



The City of New York
Department of Investigation

JOCELYN E. STRAUBER
COMMISSIONER

180 MAIDEN LANE
NEW YORK, NY 10038
212-825-5900

Release #40-2023
nyc.gov/doi

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 14, 2023

CONTACT: DIANE STRUZZI
ERIC LENKOWITZ
(212) 825-5931

DOI REPORT RECOMMENDS IMPROVEMENTS IN OVERSIGHT OF MANDATORY ASBESTOS INSPECTIONS

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation (“DOI”), issued a report today that revealed limitations in the oversight of privately-hired Certified Asbestos Investigators (CAIs), who conduct and document inspections to determine whether asbestos is present on a site in connection with the issuance of construction permits. The investigation found that the City’s Department of Buildings (DOB) and Department of Environmental Protection (DEP) were exposed to potential fraud by dishonest CAIs due in part to an absence of certain procedural requirements concerning asbestos inspections and a lack of communication between DOB and DEP. A copy of the report follows this release and is posted on DOI’s website: <https://www.nyc.gov/site/doi/newsroom/public-reports.page>

The investigation was prompted by ongoing complaints about CAI misconduct, and the arrest of three CAIs in 2021 following a DOI investigation. Similar complaints of CAI misconduct, and the arrest of 17 CAIs, resulted in [a 2018 DOI report](#) that also recommended policy and procedural changes in this area.

DOI Commissioner Jocelyn E. Strauber said, “Asbestos lurks inside many of the aging buildings in this City — and poses a life-threatening risk to construction workers and members of the public who are exposed to significant quantities of this hazardous building material. This report has revealed several areas in need of immediate improvement. We are pleased that DOB and DEP have already begun to work on improving data-sharing that should both prevent and expose fraud by CAIs in connection with their asbestos inspections, and it is our expectation that our other recommendations will be implemented as soon as possible in order to improve controls in this important area.”

CAIs are licensed professionals responsible for inspecting properties for the presence of asbestos. In New York City, DOB requires such an inspection prior to issuing a construction permit. The results of that inspection, as well as any laboratory tests for the presence of asbestos, are documented on a form referred to as an “ACP-5.” CAIs are hired by property owners to inspect and test material from the property and are responsible for completing the ACP-5 form and submitting it to DEP. The property owner or their agent also submits the ACP-5 to DOB, along with other documents, as part of the construction permit application.

Over the last decade, DOI investigations have revealed that CAIs and others have engaged in criminal activity in connection with the asbestos inspection process; in particular, CAIs have submitted ACP-5s containing false statements or material omissions to DEP and DOB. This conduct is of particular concern because CAIs play an important role in protecting workers in the construction industry and members of the public from asbestos exposure, which can pose serious health risks. DOI issued a report on this CAI misconduct in 2018, and made several recommendations to improve DEP’s oversight of CAIs, including (1) improving background checks for CAI candidates; (2) requiring CAI candidates to have additional professional experience; (3) prohibiting CAIs from submitting materials to certain laboratories to avoid conflicts of interest; and (4) conducting more frequent and stringent audits of CAIs’ records. DEP accepted and implemented the first, second and fourth recommendations and rejected the third.

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Due to ongoing complaints of CAI misconduct, DOI conducted this review of the ACP-5 submission process and made the following findings: (1) DEP does not require advance notice of asbestos inspections, which significantly limits its ability to use site visits as a means of confirming that DEP-certified CAIs are on site to conduct and supervise investigations; (2) DEP does not require that ACP-5s be timely submitted following an asbestos inspection, which limits DEP's ability to conduct its own site inspection and determine whether the conditions at inspection differed from the conditions described on the ACP-5; (3) DOB does not confirm with DEP that the ACP-5s submitted to DOB are consistent with those submitted to DEP, a process that could assist DOB in identifying fraudulent ACP-5s, and (4) DEP could audit more ACP-5s if DEP had more inspectors available.

In light of these findings, DOI now makes additional recommendations to DEP and DOB to improve the oversight of CAIs. These proposals expand the recommendations made in 2018, and seek to reduce the risk of criminal misconduct in asbestos inspections and to enhance agencies' ability to detect such misconduct.

DOI recommends that DEP:

- Integrate their computer databases with DOB's, so that when a CAI files an ACP-5 with DEP the ACP-5 will automatically populate into DOB's database. DEP and DOB have proposed a two-phase plan (discussed in more detail in the report) that will accomplish this goal in Phase 2, if implemented as described. DOI recommends that DOB and DEP work to execute this proposed plan as soon as possible.
- Require CAIs to provide notification to DEP of upcoming inspection dates and times for all inspections related to DOB permitting, and conduct site visits during inspections at a sampling of properties to ensure that licensed CAIs are on-site and conducting inspections as required.
- Require the submission of ACP-5s promptly following site asbestos surveys, with a specific timeframe to be determined by DEP.
- Increase the number of DEP inspectors available to conduct audits of sites subject to CAI inspection, as well as business documentation submitted by CAIs.

The investigation was conducted by DOI's Office of the Inspector General for DEP, specifically; Senior Investigative Attorney Grant Bauer, Deputy Inspector General Jordan Buff, and Deputy Inspector General William Cheung, and was supervised by Inspector General Juve Hippolyte, Deputy Commissioner of Strategic Initiatives Christopher Ryan and Deputy Commissioner/Chief of Investigations Dominick Zarrella.

DOI Commissioner Strauber thanks DEP Commissioner Rohit T. Aggarwala and DOB Commissioner James S. Oddo, and their staff, for their cooperation in this investigation.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City
Department of Investigation



DOI's Investigation into Asbestos Safety Regulation Governing Certified Asbestos Investigators

Jocelyn Strauber
Commissioner

Juve S. Hippolyte
Inspector General

December 2023

Executive Summary

Certified Asbestos Inspectors (“CAIs”) are licensed professionals responsible for inspecting properties for the presence of asbestos. In New York City, the Department of Buildings (“DOB”) requires such an inspection prior to issuing a construction permit. The results of that inspection, as well as any laboratory tests for the presence of asbestos, are documented on a form referred to as an “ACP-5.” CAIs are hired by property owners to inspect and test material from the property and are responsible for completing the ACP-5 form and submitting it to the New York City Department of Environmental Protection (“DEP”). The property owner or its agent also submits the ACP-5 to DOB, along with other documents, as part of the construction permit application.

