

Regulatory Inspection and NOV Coordination
NYC DEP EHS Guidance

Revision 0, Effective 4/13/11

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1 SCOPE

This guidance document defines DEP's approach to the management and coordination of inspections by regulatory agencies and any findings, including Notices of Violation (NOVs), Notices of Deficiencies, Notices of Non-Compliance, Violation Orders and/or Warning Notices issued by regulatory agencies.

2 APPLICABILITY

This guidance is applicable to all regulatory inspections at, and NOVs issued to, DEP facilities and DEP Contractors.

3 DEFINITIONS/ACRONYMS

Abatement: The correction or elimination of an environmental, safety or health hazard, or violation due to a regulatory non-compliance.

BEHS: Bureau Environmental, Health and Safety division/unit or, for bureaus without designated EHS unit, OEHS Compliance Support.

BLA: Bureau of Legal Affairs

Bureau Management: Supervisory personnel up to and including the Deputy Commissioner.

Certification of Correction: Verification that a violation has been corrected, including who performed the work to correct (in some cases, the regulator provides a form, e.g., DOB and FDNY; PESH uses the SH 912 form.)

Inspector: Representative of a regulatory agency.

NOD: Notice of Deficiency

NONC: Notice of Non-Compliance

NOV: Notice of Violation, including Violation Orders (VOs), Notices of Non-Compliance (NONC) and Notices of Deficiency (NOD)

OEHS: Office of Environmental, Health and Safety

PMA: Petition for Modification of Abatement

VO: Violation Order

WN: Warning Notice (WN), including Warning Notices, Letter of Warning, and Warning Letters - a written notification that informs an entity that a Local rule, state or federal law, or permit condition has been violated. WN is issued when a violation is minor and provides the option to resolve the violation without further enforcement.

4 REGULATORY INSPECTION COORDINATION

Regulatory agencies have the authority to conduct inspections, announced or unannounced, at DEP facilities. The following steps should be taken if an inspection is initiated at a DEP facility by a regulator.

4.1 Inspection Commencement

4.1.1 DEP Facility

When an inspector from a regulatory agency arrives at a DEP facility, DEP personnel will:

- Ask to see the identification or credentials of the inspector(s), and anyone accompanying the inspector.
- Record the inspector's name, agency, badge number, contact information and title.
- Find out the reason for the inspection and what the full scope of the inspection will be.
- Notify Bureau Management and BEHS; for bureaus without BEHS, notify OEHS.
- Determine who from the Bureau and/or the facility (including employee representatives) will accompany the inspector.
- Request that time (e.g., for PESH, usually an hour) be allowed before commencement of the inspection, to have the required BEHS/OEHS representatives present to participate in the opening conference and the inspection.

It is recommended that a representative from BEHS and/or OEHS be present for the inspection. If time is needed for a BEHS representative to arrive, facility personnel should discuss logistics with the inspector.

4.1.2 DEP Construction Site

When an inspector arrives at a DEP construction site, consultant construction management staff will immediately contact the DEP Project Manager or Operations Responsible Party who will be responsible for actions detailed in Section 4.1.1 above. If an NOV is issued to a contractor, applicable BEHS must

report the details to OEHS and BLA. BEHS will forward such NOV's to OEHS and BLA, in accordance with the Contractor Selection and Management Policy.

4.2 Inspection Process

Prior to a facility walkthrough, the appropriate DEP personnel will provide a facility safety orientation as required by facility/bureau policy at the opening meeting with the inspector.

If there are any facility-specific PPE requirements, the inspector will be responsible for providing his or her own PPE. If the inspector does not have the appropriate PPE, he or she may use any PPE which is normally available for visitors. The inspector will not be permitted to enter areas of the facility for which he or she is unable to comply with PPE or training requirements.

DEP personnel will accompany the inspector at all times when he or she is on site and will provide any requested information or documentation, as available. If information and/or documents are not readily accessible at the site, DEP personnel may coordinate with the inspector to provide such items at a later date, as requested by the inspector. If the inspector wants to access a regulated or isolated area which DEP personnel cannot enter but for which the inspector has appropriate PPE, training, etc., all efforts shall be made to find a suitably trained/knowledgeable DEP escort.

5 NOTICE OF VIOLATION

If an inspector identifies non-compliance, an NOV may be issued to the facility at the time of the inspection or at a later date. The facility Responsible Party and BEHS must understand the nature of the non-compliance so that corrective action can be undertaken to address the condition. Corrective actions may begin prior to the final issuance of the NOV. Bureau Management, OEHS Assistant Commissioner and BLA General Counsel must be notified immediately after any inspection at which non-compliance is identified.

