,967 inspections were recorded as having been conducted by the Lab Unit. However, according to the Internal Field Report for this same time period, the Lab Unit reported that a total of 8,129 inspections were performed—a discrepancy of 2,162 inspections.

Lab Unit officials stated that an inspection of a laboratory unit is recorded in FPIMS as only one inspection, is assigned only one account number, and qualifies for only one permit—regardless of the number of laboratory work areas it contains.² On the other hand, the inspection of each laboratory work area within a laboratory unit is reported as one inspection in the Internal Field Report. Thus, an inspection of a laboratory unit containing multiple laboratory work areas is recorded as one inspection in FPIMS, but it is reported as multiple inspections in the Internal Field Report.

Further confusing the matter is that the number of inspections included in the MMR as having been conducted by the Lab Unit is different from the number reported in FPIMS and in the Internal Field Report. According to the MMR, a total of 159,961 completed inspections were conducted by the entire Bureau for Fiscal Year 2009. When we were provided with data from FDNY’s Management Analysis and Planning Unit to support the numbers reflected in the MMR, we found that 1,389 of the 159,961 completed inspections were for inspections performed by the Lab Unit.

²A laboratory unit as defined in Title 3 of the Rules of the City of New York is an enclosed, fire-rated (confinement of a fire) space used for testing, research, experimental, or educational purposes and may contain one or more separate laboratory work areas. A laboratory work area is a room or space within a laboratory unit.

According to the Deputy Chief Inspector, since Fiscal Year 2007 the inspection numbers from FPIMS have been used for inclusion in the MMR. However, FPIMS shows that a total of 5,967 inspections were recorded as having been conducted by the Lab Unit during Fiscal Year 2009. Of the 5,967 inspections, 5,107 were complete, resulting in some type of enforcement decision, and 860 were incomplete, resulting in no enforcement decisions for various reasons.³ Thus, a total of 5,107 completed Lab Unit inspections should have been reported for the MMR and not 1,389—a significant understatement totaling 3,718 inspections. Lab Unit officials, including the Assistant Chief of the Bureau, agreed that the number of completed inspections performed by the Lab Unit as reported in the MMR was “grossly deflated.”

The matter of the inconsistencies in reported inspections is a serious issue for both senior FDNY officials, the Mayor’ Office, as well as the public. The information is misleading internally for senior officials of FDNY and the Mayor’s Office for budgeting and planning purposes. But misleading information is also unacceptable for the public, which has the right to know how well an agency is carrying out part of its mission, in this case, protecting public safety.

Recommendations

FDNY should:

12. Reassess the method for counting the number of inspections conducted by inspectors in a given day for establishments containing laboratory units. A decision should be made whether each laboratory work area within a laboratory unit will be reported as one inspection. This decision should be standardized and documented in FDNY’s formal procedures.

FDNY Response: FDNY agreed and stated, “The FPIMS System, when properly utilized, meets FDNY’s inspection counting requirements. Fire Prevention Management will work with Lab Unit personnel to ensure FPIMS data entry and reliability. In addition, FDNY will standardize formal procedures in the revised Lab Unit Manual expected to be completed sometime in March 2011.”

13. Require that officials responsible for the preparation and review of internal and external statistics regarding the number of inspections conducted by the Lab Unit attest that the data is adequately supported and that it has been reviewed for accuracy and completeness.

FDNY Response: FDNY agreed and stated, “The Department’s Bureau of Compliance and Internal Audit will periodically sample internal and external statistics regarding Lab Unit inspection data and report findings to upper management.”

³These include instances when inspectors were unable to gain access to the establishments or inspectors were not able to finish their inspections.

Other Matters

Ineffective Controls for Identifying Establishments Requiring Permits

The Lab Unit does not have adequate controls in place to identify establishments containing hazardous materials that require permits. As stated previously, the Lab Unit becomes aware of an establishment that may need an account and permit for hazardous materials through referrals, complaints, and requests from the establishments themselves. The Lab Unit's dependence on such referrals and requests is not a systematic approach to identifying those establishments and leaves the public safety reliant on the vigilance of others and even happenstance.