Over the last decade, inquiries by the New York City Department of Investigation (“DOI”) have revealed that CAIs and others have engaged in criminal activity in connection with the asbestos inspection process; in particular, they have submitted ACP-5s containing false statements or material omissions to DEP and DOB. This conduct is of particular concern because CAIs play an important role in protecting workers in the construction industry, and members of the public, from asbestos exposure which can pose serious health risks. DOI issued a report on CAI misconduct in 2018 and made several recommendations to enhance DEP’s oversight of CAIs, including:

- (1) improving background checks for CAI candidates;
- (2) requiring CAI candidates to have additional professional experience;
- (3) prohibiting CAIs from submitting materials to certain laboratories to avoid conflicts of interest; and
- (4) conducting more frequent and stringent audits of CAIs’ records.

DEP accepted and implemented the first, second, and fourth recommendations. DEP did not accept the third recommendation because DEP does not approve laboratories and cannot determine if a conflict of interest exists between a CAI and a laboratory.

Due to ongoing complaints of CAI misconduct, DOI recently conducted another review of the ACP-5 submission process. DOI made the following findings:

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- (1) DEP does not require advance notice of asbestos inspections, and therefore has limited ability to conduct site visits in order to confirm that DEP-certified CAIs are on site to conduct and supervise investigations as required;
- (2) DEP does not require that ACP-5s be timely submitted following an asbestos inspection, and therefore has limited ability to conduct its own site inspection shortly after the CAI's inspection, in order to determine whether the conditions at inspection differ from the conditions described on the ACP-5;
- (3) DOB does not confirm with DEP that the ACP-5s submitted to DOB are consistent with those submitted to DEP, a process that could assist DOB in identifying fraudulent ACP-5s; and
- (4) DEP could audit a greater number of ACP-5s if DEP had more inspectors available.

In light of these findings, DOI now makes additional recommendations to DEP and DOB to improve the oversight of CAIs and to decrease the risk of CAI misconduct. These proposals expand on the recommendations made in 2018 and seek to further reduce the risk of criminal misconduct in asbestos inspections and to enhance the agencies' ability to detect such misconduct. DOI recommends that DEP:

- (1) require CAIs to provide notification to DEP of the dates and times of upcoming inspections;
- (2) conduct on-site visits at a sampling of properties where CAIs are scheduled to conduct asbestos inspections, in order to confirm that DEP-licensed CAIs are in fact on site and conducting inspections as scheduled;
- (3) require the submission of ACP-5s promptly following site asbestos surveys, the specific timeframe to be determined by DEP; and
- (4) increase the number of DEP inspectors available to audit ACP-5s.

DOI also recommends that DEP and DOB improve information-sharing, and in particular, that DEP and DOB share with each other the ACP-5s that are separately filed with each agency. As discussed further below, at DOI's urging, DOB and DEP have already developed, but not yet implemented, a plan to share ACP-5s. That plan, if implemented, should ensure that DOB receives an ACP-5 that is identical to the ACP-5 that was submitted to DEP.

Background

Asbestos Regulation

Asbestos is a naturally occurring mineral found in rock and soil. In the past, it was used to provide heat and fire-resistant insulation due to its durable, flame-retardant fibers. Asbestos was also used to manufacture roofing shingles, tiles, paper goods, automobile parts, and similar products. While a low level of asbestos is present in the air in dense, urban areas and generally does not cause illness, exposure to more significant quantities of asbestos can cause life-threatening diseases like mesothelioma, asbestosis, and lung cancer.

For that reason, asbestos is regulated at the federal, state, and local levels. The United States Environmental Protection Agency (“EPA”) regulates asbestos under Title 2 of the Toxic Substances Control Act of 1976 (“TSCA”).¹ In New York, the New York State Department of Health (“NYSDOH”), New York State Department Labor (“NYSDOL”), and New York State Department Environmental Conservation (“NYSDEC”) regulate the training and licensing of asbestos workers, as well as the transport and dumping of asbestos within the state.²

In New York City, asbestos is regulated by DEP’s Asbestos Control Program.³ The Asbestos Control Program enforces the City’s asbestos laws, rules, and regulations. The Program oversees audits and inspections of asbestos surveys, asbestos abatements, and asbestos disturbance and removal. It also oversees the licensing of CAIs and asbestos handlers. The Program, staffed by eight DEP asbestos inspectors, conducts audits of randomly selected ACP-5s and CAIs. DEP’s audits consist of on-site inspections, and a review of business documentation submitted and maintained by CAIs. During on-site audits, DEP’s inspectors look for asbestos-containing material that was not disclosed on the ACP-5 and for any undisclosed construction activity. The Program receives a total of 5,000 ACP-5s per month and audits eight to nine percent of those on a monthly basis. Audits are either randomly conducted or initiated by DEP or DOI based on the receipt of a complaint. In DEP’s view, increasing the percentage of ACP-5s that are audited to 10% would provide a more appropriate level of oversight.

¹ 15 U.S.C. §§ 2641 – 2656.

² 10 NYCRR § 73; 12 NYCRR § 56; 6 NYCRR §§ 360, 364.

³ 24 N.Y. Admin. Code § 136, *amended by* NYC L.L. § 106 (2019); 15 RCNY § 1.