5.1 NOV Coordination

When an NOV is received, the facility Responsible Party will immediately forward the NOV to BEHS (or other designated division/section within the bureau). If a division/section other than BEHS receives/is forwarded the NOV, that division/section must forward a copy to BEHS for distribution. BEHS will immediately notify and forward copies of the NOV to the OEHS Assistant Commissioner and BLA General Counsel. BEHS will also notify Bureau Management of the issuance of the NOV for determination of who will coordinate its abatement and/or prepare a response to the NOV in consultation with BLA.

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All NOV's (federal, state and local) will be entered into the central NOV tracking system (see Section 6) by BEHS or designee.

5.1.1 Procedure for Abatement of NOV's

Personnel designated by Bureau Management will coordinate the development and implementation of an appropriate corrective action plan. The corrective action plan must describe the manner in which each citation identified in the NOV will be addressed by the abatement due date specified in the NOV.

BEHS will be responsible for monitoring and tracking progress in completing the abatement plan and/or in drafting a response to the NOV. For longer-term or more complex abatements, periodic meetings with representatives from BEHS, BLA, OEHS, Bureau Management and personnel responsible for abatement tasks may be held, as needed, in order to ensure that abatement milestones and targets are met.

5.1.2 Contested NOV's

If the facility or Bureau Management, BEHS, or BLA determines that a citation should be contested, BEHS and BLA will prepare documents and correspondence to be sent to the regulatory agency requesting rescission or revision of the alleged violation.

5.1.3 Periodic Updates

The facility, Bureau Management or BEHS will periodically update OEHS and BLA on progress in abatement efforts. Updates will also be entered into the NOV database by the Bureau.

5.1.4 Petition for Modification (PMA)/Requests for Extensions

If Bureau Management or BEHS anticipates that an abatement due date may not be met, it must notify OEHS Assistant Commissioner and BLA General Counsel immediately. In coordination with BLA, the bureau may prepare a PMA to request an extension of time to abate. The PMA may address one or more citations or the NOV in its entirety.

5.1.5 Inspection/NOV Communication

When an NOV is issued, OEHS will communicate to all potentially affected bureaus, offices and facilities, the findings cited in NOV's. Facilities which

identify similar conditions should develop and undertake corrective actions. OEHS or BEHS will provide assistance as needed.

6 NOV TRACKING

A centralized NOV tracking database, administered by OEHS Compliance Systems Unit, shall be utilized by bureaus to manage NOV information and to track abatement progress. The database will, at minimum, hold the following data:

- Facility Name
- Address
- Regulatory agency issuing the NOV
- Date of NOV receipt (as defined in EHS Metrics SOP)
- Abatement due date(s).
- NOV number
- Date of Inspection
- Subject of Inspection
- NOV citation(s)/infraction(s)
- Inspector Name/Number
- BEHS Contact
- OEHS Contact
- BLA Contact
- Issuing Agency Attorney handling the NOV
- DEP responsible staff
- Bureau Responsible Party
- Fees and Fines Schedule and payments imposed
- Recommended corrective action(s).
- Date Certification of Correction was submitted to the regulatory Agency
- Progress updates on corrective actions.
- Extension requests/new dates
- Links to copies of the NOVs, Certification of Correction and supporting documentation.
- Completion date.
- Status (open/closed).

When the regulatory agency has confirmed that the corrective actions have been successfully completed, the item will be closed out in the tracking system and maintained in “Closed NOVs” tracking.

The OEHS Assistant Commissioner will conduct an annual review of the NOV database to determine whether it is being used effectively, the information in it is complete and accurate, and violations are being addressed in a timely manner. This review will be in

writing and presented to the Commissioner, General Counsel, Deputy Commissioners and Bureau EHS Directors.

6.1 Tracking of Select Non-NOV Items

Issuances from regulatory agencies that are not considered to be NOV's, such as Letters of Warning, will be tracked in the NOV Tracking Database, but will not be included in the total number of "NOV's" in the EHS Metrics.

7 AUDITS

Programmatic OEHS EHS Assessments and Bureau Compliance Audits will:

- Assess the effectiveness of NOV management at the facility level by comparing information in the NOV database to the facility/Bureau NOV records;
- Assess the effectiveness of the NOV database management system with respect to completeness of the database entries as well as facility awareness of all applicable NOV's; and
- Identify for tracking in the Action Item Tracking System:
 - Any audit finding related to a previously issued citation;
 - Any regulatory citation related to a historic audit finding.

8 METRICS

Data from the NOV tracking database will be accessed by OEHS monthly for updating the NOV data in the monthly EHS Metrics report. Only NOV's will be used to calculate periodic metrics.

The OEHS Compliance Systems Unit will send monthly reminders to the bureaus to update their information in the NOV database.

9 TRAINING

Appropriate Bureau, BEHS, BLA and OEHS staff will receive training on these guidelines and the use of the tracking system.