In fact, our review of the inactive and closed accounts in our sample identified a diagnostic laboratory offering clinical and toxicology services that, according to the establishment's Web site, had relocated from Manhattan to Brooklyn sometime in 2004. The establishment began operating four new laboratory units containing hazardous materials, including flammable liquids, without obtaining the four required permits. Unaware that this establishment was no longer operating in Manhattan, the Lab Unit attempted to conduct an inspection in August 2006 and realized that the establishment was "out of business." As a result, the accounts for the Manhattan location were classified in FPIMS as closed. It was only after a referral was made by another unit within the Bureau on January 25, 2008, almost two years after the attempted inspection in Manhattan, that the Lab Unit discovered that the establishment was still operational but had merely moved to another location.

We visited the establishment on May 25, 2010, accompanied by a Lab Unit inspector, and found that no one from the Lab Unit or any other unit within FDNY had followed up since 2008 to ensure that the violating conditions cited at that time had been corrected. The Deputy Chief Inspector acknowledged that the four accounts had been "dormant" and the establishment had been operating four laboratory units without the required four permits since its relocation in 2004—approximately six years ago.

In addition, during our review of the inactive and closed accounts, we found that there were 14 accounts pertaining to Department of Environmental Protection water pollution control plants located throughout the five boroughs that should have been but were not issued permits by the Lab Unit for methane recovery operations—a hazardous flammable gas which is a waste end-product of the sewage treatment. The Deputy Chief Inspector stated that the accounts were created in 1988—over twenty years ago—in anticipation of FDNY's promulgating rules required by the City Fire Code relating to the recovery of methane gas from landfills and other approved sites. However, the rules were never enacted, and according to the Deputy Chief Inspector, the "accounts remain in limbo." We found no evidence that anyone within FDNY followed up to ensure that the rules were enacted so that these sites could be issued permits.

We find the problems described above a matter of concern since there may be other establishments in the City that contain hazardous materials operating without required permits.

Recommendations

FDNY should:

14. Ensure that the Lab Unit develops an effective method for identifying new accounts that are required to have permits for hazardous materials. The Lab Unit should consider coordinating with other agencies, including the Department of Buildings and the Department of Environmental Protection, to obtain property-related information that may help to identify new accounts.

FDNY Response: FDNY agreed and stated, “The FDNY Lab Unit currently coordinates and shares information with both the Department of Buildings and the Department of Environmental Protection. In addition, the FDNY is working closely with personnel from the Mayor’s Office of Operations and the DOITT [Department of Information Technology and Telecommunications] to develop technical requirements for the City’s Data Share initiative. Data Share is expected to leverage technology to dramatically improve sharing of critical data between agencies.”

15. Seek legal counsel to establish rules in accordance with the City Fire Code setting forth the recovery of methane gas from landfills and other approved locations.

FDNY Response: FDNY agreed and stated, “Counsel from the FDNY Bureau of Legal Affairs is examining the current rule RCNY 3508-01 regarding the permit requirements to compress, recover, flare, and odorize methane gas from landfills. FDNY Counsel is also examining the rules and enforcement options regarding the recovery of methane gas from treatment plants under [the] same regulation.”



FIRE DEPARTMENT

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SALVATORE J. CASSANO
Fire Commissioner

Suite 8W-6

September 20, 2010

H. Tina Kim
Deputy Comptroller
Bureau of Audit
The City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Re: Audit Report on the New York City Fire Department Controls Over the Laboratory Unit's Inspections of Establishments that Contain Hazardous Materials – MH10-088A

Dear Deputy Comptroller Kim:

I write in response to the draft "Audit Report on the New York City Fire Department Controls Over the Laboratory Unit's Inspections of Establishments that Contain Hazardous Materials," dated September 7, 2010. Please thank your staff for the time and diligence that they put into this audit. The Department appreciates their efforts and intends to utilize their recommendations.

I have attached a copy of the Fire Department's Agency Implementation Plan (AIP) which responds to the fifteen recommendations made by the Office of the Comptroller in the audit referenced above.

As detailed in the AIP, we agree with all of the recommendations in the report, noting that the Department had previously recognized some of these same issues. As a result, we have already begun to take steps to address these recommendations.