Asbestos Inspections and the Vulnerabilities in Submission Process

The Submission Process

DOB requires an asbestos inspection, along with other requirements, to issue a construction permit.⁴ CAIs are responsible for conducting that inspection to determine if any asbestos-containing material may be present at the proposed construction site. The CAI conducts an initial inspection, and if that inspection indicates the presence of such material, the CAI takes samples of that material and sends them to a certified NYSDOH lab for testing. This inspection may require the CAI to open walls and floors and remove carpeting or layers of roofing. If the inspection does not indicate such material, no samples are taken.⁵ The CAI completes and files an ACP-5 with DEP reflecting the date, time, and results of the inspection and any subsequent testing. Testing can indicate no asbestos-containing material, asbestos that will remain undisturbed during the work, or minor amounts of asbestos that will be abated prior to the commencement of the work. These results will be included in the ACP-5.⁶

The ACP-5 also notes the address of the proposed construction site, the property owner, and the intended scope of work. The CAI signs the form and attests that “the information provided herein is true and accurate.” The CAI then affixes their CAI seal to the document and submits the ACP-5 to DEP. Only NYSDOL and DEP-certified asbestos inspectors, or those acting under their direct and continuing supervision, may collect bulk samples of asbestos for testing and submit ACP-5s to DEP.⁷ Upon receipt of the ACP-5, DEP assigns a unique control number to it. The CAI gives a copy of the form, with the control number, to the property owner. The property owner — or expeditor or general contractor acting on the property owner’s behalf — submits the ACP-5 to DOB as part of the application for a construction permit.

⁴ 15 RCNY § 1-22; *See* 106 N.Y. Admin. Code § 28-106.1

⁵ In order to make this determination, CAIs rely on their knowledge of the materials used and an official list issued by the EPA of materials that are considered not to contain asbestos, and thus do not need to be tested.

⁶ 15 RCNY §§ 1-02, 22, 28, 29, 38. If asbestos-containing material is found or if it is determined that asbestos-containing material would be disturbed during the work, then the asbestos must be abated. In the event that asbestos must be abated, a separate form known as an ACP-7 is required to confirm that the abatement has occurred. That form also is submitted to DEP.

⁷ 15 RCNY §§ 1-16

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DOB requires the ACP-5, as well as other building survey and design documentation, to be submitted prior to DOB's full review of the scope of work for the project. Whether DOB issues a construction permit is contingent on whether asbestos is present at a construction site and, if so, whether asbestos will be disturbed in connection with the proposed construction work. If asbestos will be disturbed during the work, the property owner must hire an asbestos abatement contractor and air monitor. DOB will not issue a permit until that work is complete.⁸ DOB personnel, who assess construction documents for compliance with applicable code and zoning requirements, review ACP-5s to determine if the forms have been completed. However, DOB does not vet the accuracy of the information on the ACP-5, nor does DOB assess whether a certified CAI conducted or supervised the inspection, as required.

Issues in the ACP-5 Submission Process

DOI has conducted numerous investigations involving ACP-5s containing false statements or material omissions, or that are otherwise fraudulent, that were submitted to DOB and/or to DEP. Based on those inquiries, DOI has identified vulnerabilities in the ACP-5 submission process that increase the risk of fraudulent submissions, as set forth below.

I. DEP Does Not Require Advance Notice of Asbestos Inspections or Timely Submissions of ACP-5s to DEP

First, unlike industry practice in other inspections related to construction trades, DEP does not require CAIs to give DEP advance notice of the date, time, and place of their site inspections. For example, licensed Master Plumbers are required to provide DOB with such advance notice even though they may self-certify.⁹ Without advance notice, DEP is unable to conduct site visits to ensure that CAIs are in fact on site and conducting or supervising asbestos inspections.

In 2021, following a DOI investigation, the Office of the New York State Attorney General charged three CAIs for submitting fraudulent ACP-5s to DEP. All three pled guilty to misdemeanor charges, paid fines and/or monetary penalties, and lost their CAI licenses. These CAIs certified that they had conducted asbestos investigations at sites on

⁸ See generally 15 RCNY §§ 1-23, 25, 38

⁹ N.Y.C. Fuel and Gas Code § 406.4.7. For an explanation of the self-certification process see generally <https://www.nyc.gov/site/buildings/industry/professional-certification.page>

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dates and times when in fact they were not present. Two of the CAIs charged did not conduct inspections as represented on their ACP-5s. Another CAI allowed an unlicensed employee to conduct inspections, which is not permitted by law. DOI discovered this fraudulent conduct as a result of a proactive inquiry prompted by the submission of ACP-5s long after the dates of site inspections. With advance notice of CAI site inspections, DEP could conduct site visits at a sampling of scheduled inspections to ensure DEP-licensed CAIs are on-site as required, which could prevent this type of misconduct at least in some circumstances and also serve as a deterrent. DEP is considering the implementation of a regulation which would require CAIs to certify on ACP-5s that they were on site during their investigation and present for its entirety, which would provide some additional assurance that CAIs are conducting investigations appropriately.

Furthermore, DEP does not require that CAIs submit ACP-5s close in time to the conduct of asbestos inspections – indeed DEP imposes no time limit on these submissions. The impact of delayed submissions was evident in a 2018 DOI investigation conducted with the New York County District Attorney’s Office (“DANY”), the Queens County District Attorney’s Office (“QCDA”), and the Richmond County District Attorney’s Office (“RCDA”). These offices charged seventeen CAIs in separate cases for multiple types of fraud related to their ACP-5 submissions. The defendants (1) falsely represented that they conducted asbestos investigations and that no asbestos was found at those sites when in fact the CAIs were not present; (2) falsely represented that they had not found asbestos at property sites where in fact they found asbestos; and (3) falsely represented that asbestos inspections were conducted by individuals with appropriate certifications when in fact the investigations were conducted by unsupervised individuals without DEP certifications. The majority of these defendants pled guilty or were found guilty at trial and sentenced to conditional discharges, the payment of fines, probation, and/or ordered to forfeit their professional license(s).

DOI’s 2018 review of the ACP-5 submission process in connection with those cases confirmed that CAIs often submit ACP-5s several months to one year after the inspections, and DEP does not impose any time limit on such submissions.¹⁰ As a result, DEP cannot timely review sites inspected by CAIs to confirm that the site conditions are consistent

¹⁰ While lab results usually take approximately a week to be produced, for an expedited testing fee, results can be available within as little as six hours.

with those reported on the ACP-5. During inspections following these delayed submissions, DEP has found that the work site conditions vary from those reported on the ACP-5. However, due to the passage of time, DEP is unable to determine whether the variances indicate false statements on the ACP-5 or were because of changes caused by completion of construction, continuing construction work, or illegal abatement.

II. Insufficient Communication Between DOB and DEP

When ACP-5s are submitted to DEP, DEP's database automatically generates a unique control number for each ACP-5. The ACP-5 submitted to DOB should be the exact same document previously submitted to DEP, and therefore the control number generated by the DEP database should appear on the ACP-5 that is subsequently submitted to DOB. DOI observed that on some occasions, ACP-5s containing falsified control numbers -- either invented numbers that do not correspond to any property or genuine numbers assigned to a property, but not the property that is the subject matter of the ACP-5 -- are submitted to DOB. DOI has also found that some ACP-5s submitted to DOB included a CAI license number of a CAI that did not prepare the ACP-5 or was not otherwise involved in the asbestos inspection the ACP-5 reflected. DOI's investigations have established that fraudulent ACP-5s without a legitimate DEP-issued control number are often submitted to DOB without first having been submitted to DEP in an effort to expedite the issuance of a construction permit. Because DEP and DOB have separate submission processes for ACP-5s, and because DEP and DOB each store the ACP-5s they receive in separate databases not accessible to each other, DOB cannot readily check whether the control numbers on the ACP-5s they receive are in fact legitimately registered with DEP.

If a DOB plan examiner receives an ACP-5, that plan examiner could query DEP to determine whether the ACP-5 received by DOB bears a genuine DEP-issued unique control number, and thereby limit the risk that the ACP-5 is fraudulent. However, DOB plan examiners do not have access to the DEP ACP-5 database and generally do not contact DEP to confirm that the ACP-5 submitted to DOB's system is valid. Furthermore, as noted above, DOB reviews ACP-5s submitted by non-design professionals (that is, general contractors, filing representatives, or property owners) for completeness only and does not vet the accuracy of the information on the form. Indeed, if DOB receives a self-certified package of building plans from a design professional, such as a

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registered architect or professional engineer, DOB may not review the ACP-5 at all because it is part of a self-certified package, even though the asbestos inspector responsible for the form is not authorized to self-certify to DOB.

In 2022, a DOI investigation determined that a DOB-licensed filing representative submitted almost eighty ACP-5s using the forged signatures and seals of several CAIs without their knowledge. These ACP-5s purported to certify that asbestos investigations had been completed at various properties throughout New York City when in fact no investigations had been conducted. Consistent with the practice noted above, the filing representative used control numbers on the ACP-5s that did not exist in the DEP database, or that existed, but that did not correspond to ACP-5s for the properties at issue. As noted above, DOB generally does not confirm that DEP has a corresponding ACP-5 in its files with a matching control number and lacks a mechanism to determine whether the ACP-5 submitted to DOB is valid. DEP has sent DOB the Internet link and credentials needed to access DEP's internal ACP-5 database. However, DOB would need to manually use this link and credentials to check each individual ACP-5 as it is submitted to them and therefore rarely, if ever, does so.

Over the course of this investigation, DOI discussed the communication challenges between DEP and DOB with DEP, and recommended that the relevant DEP and DOB platforms be integrated to facilitate DOB's access to the ACP-5s filed with DEP. DEP has created an application programming interface ("API") in their ACP-5 database which can connect with DOB NOW: Build.¹¹ DOB and DEP have informed DOI that over the last several months, they have developed a two-phase plan to enable the agencies to more easily share information with respect to ACP-5s, in order to reduce the risk of fraud in the process that is detailed above. The plan prioritizes moving portions of DEP's permitting process that are closely related to construction into the DOB NOW platform. As part of this process, all approved DEP ACP-5 forms and control numbers will be moved into the platform for verification.

¹¹ DOB NOW: Build is "the online platform for Professional Engineers (P.E.), Registered Architects (R.A.), Licensees, Special Inspectors, Progress Inspectors, Filing Representatives and Owners to submit jobs to the Department of Buildings." Available at: <https://www.nyc.gov/site/buildings/industry/dob-now-build.page>.

As planned, in the first phase of the project, all approved ACP-5 forms with DEP-assigned control numbers will be uploaded into DOB NOW. DOB NOW will be updated with new data from DEP on a daily basis, so that DOB can verify the ACP-5s it receives by comparing them to the ACP-5s received by DEP and uploaded into DOB NOW. During this phase, applicants for DOB construction permits will be required to submit an ACP-5 form to DOB during the filing period. The agencies plan to begin the first phase within the next three months.

In the second phase, applicants will not need to file an ACP-5 form with DOB. Applicants will simply provide DOB with the control number of the ACP-5 which has been submitted to DEP. Under this plan, both DOB and DEP will rely on the ACP-5 forms and data in DEP's database when ACP-5s are required for construction projects.

III. Inadequate Staffing

DOI's investigations have also revealed that DEP's Asbestos Control Program lacks sufficient staffing. DEP informed DOI that DEP identifies only two to three ACP-5s each year that contain false information. With a larger staff, the Program would be able to audit a larger percentage of ACP-5s and potentially identify other ACP-5s that include false statements or require further follow-up. With additional staffing, DEP would be able to audit ten percent of ACP-5s which are submitted for active building construction projects, a percentage that, in DEP's view, would provide a more appropriate level of oversight. However, due to current staffing levels, DEP is able to audit only eight to nine percent of ACP-5s.

Findings of Investigation

DOI's findings are as follows:

- (1) During several investigations, DOI identified instances when CAIs directed individuals who were not DEP-certified to conduct asbestos investigations when the DEP-certified CAI was absent. Because DEP currently does not require advance notice of CAIs' asbestos inspections, DEP cannot conduct site visits to confirm that DEP-certified CAIs are in fact on site and supervising investigations.
- (2) CAIs often submitted their asbestos surveys several months to one year after the inspection. Due to this delayed submission, DEP cannot timely review sites upon receipt of ACP-5s to confirm

that the ACP-5 accurately represents the site's condition. During inspections following these delayed submissions, DEP has found the work sites to be in conditions inconsistent with their respective ACP-5s' representations. However, due to the delay, DEP cannot determine the cause of that inconsistency. Site conditions may differ from the ACP-5 representations due to completion of construction, continuing construction work, or illegal abatement.