As you know, the Department has partnered with IBM on a four-year, \$25 million project to develop technological solutions that address many of the issues illustrated in the Audit. We are currently embarking on the second phase of this Coordinated Building Inspection & Data Analysis System (CBIDAS) project. During this phase we will conduct a comprehensive business requirements analysis for each of the 20 inspection units in the Bureau of Fire Prevention, including the Lab Unit. We will also develop a plan to replace the Department's antiquated legacy system, FPIMS, and expand on the Building Risk Model developed during the first phase.

CBIDAS is longer-term initiative which will help the Department improve safety and performance. Nevertheless, we understand -- and your report makes clear -- that improved controls must be implemented now to ensure that the Lab Unit carries out its important mission and documents its performance in a timely and reliable manner. We look forward to implementing the recommendations included in the audit report as quickly as possible.

If you have any questions about our response or AIP, please contact Domenick Loccisano, Executive Director of Compliance and Internal Audit, at (718) 999-5180.

Sincerely,



Salvatore J. Cassano
Fire Commissioner

Attachment

cc: Edward Kilduff, Chief of Department
Michael Vecchi, Associate Commissioner for Management Initiatives
Thomas Jensen, Chief of Fire Prevention
Richard Tobin, Assistant Chief of Fire Prevention
Joseph Woznica, Deputy Assistant Chief of Fire Prevention
Ray Saylor, Chief Compliance Officer
George Davis III, Deputy Director, Mayor's Office of Operations

FDNY Agency Implementation Plan

Audit #: MH10-088A

Audit name: Audit Report on the New York City Fire Department Controls Over the Laboratory Unit's Inspections of Establishments that Contain Hazardous Materials

Rec. #: **Recommendation**

01 Determine the feasibility of using FPIMS with appropriate fields for tracking inspections. In the interim, the Lab Unit should create a database with appropriate fields for tracking inspections.

FDNY Response

AGREE. The FPIMS system only partially meets the Lab Unit's inspection tracking requirements. As a result, the FDNY has taken steps to identify the Unit's their requirements and create a comprehensive inspection tracking system that meets those requirements.

02 **Recommendation**

Develop formal procedures governing the length of time it should take to follow-up on VOs and ensure that follow-ups take place within this time period.

FDNY Response

AGREE. The length of time to follow-up on Violation Orders is established by the FDNY's Standard Form of Orders (SFO), which provides guidance on compliance with relevant sections of the NYC Charter and the Administrative Code. The FDNY will ensure that timely follow-ups are conducted.

03 **Recommendation**

Ensure that the Lab Unit takes steps to reduce the backlog of permit renewal and follow-up inspections.

FDNY Response

AGREE. The Department intends to increase staffing to address the backlog. One clerical position has been filled and interviews have been conducted for two additional positions. The FDNY anticipates these positions will be filled sometime in October.

Rec. #: MH10-088A

04

Recommendation

Ensure that Supervisors of the Lab Unit are familiar with their responsibilities regarding supervisory inspections as outlined in the Lab Unit Manual.

FDNY Response

AGREE. FDNY Lab Unit Supervisors' responsibilities regarding supervisory inspections will be reinforced during in-service training.

05

Recommendation

Ensure that Lab Unit supervisors follow procedures outlined in the Lab Unit Manual with regard to performing post inspections.

FDNY Response

AGREE. The FDNY intends to increase staffing to meet post inspection goals outlined in the Lab Unit Manual.

06

Recommendation

Ensure that an inspection is conducted by the Lab Unit at the establishment in which we found potential violations of one of its laboratory units during our own post inspection.

FDNY Response

AGREE. FDNY Lab Unit Inspectors conducted an inspection of the establishment and no violations were noted.

07

Recommendation Ensure that Lab Unit personnel comply with the procedures outlined in the Lab Unit Manual, including but not limited to those relating to the issuing of VOs for conditions posing imminent hazards; the conducting of post inspections within the required time frame; the scheduling of inspections by supervisors; and the implementation of an annual rotation program.

FDNY Response:

AGREE. FDNY Lab Unit Supervisors' responsibilities will be reinforced during in-service training to ensure consistency with official policies and procedures outlined in the Lab Unit Manual. In addition, Lab Unit Management will monitor to ensure compliance and evaluate the feasibility of rotating inspectors in this small specialized unit.

Rec. #: MH10-088A

08

Recommendation

Review the existing procedures in the Lab Unit Manual to determine whether they reflect what is practical. If deemed impractical, then the Lab Unit Manual needs to be updated with the approval of upper management.