- (3) DOB does not communicate with DEP regarding submissions of ACP-5s in order to determine whether the ACP-5s that DOB receives contains potentially false information, including with respect to the filing of the form with DEP. During the course of this inquiry, DOI learned that DEP has created an API in their ACP-5 database which can connect to DOB NOW: Build and can automatically confirm if an ACP-5 was previously submitted to DEP for approval. Such an interface would eliminate the need for the DEP-approved ACP-5 to be separately submitted to DOB and prevent the submission of ACP-5s to DOB that have not been submitted to DEP. As discussed above, DOB has recently indicated to DOI that it is in the process of developing a two-phase reform to its ACP-5 submission process which would allow for regular, and eventually automatic, cross-checking of information in ACP-5s on file with DOB against the corresponding data on file with DEP.
- (4) Due to DEP's staffing shortage, the Asbestos Control Program currently audits only around eight to nine percent of ACP-5s that it receives. With additional staffing and resources, DEP would be able to audit ten percent of submissions, a more appropriate level of oversight.

Recommendations

Policy and Procedure Recommendations

- (1) DEP should require all CAIs to file a notice of intent to conduct an inspection at a property at a particular date and time with DEP for all inspections related to DOB permitting. This advance notice should be filed electronically and include the exact address, date, and time at which the inspection will be conducted. DEP should require this notice to be submitted at least one week prior to the inspection and should require CAIs to update DEP should the date and time of any inspection change. With advance notice

of inspection dates, DEP can conduct checks of a sampling of inspection sites (see Recommendation 2), in order to confirm that DEP-licensed CAIs are on-site during the inspections, as required.

- (2) Using the notifications in Recommendation 1, DEP should conduct site visits during inspections of a sampling of properties to ensure that DEP-licensed CAIs are on-site and conducting inspections as required by law. DEP should amend its rules to incorporate this new practice. DEP also should implement its proposed requirement that CAIs certify on the ACP-5s, under penalty of perjury, that they were on-site during the entirety of the site inspection. These protocols should aid in deterring false representations in ACP-5s that a DEP-licensed CAI observed the conditions reported in the ACP-5 when in fact no CAI, or no licensed CAI, was present.
- (3) DEP should require that ACP-5s be filed promptly after a CAI's scheduled inspection, with the specific timeframe to be determined by DEP. DEP should amend its rules to reflect this change. DOI recognizes that this recommendation may not be necessary once DEP and DOB implement the planned reforms described below in Recommendation 5.
- (4) DEP should increase staffing levels in the Asbestos Control Program so that the inspectors can audit at least ten percent of the ACP-5s submitted on a monthly basis, the percentage that DEP has determined is appropriate. While DOI previously made this recommendation and DEP accepted it, the recommendation has not been implemented due to budget and attrition issues that have limited DEP's available staffing.
- (5) DOB and DEP should integrate their computer databases so that when a CAI files an ACP-5 with DEP, the ACP-5 will automatically populate into DOB's database. This will significantly limit, if not eliminate, the need for a separate submission of an ACP-5 to DOB and will reduce the risk that a fraudulent ACP-5 is submitted to DOB. It will also enable DOB to more readily identify any fraudulent ACP-5s submitted as part of the construction permit application. DEP and DOB's proposed two-phase plan (discussed above) to improve data-sharing between the two organizations would resolve this issue, assuming it is implemented as described. DOI recommends that DOB and DEP work to execute their proposed two-stage solution as soon as possible.

Appendix A: Licensing Requirements Applicable to Asbestos Inspectors and Investigators

In order to be a CAI, New York State requires asbestos inspector training from a NYSDOH accredited asbestos safety training provider. After a two-week course, applicants must score at least 70% on a written examination. The course covers the history of asbestos use, identification of asbestos, the current legal and regulatory scheme for asbestos oversight, health effects of asbestos, personal protective equipment (“PPE”) procedures, and a summary of abatement control options. After passing the exam, applicants can apply for a NYSDOL Asbestos Inspector Certificate.¹²

A NYSDOL-licensed asbestos inspector must also be certified by DEP in order to conduct a bulk asbestos survey in New York City or to file certain forms relating to asbestos inspections with DEP. A bulk asbestos survey is the collection of small samples of suspected asbestos containing material (“ACM”) within a building site for laboratory testing.¹³ To obtain a DEP Asbestos Investigator Certification, applicants must score at least 76% on a written examination administered by DEP, be licensed by NYSDOL, and have two years of work experience involving documented building survey/hazard assessment for ACM and three years of other documented building survey-related experience. In lieu of experience, an applicant may substitute proof of a technical college education and accreditation as a design or safety professional.

NYSDOL and DEP issue photo identification cards to CAIs. The NYSDOL certificate is valid for one year, while the DEP certificate is valid for two to three years. Certifications can be renewed by re-applying to both agencies.

¹² See generally 10 NYCRR § 73 (While the NYSDOL uses the term “Asbestos Inspector,” DEP uses the term “Certified Asbestos Investigator.” In this report, the term “CAI” refers to a New York City “Certified Asbestos Investigator.”).

¹³ See generally Doug Jager, ET AL., U.S. Environmental Protection Agency Science & Ecosystem Support Division, Guidance Document: Bulk Sampling for Asbestos (June 4, 2013); Available at: <https://19january2017snapshot.epa.gov/sites/production/files/2015-06/documents/Bulk-Sampling-for-Asbestos.pdf>.

**Appendix B: 2018 DOI Report on "Arrests from False Inspections Reported by
Certified Asbestos Investigators"**



NEW YORK CITY DEPARTMENT OF INVESTIGATION
ARRESTS FROM FALSE INSPECTIONS
REPORTED BY CERTIFIED ASBESTOS INVESTIGATORS

MARK G. PETERS
COMMISSIONER

February 2018

EXECUTIVE SUMMARY

In February 2018, the New York City Department of Investigation (DOI) along with the District Attorneys of New York County (DANY), Queens County (QCDA) and Richmond County (RCDA) and the New York City Department of Environmental Protection (DEP), completed an investigation that uncovered systematic fraud by Certified Asbestos Investigators (CAIs) – private construction safety professionals licensed by DEP and responsible for identifying, detecting and protecting the public from asbestos hazards. The defendants in this investigation endangered public safety by:

- Falsely stating to DEP that there was no asbestos on properties slated for construction or demolition when, in fact, asbestos was present;
- Falsely representing to DEP that sites were free of asbestos when the CAIs never conducted inspections;
- Sending unlicensed asbestos investigators to conduct inspections and certifying the results as accurate;
- Claiming to conduct multiple inspections at different locations, at the same day and time; and
- Claiming to conduct consecutive inspections at different locations without accounting for any travel time between those locations.

As a result of this investigation, DOI has arrested 17 CAIs on felony charges including filing fraudulent inspection documents with DEP and the New York City Department of Buildings (DOB). Additionally, working together with DEP, DOI has issued numerous policy and procedure recommendations to ensure CAIs are accountable for their inspections, increase DEP's oversight over the CAIs, and increase safety in the construction industry. DOI will continue to investigate this industry to ensure the recommended reforms are implemented and to deter future criminal conduct.

BACKGROUND

Asbestos Inspections

Asbestos is a highly dangerous substance when airborne and inhaled; this risk is heightened during demolition and construction of buildings. In New York City, DEP, in conjunction with DOB, strictly regulates the inspection of properties for asbestos and its abatement during the construction process.¹ Before DOB issues a construction permit to a property owner, the owner must retain a

¹ NYC ADMIN. CODE. § 24-136.

CAI – a construction professional licensed by DEP to inspect the subject property for asbestos.² The burden is on the CAI to prove asbestos is *not* present.³

To inspect a property for the presence of asbestos, in most instances, a licensed CAI inspects the premises by collecting bulk samples, submits those samples to a laboratory for testing,⁴ and obtains the test results from that laboratory. While a non-certified asbestos investigator can “participate” in a CAI’s inspection, that non-certified investigator must work “in the presence of” the CAI and under the CAI’s “direct and continuing supervision.”⁵ As a result, the CAI must be physically present at the inspection site during all inspections.

Two results are possible from this laboratory analysis: (1) asbestos is not present, or (2) asbestos is present.

Reporting the Presence of Asbestos

In circumstances where a lab reveals that asbestos is *not* present in samples collected:

- The CAI fills out an asbestos assessment report, commonly referred to as the ACP-5, on which the CAI documents the date and time (in 15-minute increments) of the inspection and the location of that inspection;
- The CAI signs the document under a declaration that “the information provided herein is true and complete;”
- The CAI submits the ACP-5 to DEP; and,
- Once filed, DEP assigns the ACP-5 a unique control number, which the property owner then submits to DOB as part of a package of documents necessary for the owner to apply for a DOB construction permit.

A sample blank ACP-5 form is attached as Attachment A.

In circumstances where a lab reveals that asbestos *is* present in the samples collected and that the asbestos will be disturbed by the proposed construction:

- The identified asbestos must be removed, or abated, before DOB issues a construction permit;

² 15 R.C.N.Y. § 1-16. The CAI is required to report on the physical condition of the building at the time of the CAI’s investigation, including a description of the building and the identities of all persons involved in the investigation, including non-CAI’s, if any. 15 R.C.N.Y. § 1-28(b) & (c). Significantly, only a CAI can conduct this investigation. 15 R.C.N.Y. § 1-16(a)(1).

³ 15 R.C.N.Y. § 1-16(a)(3).

⁴ This lab must be certified by the New York State Department of Health. 15 R.C.N.Y. § 1-36(c).

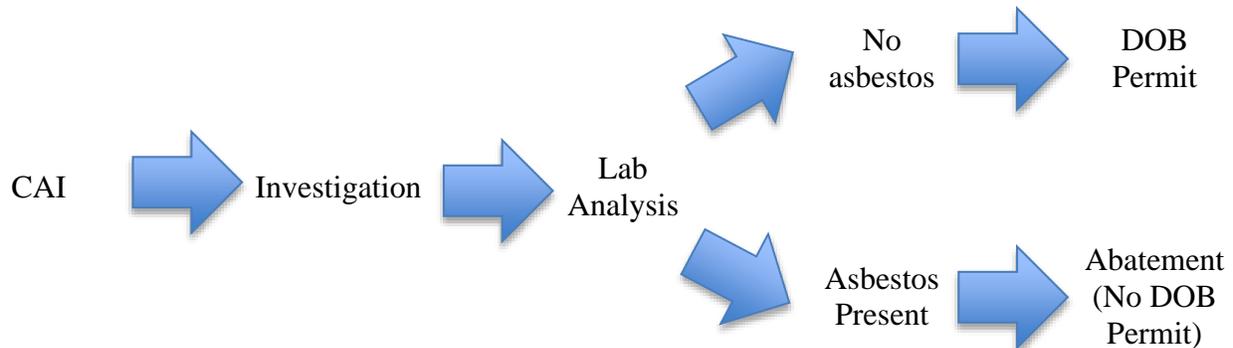
⁵ 15 R.C.N.Y. § 1-16(a)(2).

- The property owner obtains a DEP asbestos abatement permit and must comply with a series of rules and regulations issued by the DEP that govern the abatement process;⁶ and,
- Once completed, DEP issues the property owner an asbestos project completion form, which the property owner submits to DOB as part of a package of documents necessary to apply for a DOB construction permit.

In circumstances where asbestos is present but will not be disturbed by the proposed construction:

- The CAI submits to DEP an ACP-5 stating that, while asbestos is present, it will not be disturbed by the proposed construction; and,
- The CAI completes the ACP-5 and files it with DEP; it is then submitted to DOB as part of a package of documents necessary to apply for a DOB construction permit.