FDNY Response

AGREE. The FDNY's Lab Unit Manual will be reviewed and revised where necessary. The Department anticipates an updated Lab Unit Manual will be issued sometime in March 2011.

09

Recommendation

FDNY should ensure that adequate written procedures are developed and implemented for the Lab Unit inspectors to follow in carrying out inspections of establishments containing hazardous materials. At a minimum, the procedures should include:

- Providing detailed instructions (e.g., checklists) for inspectors to use when conducting field inspections;
- Requiring representatives from the inspected establishments to sign documentation including VOs and Inspection Orders after Lab Unit inspectors complete their inspections; and
- Instructions regarding unannounced inspections and follow-up inspections for no access instances.

FDNY Response

AGREE. The FDNY's Lab Unit Manual will be reviewed and revised where necessary. The updated manual will include written procedures on all of the items contained in this recommendation. The Department anticipates an updated Lab Unit Manual will be issued sometime in March 2011.

Rec. #: MH10-088A

10

Recommendation

Ensure that the Lab Unit takes steps to reduce the filing backlog of inspection documents to assure a productive workflow. All records pertaining to the inspection process should be maintained in an organized manner.

FDNY Response

AGREE. The Department intends to increase staffing to address the backlog. One clerical position has been filled and interviews have been conducted for two additional positions. The FDNY anticipates these positions will be filled sometime in October.

11

Recommendation

Ensure that the Lab Unit takes steps to reduce the backlog in entering inspection data in FPIMS. Once addressed, supervisors should ensure that they monitor the timeliness of data entry in FPIMS so that it is completed by the 15th of the following month, as required by the Lab Unit Manual.

FDNY Response:

AGREE. The Department intends to increase staffing to address the backlog. Supervisors will be held accountable to ensure compliance with FPIMS data entry deadlines. The Lab Unit Manager will monitor employee compliance with these standards.

12

Recommendation

Reassess the method for counting the number of inspections conducted by inspectors in a given day for establishments containing laboratory units. A decision should be made whether each laboratory work area within a laboratory unit will be reported as one inspection. This decision should be standardized and documented in FDNY's formal procedures.

FDNY Response:

AGREE. The FPIMS System, when properly utilized, meets FDNY's inspection counting requirements. Fire Prevention Management will work with Lab Unit personnel to ensure FPIMS data entry and reliability. In addition, FDNY will standardize formal procedures in the revised Lab Unit Manual expected to be completed sometime in March 2011.

Rec. #: MH10-088A

13

Recommendation

Require that officials responsible for the preparation and review of internal and external statistics regarding the number of inspections conducted by the Lab Unit attest that the data is adequately supported and that it has been reviewed for accuracy and completeness.

FDNY Response

AGREE. The FPIMS System, when properly utilized, meets FDNY's inspection counting requirements. Fire Prevention Management will work with Lab Unit personnel to ensure FPIMS data entry and reliability. In addition, the Department's Bureau of Compliance and Internal Audit will periodically sample internal and external statistics regarding Lab Unit inspection data and report findings to upper management.

14

Recommendation

Ensure that the Lab Unit develops an effective method for identifying new accounts that are required to have permits for hazardous materials. The Lab Unit should consider coordinating with other agencies, including the Department of Buildings and the Department of Environmental Protection, to obtain property-related information that may help to identify new accounts.

FDNY Response

AGREE. The FDNY Lab Unit currently coordinates and shares information with both the Department of Buildings and the Department of Environmental Protection. In addition, the FDNY is working closely with personnel from the Mayor's Office of Operations and the DOITT to develop technical requirements for the City's Data Share initiative. Data Share is expected to leverage technology to dramatically improve sharing of critical data between agencies.

15

Recommendation

Seek legal counsel to establish rules in accordance with the City Fire Code setting forth the recovery of methane gas from landfills and other approved locations.

FDNY Response

AGREE. Counsel from the FDNY Bureau of Legal Affairs is examining the current rule RCNY 3508-01 regarding the permit requirements to compress, recover, flare and odorize methane gas from landfills. FDNY Counsel is also examining the rules and enforcement options regarding the recovery of methane gas from treatment plants under same regulation.