The following diagram illustrates the CAIs role in the DOB construction process and demonstrates that the CAIs investigation effectively determines whether the owner will undergo the lengthy, costly and DEP-regulated asbestos abatement process or bypass this requirement and immediately obtain a DOB construction permit (and potentially remove the asbestos through extra-regulatory means). Thus, the CAI investigation process presents a potential systemic corruption vulnerability in the construction industry:



INVESTIGATIVE FINDINGS

DOI investigators subpoenaed, obtained and analyzed thousands of ACP-5s, records of travel, cellular phone service records, cell site location data, and other forms of data. Additionally, DOI investigators conducted numerous physical surveillances, interviewed scores of CAIs, and performed numerous other confidential investigative steps.

After analyzing the data, DOI and DEP identified CAIs whose inspection pattern seemed suspicious. For instance, a CAI claimed to be conducting over 2,200 asbestos investigations in a one-year period, which would have meant that he/she averaged six investigations per day, every day for 365 days.

⁶ Among other things, asbestos abatement must be performed by workers with the requisite DEP and other government issued certifications and licenses, 15 R.C.N.Y. §§ 1-29(a)(1) & (2) & 1-51(a), and must be conducted under the review of an independent air monitor, 15 R.C.N.Y. §§ 1-31 & 1-36.

I. CAIs Falsely Reported No Asbestos Found When Their Inspections Revealed the Presence of Asbestos.

This investigation revealed instances when CAIs conducted inspections and found asbestos present, but falsely reported to DEP that there was no asbestos found. Reporting no asbestos present by the CAI allows the property owner to avoid the lengthy and costly asbestos abatement process.

II. CAIs Falsely Represented to DEP that Sites they Failed to Inspect were Free of Asbestos.

This investigation revealed that CAIs certified to DEP that sites were free of asbestos when the CAIs never physically went to the locations. Specifically, cell site and travel records revealed that these CAIs were nowhere near the inspection sites at the time they claimed to have conducted those inspections. In many instances, the CAIs were thousands of miles away from the sites or even out of the country.

For instance, a CAI claimed to have conducted three different asbestos inspections in Manhattan, as well as ten others in different boroughs in New York City. On that same date, the CAI personal cell phone was obtaining service from a cell tower located across the country. This same CAI claimed that he/she conducted two different inspections in Manhattan, as well as two others in other boroughs in New York City, when his personal cell phone was actually pinging on a cell tower located over 200 miles away.

Travel records also revealed that CAIs claimed to be conducting asbestos investigations in New York City when the CAIs were not even in the United States. For instance, a CAI claimed to have conducted three inspections in Manhattan in a three-day period, as well as ten other inspections at various locations throughout New York City. Corresponding travel records revealed that this CAI was out of the country during this entire period.

III. CAIs Sent Unlicensed Asbestos Investigators to Conduct Inspections and Certified the Results as Accurate.

The investigation found that some CAIs never conducted inspections, instead sent uncertified asbestos investigators to conduct them, but still certified that they had personally conducted the inspection. The CAIs reported conducting an unusually high volume of inspections. When confronted by DOI investigators, CAIs attempted to explain away this high volume by stating that they had retained other uncertified persons to act as their “agents” who were working on their behalf. In many instances, these “agents,” whose identities these CAIs often refused to disclose, were not licensed to conduct these inspections. These actions violated rules and regulations that require that inspections be conducted by an individual “certified as an asbestos investigator”⁷ and created a safety hazard.

⁷ As mentioned previously, while a non-certified asbestos investigator can “participate” in a CAI’s inspection, that non-certified investigator must work “in the presence of” the CAI and under the CAI’s “direct and continuing supervision.” 15 R.C.N.Y. § 1-16(a)(2).

IV. CAIs Falsely Claimed to Conduct Multiple Inspections Simultaneously at Different Locations.

This investigation uncovered a pattern where some CAIs were claiming to be conducting multiple, simultaneous inspections at different locations. For instance, for at least 90 different inspection reports in a one-year period, one CAI claimed to have simultaneously conducted at least two different inspections at two different locations, on the same date and time. Indeed, this CAI claimed to have conducted inspections in three different boroughs: Manhattan, Brooklyn and Queens, during the same day and time.

V. CAIs Claimed to Conduct Consecutive Inspections at Different Locations without Accounting for Any Travel Time as Would be Necessary between Locations.

This investigation also found CAIs claimed to conduct inspections at different locations in New York City without accounting for any travel time between these locations. For instance, on at least 70 occasions in a one-year period, a CAI claimed to have conducted an inspection in Brooklyn and immediately thereafter conducted an inspection in the Bronx without accounting for the time necessary to travel from Brooklyn to the Bronx.

Based upon this investigation, 17 CAIs have been arrested.

CONCLUSION

CAIs are intended to play a vital role in protecting the public from asbestos dangers. New Yorkers must be able to rely on CAIs, as trained and licensed construction professionals, to fulfill their duty to protect the public with honesty and integrity. DOI's investigation reveals a pattern of CAIs affirming inspections that they never completed and reporting false results, resulting in significant public safety concerns. DOI has issued a host of recommended reforms to ensure a robust oversight regime by DEP over CAIs, which DEP has agreed to implement. These reforms, coupled with DOI's continued vigilance, will help prevent the recurrence of a similar fraud.

POLICY AND PROCEDURE RECOMMENDATIONS

DOI identified the following necessary reforms to strengthen DEP's regulatory oversight over CAIs. DEP, as part of its own initiative, has already accepted DOI's recommendations and begun to implement reforms, in addition to those reforms recommended by DOI. In particular:

1. DEP should conduct a more thorough background check of all new and renewal CAI applicants and will refer to DOI any applicants where fraud and other misconduct may have been committed. As a result of this recommendation which DEP accepted, DEP is now conducting a more thorough vetting process through a review of all supporting documents submitted by prospective CAIs. DEP is verifying the authenticity of these documents by conducting thorough background checks on all new and renewal CAI applicants and will be referring to DOI any applicants where fraud and other misconduct may have been committed.

2. DEP should require all new CAI applicants have sufficient experience in the field of building survey/hazard assessment for asbestos. DEP was already in the process of implementing this recommendation as a result of their independent proactive review to enhance the oversight of CAIs. This investigation revealed a comparative lack of competence in asbestos investigations between CAI applicants who were exempt from these experience requirements,⁸ and those CAIs who were required to have such experience. DEP has accepted this PPR and will now require all CAI applicants to have experience in building survey/hazard assessment for asbestos. By mandating such experience requirements, prospective CAIs will have sufficient experience to conduct asbestos investigations properly.
3. DEP should review the rules governing CAIs to prohibit CAIs from submitting asbestos samples to self-affiliated accredited laboratories. Current state regulations governing these laboratories do not prohibit CAIs from having ownership interests or holding positions within a laboratory. To avoid a conflict of interest, DEP has agreed to prohibit CAIs from submitting bulk samples of suspect materials they collected in their own investigations to laboratories in which those CAIs are affiliated or otherwise have an ownership interest.⁹
4. DEP should amend the chain of custody forms for all samples submitted to a certified laboratory to now require handwritten documentation for those who handled or had access to the samples. As a result of its own proactive review, DEP was already in the process of implementing this recommendation. This investigation discovered numerous instances of computer-generated chain of custody forms which lacked any distinguishing feature for those individuals identified within that chain. DEP is now requiring all such persons in the chain of custody to print and sign their full names, as well as the date and time they came into possession of the samples.
5. DEP should implement an even more robust and thorough audit regime, to include a thorough review of the accuracy and authenticity of records associated with CAIs' asbestos investigations and refer to DOI any evidence of fraud. Under existing rules and regulations, CAIs are required to maintain business records associated with their asbestos investigations for a period of 30 years.¹⁰ Despite these rules, DOI's investigation revealed that such records are often not maintained or appear to have been prepared in anticipation of a DEP audit. As a result, DEP has agreed to implement an even more robust and thorough audit regime, which will include a thorough review of these documents to determine their authenticity and refer to DOI any evidence of fraud.

⁸ Under current rules, registered design professionals, certified industrial hygienists and certified safety professionals are exempt from these experience requirements. 15 R.C.N.Y. § 1-16(b)(1). All other CAI applicants are required to have such experience. 15 R.C.N.Y. §§ 1-16(b)(2) – (5).

⁹ Specifically, 15 R.C.N.Y. § 1-44 can be amended to include a subsection (e) stating the following: “(e) the asbestos investigator certifies to the Department that he does not have an ownership interest or is otherwise affiliated with the lab testing the samples collected by that asbestos investigator.” The principles promoting the separation between the CAI and the lab and the independence of the lab is consistent with current rules requiring the strict independence of air monitors from those parties involved in the asbestos project. 15 R.C.N.Y. § 1-36(a)(1).

¹⁰ 15 R.C.N.Y. § 1-28(d).

DOI will continue to monitor the implementation of these PPR's.

* * *

Attachment A



NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Asbestos Control Program
 59-17 Junction Boulevard, 8th Floor, Flushing, NY 11373
ASBESTOS ASSESSMENT REPORT



1. NYC DOB Job # (if applicable) _____ **Control Number:** _____
2. Premise No. _____ Street Name _____ Borough _____ Zip _____
3. AKA _____ Type of Facility _____ BIN _____ Block _____ Lot _____
4. Building Owner _____ Address _____
5. City _____ State _____ Zip _____ Contact Person _____
6. Tel. # _____ Fax # _____ Email _____
7. Description of the Entire Scope of Work _____

8. I, _____, have conducted an asbestos investigation on _____ in accordance
Name of Certified Asbestos Investigator *Date(s)*
- with Sections 1-16 and 1-28 of the NYC DEP Asbestos Control Program Rules and declare that at said facility address, the
- a. portion(s) of the premises affected by the work is free of asbestos containing material (ACM).
- b. premise (or portions thereof) affected by the work contains 10 square feet or less or 25 linear feet or less of ACM.
 Specify locations in section 9: Note: This material must be abated as a minor project in accordance with relevant provisions of the DEP Asbestos Rules.
- c. asbestos is present and will not be disturbed during construction activity. Specify the quantity and area where asbestos is present. Specify amount: _____ sq. ft _____ linear ft.
 Specify locations (attach additional documents as necessary): _____
- d. entire building is free of asbestos containing material (ACM).

9. RESULTS OF ASBESTOS BUILDING SURVEY:

| LOCATION | FLOOR NUMBER | DESCRIBE SECTION OF FLOOR | ALL MATERIALS ASSUMED TO CONTAIN ACM AND/OR SAMPLED | NUMBER OF SAMPLES ANALYZED | ASBESTOS PRESENT | ASSUMED ACM |
|----------|--------------|---------------------------|---|----------------------------|------------------|-------------|
| | | | | | | |

10. ANALYTICAL LABORATORY:

| NAME | ELAP # (NYS DOH CERTIFICATION) | DATE(S) SAMPLES ANALYZED |
|------|--------------------------------|--------------------------|
| | | |

11. NYS DOL Asbestos Handling license # _____ Company Name _____

I hereby declare the information provided herein is true and complete

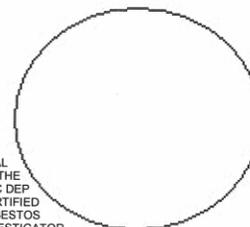
 DEP Certified Asbestos Investigator's Signature 1/1/0001 _____
 Date Certificate Number Expiration Date

Tel. # _____ Fax # _____

Email _____

The investigator shall assume that some or all of the areas investigated contain ACM, and for each area that is not assumed to contain ACM, collect and submit for analysis bulk samples in accordance with §§ 1-36, 1-37, and 1-44 of the DEP Asbestos Rules and EPA publications 560/5-85-024 and 560/5-85-030a and 40 CFR 763.86, 40 CFR 763.80, 40 CFR 763.85.

SEAL OF THE
 NYC DEP
 CERTIFIED
 ASBESTOS
 INVESTIGATOR



Is it a Build-It-Back project? Yes, App ID # _____ No

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